IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DONALD LINDSAY,
B89208,

Plaintiff,

Case No. 17-cv-254-DRH

vs.

MENARD CORRECTIONAL CENTER,
UNKNOWN CORRECTIONAL OFFICERS, and
DR. BUTLER,

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Plaintiff Donald Lindsay, currently incarcerated in Dixon Correctional Center, brings this *pro se* action pursuant to 42 U.S.C. § 1983 for deprivations of his constitutional that allegedly occurred when Plaintiff was housed at Menard Correctional Center ("Menard") in 2015.

In connection with his claims, Plaintiff names Menard, Dr. Butler, and several unknown parties (John/Jane Does). Plaintiff describes the unknown parties as (1) C/O on duty 5/24/15 in N2-5 Gallery; (2) Crisis Team Member on duty 5/24/15 in N2-5 Gallery; (3) Lt. on duty 5/24/15 in N2-5; (4) Sgt. On duty

5/24/15 in N2-5 and N2-8 gallery; and (5) C/O on duty 5/24/15 in N2-8 Gallery. Plaintiff seeks monetary damages.[1] (Doc. 1, p. 8).

This case is now before the Court for a preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A, which provides:

> (a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
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> (b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
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> (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton,* 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross "the line between possibility and plausibility." *Id.* at 557. At this juncture, the

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[1] To facilitate the orderly progress of this action going forward, the Clerk shall be directed to rename the Unknown Correctional Officers Defendant as follows: John Doe # 1 (C/O on duty 5/24/15 in N2-5 Gallery); John Doe # 2 (Crisis Team Member on duty 5/24/15 in N2-5 Gallery); John Doe # 3 (Lt. on duty 5/24/15 in N2-5); John Doe # 4 (Sgt. On duty 5/24/15 in N2-5 and N2-8 gallery); and John Doe # 5 (C/O on duty 5/24/15 in N2-8 Gallery). *See* FED. R. CIV. P. 21 ("the court may at any time, on just terms, add or drop a party").

factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

The Complaint

On May 24, 2015, at around 5 pm, Plaintiff was in N2-5 gallery. Plaintiff asked the N2-5 on duty correctional officer ("N2-5 Correctional Officer") to place him on suicide watch. (Doc. 1, p. 6). The N2-5 Correctional Officer told Plaintiff he had to do something suicidal to be placed on suicide watch. *Id.* In response, Plaintiff tied a sheet around his neck and to the coat rack. *Id.* The N2-5 Correctional Officer told Plaintiff to cuff up because he was going to be placed on suicide watch. *Id.* At that point, Plaintiff was taken to the N2-5 gallery hospital. *Id.*

The on duty crisis team member ("N2-5 Crisis Team Member") and the N2-5 on duty lieutenant ("N2-5 Lieutenant") visited Plaintiff in the hospital. However, Plaintiff was not placed on suicide watch. *Id.* Instead, after the N2-5 Crisis Team Member left the room, Plaintiff was stripped to his boxers and received a disciplinary ticket for insolence. *Id.* Plaintiff was then placed in segregation in the N2-8 gallery. *Id.*

After being placed in the N2-8 gallery, Plaintiff told the N2-8 on duty correctional officer ("N2-8 Correctional Officer") that he intended to commit suicide. *Id.* Plaintiff then started punching himself in the left eye until it was swollen shut. *Id.* The sergeant on duty in N2-5 and N2-8 ("N2-5/N2-8 Sergeant")

observed Plaintiff punching himself in the eye. *Id.* The N2-5 Sergeant told Plaintiff he would only give himself a headache. *Id.*

Plaintiff then began pulling strings out of his mattress. *Id.* Plaintiff continued pulling strings out of his mattress until he had enough string to hang himself. *Id.* Plaintiff tied the strings around his cell bars and proceeded to hang himself. *Id.* The N2-5/N2-8 Sergeant and unspecified correctional officers were present and observed this sequence of events. *Id.* These defendants did not intervene until Plaintiff almost lost consciousness. *Id.* At that time, they cut Plaintiff down but still refused to place Plaintiff on suicide watch. *Id.* Instead, the N2-5/N2-8 Sergeant and unspecified correctional officers removed Plaintiff's mattress and took Plaintiff's boxers. *Id.* Additionally, they wrote a second disciplinary ticket. *Id.* Plaintiff told the Defendants that he was not going to stop until he was dead. The Defendants said "oh well, it's almost time for shift change." *Id.*

Plaintiff was then returned to his cell in N2-8. Plaintiff was apparently left alone for a period of time. *Id.* Plaintiff found a plastic spoon in his cell and began cutting his arm. *Id.* A correctional officer doing his rounds (presumably the N2-8 Correctional Officer) returned sometime later. *Id.* That correctional officer observed the blood on Plaintiff's arm, left, and returned with the N2-5 Crisis Team Member, the N2-5/N2-8 Sergeant, and the N2-5 Lieutenant. *Id.* The N2-5 Crisis Team Member told Plaintiff to stop playing games and "grow up." *Id.* Then, "they" put on their tactical gear and dragged Plaintiff out of his cell naked.

Id. Plaintiff was dragged from the N2-8 gallery to the N2-5 hospital, naked, without shoes, and in the rain. *Id.* A female officer observed this sequence of events. *Id.* At some point, Plaintiff stated he could not breathe, he needed his inhaler, and he could not walk any more. *Id.* Plaintiff dropped to his knees. *Id.* One of the correctional officer defendants shoved his fingers under Plaintiff's jaw bone and picked Plaintiff up. *Id.* During this time, the N2-5 Lieutenant was shoving Plaintiff's head down with his shield. (Doc. 1, pp. 6-7).

At some point, Plaintiff was placed in an elevator with the Correctional Officer Defendants and the N2-5 Lieutenant. The correctional officers and the N2-5 Lieutenant proceeded to kick and punch Plaintiff, who was naked and still in handcuffs. The Correctional Officer Defendants and the N2-5 Lieutenant continued to kick and punch Plaintiff even when Plaintiff was on the ground. After the assault was over, Plaintiff was placed in a suicide cell. The next morning Plaintiff was visited by Butler, a mental health physician. Butler told Plaintiff he completed an incident report addressing everything that happened.

Discussion

Dismissal of Certain Defendants

Menard Correctional Center

As a preliminary matter, the Court notes that, in addition to the individual defendants, Plaintiff has named Menard as a defendant. Menard is a division of a state agency (the Illinois Department of Corrections). Accordingly, Menard is a state entity and is not a "person" amendable to suit under § 1983. *See Will v.*

Mich. Dep't of State Police, 491 U.S. 58, 66–67, 71 (1989) (states and state agencies are not "persons" who may be sued for constitutional violations under § 1983). *See also Smith v. Gomez*, 550 F.3d 613, 618 (7th Cir. 2008); *Williams v. Wisconsin*, 336 F.3d 576, 580 (7th Cir. 2003); *Toledo, Peoria & Wester R. Co. v. State of Ill. Dept. of Transp.*, 744 F.2d 1296, 1298 (7th Cir. 1984).

Accordingly, Menard shall be dismissed from this action with prejudice.

Dr. Butler

The Complaint fails to state any claim as to Dr. Butler. Plaintiff alleges that Dr. Butler met with Plaintiff *after* the alleged constitutional violations occurred and Dr. Butler indicated that he had written a report regarding the events occurring that day. (Doc. 1, p. 7). There is no indication that Dr. Butler was personally responsible (directly or otherwise) for Plaintiff's excessive force or deliberate indifference to/failure to protect from risk of suicide claims. Nor is there any allegation suggesting that Dr. Butler was involved in any other constitutional violation. Accordingly, Dr. Butler shall be dismissed without prejudice for failure to state a claim.

Merits Review Pursuant to § 1915(A)

Based on the allegations of the Complaint and Plaintiff's articulation of his claims, the Court finds it convenient to divide the *pro se* action into the following counts. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice as inadequately pled under the *Twombly* pleading standard.

COUNT 1 – Eighth Amendment deliberate indifference to medical needs/failure to protect from suicide risk claim against the N2-5 Correctional Officer, N2-5 Crisis Team Member, N2-8 Correctional Officer, N2-5 Lieutenant, and N2-5/N2-8 Sergeant, for disregarding Plaintiff's risk of suicide on May 24, 2015 and/or delaying mental health assistance.

COUNT 2 – Eighth Amendment excessive force claim against the N2-5 Correctional Officer, N2-5 Crisis Team Member, N2-8 Correctional Officer, N2-5 Lieutenant, and N2-5/N2-8 Sergeant for their conduct on May 24, 2015, after Plaintiff cut his arm with a plastic spoon.

Count 1 – Deliberate Indifference/Failure to Protect

Suicide, attempted suicide and other acts of self-harm clearly pose a "serious" risk to an inmate's health and safety, and may provide the foundation for deliberate indifference to medical needs and failure to protect claims. *See Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006) (quoting *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001)); *see also Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 665 (7th Cir. 2012) ("[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies."). At the same time, courts have recognized that "[s]uicide is inherently difficult for anyone to predict, particularly in the depressing prison setting." *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001); *see also Collignon v. Milwaukee Cty.*, 163 F.3d 982, 990 (7th Cir. 1998) ("No one can predict suicide with any level of certainty [.]"). Where the harm at issue is a suicide or attempted suicide, deliberate indifference requires "a dual

showing that the defendant: (1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded that risk." *Collins*, 462 F.3d at 761 (citations omitted).

Considering the above authority, the Court finds that the Complaint states a plausible claim for deliberate indifference to medical needs and/or failure to protect claim. Accordingly, **Count 1** shall proceed against the N2-5 Correctional Officer, N2-5 Crisis Team Member, N2-8 Correctional Officer, N2-5 Lieutenant, and N2-5/N2-8 Sergeant.

Count 2 – Excessive Force

The intentional use of excessive force by prison guards against an inmate without penological justification constitutes cruel and unusual punishment in violation of the Eighth Amendment and is actionable under § 1983. *See Wilkins v. Gaddy*, 559 U.S. 34 (2010); *DeWalt v. Carter*, 224 F.3d 607, 619 (7th Cir. 2000). An inmate must show that an assault occurred, and that "it was carried out 'maliciously and sadistically' rather than as part of 'a good-faith effort to maintain or restore discipline.' " *Wilkins*, 559 U.S. at 40 (citing *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)). An inmate seeking damages for the use of excessive force need not establish serious bodily injury to make a claim, but not "every malevolent touch by a prison guard gives rise to a federal cause of action." *Wilkins*, 559 U.S. at 37-38 (the question is whether force was de minimis, not whether the injury suffered was de minimis); *see also Outlaw v. Newkirk*, 259 F.3d 833, 837-38 (7th Cir. 2001).

Here, Plaintiff alleges that after he began cutting himself with a spoon, he was forcefully removed from his cell in the N2-8 gallery. Plaintiff was then dragged, naked and in the rain, to the hospital. During this time, while on his knees and/or on the ground, Plaintiff was kicked, punched, and shoved by the Defendants. Plaintiff complained that he could not breathe but the physical assault continued. There is no indication that Plaintiff was resisting or displaying aggressive behavior. Further, no justification is apparent for the Defendants' violent handling of Plaintiff. Accordingly, the excessive force claim in **Count 2** shall proceed against the N2-5 Correctional Officer, N2-5 Crisis Team Member, N2-8 Correctional Officer, N2-5 Lieutenant, and N2-5/N2-8 Sergeant

Identification of Unknown Defendants

Plaintiff will be allowed to proceed against the unknown defendants, who are identified in the Complaint as (1) C/O on duty 5/24/15 in N2-5 Gallery; (2) Crisis Team Member on duty 5/24/15 in N2-5 Gallery; (3) Lt. on duty 5/24/15 in N2-5; (4) Sgt. On duty 5/24/15 in N2-5 and N2-8 gallery; and (5) C/O on duty 5/24/15 in N2-8 Gallery. These individuals must be identified with particularity before service of the Complaint can be made on them. Also, where a prisoner's complaint states specific allegations describing conduct of individual prison staff members sufficient to raise a constitutional claim, but the names of those defendants are not known, the prisoner should have the opportunity to engage in limited discovery to ascertain the identity of those defendants. *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 832 (7th Cir. 2009). For that reason,

Menard's current warden, Jacqueline Lashbrook, shall be added as a defendant, in her official capacity only, for the purpose of responding to discovery (informal or formal) aimed at identifying these unknown defendants. Guidelines for discovery will be set by the United States Magistrate Judge. Once the names of the unknown defendants are discovered, Plaintiff must file a motion to substitute each newly identified defendant in place of the generic designation in the case caption and throughout the Complaint.

Pending Motions

Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 2) has been granted. (Doc. 7). Accordingly, Plaintiff's Motion for Service of Process at Government Expense shall be denied as unnecessary.

Plaintiff's Motion for Recruitment of Counsel (Doc. 3) shall be **REFERRED** to a United States Magistrate Judge for prompt disposition.

Disposition

IT HEREBY ORDERED that **MENARD CORRECTIONAL CENTER** is **DISMISSED** with prejudice and **DR. BUTLER** is **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted. The Clerk of the Court is **DIRECTED** to terminate these Defendants as parties in CM/ECF.

IT IS FURTHER ORDERED that the Complaint (Counts 1 and 2) shall receive further review as to the Unidentified Defendants. The Clerk of the Court is **DIRECTED** to rename the Unknown Correctional Officers Defendant as follows: John Doe # 1 (C/O on duty 5/24/15 in N2-5 Gallery); John Doe # 2 (Crisis Team

Member on duty 5/24/15 in N2-5 Gallery); John Doe # 3 (Lt. on duty 5/24/15 in N2-5); John Doe # 4 (Sgt. On duty 5/24/15 in N2-5 and N2-8 gallery); and John Doe # 5 (C/O on duty 5/24/15 in N2-8 Gallery).

FURTHER, the Clerk of the Court is **DIRECTED** to add **JACQUELINE LASHBROOK, the warden of Menard**, in her official capacity, so that she may participate in discovery aimed at identifying the Unknown Defendants with particularity.

The Clerk of the Court shall prepare for Defendant **LASHBROOK:** (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be

retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Other than notice to be sent to **LASHBROOK,** as ordered above, service shall not be made on the Unknown Defendants (John Does 1 through 5) until such time as Plaintiff has identified them by name in a properly filed motion for substitution of parties. Plaintiff is **ADVISED** that it is his responsibility to provide the Court with the names and service addresses for these individuals.

Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a **United States Magistrate** for further pre-trial proceedings. Further, this entire matter shall be **REFERRED** to a **United States Magistrate** for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral*.

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, regardless of the fact that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than 7 days after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 18, 2017

Digitally signed by Judge David R. Herndon
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United States District Judge