

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 17-10906-GAO

PAUL F. SHEDLOCK,
Plaintiff,

v.

KENNETH CHOLETTE and DAVID REGO,
Defendants.

OPINION AND ORDER

September 17, 2018

O'TOOLE, D.J.

The plaintiff, Paul F. Shedlock, is confined by Massachusetts law in the Nemasket Correctional Center (“NCC”) as a sexually dangerous person. Defendant Kenneth Cholette, a corrections officer, and defendant David Rego, a sergeant, are both assigned to the NCC. Acting *pro se*, the plaintiff asserts a variety of claims against them. The defendants move to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and the plaintiff opposes.

After review of the complaint and the parties’ motion papers, I agree with the defendants that the complaint does not adequately allege an actionable civil rights claim against Cholette. However, with the indulgence to be accorded *pro se* pleadings, I conclude that the complaint adequately alleges a claim of cruel and unusual punishment by use of excessive force under the Eighth and/or Fourteenth Amendment by alleging that Rego punched the plaintiff without justification with the intention of causing “pain and suffering.” (Compl. ¶ 35 (dkt. no. 1).) This is sufficient to state a claim at the pleading stage.

The Motion to Dismiss (dkt. no. 20) is GRANTED as to claims against Cholette, but DENIED as to a claim of unjustified use of excessive force under the Eighth Amendment against Rego.¹

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge

¹ The complaint is also sufficient to allege a common law claim of assault and battery.