UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JUAN JOSEPH FLAGG, Plaintiff, v. S. TIERNEY Officer, RICHARDSON Screening Officer, C. POPE Hearing Officer, Defendants.	)	No. 2:24-cv-00018-MKK-JMS

ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Juan Joseph Flagg, an Indiana Department of Correction ("IDOC") inmate, filed this suit alleging: (1) Defendant Tierney violated Plaintiff's Eighth Amendment rights by deliberately provoking violence against Plaintiff; (2) Defendant Tierney violated Plaintiff's First Amendment rights by taking adverse actions against Plaintiff after Plaintiff complained about Defendant Tierney and sought help from superior officers; and (3) Defendants Tierney, Richardson, and Pope violated Plaintiff's Fourteenth Amendment due process rights by initiating bogus disciplinary proceedings and depriving Plaintiff of due process in said proceedings. (Dkts. 3, 18).

On January 13, 2025, Defendants filed a Motion for Summary Judgment as to all claims. (Dkt. 65). On February 4, 2025, Plaintiff responded in opposition. (Dkt. 72). And on February 18, 2025, Defendants filed their reply, in which they "acknowledge[d] a genuine dispute of fact regarding Plaintiff's Eighth Amendment

claims against Tierney stemming from an attack on Plaintiff on December 16, 2022." (Dkt. 75 at 1). For the reasons set forth below, Defendants' Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part.

I. Summary Judgment Standard

Federal Rule of Civil Procedure directs courts to grant summary judgment on any claim for which a party "shows that there is no genuine dispute as to any material fact" and that the party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record in the light most favorable to the non-moving party. The non-moving party receives the benefit of conflicting evidence, and the Court draws all reasonable inferences in that party's favor. *Ziccarelli v. Dart*, 35 F.4th 1079, 1083 (7th Cir. 2022); *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021); *Darst v. Interstate Brands Corp.*, 512 F.3d 903, 907 (7th Cir. 2008). The Court does not weigh evidence or make credibility determinations at the summary judgment stage, as those tasks fall within the purview of the factfinder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court need consider only the materials cited by the parties. Fed. R. Civ. P. 56(c)(3). The Court is under no obligation to "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 572 (7th Cir. 2017). When examining the facts, the Court is not constrained to considering the facts presented by a particular source. *See Gupta v. Melloh*, 19 F.4th 990, 997 (7th Cir. 2021) ("Taking the facts in the light most favorable to the non-moving party does not mean that the facts must come

only from the nonmoving party. Sometimes the facts taken in the light most favorable to the non-moving party come from the party moving for summary judgment or from other sources.").

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence the party contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also* S.D. Ind. L.R. 56-1(a). "Summary judgment is not a time to be coy: conclusory statements not grounded in specific facts are not enough." *Daugherty v. Page*, 906 F.3d 606, 611 (7th Cir. 2018) (cleaned up). Rather, at the summary judgment stage, "[t]he parties are required to put their evidentiary cards on the table." *Sommerfield v. City of Chi.*, 863 F.3d 645, 649 (7th Cir. 2017).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support that position by "citing to particular parts of materials in the record, including depositions, documents, . . . affidavits or declarations . . . ." Fed. R. Civ. P. 56(c)(1)(A). If a responding party fails to properly support a fact in opposition to the movant's factual assertion, the movant's fact may be considered undisputed, potentially resulting in summary judgment for the movant. Fed. R. Civ. P. 56(e)(2)–(3); *see also* S.D. Ind. L. R. 56-1(f).

II. Factual Background

The facts stated below are not necessarily objectively true. But, as the summary judgment standard requires, the Court views, and recites below, the evidence in the light most favorable to the non-movant, *i.e.*, Plaintiff, and draws all reasonable inferences in his favor. *See Khungar*, 985 F.3d at 572.

A. The Parties

Plaintiff is, and was at all relevant times, an inmate at Wabash Valley Correctional Facility ("WVCF"), an IDOC prison. (Dkt. 1 at 1). In November of 2022, Plaintiff was housed in P Unit, a general population housing unit for inmates in education programs. (Dkt. 66-1 at 13:14–25). At all relevant times, Defendants Richardson and Pope were employed at WVCF. (Dkt. 67 at 2). Defendant Tierney was employed at WVCF through in or around May 2023. (Dkt. 1 at 23–24; Dkt. 66-1 at 109:20–110:1). During December 2022, Tierney was a Correctional Officer in P Unit. (Dkt. 66-2, ¶¶ 2–3). Defendant Richardson was a Disciplinary Screening Officer, who was tasked with screening disciplinary charges for offenders. (Dkt. 66-3, ¶¶ 3–4). Screening occurred before formal disciplinary hearings. (*Id.*, ¶ 4). Defendant Pope was a Disciplinary Hearing Board Officer. (Dkt. 66-4 at 1).

B. Plaintiff's November 14, 2022, Video Call

On November 14, 2022, Plaintiff participated in a scheduled video call with a friend. (Dkt. 1 at 10). At some point during the call, the friend's minor child appeared on screen briefly and was not wearing any clothes. (*Id.* at 11; Dkt. 66-1 at 18:3–10). Plaintiff blocked the screen with his hand and informed his friend that

that sort of incident could result in removal of video privileges. (Dkt. 1 at 11; Dkt. 66-1 at 18:10–21).

C. Plaintiff's Interactions with Tierney & the December 2022 Assault

Approximately one month later, on December 13, 2022, Plaintiff was scheduled for his third day of GED testing. (Dkt. 1 at 11–12; Dkt. 66-1 at 19:1–7). About 30 minutes before his scheduled departure for the testing, Plaintiff, wanting to access the main floor of the cell house to prepare for class, pressed the intercom button in his cell. (Dkt. 1 at 12–14; Dkt. 66-1 at 19:8–20:8). After about 10 minutes without a response, Plaintiff yelled for a correctional officer. (Dkt. 1 at 14; Dkt. 66-1 at 20:9–14). After an additional 5 minutes, Plaintiff kicked his cell door twice. (Dkt. 1 at 14; Dkt. 66-1 at 20:14–18). Tierney then responded on the cell intercom, and told Plaintiff that he (Tierney) would not assist a "child molester." (Dkt. 1 at 14; Dkt. 66-1 at 20:18–25). After Plaintiff requested to speak with a supervisor, Tierney replied that speaking to a supervisor would only make the situation worse, and that if Plaintiff did so, Tierney would "let everybody know" that Plaintiff was watching child pornography. (Dkt. 1 at 14–15; Dkt. 66-1 at 21:4–11).

Following this exchange, Tierney issued a disciplinary report to Plaintiff for tampering with a locking device, and Plaintiff was placed on lock down for 23 hours (a status known as "red tag"). (Dkt. 1 at 15; Dkt. 66-1 at 21:14–25, 41:5–16). Plaintiff was also placed on "CAB hold," which prevented him from going to school or work. (Dkt. 66-1 at 23:17–25, 34:11–21). Later that same day (December 13, 2022), Plaintiff received a written notice that his video privileges were being

suspended permanently for exposure of a male minor on a video call. (Dkt. 1 at 16; Dkt. 66-1 at 33:17–34:4).

On or about December 14 or 15, 2022, and after Plaintiff had spoken with "a supervisor" and his family had called the institution, Plaintiff was removed from red tag status and his CAB hold was lifted. (Dkt. 1 at 16–17; Dkt. 66-1 at 23:13–22, 51:16–52:10). On or about December 15, 2022, Plaintiff's disciplinary report for kicking the door was downgraded from a "major" violation to a "minor" violation. (Dkt. 1 at 16–17; Dkt. 66-1 at 23:17–24:13).

Tierney and Plaintiff interacted again on or about December 16, 2022. (Dkt. 1 at 17; Dkt. 66-1 at 24:14–21, 30:1–21). When Plaintiff requested to be released from his cell to attend school, Tierney refused to do so, citing Plaintiff's disciplinary report as the reason. (Dkt. 1 at 17–18; Dkt. 66-1 at 24:22–23:9). Plaintiff informed Tierney that he (Plaintiff) had spoken to the supervisor, who had removed the conduct and allowed Plaintiff to attend school the day before. (Dkt. 61-1 at 25:2–8; Dkt. 72-1 at 69–70). Plaintiff's family again called the institution. (Dkt. 66-1 at 25:10–11; Dkt. 72-1 at 70). Tierney then went to Plaintiff's cell, called him a child molester, and warned him to watch his back. (Dkt. 1 at 18; Dkt. 66-1 at 24:14–25:9, 38:23–39:5, 60:3–22; Dkt. 72 at 15, 17–18, 22; Dkt. 72-1 at 70).

Later that same day (December 16, 2022), Plaintiff was assaulted by two other inmates, during which time the assailants called Plaintiff a child molester. (Dkt. 1 at 18; Dkt. 66-1 at 64:3–67:16; Dkt. 72-1 at 70). The following day, Tierney issued Plaintiff two more disciplinary reports for tampering with a locking device,

alleging that Plaintiff repeatedly put cardboard inside the door lock to prevent the door from securing. (Dkt. 1 at 18–19; Dkt. 66-1 at 29:10–25, 40:1–9, 69:10–70:2; Dkt. 66-4 at 8, 12; Dkt. 72-1 at 70).

On or about December 21, 2022, Plaintiff "gave a[n] informal grievance to Facility Investigator that Tierney" was threatening him "which led to a P.R.E.A. complaint for Record Keeping." (Dkt. 72 at 9–10).

D. Plaintiff's December 21, 2022, Screening

On December 21, 2022, Plaintiff underwent screening for the three disciplinary reports written by Tierney (*i.e.*, one disruptive behavior report and two tampering reports). (Dkt. 1 at 18–19; Dkt. 66-1 at 68:8–69:17, 70:3–6, 72:12–73:4; Dkt. 66-4 at 6, 11).[1] Screening Officer Richardson communicated to Plaintiff that he had three charges pending against him. (Dkt. 1 at 18–19; Dkt. 66-1 at 77:4–15). Richardson refused Plaintiff's request for her to photograph Plaintiff's cell door but would not document that refusal. (Dkt. 1 at 19; Dkt. 66-1 at 70:7–71:17). Richardson asked Plaintiff if he wanted any witnesses, and Plaintiff requested Sergeant Henderson, the supervisor of the P Unit. (Dkt. 1 at 19; Dkt. 66-1 at 71:18–25; Dkt. 66-3, ¶ 13). Plaintiff also requested copies of work orders for his cell door as evidence. (Dkt. 66-1 at 83:1–10; Dkt. 72 at 26–27). Plaintiff pleaded guilty to the disruptive behavior Class C charge that was issued on December 13, 2022. (Dkt. 66-1 at 72:12–24). Richardson then ended the screening, and stated, "I heard about

[1] The Court notes that Plaintiff alleges that all three of the pending reports were addressed at the disciplinary screening, (Dkt. 1 at 18–19; Dkt. 66-1 at 68:8–69:17, 70:3–6, 72:12–73:4), but the Affidavit of Jessica Richardson asserts that the screening only addressed the two Class B reports, (Dkt. 66-3 at 1). This factual disagreement is immaterial to the Court's decision.

that nasty s*&# you did. That was a kid." (Dkt. 1 at 19–20; Dkt. 66-1 at 73:8–14). Plaintiff requested that Richardson contact the investigators with whom he had spoken about Tierney, but Richardson instructed Plaintiff to leave. (Dkt. 1 at 19–20; Dkt. 66-1 at 47:5–51:10, 73:15–74:18).

E. Plaintiff's December 28, 2022, Disciplinary Hearing

On December 28, 2022, Disciplinary Hearing Board Officer Pope held a disciplinary hearing concerning the three charges against Plaintiff. (Dkt. 1 at 20; Dkt. 66-1 at 94:3–96:24). Plaintiff submitted as evidence a statement from Sergeant Henderson, Tierney's supervisor, that indicated that his cell door was defective. (Dkt. 1 at 20; Dkt. 66-1 at 71:19–22; Dkt. 66-4, at 2, ¶ 12; Dkt. 72 at 12, 29–30). Pope made a comment referencing Plaintiff's November 14, 2022, video call, stating that it involved "an innocent child." (Dkt. 1 at 20–21; Dkt. 66-1 at 94:16–19). Plaintiff was found guilty of both Class B tampering and Class C disruptive behavior. (Dkt. 1 at 20–21; Dkt. 66-1 at 96:11–15; Dkt. 66-4 at 5, 10; Dkt. 72 at 6, 24). Defendant Pope issued written reprimands for both Class B charges and imposed a loss of commissary and a loss of phone and tablet privileges for one month. (Dkt. 1 at 20–21; Dkt. 66-1 at 96:16–97:3; Dkt. 66-4, at 3, ¶ 16). Plaintiff was placed in a disciplinary housing unit and lost his job, his pay, and his access to education pursuant to facility policy. (Dkt. 1 at 21–22; Dkt. 66-1 at 97:3–97:9, Dkt. 66-4 at 3, 5, 10; Dkt. 72 at 9, 28–29). Plaintiff was moved to restrictive housing for three months. (Dkt. 1 at 22; Dkt. 66-1 at 97:22–100:24).

F. Events Following December 2022 Disciplinary Hearing

Plaintiff immediately appealed the disciplinary hearings related to the Class B tampering charges. (Dkt. 66-4 at 4, 9). A few months after the disciplinary hearing, Plaintiff filed a grievance regarding the Class C disruptive behavior charge, and his video visits were reinstated. (Dkt. 1 at 22–23; Dkt. 66-1 at 102:13–103:18). On February 2, 2023, his Class B tampering charges were dismissed based on Sergeant Henderson's written statement. (Dkt. 1 at 23; Dkt. 66-1 at 102:17–103:18; Dkt. 66-4 at 4, 9).

In or around May 2023, Tierney's employment at IDOC was terminated. (Dkt. 1 at 23–24; Dkt. 66-1 at 109:20–110:1).

Plaintiff was assaulted in April 2023 and in May 2023. (Dkt. 1 at 23–24; Dkt. 66-1 at 104:1–110:8). Other inmates were told Plaintiff was to blame for Tierney's termination. (Dkt. 1 at 23–24, 26; Dkt. 66-1 at 104:1–106:11, 110:2–8; Dkt. 72-1 at 5). Plaintiff did not receive back pay even though his Class B charges had been dismissed. (Dkt. 1 at 24; Dkt. 66-1 at 110:25–111:2).

III. Discussion

Plaintiff raises Fourteenth Amendment due process claims against all three Defendants, and First and Eighth Amendment claims against Tierney. (Dkt. 1 at 30–33; Dkt. 72 at 1–2). The Court addresses each in turn.

A. Fourteenth Amendment Claims

The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of

law." U.S. CONST. amend. XIV, § 1. The procedural protections of the Due Process Clause are only triggered if state action implicates a constitutionally protected interest in life, liberty, or property. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."); *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 570–71, (1972) (noting that "whether due process requirements apply in the first place" depends on whether an "interest is within the Fourteenth Amendment's protection of liberty and property."). Not every interest falls within the protection of the Fourteenth Amendment. *See Munson v. Friske*, 754 F.2d 683, 692 (7th Cir. 1985) ("[T]he interests falling within the concept of procedural due process are not infinite, so that a court must look to the nature of the interest at issue to see if it is encompassed within the fourteenth amendment's protection of liberty and property." (citation omitted)). Thus, a Section 1983 plaintiff cannot complain of procedural due process violations unless the State has deprived him of such a constitutionally protected interest. *See Ky. Dep't. of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) ("We examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State, the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." (citations omitted)); *Williams v. Ramos*, 71 F.3d 1246, 1248 (7th Cir. 1995) ("When a plaintiff brings an action under § 1983 for procedural due process violations, he must show

that the state deprived him of a constitutionally protected interest in 'life, liberty, or property' without due process of law.") (citing *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)).

Here, Plaintiff alleges that Tierney violated his Fourteenth Amendment rights by commencing disciplinary proceedings against him for false charges. (Dkt. 1 at 30; Dkt. 72 at 1–2, 11). Plaintiff alleges that Richardson and Pope failed to provide adequate notice of the disciplinary charges and prevented him from presenting evidence in violation of his due process rights. (Dkt. 1 at 31–33; Dkt. 72 at 26–31).

In their Motion, Defendants argue that they are entitled to judgment as a matter of law on two bases. First, "Plaintiff's allegations do not implicate a protected liberty interest," as the sanctions at issue—a written reprimand and 30-day loss of privileges—do not constitute a protected interest. (Dkt. 67 at 12–13; Dkt. 75 at 6–7). Further, Defendants argue that "Richardson and Pope conducted the disciplinary proceedings within the framework of the Fourteenth Amendment." (Dkt. 67 at 13–14; Dkt. 75 at 7–8).

The Court agrees that Plaintiff's Fourteenth Amendment claims fail as a matter of law, as his claims do not allege the denial of a protected liberty or property interest. First, the Court identifies the sanctions resulting from the Defendants' own actions. The only disciplinary sanctions Plaintiff received for the three charges were written reprimands and the suspension of phone, tablet, and commissary privileges for 30 days. (Dkt. 67 at 13; Dkt. 75 at 6–7; Dkt. 66-4 at 3, ¶¶

16, 17, 19). The other consequences felt by Plaintiff—*i.e.*, the change in housing status and the loss of job and education qualification—did not result from any actions taken by the Defendants themselves; rather, those consequences were issued by WVCF's classification department in accordance with facility policy. (Dkt. 67 at 13; Dkt. 75 at 6–7; Dkt. 66-4 at 3, ¶ 19). Plaintiff's submissions do not contradict these factual assertions, as submitted by Defendants. (*See* Dkt. 72 at 9, 28–29 (acknowledging that the change in housing status and the loss of his job and education qualification were "automatic" when he was found guilty)).

Thus, Defendants cannot be liable for any property or liberty interest deprivations aside from the written reprimands and suspension of phone, tablet, and commissary privileges for 30 days. *See Locke v. Haessig*, 788 F.3d 662, 669 (7th Cir. 2015) ("For constitutional violations under § 1983 or Bivens, a government official is only liable for his or her own misconduct.") (internal quotation marks omitted); *Minix v. Canarecci*, 597 F.3d 824, 833–34 (7th Cir. 2010) (same). None of the disciplinary sanctions that can be attributed to Defendants constitutes a protected liberty or property interest within the scope of the Fourteenth Amendment. *See Smith v. Birkey*, 447 Fed. Appx. 744, 746 (7th Cir. 2011) (finding that losses of commissary and telephone privileges do not implicate a liberty interest); *Townsend v. Vaughn*, No. 24-cv-1758-DWD, 2024 WL 4492062, at *8 (S.D. Ill. Oct. 15, 2024) ("The restrictions on things like commissary, music, the GTL tablet, and phone calls do not invoke a protected liberty interest."); *Reed v. Hanlon*, No. 1:06-cv-1761-SEB-JMS, 2008 WL 696981, at *4 (S.D. Ind. Mar. 13, 2008)

("[Plaintiff] received all of the process to which he was entitled because the sanction of a written reprimand does not rise to the level of a federally protected liberty interest.").

Because the disciplinary sanctions directly resulting from the disciplinary proceedings do not implicate a protected liberty or property interest, and there is no evidence that the Defendants were personally responsible for any additional disciplinary sanctions, Defendants are entitled to summary judgment on Plaintiff's Fourteenth Amendment claims. *See Thompson*, 490 U.S. at 460 (finding that questions of due process do not arise until a protected liberty or property interest has been interfered with by the State).

Thus, the Court **GRANTS** Defendants' Motion for Summary Judgment with respect to Plaintiff's Fourteenth Amendment claims.

B. First Amendment Claims

Under the First Amendment, correctional staff members "may not retaliate against an inmate because he filed grievances." *Manuel v. Nalley*, 966 F.3d 678, 680 (7th Cir. 2020) (citing *Antoine v. Ramos*, 497 F. App'x 631, 634 (7th Cir. 2012)); *see also Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) ("[F]iling a non-frivolous grievance is a constitutionally protected activity sufficient to support a retaliation claim."). For an inmate to prevail on a First Amendment retaliation claim, he must "show that the speech or activity was constitutionally protected, a deprivation occurred to deter the protected speech or activity, and the speech or activity was at least a motivating factor in the decision to take retaliatory action." *Manuel*, 966

F.3d at 680 (citing *Kidwell v. Eisenhauer*, 679 F.3d 957, 964 (7th Cir. 2012)); *see also Jones v. Van Lanen*, 27 F.4th 1280, 1284 (7th Cir. 2022). "The 'motivating factor' amounts to a causal link between the activity and the unlawful retaliation." *Manuel*, 966 F.3d at 680 (citing *Kidwell*, 679 F.3d at 965). If the inmate can establish a prima facie case of retaliation, the burden shifts to the defendant to show that the same action would have been taken in the absence of the inmate's protected activity. *Id.* "Once established, the petitioner must demonstrate the proffered reason is pretextual or dishonest." *Id.*

Plaintiff alleges that Tierney violated his First Amendment rights by retaliating against him after he made "informal grievances" and complaints against Tierney to his supervisor(s). (Dkt. 1 at 30–31; Dkt. 66-1 at 46:9–49:17, 117:7–118:11; Dkt. 72 at 2, 5, 14–25, 72; Dkt. 72-1 at 69–70). Plaintiff alleges that Tierney retaliated by filing two false Class B reports against Plaintiff for tampering with a locking device. (Dkt. 1 at 18–19; Dkt. 66-1 at 28:19–29:25; Dkt. 72 at 23). Plaintiff further alleges that after he made the informal grievances and complaints, Tierney told Plaintiff to "watch his back." (Dkt. 1 at 17–18; Dkt. 66-1 at 60:3–22; Dkt. 72 at 22). Two inmates assaulted Plaintiff shortly thereafter, and Plaintiff asserts that "without a doubt," Tierney specifically instructed the offenders to assault him. (Dkt. 1 at 17–18; Dkt. 66-1 at 64:12–16, 66:11–67:16; Dkt. 72 at 19–23).

In Defendants' Motion, Tierney argues that Plaintiff's First Amendment claim fails on two grounds. First, defense maintains that Plaintiff does not allege

that he was engaged in any form of protected speech. (Dkt. 67 at 9–10). No protected speech occurred during Plaintiff's November 2022 video visit, and Plaintiff's request(s) to speak to Tierney's supervisor do not constitute protected speech because they "did not touch on an issue of prison security or public concern," Tierney argues. (*Id.* at 10).

Tierney further argues that Plaintiff has not shown that he suffered a deprivation that would likely deter a person from engaging in further protected speech. (*Id.*). A threat to "watch your back" is not severe enough to deter an inmate from making complaints or filing grievances, and Plaintiff has no evidence that Tierney was involved in any way with the assaults on Plaintiff, Tierney asserts. (*Id.*). Finally, Tierney argues that there is no evidence that his actions were motivated by Plaintiff's speech, as Tierney filed the disciplinary actions at issue "because he witnessed him breaking institutional rules." (*Id.* at 11 (citing Dkt. 66-2, at 2, ¶ 7); Dkt. 75 at 3).

(1) Protected Speech

Contrary to Defendant's assertion, the Court finds that Plaintiff has presented evidence sufficient to show he engaged in protected First Amendment activity. Here, Plaintiff's speech went beyond a mere request to speak to a supervisor; rather, Plaintiff made "informal grievances" and complaints against Tierney, and those complaints about Tierney pertained to Tierney's behavior. (Dkt. 1 at 14–18; Dkt. 66-1 at 51:14–52:15, 56:17–60:22; Dkt. 72 at 21–22). This type of speech is protected by the First Amendment. *See Caffey v. Maue*, 679 Fed. Appx.

487, 490 (7th Cir. 2017) ("Inmates retain a First Amendment right to complain about prison staff, whether orally or in writing, but only in ways consistent with their status as prisoners."); *Powers-Ivey v. Harris*, No. 3:24-cv-134-JTM-APR, 2024 WL 3718096, at *1 (N.D. Ind. Aug. 7, 2024) ("Complaining to a supervisor about a staff member is protected First Amendment activity, as long as it was communicated in a way that is consistent with legitimate penological interests . . . [f]or example, complaining to a supervisor about an officer's behavior is protected, but directing those same statement to the officer 'as a challenge to their authority' is not.").

(2) Deprivation

Plaintiff has also presented enough evidence to create a dispute of material fact as to whether he suffered a deprivation designed to deter his protected activity. *Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020). Plaintiff alleges that, after Tierney learned Plaintiff made informal grievances and complaints against him, (Dkt. 61-1 at 24:4–26:3, Dkt. 72 at 17, 22; Dkt. 72-1 at 69–70, ¶¶ 9–11), Tierney threatened Plaintiff, telling him to "watch his back" and calling him a "child molester," among other things, (Dkt. 1 at 17–18; Dkt. 66-1 at 24:14–26:3, 38:23–39:5, 60:3–22; Dkt. 72 at 15, 17–18, 22; Dkt. 72-1 at 70, ¶ 11). Drawing reasonable inferences in Plaintiff's favor, a jury could conclude that Tierney's warning for Plaintiff to "watch his back," combined with Tierney calling Plaintiff a "child molester" both over the intercom (on December 13, 2022, (Dkt. 1 at 14–15; Dkt. 66-1 at 20:22–22:16; Dkt. 72 at 15)) and in person (on December 16, 2022, (Dkt. 1 at 17–

18; Dkt. 66-1 at 24:14–26:3, 38:23–39:5, 60:3–22; Dkt. 72 at 15, 17–18, 22; Dkt. 72-1 at 70, ¶ 11)), were designed to deter Plaintiff from filing additional grievances or complaints against him.

(3) Motivating Factor

Finally, the Court finds that Plaintiff has provided enough evidence at this stage to establish a prima facie case that Tierney's alleged retaliatory threats were motivated, at least in part, by the protected speech or activity—*i.e.*, Plaintiff's informal grievances and complaints. First, Tierney told Plaintiff to watch his back and called him a child molester very shortly after Plaintiff complained to the supervisor(s). (Dkt. 1 at 17–18; Dkt. 66-1 at 24:14–26:3, 38:23–39:5, 60:3–22; Dkt. 72 at 15, 17–18, 22; Dkt. 72-1 at 70, ¶ 11). While perhaps insufficient to carry the day at trial, this suspect timing in combination with Tierney's threats is sufficient to establish a prima facie case. *See Peele v. Burch*, 722 F.3d 956, 960 (7th Cir. 2013) ("Suspicious timing is rarely enough, by itself, to create a triable issue of fact." (citing *Kidwell*, 679 F.3d at 966); *Loudermilk v. Best Pallet Co., LLC*, 636 F.3d 312, 315 (7th Cir. 2011) ("Occasionally, however, an adverse action comes so close on the heels of a protected act that an inference of causation is sensible."); *McCutcheon v. Schnicker*, No. 13-cv-00779-JPG-PMF, 2016 WL 1059009, at *2–3 (S.D. Ill. Mar. 17, 2016) ("The Court also acknowledges that the *Kidwell* court found that no more than a 'few day[s]' should have elapsed between the activity and the adverse action in order to demonstrate an inference of causation. However, *Kidwell* was employment action and not a prisoner case. The prison environment is drastically

different than an at-will employment environment. As such, a jury may reasonably determine that an approximate two weeks between the protective activity and the adverse action is sufficient to infer retaliation.").

Second, when Plaintiff previously requested to speak with a supervisor, Tierney indicated Plaintiff "[was] going to get [his] ass beat" and threatened to "let everybody know" that Plaintiff was watching child pornography. (Dkt. 1 at 14–15; Dkt. 66-1 at 21:4–22:16, 66:22–67:3). Further, Plaintiff has provided affidavits by other inmates, corroborating that Tierney told inmates that Plaintiff was a "snitch" and a "child molester," (Dkt. 72-1 at 6, 7, 9), and that he even encouraged some inmates to attack Plaintiff, (*id.* at 7, 9). These assertions are enough to show that a reasonable juror could conclude that these actions could deter protected conduct. *See Streckenbach v. Meisner*, 768 Fed. Appx. 565, 569 (7th Cir. 2019) (unpublished) ("It is 'common knowledge that snitches face unique risks in prison,' *Dale v. Poston*, 548 F.3d 563, 570 (7th Cir. 2008), and we think that a reasonable juror could infer that being labeled a snitch would likely deter a person of 'ordinary firmness' from exercising his First Amendment rights."); *McCutcheon*, 2016 WL 1059009, at *2 ("A reasonable jury could determine that the publication of the plaintiff's crimes and referring to the plaintiff as a 'child molester' . . . to the general prison population and staff would create fear in a reasonable victim of a substantial risk of serious injury . . [C]omments made to incite the general population with regard to single individual within a prison environment[] goes beyond 'mere harassment' and a

reasonable officer should know that the effect of such comments would create a substantial risk of serious injury to the plaintiff.").

Additionally, the day after Plaintiff made his informal grievances and complaints against Tierney, Tierney wrote two disciplinary reports against Plaintiff—which Plaintiff maintains were unfounded—for tampering with his cell door lock. (Dkt. 1 at 17–19; Dkt. 66-1 at 29:10–25, 69:10–70:2).

Thus, the Court **DENIES** Defendants' Motion for Summary Judgment with respect to Plaintiff's First Amendment claim against Tierney.

C. Eighth Amendment Claims

Plaintiff's final claim alleges Tierney violated the Eighth Amendment by deliberately provoking other inmates to assault him. To establish a failure-to-protect claim, "the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm" and that the prison official acted with "deliberate indifference" to the inmate's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). A prison official acts with deliberate indifference if he "knows of and disregards an excessive risk to inmate health or safety"—that is, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837. A prisoner alleging an Eighth Amendment violation need not show that prison officials believed that harm would actually occur: "it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Id.* at 842. A prison official's subjective knowledge of the risk can be proven through

circumstantial evidence, such as by showing that the risk was so obvious that the official must have known about it. *Balsewicz v. Pawlyk*, 963 F.3d 650, 655 (7th Cir. 2020), *as amended* (July 2, 2020). Courts have found a substantial risk of serious harm when a prison official has knowledge of a threat to a specific prisoner from a specific source. *See Brown v. Budz*, 398 F.3d 904, 914–15 (7th Cir. 2005) (collecting cases).

Plaintiff alleges that Tierney violated his Eighth Amendment rights by communicating to other inmates that Plaintiff was a child molester and encouraging the other inmates to attack Plaintiff. (Dkt. 1 at 30–31; Dkt. 72 at 31–35). Plaintiff was attacked on multiple occasions. (*See* Dkt. 1 at 18, 23–24; Dkt. 66-1 at 64:3–67:16, 104:1–110:8). In his reply, Tierney admits that "[there is] a genuine dispute on a material fact which precludes summary judgment on Plaintiff's Eighth Amendment claims against Tierney stemming from the December 16, 2022, attack." (Dkt. 75 at 4). Tierney maintains, however, that Plaintiff has not presented any evidence "that Tierney was deliberately indifferent to the other alleged attacks on Plaintiff in May 2023 or 2024, or in April of 2023 when Plaintiff was spit on." (*Id.*). Defense argues that the affidavits of other inmates submitted by Plaintiff either make no mention of Tierney, lack specifics on timing, or suggest that the attacks "were directed by other unnamed officers." (*Id.* at 4–6). Moreover, defense argues, those attacks appear to have "occurred after Tierney had been fired and was no longer at the facility." (*Id.* at 6).

"A prison official's harassment of an inmate may become actionable where it involves a 'credible threat to kill, or to inflict any other physical injury.'" *Sharp v. Spiller*, No. 15-cv-880-MJR, 2015 WL 5162678, at *5 (S.D. Ill. Sept. 2, 2015) (citing *Dobbey v. Ill. Dep't of Corr.*, 574 F.3d 443, 446 (7th Cir. 2009)). "Allegations that a corrections officer has provoked or persuaded other inmates to cause harm to a plaintiff support an inference that the officer attempted to inflict injury on the plaintiff in violation of the Eighth Amendment." *Id.*; *see also Northington v. Jackson,* 973 F.2d 1518, 1525 (10th Cir. 1992) (Eighth Amendment claim stated where guard intended to do harm to a prisoner by inciting inmates to beat him and where guard told other inmates that plaintiff was a snitch); *Jenkins v. Freeman*, No. 09-cv-323-WMC, 2010 WL 2812959, at *1 (W.D. Wis. July 15, 2010) ("[Plaintiff] does not allege that [Defendant] threatened him directly, but his allegations support the drawing of an inference that [Defendant] has acted maliciously by encouraging other prisoners to harm him. That is sufficient.").

Plaintiff, therefore, does not need to show that each attack was a direct and immediate outcome of Defendant Tierney's actions. Rather, at this stage of the case, it is sufficient if he submits evidence supporting a reasonable inference that Defendant identified Plaintiff as a "child molester" and a "snitch" and encouraged other inmates to attack Plaintiff. *See Jenkins*, 2010 WL 2812959, at *2 ("[Plaintiff] would be placed at an even greater risk if other prisoners believed him to be a sexual predator of children . . . These labels, combined with [Plaintiff's] allegation that [Defendant] was encouraging other prisoners to take action against him, are

enough to allow a reasonable jury to infer that [D]efendant [] has placed [Plaintiff] at a substantial risk of serious harm."). Here, Plaintiff has surmounted that bar as to not only the December 2022 attacks, but also the April and May 2023 attacks. An inmate's affidavit alleges that Tierney continued to label Plaintiff as a "child molester" and encourage additional attacks on Plaintiff after the December 2022 assault, but before Tierney left the facility in or around May 2023:

> While I was being house in Wabash Valley Correctional Facility[,] [t]here was a time **when I was approached by c/o Tierney in January 2023**. He asked me if I knew a person name[d] Juan Flagg.[] I acted as if I didn't know of him and asked him what did he do? **C/o Tierney told me that Flagg was [a] child molester** and was recently written up for watching child porn while on his video visit [and] **that if something was to happen to him that he would make sure that didn't anything happened to whoever done it**, that he can't stand child molesters. I asked him was he for real, in turn, is when he told me that he had Mr. Flagg['s] ass kicked, and Flagg went and wrote grievances and snitched on him . . . After that, **I watched c/o Tierney literally walk around and campaign on Mr. Flagg with the intent to have harm done to him** . . . Around the whole cell house, and any cell house that he worked[,] **he would campaign for Mr. Flagg's assault[,] he'd even tell people he'd [] "give anything to see Flagg's police ass beat."**

(Dkt. 72-1 at 7 (emphasis added); *see also* Dkt. 72-1 at 9 ("While being housed with Juan Flagg in Wabash Valley Correctional facility, I witnessed officer Tierney taking credit for Flagg being attacked, he told me that Mr. Flagg is a child molester.")).

Thus, the Court **DENIES** Defendants' Motion for Summary Judgment with respect to Plaintiff's Eighth Amendment claim against Tierney.

IV. Conclusion

For the foregoing reasons, the Defendants' Motion for Summary Judgment, Dkt. [65], is **GRANTED** as to Plaintiff's Fourteenth Amendment Claims against Defendants Tierney, Richardson, and Pope, and is **DENIED** as to Plaintiff's First Amendment and Eighth Amendment Claims against Defendant Tierney.

Because it is the Court's preference that Plaintiff be represented by counsel for trial or any potential settlement conference, Plaintiff shall have through **September 22, 2025**, in which to file a motion for assistance with the recruitment of counsel. **The Clerk is directed** to include a motion for counsel form with Plaintiff's copy of this Order.

So ORDERED.

Date: 08/21/2025

M. Kendra Klump
United States Magistrate Judge
Southern District of Indiana

Distribution:

JUAN JOSEPH FLAGG
121969
WABASH VALLEY - CF
Wabash Valley Correctional Facility
Electronic Service Participant – Court Only

Elijah B. Mollet
Lewis And Wilkins LLP
emollet@lewisandwilkins.com

Eric Ryan Shouse
Lewis And Wilkins LLP
shouse@lewisandwilkins.com

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

_____
Full name of plaintiff(s)

v. Case No._____

_____
Full name of defendant(s)

MOTION FOR ASSISTANCE WITH RECRUITING COUNSEL

I request the court's assistance recruiting counsel to represent me in this action.

(Note: You may attach additional pages to this motion.)

I. Financial Status

Have you previously filed a "Request to Proceed in Forma Pauperis" (an IFP application)? Please check the appropriate box below:

☐ I have previously filed an IFP application in this case, and it is a true and correct representation of my current financial status.

☐ I have not previously filed an IFP application in this case and now attach an original IFP application showing my financial status.

☐ I have previously filed an IFP application in this case, but my financial status has changed. I have attached a new IFP application showing my current financial status.

II. Attempts to Obtain Counsel

The law requires persons requesting assistance with recruiting counsel to first make a reasonable attempt to obtain counsel on their own or demonstrate that they have been effectively precluded from doing so. List all attorneys and/or law firms you have contacted to represent you in this case and their responses to your requests. If you have limited access to the telephone, mail, or other communication methods, or if you otherwise have had difficulty contacting attorneys, please explain.

III. Ability to Litigate the Case

1) Do you have any difficulty reading or writing English?

2) What is your educational background (including how far you went in school)?

3) Do you have any physical or mental health issues that you believe affect your ability to litigate this case on your own? If so, what are they?

_____

_____

_____

4) Have you received any assistance with this case from others, including other inmates? If so, describe the assistance you have received and whether you will continue to receive it.

_____

_____

_____

5) List any other cases you have filed without counsel, and note whether the Court recruited counsel to assist you in any of those cases.

_____

_____

_____

6) Describe any other factors you believe are relevant to your ability to litigate this case on your own.

_____

_____

_____

IV. Requirements for the Recruitment of Counsel

By filing this motion, I agree to the following conditions:

- While I set the objectives of the litigation, I acknowledge it is usually counsel's choice as to the strategies used to accomplish that objective.
- I will fully cooperate with recruited counsel. If I do not do so, I understand that recruited counsel may withdraw.
- I understand that counsel is not responsible for paying the costs associated with my lawsuit.
- I understand that I am not entitled to free legal counsel and that recruited counsel may require me to enter into a contingency fee agreement in order to represent me in this action.
- I understand that a portion of any monetary recovery (not to exceed 25%) may be used to satisfy the amount of attorney's fees awarded under 42 U.S.C. § 1988. This requirement is imposed by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d).
- I understand that even if the Court grants this motion, I will receive counsel only if an attorney volunteers to take my case and that there is no guarantee that an attorney will volunteer to represent me.
- I understand that if my answers in this motion or in my IFP application are false, I may be subject to sanctions, including the dismissal of my case.

I declare under penalties for perjury that the above statements are true and correct:

_____ _____

Date **Signature - Signed Under Penalty for Perjury**