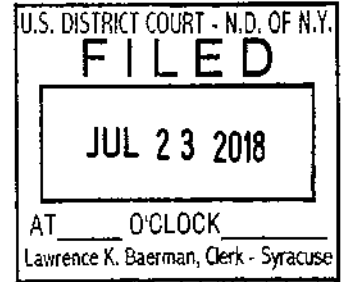


UNITED STATES DISTRICT COURT  
Northern District of New York
 CRAIG ALEXANDER  
Plaintiff

v.

 STATE OF NEW YORK, et al  
Defendants

Civ No. 6:17-cv-0725(GTS/ATB)

 Plaintiff's Opposition to Defendants'  
Motion for Summary Judgement

NOW COMES Craig Alexander, Plaintiff in the above captioned matter, opposing Defendants' Motion for Summary Judgement. Plaintiff asserts there still exists material issues of fact that can be settled only by a jury. Also, Defendants are wrong when they claim a lack of physical injury necessitates dismissal. In support of these assertions and in opposition to Defendants' motion, Plaintiff states as follows:

I - Pro Se Status

Plaintiff again takes this opportunity to remind this court of his status as a pro se, incarcerated litigant. He repeats his request that this filing be granted a liberal construction and be broadly interpreted to include any and all rational and reasonable arguments it may be considered to imply. See *Haines v. Kerner*, 404 US 519 (1972).

II - Standard of Review

"Summary Judgement is proper only when, construed in the light most favorable to the non-movant, there is no genuine dispute as to any material fact and the movant is entitled to judgement as a matter of law." *Doninger v. Niehoff*, 642 F.3d 334, 344 (2nd Cir, 2011) quoting Fed. Rule of Civil Procedure 56(a), (internal quotes omitted). "A fact is material if it is one that might affect the outcome of the suit under the governing law." *Wartholomeou v. NYC*, 2018 US Dist LEXIS 1168

(SDNY, 1/2/18) quoting *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 248 (1986). The moving party bears the burden of showing no dispute about material facts exist. *Celotex v. Catrett*, 477 US 317, 323 (1986).

### III - Defendants' Motion Must Fail

Summary judgement is not appropriate at this particular stage of this matter. Defendants have failed to carry their burden as to the existence of questions related to material facts. Their analysis of the "excessive force" elements is wrong and they have fundamentally misconstrued the law relating to damage awards under §1997e(e).

A - Questions of Material Fact Exist: As every Defendant in a §1983 lawsuit does, Defendants here attempt to play down and minimize their actions and paint them within the bounds of "reasonableness." They encourage the court to gloss over their actual actions and substitute its own judgement in lieu of a jury's. That should not be allowed to happen here.

Plaintiff concedes that there is no dispute about two specific prongs of the "excessive force" elements. Defendants did, in fact, act under the color of law (prong 1), and Defendants acted willfully (prong 3). Defendants raise no defense or challenge of these elements and they must, therefore, be deemed admitted.

Defendants' justification of their methods of arrest (prong 2) are a bit more specious. As expected, they somewhat gloss over the actual actions they took when making this arrest. Yes, Plaintiff ran from Defendants on the day of his arrest. Yes, it was reasonable for Defendants to pursue him and affect an arrest. But the tactics used by Defendants and the cruelty exhibited fall far afield of what society and the courts deem appropriate. The question of material fact, in other words, is whether the actions of Defendants immediately after the chase ended constitute "excessive force."

The aggregated video footage supplied by Defendants clearly shows Officer

Jones brutally smash Plaintiff's head into the floor after he had already been subdued. Defendants' "Exhibit A" at timestamp 9:45:45 am. This fact is conveniently absent from Defendants' motion and version of events. See SOMF, ¶ 18. Whether this rises to the level of "brutality" is precisely the kind of question that can only be answered by a jury. Even though Defendants attempt to slip that fact past this court in an effort to dispose of this matter, Plaintiff urges this court to view carefully the actual events and not let Defendants brush this under the rug.

B - Mental Health Injuries: It has long been the established understanding that, under the PLRA, a plaintiff must suffer some kind of physical injury to succeed on a brutality claim under §1983. See *Felix v. NWSCF*, 2016 US Dist LEXIS 32299 (DVT, 1/21/16). Almost universally, courts have held that "physical manifestations of emotional injuries are not physical injuries for PLRA standards." *McCloud v. Tureglio*, 2008 US Dist LEXIS 124388 (NDNY, 3/17/08) and cases collected at Note 20. But such a rule does not reflect the progressive changes our society has undergone with regards to mental health and emotional trauma.

We live in a world today with a drastically different understanding of the emotional and psychological needs of people than we knew about even a short while ago. We now understand that long-term solitary confinement wreaks havoc on an inmate's mental state and causes more harm than it prevents. We now understand that a whole spectrum of disorders exist that drastically affects how people cope with everyday life, even when those disorders do not manifest themselves physically. The taboo of mental health disorders and treatment have given way to an openness that encourages those who suffer to seek treatment and society to recognize those disorders as very real problems.

And yet, we still labor under the narrow legal definitions of what constitutes an "injury." The symptoms we now know to cause very real distress

(anxiety, stress, depression, suicidal ideation, etc.) still do not count as "injuries" when seeking redress for violations of a persons constitutional rights. Even more troubling, such a restriction, this seemingly "extra" requirement to show a physical injury, is one imposed only on those plaintiffs who are incarcerated. This is a tacit endorsement of the belief that criminals and inmates somehow count for less than other citizens. Such a belief does not comport with due process, fundamental fairness, or equal protection under the law and does not accomplish the actual goal of the PLRA because it does not actually help "weed-out" false or frivolous claims.

This is an opportunity to amend those broken laws and bring our jurisprudence in line with out more contemporary understanding of what it means to be injured. If this court does not feel the "physical injury" requirement of the PLRA has been met, he begs this court to resist the urge to simply dismiss this matter. A jury should still have the opportunity to weigh in and determine if Plaintiff's psychological and emotional injuries are sufficient to warrant an award of damages. It is time to break from our restrictively narrow definitions of "injury" and demonstrate that even incarcerated litigants have value and their injuries, internal or external, deserve compensation.

C - Nominal and Punitive Damages: Even if this court finds that there is insufficient cause to award actual damages, dismissal is still inappropriate at this juncture.

A "plaintiff cannot recover damages for mental or emotional injury for a constitutional violation in the absence of showing actual physical injury." Thompson v. Carter, 284 F. 3d 411, 417 (2nd Cir, 2002) citing 42 USC § 1997e(e). "However, § 1997e(e) does not limit the availability of nominal damages for the violation of a constitutional right or of punitive damages." Id at 418.

Here, either of those kinds of awards would be proper. Nominal damages would

allow for an official recognition of wrongdoing by Defendants. Punitive damages would help ensure no other person is subjected to the kind of brutal, inappropriate conduct of Defendants regardless of their own actions. The determination of such an award is still within the scope and purview of a jury. Summary judgement or dismissal at this time would deny Plaintiff those potential remedies. These questions should be put to a jury and not summarily dismissed by this court.

#### IV - Conclusion

Defendants have failed to carry their burden showing there are no questions of material facts. They are, and a jury must decide them. Reasonable jurists could determine that the actions of Defendants were outside the acceptable range of officers in their capacity. The PLRA "physical injury" is antiquated and should be ignored so a jury can apply our more modern understanding of the very real nature of emotional and psychological injuries a person can suffer. Moreover, the "physical injury" requirement does not preclude the awarding of nominal or punitive damages. Summary judgement at this point is premature and would be wrong.

WHEREFORE the above reasons, Plaintiff respectfully requests this court:

- 1 - DENY Defendants' motion for Summary Judgement,
- 2 - ORDER this matter ready for trial, and
- 3 - GRANT any and all other such relief it feels equitable and just.

Respectfully,


Dated July 18, 2018

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Craig Alexander  
Reg. No. 21707-052  
FCI- Fort Dix  
P.O. Box 2000  
Joint Base MDL, NJ 08640

Certificate of Service

I, Craig Alexander, do hereby certify that on this 18th day of July, 2018 I did serve a true and accurate copy of the above Opposition to Defendants' Motion for Summary Judgment on Defendants at 125 East Jefferson St., Syracuse, NY 13202 via the official Inmate Legal Mail system of FCI-Fort Dix, First Class US Mail, postage pre-paid.

  
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Craig Alexander