IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

WENDELL DWAYNE O'NEAL,
202 Honorway
Madison, Alabama 35758,

ORDER

Petitioner,

06-C-40-C

v.

K.A., SUPER U.S.A., INC., 3807 FREEMONT AVE., N., MINNEAPOLIS, MINNESOTA; P.O. RABINE, P.O. MURO, 330 E. 38th STREET, MINNEAPOLIS, MINNESOTA 55409, SGT. GREGORY FREEMAN, 350 S. 5th STREET, MINNEAPOLIS, MN. 55487, MINNEAPOLIS DEPT. OF POLICE, 350 S. 5th STREET, MINNEAPOLIS, MN. 55487, CITY OF MINNEAPOLIS, 350 S. 5th STREET, MINNEAPOLIS, MINNESOTA 55487; UNKNOWN HENNEPIN COUNTY DEPUTY SHERIFF; PATRICK McGOWAN, HENNEPIN COUNTY SHERIFF; HENNEPIN COUNTY ADULT DETENTION CENTER, 401 S. 4th AVENUE, MINNEAPOLIS, MINNESOTA 55487; COUNTY OF HENNEPIN, 300 S. 6th STREET, MINNEAPOLIS, MINNESOTA 55487; LEE BARRY, ASST. D.A., BEVERLY BENSON, ASST. D.A., HENNEPIN. COUNTY DISTRICT ATTORNEYS' OFFICE, 300 S. 6th STREET. MINNEAPOLIS, MINNESOTA 55487, JOINTLY/SEVERALLY/OFFICIALLY, AS POLICE AGENTS/GOV. AGENCIES AND, OR MUNICIPALITIES,

Respondents.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

In an order dated March 14, 2006, I dismissed petitioner Wendell Dwayne O'Neal's amended complaint in this case without prejudice to his filing a new complaint in which he listed by name the individual respondents he wished to sue or provided the court with an affidavit describing the steps he took to learn the names of the respondents listed as "unknown" in the amended complaint. I gave petitioner until April 4, 2006 to file his new complaint. Petitioner has filed two documents in response to the order. On April 7, 2006, petitioner filed a document entitled "Plaintiffs' Complaint Order Compliance as to Defendants Identity and Notice for U.S. Marshal Service." On April 10, 2006, he filed a new complaint in which he named some of the respondents who had been designated as "unknown" in his amended complaint. Attached to his complaint is an affidavit explaining the steps he took to identify the unknown respondents. I will disregard petitioner's April 7, 2006 filing and accept his new complaint as the sole operative pleading in this case.

This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. §§ 1983 and 1985(3). Petitioner seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From an affidavit of indigency previously filed, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2). Allegations are legally frivolous when they are "clearly baseless," meaning fanciful, fantastic, delusional, irrational, or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).

Petitioner's allegations concern an incident in July 2004 in which he was arrested and charged with attempted robbery after leaving a SuperUSA store in Minneapolis, Minnesota. The allegations have a paranoid quality that makes them difficult to accept as true, especially his allegations of conspiracy. Petitioner's allegations are founded on his belief that no probable cause existed to arrest or charge him; therefore, because he was arrested and charged with attempted robbery, the police officers and attorneys who handled his case must have acted unlawfully. Moreover, it is difficult to piece together a coherent factual background for petitioner's claims because of the scattershot nature of his allegations. However, in light of his submissions in other cases in this court, I do not believe that petitioner will be able to present his claims in a more coherent fashion if given another chance. Therefore, I will screen his proposed amended complaint as is. Because it is not

possible to construct a coherent narrative of the facts underlying petitioner's claims, I will not include a section of factual allegations. Instead, I will discuss the allegations under the headings petitioner has provided in his complaint.

A. "Count I - Collaborated False Arrest"

1. Allegations of fact

Petitioner alleges that respondent K.A. and an unnamed employee of respondent SuperUSA, Inc. caused him to be arrested falsely on July 10, 2004 by calling 911 and falsely accusing petitioner of attempting to rob the SuperUSA store. The employees caused him to leave the store after they verbally and physically threatened him that day. The store's videotape surveillance recorded the incident between petitioner and the employees. Respondent SuperUSA, Inc., is liable for its employees' actions under "respondent superior or other applicable doctrine."

Respondents Rabine and Muro, who are Minneapolis police officers, responded to the employees' 911 call. They approached petitioner as he sat at a bus stop outside the store, searched him and placed him in their patrol car. Petitioner denied the employees' accusations and asked respondents Rabine and Muro to review the store's videotape, which did not show petitioner attempting to rob the store. Respondents refused to review the videotape at that time but took the videotape with them. Respondents Rabine and Muro

took statements from the employees, in which the employees said that petitioner had demanded money from the store's cash register and had struck a newspaper stand with his forearm.

2. Claims[1]

a. False arrest

Petitioner alleges that respondents K.A. and an unknown SuperUSA employee (not named as a respondent in the caption) caused him to be falsely arrested and that respondents Rabine and Muro falsely arrested him. In addition, he alleges that respondent SuperUSA, Inc. is liable "under respondeat superior or other applicable doctrine."

Section 1983 provides a cause of action for individuals whose rights under federal law are violated by individuals acting under color of state law. Action by private citizens that is not related to the government in any way cannot be the subject of a claim under § 1983. Therefore, petitioner's allegations that respondents K.A. and an unknown SuperUSA employee caused him to be falsely arrested by placing a 911 call and that respondent SuperUSA is liable for the actions of its employees are insufficient to state a claim.

[1]From one of petitioner's previous complaints, I am aware that petitioner was charged with attempted robbery and that the charge was dismissed. Therefore, it is unnecessary to consider whether Heck v. Humphrey, 512 U.S. 477 (1994), bars petitioner's claims.

All that remains is petitioner's false arrest claim against respondents Rabine and Muro, who are Minneapolis police officers. A claim of false arrest implicates the Fourth Amendment, which protects individuals from governmental searches or seizures that are unreasonable. Pepper v. Village of Oak Park, 430 F.3d 805, 809 (7th Cir. 2005). However, if respondents Rabine and Muro had probable cause to arrest petitioner, he has no basis for a false arrest claim. Probable cause to arrest exists where an officer is aware of facts "sufficient to warrant a prudent person in believing that the suspect had committed or was committing a crime." Marshall ex rel. Gossens v. Teske, 284 F.3d 765, 772 (7th Cir. 2002). In the present case, respondents Rabine and Muro arrested petitioner after the store employees had called 911 and stated that petitioner had attempted to rob the store. After respondents Rabine and Muro arrived at the store, the employees told them that petitioner had demanded that they open the store's cash register and had struck a news stand with his forearm. These facts demonstrate that respondents Rabine and Muro had probable cause to arrest petitioner, despite his denial of any attempted robbery. Moreover, the fact that respondents Rabine and Muro decided not to review the store's surveillance tape does not help petitioner because the Constitution does not require police officers to pursue all investigative avenues before making an arrest. Schertz v. Waupaca County, 875 F.2d 578, 583 (7th Cir. 1989); Carroccia v. Anderson, 249 F. Supp. 2d 1016, 1025 (N.D. Ill. 2003). Because respondents had probable cause to arrest petitioner, petitioner has no basis for a

false arrest claim against them.

b. Conspiracy to cause false arrest

In paragraphs 12-14 of his complaint, petitioner alleges that respondents K.A., Rabine, Muro, SuperUSA, Inc., Minneapolis Police Department and City of Minneapolis and the unknown SuperUSA employee conspired to unlawfully arrest petitioner. He alleges that respondents Rabine and Muro's police report "evidence contrivances." Cpt., dkt. #10, ¶ 12, including the timing of the officers' response to the employees' 911 call. Because I have concluded that petitioner has failed to state a viable claim for false arrest, I must deny his request for leave to proceed on his conspiracy claim as well. Cefalu v. Village of Elk Grove, 211 F.3d 416, 423 (7th Cir. 2000) ("because the jury exonerated the defendants of any substantive constitutional violation, the conspiracy claim necessarily falters under this circuit's precedents"); Indianapolis Minority Contractors Ass'n, Inc. v. Wiley, 187 F.3d 743, 754 (7th Cir. 1999) ("the absence of any underlying violation of the plaintiffs' rights precludes the possibility of their succeeding on [a] conspiracy count").

B. "Count II - Unlawful Detention Conspiracy"

1. Allegations of fact

Respondents K.A., Rabine, Muro, Minneapolis Police Department and City of

Minneapolis and an unknown SuperUSA employee unlawfully detained petitioner at the store. Respondents K.A., Rabine, Muro and Sgt. Gregory Freeman conspired to detain petitioner at the Hennepin County Adult Detention Center for several days before petitioner was released on bond. While petitioner was detained, respondent Unknown Hennepin County Deputy Sheriff placed him in an administrative segregation cell and did not give him a mattress or floor covering on which to sleep. Because petitioner was unable to sleep, he was anxious and stressed the next day and declined an interview with respondent Freeman, who was assigned to investigate the incident at the store.

Respondent Gregory failed to investigate the incident. Respondents Barry and Benson, who are assistant district attorneys in Hennepin County, charged petitioner with attempted robbery. They failed to investigate the circumstances of the alleged attempted robbery and conspired to maliciously prosecute petitioner. As a result, petitioner was detained at the Hennepin County jail until the charge was dismissed.

2. Claims

a. Unlawful detention

In paragraph 15 of his complaint, petitioner alleges that respondents K.A., Rabine, Muro, Minneapolis Police Department, City of Minneapolis and an unknown SuperUSA employee unlawfully detained him at the store. Because I have concluded that respondents

Rabine and Muro had probable cause to arrest petitioner at the store, his unlawful detention claim lacks legal merit. Therefore, he will be denied leave to proceed on this claim.

b. Conspiracy to unlawfully detain

In paragraph 16 of his complaint, petitioner alleges that respondents Freeman, Rabine, Muro and K.A. conspired to cause petitioner to be detained unlawfully for several days at the Hennepin County Adult Detention Center after he was arrested. This claim lacks legal merit as well because respondents Rabine and Muro had probable cause to arrest petitioner. Where probable cause exists, law enforcement officials may arrest an individual and detain him for days before charging him with a crime or releasing him. Holly v. Woolfolk, 415 F.3d 678, 680 (7th Cir. 2005); Edmond v. Goldsmith, 183 F.3d 659, 669 (7th Cir. 1999); see also Baker v. McCollan, 443 U.S. 137 (1979) (if probable cause exists at time of arrest, police cannot be held liable for ensuing custody, even if mistaken). Because petitioner was lawfully detained, his claim for conspiracy lacks legal merit. Petitioner will be denied leave to proceed on this claim.

c. Placement in administrative segregation

Petitioner alleges that respondent Unknown Hennepin County Deputy Sheriff placed him in an administrative segregation cell at the Hennepin County Adult Detention Center.

It is possible to infer that petitioner is alleging that he was placed in that status without proper procedures and in violation of his right to be free from punishment. Because petitioner had not been convicted at the time he was detained, he was a pre-trial detainee. The due process clause of the Fourteenth Amendment protects pre-trial detainees from being punished and entitles them to procedural protections in certain situations. Fisher v. Lovejoy, 414 F.3d 659, 661 (7th Cir. 2005). Administrative segregation is, by definition, non-punitive. Detainees or inmates may be placed in administrative segregation before they can be assigned a security classification or because they have a contagious disease, present an escape risk or have been threatened by other detainees or inmates. Wagner v. Hanks, 128 F.3d 1173, 1174 (7th Cir. 1997). Because administrative segregation is not punitive in nature, petitioner will be denied leave to proceed on his claim that his placement in administrative segregation constituted punishment. Petitioner will be denied leave to proceed on his due process claim as well because the Court of Appeals for the Seventh Circuit has held that a pre-trial detainee is not entitled to due process before he is placed in administrative segregation. Zarnes v. Rhodes, 64 F.3d 285, 292 (7th Cir. 1995).

d. Lack of mattress or floor covering

In paragraph 18 of his complaint, petitioner alleges that respondent Unknown Hennepin County Deputy Sheriff did not provide him with a mattress or a floor covering

on which to sleep while he was detained at the Hennepin County Adult Detention Center. Although not clear, it appears that petitioner believes that the reason for this denial was to deprive him of sleep so that he would be more likely to admit his guilt to respondent Freeman.

Pre-trial detainees are entitled to at least the same protection against deliberate indifference to their basic needs as is available to convicted prisoners under the Eighth Amendment. Cavalieri v. Shepard, 321 F.3d 616, 620 (7th Cir. 2003). However, jail officials "are not required to provide comfortable jails, even for pretrial detainees." Tesch v. County of Green Lake, 157 F.3d 465, 476 (7th Cir. 1998). Because the number of detainees in a jail often exceeds the number of jail staff on duty, "it is not unreasonable for a pretrial detainee to expect to experience a short-term imposition on a basic human necessity." Id. Petitioner's allegation that he was not provided a mattress or floor covering for the two or three days in which he was detained is not serious enough to suggest that his basic needs were being ignored. Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996). Therefore, petitioner will be denied leave to proceed on this claim.

e. Failure to investigate

In paragraph 19 of his complaint, petitioner alleges that respondent Freeman "was charged by lawful authority to conduct a probable cause evaluation" and that he failed to

conduct this investigation. In paragraph 20, petitioner alleges that respondents Barry, Benson and Hennepin County District Attorney's Office violated his rights by either (1) failing to investigate the incident or (2) conspiring to maliciously prosecute him by charging him with attempted robbery. I will address petitioner's "failure to investigate" allegations in this section and his conspiracy allegation in the next section.

Petitioner's allegation that respondents failed to conduct a proper investigation of the incident at the SuperUSA store is insufficient to state a claim under § 1983 because petitioner does not have a constitutional right to a thorough investigation. Alexander v. City of South Bend, 433 F.3d 550, 555 (7th Cir. 2006). He does have a constitutional right to a fair trial, but that right is not implicated here because the attempted robbery charge against him was dismissed before a trial was held. Therefore, petitioner will be denied leave to proceed on his claim that respondents Freeman, Barry and Benson failed to conduct a thorough investigation.

f. Conspiracy to maliciously prosecute

In Newsome v. McCabe, 256 F.3d 747, 751 (7th Cir. 2001), the court of appeals held that there is no constitutional right not to be prosecuted without probable cause. As a result, petitioner "may not state a § 1983 claim simply by alleging that he was maliciously prosecuted. Instead, he must allege the violation of one of his constitutional rights, such as

the right to a fair trial." Penn v. Harris, 296 F.3d 573, 576 (7th Cir. 2002). Petitioner has alleged only that respondents Barry, Benson and Hennepin County District Attorney's Office conspired to maliciously prosecute him. He has not identified a specific constitutional right these respondents violated. Therefore, he has failed to state a legally cognizable claim.

Even if petitioner had stated a claim, I would deny him leave to proceed because respondents Barry and Benson are prosecutors and have absolute immunity from suits for money damages that arise out of their decision to initiate a prosecution. Burns v. Reed, 500 U.S. 478, 486 (1991); Newsome v. McCabe, 256 F.3d at 749; Spiegel v. Rabinowitz, 121 F.3d 251, 256-57 (7th Cir. 1997).

C. "Count III - Unlawful Deprivation of Property"

In paragraphs 22 and 23 of his complaint, petitioner alleges that respondent Freeman denied him his clothing when he was released from the Hennepin County Adult Detention Center, forcing petitioner to wear jail-issued clothing. He alleges that respondent Freeman did not have legal authority to withhold his clothing and therefore must have had a vindictive and retaliatory motive for doing so. I understand petitioner to allege that he was deprived of property without due process of law. Petitioner's allegations are insufficient to state a due process claim. His allegations suggest that respondent Freeman's refusal to return his clothing was a random and unauthorized act. "A random and unauthorized deprivation

of property by a state employee does not constitute a violation of procedural due process so long as the state provides a meaningful post-deprivation remedy for the loss." Snyder v. Nolen, 380 F.3d 279, 298 (7th Cir. 2004) (discussing Parratt v. Taylor, 451 U.S. 527 (1981)). Minnesota law recognizes a cause of action for replevin. Minn. Stat. § 548.04. Because petitioner has a meaningful state law remedy available to him, he will be denied leave to proceed on his due process claim.

D. "Count IV - Process Abuse Conspiracy"

In paragraph 24 of his complaint, petitioner charges "all Defendants with a conspiratorial, collaborated and, or constructive effort, to maliciously and, or vindictively, abuse lawful processes to cause unlawful arrest and effectual unlawful detainments." Petitioner will be denied leave to proceed on this claim because his allegations indicate that probable cause existed to believe that he had attempted to rob the SuperUSA store. Because respondents Rabine and Muro had probable cause to arrest petitioner and detain him while the incident was investigated further, petitioner has no basis for his conspiracy claim. Cefalu, 211 F.3d at 423 ("because the jury exonerated the defendants of any substantive constitutional violation, the conspiracy claim necessarily falters under this circuit's precedents"); Indianapolis Minority Contractors Ass'n, 187 F.3d at754 ("the absence of any underlying violation of the plaintiffs' rights precludes the possibility of their succeeding on

[a] conspiracy count").

E. "Count V - Conspiracy to Maliciously Prosecute"

In paragraph 25 of his complaint, petitioner charges "all Defendants with either conspiratorial, collaborative, or constructive, systematic efforts through abuse of lawful process, to cause and execute a malicious prosecution against him, contrary to lawful statutory provisional authorities, by advance of a known false complaint, to obtain a warrant, for continued detention against Plaintiff, resulting in an ultimate denied bail opportunity, for his inability to pay based on said false charge, in additions to others accumulated, despite being later dismissed, either by simply disappearing, or forced, illusory, sic, plea-bargain, in the 4th Judicial District Court of Hennepin County, in order for him to be restored to once accustomed liberties therefrom." This allegation fails to state a claim under the holding of Newsome, which was discussed above in connection with petitioner's claim of conspiracy to maliciously prosecute against respondents Barry and Benson. Petitioner will be denied leave to proceed on this claim.

F. "Count VI - Failure to Properly Train and or Supervise"

In paragraph 26, petitioner alleges "that all corporate; agency' and or municipal entities be noticed of claim of their respective failures to provide proper training and, or

supervision of their respective employees." Because I will deny petitioner leave to proceed on all of the other claims he raised in this lawsuit, he has no basis for asserting a failure to train or supervise claim against any of the government entities named as respondents. Tesch, 157 F.3d at 477.

ORDER

IT IS ORDERED that:

1. Petitioner Wendell Dwayne O'Neal's request for leave to proceed in forma pauperis is DENIED with respect to all of the claims raised in his proposed complaint in this case and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted.

2. The clerk of court is directed to close the file.

Entered this 18th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge