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

SIDNEY L. COLEMAN and
LAKESHA M. JOHNSON,

OPINION and ORDER

Plaintiffs,

13-cv-765-jdp

v.

DAVID J. COMPTON, TRACIE A. JOKOLA,
JAMIE GRANN, KYMTANA WOODLY,
KELLY L. BECKETT, BENJAMIN D. SCHWARZ,
MARK D. ALLEN, DAVE MERTZ, JEFF FELT,
MICHAEL G. MCEVOY, KELLY POWERS,
JERRY B. JOHNSON, DET. RILEY, and ZACH HAGGERTY,

Defendants.[1]

Plaintiffs Sidney L. Coleman and Lakesha M. Johnson, both Madison residents, have filed this joint civil action pursuant to 42 U.S.C. § 1983, alleging unlawful search and seizure by numerous officers employed by the City of Madison Police Department. In a June 11, 2014 order, I dismissed plaintiffs' complaint because it did not satisfy the pleading requirements of Federal Rule of Civil Procedure 8. More specifically, the complaint did not explain which of the named defendants took the various actions that plaintiffs believe violated their rights.

Now before the court is an amended complaint in which plaintiffs name separately numbered John Doe defendants as responsible for each instance of wrongdoing, Dkt. 24, and a second amended complaint in which they identify each defendant by name for each alleged violation, Dkt. 25. Because the second amended complaint provides much more clarity about

[1] I have amended the caption to reflect the caption of plaintiffs' second amended complaint, Dkt. 25. Defendants Hanson, Bedford, and John and Jane Does are dismissed from the case, as they do not appear in the second amended complaint.

each defendant's alleged wrongdoing, I will accept that document as the operative pleading and will not need to consider the first amended complaint.

The next step is for the court to screen plaintiffs' complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 & 1915A. In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After review of the complaint with this principle in mind, I conclude that plaintiffs adequately state several Fourth Amendment claims against defendants.

ALLEGATIONS OF FACT

The following facts are drawn from plaintiffs' complaint. Plaintiffs Sidney L. Coleman and Lakesha M. Johnson are residents of Madison, Wisconsin, and are engaged to be married. Defendants are all employed by the Madison Police Department.

At approximately 11:59 p.m. on January 12, 2011, defendants Sergeant David J. Compton, Detective Jerry B. Johnson, Detective Jamie J. Grann, Officer Dave Mertz, Officer Jeff Felt, Detective Kymtana Woodly, Detective Riley, Officer Benjamin D. Schwarz, Detective Kelly L. Beckett, Detective Tracie A. Jokala, and Officer Michael G. McEvoy executed a search of plaintiffs' room (which they were renting on a weekly basis) at the Road Star Inn in Madison. However, they did not have a search warrant or arrest warrant. In conducting the search, the officers pointed guns at both plaintiffs as well as in the direction of their three-year-old child. Plaintiff Coleman was formally arrested. Plaintiff Johnson and plaintiffs' child were also "transported" to the police station. Both plaintiffs were placed in

holding cells for several hours. Defendant Schwarz handcuffed Coleman to a brick bench for over four hours, causing him pain and humiliation.

Defendants Grann and Jokala separated Johnson from her child and interrogated about a crime she had nothing to do with (I understand plaintiffs to be saying that plaintiff Coleman was suspected of a crime). Johnson was never actually accused of committing any crime. Defendant Officer Kelly Powers watched the child while Johnson was being interrogated. Grann used "subterfuge" and "insisted" that Johnson give him a DNA sample, which she did.

Defendants Grann and Johnson then interrogated plaintiff Coleman while defendants Officer Zach Haggerty and Officer Mark D. Allen guarded his cell. Ultimately, Coleman was transported to the Dane County Jail by defendant Powers.

Plaintiff Johnson and her child were released at 4:41 a.m. Defendant Woodly ordered plaintiffs' car to be towed. Johnson did not receive her purse and personal items that were in the car for two days.

ANALYSIS

I understand plaintiffs to be bringing several claims under the Fourth Amendment to the United States Constitution, which protects the right of individuals to be free from "unreasonable searches and seizures." I will address these in turn below.

A. Search of motel room

I understand plaintiffs to be bringing a claim that the various Madison Police Department officers conducted a search of plaintiffs' dwelling without a search warrant. It is a "basic principle of Fourth Amendment law that searches and seizures inside a home without

a warrant are presumptively unreasonable," *Groh v. Ramirez*, 540 U .S. 551, 559 (2004) (interior quotation omitted). "This constitutional protection of houses has been extended to other residential premises as well, including apartments, hotel and motel rooms, and rooms in rooming houses or hospitals." Wayne R. LaFave, 1 Search & Seizure § 2.3 (5th ed. 2012) (footnotes omitted). Therefore, I will allow plaintiffs to proceed on this Fourth Amendment claim against all of the officers conducting the search.

In addition, I understand plaintiffs to be saying that the police officers also violated the Fourth Amendment by unnecessarily pointing their guns at them as well as their child during the search. At least at this early stage of the proceedings, these allegations also support a Fourth Amendment claim. *See Baird v. Renbarger*, 576 F.3d 340, 345 (7th Cir. 2009).

B. Seizure of Johnson

From the allegations that plaintiff Johnson was "transported to the police station," placed in a holding cell, and interrogated without ever being accused of a crime, I can infer that plaintiff Johnson was taken to the police station and detained against her will, which violates the Fourth Amendment. *See, e.g., Hayes v. Florida*, 470 U.S. 811, 816 (1985) ("And our view continues to be that the line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes. We adhere to the view that such seizures, at least where not under judicial supervision, are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause."). This claim has two distinct aspects: defendants arrested Johnson (1) in her home without a warrant; and (2) without probable cause. *See Hawkins v. Mitchell*, 756 F.3d 983, 991 (7th Cir. 2014). I conclude that plaintiff

Johnson may proceed on a Fourth Amendment claim against the officers present at her seizure and subsequent interrogation.

In addition, Johnson alleges that defendant Grann forced her to allow him to take a DNA sample. Given that a DNA sample is a Fourth Amendment search, *United States v. Hook*, 471 F.3d 766, 773 (7th Cir. 2006), and Johnson has already alleged that she was not even suspected of a crime before being seized, I conclude that she has stated a Fourth Amendment claim against Grann.

C. Seizure of Coleman

Plaintiffs allege that Coleman was "arrested without an arrest warrant," which is itself enough to state a Fourth Amendment claim. The question whether defendants had probable cause to arrest and then detain him is a closer call; unlike with Johnson, plaintiffs do not specifically allege that defendants had no reason to suspect Coleman of having committed a crime. However, construing plaintiffs' complaint generously, I can reasonably infer that plaintiffs are saying that defendants did not have probable cause to arrest him, which is another basis for a Fourth Amendment claim.

D. Excessive force in jail

Plaintiffs allege that defendant Schwarz handcuffed Coleman to a brick bench for over four hours, causing him pain and humiliation. Because this alleged mistreatment occurred before any kind of probable cause hearing, this excessive force claim falls under the Fourth Amendment.[2] *Luck v. Rovenstine*, 168 F.3d 323, 326 (7th Cir. 1999) ("There is, to be sure, a difference between the constitutional provisions that apply to the period of confinement

[2] In their complaint, plaintiffs refer to the Eighth and Fourteenth Amendments as well, but a detainee's treatment before a probable cause hearing has been held falls under the Fourth Amendment. *Luck*, 168 F.3d at 326.

before and after a probable cause hearing: the Fourth Amendment governs the former and the Due Process Clause the latter."). At this point, plaintiffs have alleged enough to suggest that Schwarz's actions were unreasonable, so they may proceed on an excessive force claim against him. *See, e.g.*, *Tibbs v. City of Chicago*, 469 F.3d 661, 666 (7th Cir. 2006) ("We have on occasion recognized valid excessive force claims based on overly tight handcuffs.").

E. Impoundment of car

Plaintiffs allege that defendant Woodly ordered plaintiffs' car to be towed, which resulted in plaintiff Johnson not receiving her purse and personal items that were in the car for two days. Given that plaintiffs are already proceeding on Fourth Amendment claims regarding their seizures, I can infer that the impoundment of the car was also unreasonable under the Fourth Amendment, so I will allow plaintiffs to proceed on this claim.

ORDER

IT IS ORDERED that:

1. The caption is amended to reflect the caption of plaintiffs' second amended complaint, Dkt. 25. Defendants Sgt. Hanson, Caleb J. Bedford, and John and Jane Does are DISMISSED from the case.

2. Plaintiffs Sidney L. Coleman and Lakesha M. Johnson are GRANTED leave to proceed on the following claims:

    a. A Fourth Amendment claim against defendants Sergeant David J. Compton, Detective Jerry B. Johnson, Detective Jamie J. Grann, Officer Dave Mertz, Officer Jeff Felt, Detective Kymtana Woodly, Detective Riley, Officer Benjamin D. Schwarz, Detective Kelly L. Beckett, Detective Tracie A. Jokala, and Officer Michael G. McEvoy for executed a search of plaintiffs' room without a search or arrest warrant.

    b. A Fourth Amendment claim against defendants Compton, Johnson, Grann, Mertz, Felt, Woodly, Riley, Schwarz, Beckett, Jokala, McEvoy, and Officer Kelly Powers for arresting and detaining plaintiff Johnson

without an arrest warrant or probable cause and for taking Johnson's DNA sample.

c. A Fourth Amendment claim against defendants Compton, Johnson, Grann, Mertz, Felt, Woodly, Riley, Schwarz, Beckett, Jokala, McEvoy, Powers, Officer Zach Haggerty, and Officer Mark D. Allen for arresting and detaining plaintiff Coleman without an arrest warrant or probable cause.

d. A Fourth Amendment claim against defendant Schwarz for using excessive force in shackling plaintiff Coleman.

e. A Fourth Amendment claim against defendant Woodly for impounding plaintiffs' car.

3. The clerk of court is directed to forward completed Marshals Service and summons forms to the U.S. Marshal, who will serve plaintiffs' complaint on defendants.

4. For the time being, plaintiffs must send defendants a copy of every paper or document that they file with the court. Once plaintiffs have learned what lawyer will be representing defendants, they should serve defendants' lawyer directly rather than defendants themselves. The court will disregard any documents submitted by plaintiffs unless they show on the court's copy that they have sent a copy to defendants or to defendants' attorney.

5. Plaintiffs should keep a copy of all documents for their own files. If plaintiffs do not have access to a photocopy machine, they may send out identical handwritten or typed copies of their documents.

6. Plaintiffs are reminded that they must pay the remainder of the filing fee.

Entered February 9, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge