

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

ANTHONY D. TAYLOR, SR.,

Plaintiff,

v.

OFFICER ROBERT LYNN,
OFFICER WITTE and CITY
OF БЕЛОIT POLICE DEPARTMENT,

Defendants.

OPINION and ORDER

13-cv-862-bbc

Pro se plaintiff Anthony D. Taylor has filed a complaint and a proposed amended complaint in which he alleges that defendants Robert Lynn, Officer Witte and the City of Beloit Police Department searched his home, in violation of the Fourth Amendment, Fourteenth Amendment and First Amendment to the United States Constitution, along with Article I, § 11 of the Wisconsin Constitution. He has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is incarcerated, the court is required under the Prison Litigation Reform Act, 28 U.S.C. § 1915A, to screen the proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief.

Plaintiff filed his amended complaint before the court had an opportunity to review

the original complaint, so I am treating the amended complaint as the operative pleading and not considering the original complaint. Having reviewed the amended complaint, I conclude that plaintiff may proceed on claims that defendants Lynn and Witte searched his home in violation of the Fourth and Fourteenth Amendments. However, I am dismissing his remaining claims for his failure to state a claim upon which relief may be granted.

Plaintiff alleges the following facts in his amended complaint.

ALLEGATIONS OF FACT

On Saturday April 2, 2011, at approximately 11:40 p.m., plaintiff Anthony Taylor was at his home in Rock County, Wisconsin, when defendants Robert Lynn and Witte of the City of Beloit Police Department came to his house without a warrant. According to an incident report dated April 5, 2011, defendants went to plaintiff's residence to "follow up" on a "domestic incident" that allegedly occurred on March 13, 2011. However, there were no pending arrest warrants for plaintiff at the time.

Defendants Lynn and Witte walked to the back of plaintiff's home and looked through the windows of plaintiff's garage and kitchen. Plaintiff was in the kitchen, along with his wife, who was wearing only a bra. After observing plaintiff and his wife for several minutes, defendants knocked on the door. When plaintiff's wife refused to open the door, the officers advised her that she was under arrest for obstructing an officer. She was later sent a citation through the mail.

Plaintiff believes that defendants actions were "racially motivated" because he is black

and his wife is white.

OPINION

Plaintiff asserts claims under Fourth Amendment, Fourteenth Amendment and First Amendment to the United States Constitution, along with Article I, § 11 of the Wisconsin Constitution. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. The first question is whether defendants Lynn and Witte conducted a "search" of plaintiff's home within the meaning of the Fourth Amendment. Although defendants did not physically enter plaintiff's home, the Supreme Court has stated that "the area immediately surrounding and associated with the home—what our cases call the curtilage" are "part of the home itself for Fourth Amendment purposes." Florida v. Jardines, 133 S. Ct. 1409, 1414-15 (2013) (internal quotations omitted). It is reasonable to infer from plaintiff's allegations that defendants invaded plaintiff's curtilage, so plaintiff has shown for the purpose of pleading that defendants conducted a search under the Fourth Amendment.

The second question is whether the search was unreasonable. Generally, warrantless searches of a home are unreasonable unless the search falls within one of "a few specifically established and well-delineated exceptions," Katz v. United States, 389 U.S. 347, 357 (1967), such as exigent circumstances. Sutterfield v. City of Milwaukee, 751 F.3d 542, 557 (7th Cir. 2014). Because plaintiff alleges that defendants did not have a warrant and he

does not allege facts suggesting exigent circumstances or another exception to the warrant requirement, I will infer at this stage of the proceedings that the search was unreasonable. Accordingly, I will allow plaintiff to proceed on a claim under the Fourth Amendment against defendants Lynn and Witte.

However, plaintiff should be aware that he cannot use this case to challenge the citation that his wife received because she did not join his complaint and he cannot sue on her behalf. Kowalski v. Tesmer, 543 U.S. 125, 129 (2004) ("[A] party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). Even if plaintiff's wife were a party, she could not challenge the validity of a criminal conviction in the context of a civil rights lawsuit. Helman v. Duhaime, 742 F.3d 760, 762 (7th Cir. 2014).

With respect to plaintiff's claim under the Fourteenth Amendment, it is well established that law enforcement officers violate the equal protection clause if they target citizens on the basis of race. Chavez v. Illinois State Police, 251 F.3d 612, 635 (7th Cir. 2001). Although plaintiff's allegations of race discrimination are incredibly thin, in this circuit, a plaintiff may state a claim for discrimination if he "identifies the type of discrimination that [h]e thinks occur[red] . . . , by whom . . . and when." Swanson v. Citibank, NA, 614 F.3d 400, 405 (7th Cir. 2010). Because plaintiff has satisfied those requirements, I will allow him to proceed on his claim under the equal protection clause.

However, to prove his discrimination claim at summary judgment or trial, plaintiff will have to come forward with specific facts showing that a reasonable jury could find that

defendants searched his home because of his race. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56. A discrimination claim is a classic example of a claim that is easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove his claim with the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007).

A plaintiff can prove discrimination in various ways. For example, plaintiff may adduce evidence that defendants gave more favorable treatment to citizens of other races, Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir. 2006), or that defendants targeted others like him. Hasan v. Foley & Lardner LLP, 552 F.3d 520, 529 (7th Cir. 2008). In addition, he may rely on suspicious statements that defendants made, e.g., Mullin v. Gettinger, 450 F.3d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-50 (7th Cir. 2005), or evidence that defendants are lying about their reasons for conducting the search. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006). In deciding whether he wishes to pursue an equal protection claim, plaintiff should consider whether he will be able to prove his claim at summary judgment or trial.

I am dismissing plaintiff's remaining federal claims for his failure to state a claim upon which relief may be granted. Plaintiff does not allege any facts that defendants interfered with his speech, his ability to associate with others, the exercise of his religion or any rights protected by the First Amendment, so I cannot allow him to proceed on a claim

under the First Amendment. Plaintiff's claim against the Beloit Police Department must be dismissed because he does not allege that the individual defendants were acting in accordance with a policy or custom of the city or the department, which is a requirement for municipal liability. Monell v. Department of Social Services, 436 U.S. 658, 691 (1978).

I am dismissing plaintiff's claim under the Wisconsin Constitution because I cannot grant plaintiff relief on that claim. The state constitution does not authorize suits for money damages except in the context of a takings claim. W.H. Pugh Coal Co. v. State, 157 Wis. 2d 620, 634-35, 460 N.W.2d 787, 792-93 (1990) (holding that plaintiff could sue state for money damages arising from unconstitutional taking of property because article I, section 13 of the Wisconsin Constitution requires that state provide "just compensation" when property is taken); Jackson v. Gerl, 2008 WL 753919, *6 (W.D. Wis. 2008) ("Other than one very limited exception inapplicable to this case, I am not aware of any state law provision that allows an individual to sue state officials for money damages arising from a violation of the Wisconsin Constitution."). With respect to injunctive relief, sovereign immunity principles prohibit federal courts from enjoining state officials under state law. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984). This limitation applies not just to injunctions, but to declaratory relief as well. Benning v. Board of Regents of Regency Universities, 928 F.2d 775, 778 (7th Cir. 1991). Accordingly, plaintiff cannot obtain a remedy in this court under the Wisconsin Constitution.

ORDER

IT IS ORDERED that

1. Plaintiff Anthony D. Taylor is GRANTED leave to proceed on his claims that defendants Robert Lynn and Officer Witte searched his home, in violation of the Fourth and Fourteenth Amendment.

2. Plaintiff's claims under the First Amendment and all claims against defendant City of Beloit Police Department are DISMISSED for plaintiff's failure to state a claim upon which relief may be granted. Plaintiff's claim under the Wisconsin Constitution is DISMISSED because this court does not have authority to grant a remedy to plaintiff with respect to that claim.

3. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under

Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

7. Summonses and copies of plaintiff's complaint and this order are being forwarded to the United States Marshal for service on defendants.

Entered this 10th day of November, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge