

22-1227

Pearson v. Gesner

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 - - - - -

4 August Term, 2023

5 (Argued: February 13, 2024

Decided: January 13, 2025)

6 Docket No. 22-1227

7 _____
8 ROBERT PEARSON JR.,

9 *Plaintiff-Appellant,*

10 - v. -

11 SERGEANT GESNER, #138, OFFICER MORRIS, #437, OFFICER
12 HALSTEAD, #148, OFFICER BROECKEL, #320,

13 *Defendants-Appellees*.*
14 _____

15 Before: KEARSE, PARK, and ROBINSON, *Circuit Judges*.

* Although in the caption of the operative complaint "Gesner" is a misspelling of the defendant's name Gessner, we "feel constrained to adhere to the erroneous spelling" for the caption, *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 555 n.* (1980). The Clerk of Court is instructed to amend the official caption to conform with the above.

1 Plaintiff Robert Pearson Jr. appeals from a judgment of the United States
2 District Court for the Southern District of New York (Philip M. Halpern, *Judge*),
3 dismissing his *pro se* amended complaint brought under 42 U.S.C. § 1983 alleging
4 principally that, while he was being held at a county correctional facility for a parole
5 violation, corrections officers beat him up in his cell, played with his food, then
6 sprayed chemicals in his eye, causing him continuing pain and impaired vision, and
7 denied him medical care. The district court granted defendants' motion pursuant to
8 Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim. *See Pearson v. Gesner*, No.
9 21-CV-05670, 2022 WL 1523166 (S.D.N.Y. May 13, 2022). On appeal Pearson, now
10 represented by appointed counsel, contends principally that the court erred in
11 considering materials outside the amended complaint. We agree that the court erred
12 in this respect, and we thus vacate the judgment in part and remand for further
13 proceedings in connection with the allegations that defendants subjected Pearson to
14 excessive force. In light of allegations in the amended complaint itself, we affirm so
15 much of the judgment as dismissed claims that defendants denied Pearson medical
16 assistance.

17 Affirmed in part, vacated in part, and remanded.

1 EMILY VILLANO, New York, New York (Jennifer M.
2 Keighley, Orrick, Herrington & Sutcliffe, New York,
3 New York, on the brief), *for Plaintiff-Appellant* **.

4 CAROL C. PIERCE, Deputy County Attorney, Goshen,
5 New York (Richard B. Golden, Orange County
6 Attorney, Goshen, New York, on the brief), *for*
7 *Defendants-Appellees*.

8 KEARSE, *Circuit Judge*:

9 Plaintiff Robert Pearson Jr. appeals from a judgment of the United States
10 District Court for the Southern District of New York (Philip M. Halpern, *Judge*),
11 dismissing his *pro se* Amended Complaint brought under 42 U.S.C. § 1983 alleging
12 principally that, while he was being held at the Orange County, New York
13 Correctional Facility for a parole violation, corrections officers beat him up in his cell,
14 played with his food, then sprayed chemicals in his eye, causing him continuing pain
15 and impaired vision, and denied him medical care. The district court granted
16 defendants' motion pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Amended

** This Court appointed Jennifer Keighley and Emily Villano of Orrick, Herrington & Sutcliffe LLP to represent Mr. Pearson on appeal, and we are grateful to them for their able discharge of that responsibility.

1 Complaint for failure to state a claim. *See Pearson v. Gesner*, No. 21-CV-05670, 2022
2 WL 1523166 (S.D.N.Y. May 13, 2022) ("May 2022 Opinion" or "D.Ct. Op.").

3 On appeal Pearson, now represented by appointed counsel, contends
4 principally that the court erred in considering materials outside the Amended
5 Complaint. We agree that the court erred in this respect, and we thus vacate the
6 judgment in part and remand for further proceedings in connection with the
7 allegations that defendants subjected Pearson to excessive force. In light of
8 allegations in the Amended Complaint itself, we affirm so much of the judgment as
9 dismissed claims that defendants denied Pearson medical assistance.

10 I. BACKGROUND

11 Pearson began this action with a complaint that named as defendants
12 New York State and the Orange County Jail Medical Department. The district court
13 dismissed without prejudice on the grounds that the State of New York had
14 immunity under the Eleventh Amendment to the Constitution and that the Orange
15 County Jail Medical Department lacked juridical existence apart from the county of
16 which it was a part. *See Pearson v. State of New York*, No. 21-CV-5670, 2021 WL

1 3292527, at *1 (S.D.N.Y. Order, Aug. 2, 2021) ("2021 Order"). The court directed the
2 Orange County Attorney to "identify the individuals involved in the incidents
3 described within sixty days," and it directed Pearson to file an amended complaint
4 naming individual defendants within 30 days of receiving that information. D.Ct.
5 Op., 2022 WL 1523166, at *1 (describing 2021 Order at 3).

6 Before receiving that information from the Orange County Attorney,
7 Pearson filed the Amended Complaint on September 7, 2021, against the defendants
8 listed in the caption above, to wit, "Gessner"--the author of an inmate misbehavior
9 report (whose name is misspelled "Gesner" in captions)--and three officers listed in
10 that report as participants in and/or witnesses to an event as to which Pearson had
11 complained. In particular, Pearson had complained that officers meddled with his
12 food and pepper-sprayed him. Pearson attached a copy of the April 24, 2021 Inmate
13 Misbehavior Report ("Report" or "Misbehavior Report") to his Amended Complaint,
14 with a note to the judge stating, "I'm sending the form that attach to the papers they
15 go with my case! The papers is evidence for my case." (App'x at 20.)

1 A. *The Amended Complaint*

2 The Amended Complaint contains factual allegations that we accept as
 3 true for purposes of this appeal. *See, e.g., Harrington v. County of Suffolk*, 607 F.3d 31,
 4 33 (2d Cir. 2010) (when reviewing a district court's dismissal for failure to state a
 5 claim, the appellate court is to assume "all well-pleaded, nonconclusory factual
 6 allegations in the complaint to be true"). As we interpret his handwritten Amended
 7 Complaint, Pearson alleged that in his cell, on an unspecified date:

8 I was on the Door because I had a problem with my food! I was
 9 telling the officers about my food. The officer put his haed [sic]
 10 into my food hold [sic] [a]n[d] spreyed [sic] me in my eye my right
 11 eye with some typ [sic] of chemical, befor [sic] this the officers was
 12 beating me up in my cell [a]n[d] they was palying [sic] with my
 13 food befor [sic] this [a]n[d] thats way [sic] the officers was Doing
 14 This Day! I ask the officer to give me another tray because it was
 15 something in my tray [a]n[d] he told me no! the officer put his
 16 head [sic] into my food hold [sic] [a]n[d] speyed [sic] me in my
 17 right eye with chemical. They took me to medical [a]n[d] medical
 18 did not Do anything for me, The officers did not give me a shower
 19 or did They give me new clothing they put me back into a call [sic]
 20 the same way they took me out! The officers put me into a cell
 21 [a]n[d] they turned off the water in my cell [a]n[d] they did not
 22 give me any new clothing They Just put me back into anther [sic]
 23 call [sic] with the same thing on! I was in very bad pain. I did not
 24 have any water or anything. This should be on Video Tape!!

1 (Amended Complaint at 4.) Pearson alleged, "I be in very bad pain for what They did
2 to me [a]n[d] I can not see how I could befor [sic] befor [sic] what happen to me!!" (*Id.*
3 at 5.)

4 Defendants moved to dismiss the Amended Complaint under Rule
5 12(b)(6) for failure to state a claim, contending principally that in the incident referred
6 to, Gessner had sprayed Pearson with "oleoresin capsicum ('O.C. spray') . . . in order
7 to obtain compliance by Plaintiff who was disobeying orders to remove his hand from
8 the tray slot in his cell." (Declaration of Chief Assistant County Attorney Carol C.
9 Pierce in Support of Defendants' Motion To Dismiss, dated February 1, 2022 ("Pierce
10 Decl."), ¶ 3.) In addition to the Amended Complaint, defendants attached to their
11 motion as Exhibit B a "copy of a handheld video that was taken of Plaintiff on April
12 24, 2021, immediately after the use of the O.C. spray and his escort to medical," and
13 as Exhibit C a copy of a "Deprivation Order," both of which defendants stated were
14 "incorporated by reference into Plaintiff's amended complaint." (*Id.* ¶¶ 6-7.)

15 B. *The District Court's Decision*

16 In its May 2022 Opinion, the district court granted defendants' motion
17 and dismissed the Amended Complaint, with prejudice, for failure to state a claim.

Citing principles governing review of Rule 12(b)(6) motions, the court stated that it could not consider the Deprivation Order submitted by defendants "because it [wa]s neither integral to--nor referenced within--the" Amended Complaint. D.Ct. Op., 2022 WL 1523166, at *1 n.4. However, the court deemed it appropriate to consider defendants' video, "taken on April 24, 2021 immediately after the use of pepper spray," because the video had been mentioned in the Amended Complaint. *Id.* The court found that "Plaintiff relied on the video to support his claims, alleging specifically that the events 'should be on video tape!!'" *Id.* (quoting Amended Complaint at 4).

The district court also found it permissible to consider the Misbehavior Report authored by Gessner, stating that

Plaintiff's allegations are supplemented by the Inmate Misbehavior Report annexed to the Amended Complaint. That document, authored by Gessner, indicates that the underlying events took place on April 24, 2021.

D.Ct. Op., 2022 WL 1523166, at *2 (emphasis added). The court quoted Gessner's Misbehavior Report descriptions of the incident as follows:

"At 1112 hours, I entered Delta-1 Housing Unit after being advised that Inmate Pearson, Robert (2021-00444) was refusing to comply with staff orders. Inmate Pearson's left arm was placed through the tray slot to prevent staff from securing the tray slot.

1 Inmate Pearson disobeyed all orders to remove his left hand from
2 the tray slot.

3 "At 1116 hours, Inmate Pearson was advised to remove his
4 hand or he would be sprayed with oleoresin capsicum (pepper
5 spray). Inmate Pearson continued to refuse orders. I deployed
6 two one-second bursts of oleoresin capsicum through the lower
7 tray slot striking Inmate Pearson in the facial area.

8 "As a result of being pepper-sprayed, Inmate Pearson
9 moved his left arm revealing that Inmate Pearson stuffed paper in
10 the lock latch to prevent closure. Officer Morris #437 removed the
11 paper from the lock latch. Officer Morris and Officer Halstead
12 #148 then pushed Inmate Pearson's left arm through the tray slot
13 back into his cell and secured the lower tray slot.

14 "Inmate Pearson was issued a misbehavior report for this
15 incident."

16 *Id.* The district court also noted that

17 Plaintiff was thereafter found guilty of disruptive conduct,
18 tampering with a security device, and disobeying a correction
19 officer. He was penalized with fourteen days' keeplock.

20 *Id.* (citing a page appended to the Misbehavior Report, titled "Hearing Report Form"
21 and dated April 26, 2021).

22 After noting general principles governing assessment of the sufficiency
23 of a complaint to state a claim--including the requirement that the complaint "contain
24 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on

1 its face," and the requirements that the court draw all favorable reasonable inferences
2 from the facts pleaded and "interpret the pleadings of a *pro se* plaintiff liberally," D.Ct.
3 Op., 2022 WL 1523166, at *3 (internal quotation marks omitted)--the court concluded
4 that Pearson's claims of excessive force should be dismissed. First, it stated that "[t]he
5 Amended Complaint lacks any allegation suggesting that Morris, Halstead, or
6 Broeckel participated in an actionable constitutional violation." *Id.* at *4. Second,
7 while finding that, with respect to having had chemicals sprayed in his eye, Pearson
8 "pled plausibly that force was used purposefully" by Gessner, the district court stated
9 that the "sole issue" was "whether the facts pled suggest plausibly that the force used
10 was objectively unreasonable." *Id.* at *5. The court stated that

11 *[t]he Inmate Misbehavior Report reveals that Gessner discharged the*
12 *pepper spray in two one-second bursts to maintain discipline and secure*
13 *Plaintiff's compliance with the repeated direction to remove his arm*
14 *from the tray slot in his cell door. (Am. Compl. at 9).*

15 *Id.* (emphases added). The court concluded that "[s]uch a use of force is not
16 objectively unreasonable." *Id.*

17 The district court also discussed the video submitted by defendants,
18 showing that after Pearson was sprayed, "correction officers--Defendants,
19 presumably--" took Pearson to the infirmary. *Id.* at *2. The court summarized the

1 video as to subsequent events, which included Pearson profanely complaining,
2 refusing to allow a nurse to check his vital signs, and insisting that he immediately
3 be taken back to his cell. *See id.* at *2-*3. The court concluded that the Amended
4 Complaint did not allege facts sufficient to show any "deliberate indifference to a
5 serious medical need," *id.* at *6, and that even had Pearson made such a showing, his
6 claim for denial of medical care "would still fail because, *inter alia*, Plaintiff refused
7 medical care at the infirmary," *id.* at *6 n.10 (citing defendants' Exhibit B, the video,
8 at 04:25-09:20).

9 Finally, as to Pearson's complaints that officers had put their hands in his
10 food, the district court ruled that Pearson also failed to state a claim for
11 unconstitutional "conditions of confinement," *id.* at *6, stating that "Plaintiff pled
12 simply that he missed a meal and was placed in a cell without running water. (Am.
13 Compl. at 4). Without any additional facts, this conclusory allegation is insufficient
14 to plead plausibly that the condition at issue was 'sufficiently serious' for the
15 purposes of a conditions of confinement claim," *id.* at *7.

16 Concluding that further amendments by Pearson would be futile, the
17 district court dismissed his federal claims with prejudice and declined to exercise

1 jurisdiction over any state-law claims he might wish to pursue. *See* D.Ct. Op., 2022
2 WL 1523166, at *8.

3 Pearson timely appealed the district court's dismissal of his claims of
4 excessive force and deliberate indifference to his medical needs. This Court
5 appointed counsel to represent him in the appeal.

6 II. DISCUSSION

7 On appeal, Pearson contends principally that, in granting the Rule
8 12(b)(6) motion, the district court erred by considering Gessner's Misbehavior Report
9 narrative and the video submitted by defendants. He argues that the Amended
10 Complaint adequately pleaded that he was subjected to objectively unreasonable
11 force, that he was denied medical assistance for his serious medical condition, and
12 that the individual defendants were plausibly alleged to have been involved in those
13 events--or at least that he should have been given the opportunity to file a further
14 amended complaint to address any substantive deficiencies in his claims against these
15 newly identified individual defendants.

1 We review *de novo* a district court's grant of a motion to dismiss for
2 failure to state a claim. See *Quinones v. City of Binghamton*, 997 F.3d 461, 466 (2d Cir.
3 2021). For the reasons that follow, we conclude that the Amended Complaint failed
4 to state claims against the present defendants for denial of medical assistance.
5 However, we conclude that in dismissing the claims for use of excessive force, the
6 district court erred by considering materials outside the Amended Complaint that
7 were not relied on by Pearson in drafting his pleading.

8 A. *Claims of Denial of Medical Assistance*

9 As to Pearson's challenge to the dismissal of his claims that defendants
10 denied him medical assistance, we conclude that the Amended Complaint itself--
11 without regard to any materials outside his pleading--forecloses such a claim. The
12 Amended Complaint named only four defendants, all of them corrections officers.
13 And, asserting that "the officers" had "beat[en]" him in his cell and played with his
14 food, Pearson alleged that after an officer "speyed [*sic*] me in my right eye with
15 chemical[, t]hey took me to medical" (Amended Complaint at 4 (emphasis added).)

16 The Amended Complaint's factual statement that after Pearson was
17 sprayed with chemicals the officers took him to the medical facility contradicts the

1 contention that the officers denied him medical assistance. We thus affirm so much
2 of the judgment as dismissed Pearson's claims that the named defendants denied him
3 medical assistance.

4 B. *Claims of Excessive Force*

5 Generally, in determining whether a complaint states a claim, the court
6 is required to make the assessment based solely on the allegations in the complaint,
7 without considering extraneous facts and materials. A plaintiff may incorporate
8 allegations in the complaint by reference to another document, *see, e.g., Chambers v.*
9 *Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) ("*Chambers*"); and "where the
10 complaint relies heavily upon its terms and effect," the "document is integral to the
11 complaint," *Goel v. Bunge, Ltd.*, 820 F.3d 554, 559 (2d Cir. 2016) (internal quotation
12 marks omitted). But extraneous materials do not become integral parts of the
13 complaint unless the plaintiff relied on them in drafting the complaint. *See Chambers*,
14 282 F.3d at 153 (stressing that the "plaintiff's *reliance* on the terms and effect of a
15 document in drafting the complaint is a necessary prerequisite to the court's
16 consideration of the document on a dismissal motion" (emphasis in original)).

1 Further, a plaintiff does not necessarily "adopt as true *the full contents* of
2 any document attached to a complaint or adopted by reference." *Gant v. Wallingford*
3 *Board of Education*, 69 F.3d 669, 674 (2d Cir. 1995) (emphasis added). For example,
4 where the plaintiffs attached a document that they alleged was a defendant's
5 "self-serving document," it was "error for the district court to assume that plaintiffs'
6 complaint adopted the [defendant's] exculpatory conclusions." *Id.* at 675. "*Rather than*
7 *accepting [as true] every word* in a unilateral writing by a defendant and attached by a
8 plaintiff to a complaint," the court must "*consider why a plaintiff attached the documents.*"
9 *Northern Indiana Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 455 (7th
10 Cir. 1998) (emphases added). "*The purpose for which the document is offered is*
11 *particularly important where the document is one prepared by or for the defendant.* Such
12 unilateral documents may reflect *the defendant's version of contested events* or contain
13 self-serving, exculpatory statements that are *unlikely to have been adopted by the*
14 *plaintiff.*" *Goines v. Valley Community Services Board*, 822 F.3d 159, 168 (4th Cir. 2016)
15 (emphases added). And "[t]reating the contents of such a document as true simply
16 because it was attached to or relied upon in the complaint, even though the plaintiff
17 relied on it for purposes other than truthfulness, would . . . enable parties to hide

1 behind untested, self-serving assertions." *Id.* (internal quotation marks omitted). In
2 sum,

3 in cases where the plaintiff attaches or incorporates a document
4 for purposes other than the truthfulness of the document, it is
5 inappropriate to treat the contents of that document as true. *For*
6 *example, if a prisoner attaches an unfavorable decision from a prison*
7 *tribunal to show that he has exhausted his administrative remedies, he*
8 *does not thereby adopt the factual findings of that unfavorable decision.*

9 *Id.* at 167 (emphasis added).

10 When a defendant submits extraneous materials with a Rule 12(b)(6)
11 motion to dismiss, the district court must either ignore the materials and resolve the
12 motion on the basis of the complaint alone or convert the motion to one for summary
13 judgment and give the parties the opportunity to conduct appropriate discovery. *See*
14 Fed. R. Civ. P. 12(d); *Palin v. New York Times Co.*, 940 F.3d 804, 810-11 (2d Cir. 2019).
15 In the present case, the district court did neither.

16 Here, while the district court noted that it was allowed to consider
17 extraneous items if the plaintiff had "relie[d] heavily" on their "terms and effect," D.Ct.
18 Op., 2022 WL 1523166, at *1 n.4 (internal quotation marks omitted), neither of the two
19 extraneous items that the court considered met that criterion. First, while the court
20 noted that the Amended Complaint stated that "the events 'should be on video tape,'"

1 *id.*, that statement did not indicate that Pearson had relied on a video tape in framing
2 his pleading. Indeed, his "should be" phrasing suggests that Pearson in fact had not
3 seen the video, and perhaps that he did not even know whether a video existed.
4 Further, while the court stated that Pearson relied on the video to support his
5 "claims"--plural--*id.*, the video submitted by defendants could not have been relied
6 on for the claim that defendants had beaten Pearson, or had contaminated his food
7 with their hands and then sprayed him with chemicals, because the video did not
8 begin until "*after* the use of the pepper spray," D.Ct. Op., 2022 WL 1523166, at *1 n.4
9 (emphasis added); *see also* Pierce Decl. ¶ 6 ("Exhibit 'B' is . . . a handheld video that
10 was taken . . . immediately after the use of the O.C. spray").

11 Second, although the court stated that the Amended Complaint was
12 "supplemented by the Inmate Misbehavior Report annexed to the Amended
13 Complaint," D.Ct. Op., 2022 WL 1523166, at *2, that characterization was apt only
14 with respect to the issue as to which the court had earlier instructed Pearson to file
15 an amended complaint. In the 2021 Order, the court had noted that the defendants
16 named in the original complaint were not suable entities and had instructed the
17 Orange County Attorney to identify for Pearson the county employees involved in
18 the events of which he complained. Pearson filed the Amended Complaint naming

1 Gessner, Morris, Halstead, and Broeckel as defendants, and attached the Misbehavior
2 Report which stated that Gessner, Morris, Halstead, and Broeckel had at least been
3 present. It is reasonable to infer that he attached the Misbehavior Report as evidence
4 that he was now suing the individuals involved, in compliance with the only
5 instruction given to him by the court in its 2021 Order.

6 In contrast, the narrative provided by the Misbehavior Report gave a
7 version of the events that significantly differed from the allegations in the Amended
8 Complaint. The Report's narrative, as quoted by the district court and reprinted in
9 Part I.B. above, principally stated (a) that Pearson was refusing to comply with
10 officers' orders, (b) that he was physically preventing closure of his food tray slot, (c)
11 that he was warned that if he did not obey an order to cease that obstruction he
12 would be sprayed with pepper spray, (d) that he was pepper-sprayed only after
13 having been so warned, and (e) that Gessner had deployed only two short bursts of
14 pepper spray. In the Amended Complaint, there was no allegation that Pearson was
15 obstructing any security device, or that he was failing to comply with any orders, or
16 that he was given any warning that an officer would pepper-spray him in the face,
17 or that the spraying was in fact brief.

1 In sum, the factual allegations in the Amended Complaint did not
2 provide a basis for an inference that Pearson had given the officers cause to spray him
3 with injurious chemicals. And Pearson--who most reasonably can be interpreted as
4 attaching the Misbehavior Report to show that he was naming the correct individuals
5 as defendants--cannot be reasonably be understood to have relied on the Inmate
6 Misbehavior Report's self-serving assertions as to the events in drafting the Amended
7 Complaint. The district court erred in accepting Gessner's narrative as true, and
8 thereby ruling that Gessner's spraying of Pearson was objectively reasonable and that
9 Pearson therefore had failed to state a claim for excessive force.

10 We also note that the Amended Complaint alleged that the officers, after
11 returning Pearson from the infirmary to a cell, turned off the water in the cell. The
12 district court viewed this allegation (and Pearson's claims that officers contaminated
13 his food by putting their hands in it) as asserting relatively routine grievances about
14 "conditions of confinement"; it minimized them by stating that "Plaintiff pled simply
15 that he missed a meal and was placed in a cell without running water," D.Ct. Op.,
16 2022 WL 1523166, at *7. But Pearson does not pursue a conditions-of-confinement
17 claim here (*see* Pearson brief on appeal at 11 n.2); and the Amended Complaint's lack-
18 of-water complaint was not simply that the cell in which he was placed did not have

1 running water; the allegation was that the officers affirmatively "*turned off* the water
2 in [his] cell." (Amended Complaint at 4 (emphasis added).) That allegation could be
3 understood to assert, in the circumstances alleged, the deliberate perpetuation of the
4 effect of an unjustified spraying with injurious chemicals, *i.e.*, a further claim of
5 excessive force. *Cf., e.g., Headwaters Forest Defense v. County of Humboldt*, 276 F.3d
6 1125, 1130-31 (9th Cir. 2002) ("a refusal without cause" to allow access to water "to
7 alleviate [pepper spray's] harmful effects constitutes excessive force" (internal
8 quotation marks omitted)).

9 Given that the district court erred in considering--and adopting--the
10 Misbehavior Report's description of the events as set out in Gessner's self-serving
11 narrative, which differed in nearly every way from the events described in the
12 Amended Complaint, we vacate so much of the judgment as dismissed Pearson's
13 claims for use of excessive force and remand for further proceedings.

14 *C. On Remand*

15 There is merit, however, in the district court's observation that the
16 Amended Complaint does not indicate which complained-of acts are alleged to have
17 been performed by which of the named defendants. Nor does this pleading make

1 clear whether Pearson attributes some of those acts to only one, or to more than one,
2 officer. In addition, the record includes an October 4, 2021 letter from Pearson to the
3 district judge, stating that in referring to a beating, Pearson had not intended his
4 Amended Complaint to indicate that he had been beaten by the present defendants.
5 (*See* D.Ct. Dkt. 21, Oct. 14, 2021.)

6 On remand, Pearson--preferably with counsel appointed or continuing
7 to represent him--should be allowed to file a second amended complaint. His new
8 pleading should at least identify, to the extent possible without the need for some
9 limited discovery, *cf. Davis v. Kelly*, 160 F.3d 917, 918, 922 (2d Cir. 1998), which
10 defendant or defendants engaged in which of the alleged acts of excessive force, and
11 should clarify other aspects of the excessive-force claims he wishes to pursue.

12 CONCLUSION

13 We have considered all of the parties' arguments in support of their
14 respective positions and, except as indicated above, have found them to be without
15 merit. The judgment is affirmed insofar as it dismissed Pearson's claims that these
16 defendants denied him medical assistance. To the extent that the judgment dismissed

1 claims asserting that Pearson was subjected to excessive force, it is vacated, and the
2 matter is remanded for further proceedings not inconsistent with this opinion.