

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PIERRE DEPREE HUSBAND,

Petitioner,

v.

ANN TURNER, Madison Police Dept. Detective; and
DOROTHY DOHEY, Madison Police Dept. Detective,

Respondents.

OPINION AND ORDER

07-C-391-C

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner is presently confined at the Racine Youth Offender Correctional Facility in Racine, Wisconsin. Petitioner asks for money damages for denial of his Fifth Amendment rights and for the alleged manipulation of him during questioning by law enforcement officers.

In addressing any pro se litigant's complaint, I must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, since petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires that I deny leave to proceed if the action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks

monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Petitioner contends that respondents violated his Fifth Amendment right to a Miranda warning and wrongfully manipulated him during an interrogation. Petitioner will be granted leave to proceed on his claims that respondents violated his Fifth Amendment right to a Miranda warning, but will be denied leave to proceed on his claim for wrongful manipulation.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Pierre Husband is a prisoner at Racine Youth Offender Correctional Facility. On April 12, 2002, at approximately 2:30 p.m., petitioner was in keyboard class at James Madison Memorial High School. Two security guards came to petitioner's class, and petitioner's teacher told petitioner the assistant principal wanted to see him. Petitioner went with the guards to the principal's office. The office was a windowless room containing a table and chairs. The assistant principal and two plainclothes detectives were waiting in the office when petitioner arrived.

The detectives, respondents Ann Turner and Dorothy Doheny, were investigating allegations that petitioner had engaged in criminal sexual activity with a child. Respondents

had gotten permission from petitioner's mother before going to the school to question him. Respondents carried weapons that were not visible.

Once petitioner arrived at the office, the guards left. The assistant principal also left the office once petitioner began speaking with respondents. Over the next 45 minutes, respondents interrogated petitioner regarding the alleged sexual contact. Initially petitioner denied having any sexual contact with the child, but admitted it approximately halfway through the interview. Before petitioner made this admission, respondent Turner told petitioner that he would not be taken to jail that day and would be able to go to his after-school job that afternoon. Respondents never gave any type of Miranda warning to petitioner.

Petitioner believed he had no choice but to go to the office and answer respondent's questions. Petitioner was only 16 years old and had a history of depression and emotional immaturity. Respondents interrogated petitioner without counsel and without the presence of his mother, and used promises and pressure tactics to obtain an admission. Petitioner was young and ignorant, which gave both detectives the power to manipulate him and take advantage of him and deny his civil rights.

Following the interrogation, petitioner was charged with sexual assault of a child. (The Wisconsin Circuit Court Access Program shows the criminal complaint was filed May 10, 2002.) After being charged, petitioner made an initial appearance, where the court made

a probable cause finding and set a cash bond. During the criminal proceedings, petitioner moved to suppress the statements he made during the interview, and the court granted the motion. Shortly after the motion to suppress was granted, petitioner pleaded guilty.

DISCUSSION

I understand petitioner to raise two separate claims: 1) respondents violated his Fifth Amendment rights when they interrogated him without first giving him a Miranda warning; and 2) respondents wrongfully manipulated him to get him to confess a crime. Petitioner seeks money damages for both of these wrongs.

Claim for violation of Miranda rights:

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court held that before police officers interrogate a suspect in custody, they must warn the suspect of his right to remain silent and his right to an attorney. This “Miranda warning” is required only when police interrogate a person after the person “has been taken into custody or otherwise deprived of his freedom.” Id. To determine whether a person was in “custody” for the purpose of applying Miranda, a court considers the circumstances surrounding an interrogation and whether a “reasonable” person would have believed that he or she was at liberty to terminate the interrogation and leave. Thompson v. Keohane, 516 U.S. 99

(1995).

A Miranda violation provides a basis for § 1983 liability only when the suspect's statements were used against him in a "criminal case." Sornberger v. City of Knoxville, 434 F.3d 1006, 1024 (7th Cir. 2006) (citing Chavez v. Martinez, 538 U.S. 760, 778 (2003)). Even where a suspect's statements are not used at a final trial, earlier "courtroom uses" may provide a basis for § 1983 liability. Id. at 1025. In Sornberger, a suspect's statements were used against her for three different courtroom uses: to find probable cause to indict, to arraign her and to set her bail. Id. at 1028. Even though the charges were dropped against the suspect before trial, the use of the statements at these earlier stages satisfied the requirement that the statements be "used in a criminal case." Id. at 1026.

Although the incriminating statements petitioner made were ultimately suppressed, they were not suppressed at the time of the initial appearance, where the court found probable cause to believe that petitioner had committed a crime and set a cash bond. I conclude that petitioner's allegations allow an inference to be drawn that he was interrogated "in custody" without having first been given a Miranda warning and that these statements were used against him in a "criminal case." These allegations are sufficient to state a claim upon which relief may be granted.

I should warn petitioner that to receive more than nominal damages for a Miranda violation, he will have to establish the actual damages caused by the violation. The basis for

these damages may not call into question the validity of petitioner's confinement, see Heck v. Humphrey, 512 U.S. 477 (1994), unless petitioner has succeeded in having his conviction overturned, and damages for any mental or emotional injury may be limited, see 42 U.S.C. § 1997e(e)(2006). I should also warn petitioner that the state court finding that a Miranda violation occurred does not mean that this court will reach the same conclusion. Respondents in this action were not parties to the state criminal proceeding and therefore cannot be prevented from disputing the alleged facts giving rise to the alleged Miranda violation in this proceeding. See Paige K.B. v. Steven G.B., 226 Wis. 2d 210, 224, 594 N.W.2d 370 (1990).

Claim for manipulation:

Beyond the rules laid out in Miranda and its progeny, no federal laws prohibit law enforcement officers from using manipulative tactics during interrogation, although abusive tactics may result in the suppression of any evidence so obtained. Petitioner may wish to bring a separate claim against respondents for "manipulation," but I conclude that he has failed to state a claim upon which relief may be granted. Petitioner will be denied leave to proceed in forma pauperis on this claim.

ORDER

IT IS ORDERED that petitioner Pierre Husband's request for leave to proceed in forma pauperis is GRANTED with respect to his claim that respondents violated his Fifth Amendment right against self-incrimination by failing to advise him of his Miranda rights; petitioner's request for leave to proceed in forma pauperis is DENIED with respect to his claim that respondents manipulated him because this claim failed to state a claim of a violation of his federal or constitutional rights.

- For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.
- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is \$347.00; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).
- A copy of petitioner's complaint and a copy of this order are being forwarded to the

United States Marshal for service on the defendant.

Entered this 21st day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge