

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

2021 JAN -5 PM 1:37

DEXTER JOHNSON,
Plaintiff,

U.S. MARSHALS
MILWAUKEE, WI

v.

Case No. 19-C-1703

PATRICK MITCHELL,
CITY OF WEST ALLIS POLICE
DEPARTMENT, and LORI BELLI,
Defendants.

SCREENING ORDER

Plaintiff Dexter Johnson, a former inmate¹ at the Milwaukee County House of Correction, filed a pro se complaint under 42 U.S.C. § 1983 alleging that the defendants violated his civil rights by searching his home. This order resolves the plaintiff's motion for leave to proceed without prepaying the filing fee and screens his complaint.

I. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE

The Prison Litigation Reform Act (PLRA) applies to this case because the plaintiff was a prisoner when he filed his complaint. See 28 U.S.C. § 1915(h). The PLRA allows a prisoner plaintiff to proceed with his case without prepaying the civil case filing fee. 28 U.S.C. § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the \$350 filing fee over time. *Id.*

I ordered the plaintiff to pay an initial partial filing fee of \$56.00. ECF No. 11. The plaintiff paid that fee on June 5, 2020. I will grant the plaintiff's motion for leave to proceed

¹ The plaintiff notified the court by phone call that he has been released from custody. In a letter sent on November 23, 2020, he provided his new address: 8626 W. Appleton Ave. #1, Milwaukee, Wisconsin 53225. I will direct the Clerk's office to update the docket with the plaintiff's new address.

without prepaying the filing fee. Although the plaintiff is no longer incarcerated, he remains obligated to pay the remainder of the filing fee over time, as he is able.

II. SCREENING THE COMPLAINT

A. Federal Screening Standard

Under the PLRA, I must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint if the prisoner raises claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, I apply the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). See *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to “state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United

States, and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). I construe pro se complaints liberally and hold them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

B. The Plaintiff’s Allegations

On January 4, 2019, the plaintiff was at the Milwaukee County Courthouse to appear for case 17-CF-5081. At that time, detectives (whom he does not name) arrested him “for an investigation.” ECF No. 1 at 2. He alleges they had no probable cause to arrest him. They transported the plaintiff to the West Allis Police Department, where he was held in custody for almost six days without ever going to court or being informed of any charges against him. The Milwaukee County District Attorney’s Office never filed any charges.

While the plaintiff was in custody, officers from the West Allis Police Department, including defendant Lori Belli, executed a search warrant at his home looking for “fruits pertaining to Case No. 16-CF-1674.” ECF No. 1 at 3. The plaintiff alleges that the warrant was based on old, “stale” information and was not based on probable cause. *Id.*

C. Analysis

The plaintiff’s complaint presents several potential claims. The first is based on his arrest, which he alleges was not supported by probable cause. While probable cause is an absolutely defense to a claim of a wrongful arrest, the plaintiff alleges that the officers did not have probable cause. Probable cause to arrest exists where, “at the time of the arrest, the facts and circumstances within the officer’s knowledge are sufficient to permit

a prudent person to believe that the suspect had committed, is committing, or is about to commit an offense.” *Rooni v. Biser*, 742 F.3d 737, 740 (7th Cir. 2014). According to the complaint, the plaintiff was appearing in court at the time of his arrest and then held pending an investigation into another case. Though his allegation the officers lacked probable cause is conclusory, he does not know what the officers knew or believed at the time they arrested him. I will add a John Doe 1 placeholder to the case since the plaintiff does not name any officials involved in his arrest. See *Donald v. Cook County Sheriff's Dep't*, 95 F.3d 548, 555–56, 559 (7th Cir. 1996) (explaining that the court may add defendants mentioned in the body of the complaint but not the caption, including adding Doe placeholders).

Next, the plaintiff alleges that he was held for six days without a hearing. It is not clear if the arrest was warrantless, only that the plaintiff believes it was without probable cause. For now, I will presume the arrest was made without a warrant, given that the plaintiff specifically mentions the warrant with respect to the search of his house. Following a warrantless arrest, the Fourth Amendment requires timely judicial determination of probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The U.S. Supreme Court has established that a hearing within 48 hours would be presumptively “prompt.” *County of Riverside v. McLaughlin*, 500 U.S. 44, 56–57 (1991). The plaintiff alleges he was held for six days—four days over the presumptively prompt time limit. This is sufficient at screening to state a claim based on his detention without a hearing. As with his arrest claim, the plaintiff does not identify who was responsible for his allegedly protracted detention. The court will add John Doe 2 to the case to hold a place for the

defendant(s) responsible, whom the plaintiff will be able to investigate once I enter a scheduling order in the case.

Finally, the plaintiff alleges that defendant Belli searched his home based on an invalid warrant. Specifically, he alleges that the warrant was based on an affidavit with stale, outdated information and was looking for items related to a three-year-old crime. In short, I understand him to be alleging that Belli procured the warrant without probable cause to search his home. To state a claim, the plaintiff must allege that “reasonably well-trained officers in their positions should have known that the testimony or affidavits they provided in support of the warrants would have failed to establish probable cause, so that they should not have applied for the warrants in the first place.” *Beauchamp v. City of Noblesville*, 320 F.3d 733, 743 (7th Cir. 2003). This means that the officers “knowingly or intentionally or with a reckless disregard for the truth, made false statements to the judicial officer, and that the false statements were necessary to the judicial officers’ determinations that probable cause existed for the arrests.” *Id.*

At this stage, there is no way for the plaintiff to know whether Belli knowingly or intentionally made a false statement. He has alleged what he knows: that he does not believe the information in the affidavit in support of the search warrant application amounted to probable cause and that Belli should not have had a warrant based on it. I will allow him to proceed against Belli on a claim related to the warrant.

The complaint contains no allegations against Patrick Mitchell. Section 1983 requires that an individual be personally involved in the alleged constitutional violation. *See Colbert v. City of Chicago*, 851 F.3d 649, 657 (7th Cir. 2017). This means that a plaintiff must include allegations that connect the person he is suing to the alleged

misconduct. *Id.* Because the plaintiff does not connect any allegations to defendant Mitchell, I will dismiss Mitchell from the lawsuit.

I will also dismiss the West Allis Police Department because the plaintiff cannot sue a police department under § 1983. *Best v. City of Portland*, 554 F.3d 698, 698 n.* (7th Cir. 2009). The police department is merely the vehicle through which the city fulfills its policy functions; it is not a governmental entity unto itself. See *Kudla v. City of Hammond*, Case No. 18-cv-419, 2019 WL 4297591, at *3 (N.D. Ind. Sept. 11, 2019).

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that plaintiff's motion for leave to proceed without prepaying the filing fee (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that Patrick Mitchell and the West Allis Police Department are **DISMISSED**.

IT IS FURTHER ORDERED that the U.S. Marshals Service shall serve a copy of the complaint and this order upon defendant Lori Belli pursuant to Federal Rule of Civil Procedure 4. Plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). Although Congress requires the court to order service by the U.S. Marshals Service, it has not made any provision for these fees to be waived either by the court or by the U.S. Marshals Service. The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2), (a)(3). The U.S. Marshals Service will give plaintiff information on how to remit payment. The court is not involved in collection of the fee.

IT IS ALSO ORDERED that defendant Belli shall file a responsive pleading to the complaint.

IT IS FURTHER ORDERED that the Clerk's office update the docket with the plaintiff's new address, provided above and in the plaintiff's November 23, 2020 letter (ECF No. 14).

IT IS FURTHER ORDERED that the parties may not begin discovery until after the court enters a scheduling order setting deadlines for discovery and dispositive motions.

IT IS FURTHER ORDERED that the plaintiff must submit the original document for all future filings to the court at the following address:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE JUDGE'S CHAMBERS. It will only delay the processing of the matter.

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this case for failure to diligently pursue it. In addition, the parties must notify the Clerk of Court of any change of address. The plaintiff is reminded that it is his responsibility to promptly notify the court if his address changes again. The plaintiff's failure to keep the court advised of his whereabouts may result in the dismissal of this case without further notice.

Enclosed is a guide prepared by court staff to address common questions that arise in cases filed by prisoners. Entitled "Answers to Prisoner Litigants' Common

Questions,” this guide contains information that plaintiff may find useful in prosecuting his case.

Dated at Milwaukee, Wisconsin, this 4th day of January, 2021.

s/Lynn Adelman
LYNN ADELMAN
United States District Judge