

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

MICHAEL E. FLOURNOY,

Plaintiff,

v.

OPINION & ORDER

14-cv-528-jdp

WINNEBAGO COUNTY SHERIFF'S OFFICE,
ROBERT BOB BAUDELIO JUANEZ,
LARRY MARINO, DANIEL FREEDLUND,
PETER DALPRA, JOSEPH BOOMER,
BRAD KISER, IASPARRO DOMINC,
CUNNINGHAM NICK, JULIE DODD,
NEAL C. GRUHN, WAYNE JACKOWSKI,
CRAIG SMITH, ADAM KING,
JOHN D. RICHARDSON, and DAN IVANCICH,

Defendants.

Pro se prisoner Michael Flournoy filed a proposed complaint under 42 U.S.C. § 1983 in which he alleged that defendants violated his Fourth and Fourteenth amendment rights during an investigation, arrest, and prosecution in Illinois state court. I screened plaintiff's complaint and dismissed it for failure to comply with Federal Rule of Civil Procedure 8(a)'s requirement of a short and plain statement of a claim. Dkt. 11. I permitted plaintiff to amend his complaint to allege facts which, if true, would show that officers lacked probable cause to arrest him. *Id.* Plaintiff moved for reconsideration of that decision, Dkt. 12, which I denied.

Plaintiff has now filed his amended complaint, Dkt. 14, which I must again screen, pursuant to 28 U.S.C. §§ 1915 and 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 reviewing the amended complaint with this principle in mind, I conclude that it must be dismissed for failure to state a claim upon which relief can be granted.

ALLEGATIONS OF FACT

The factual background of this case has not changed since my January 22, 2015, screening order. I will briefly summarize the pertinent facts.

After an undercover investigation, officers of the Winnebago County, Illinois, Sheriff's Office, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, Firearms and Explosives conducted a controlled drug buy in Rockford, Illinois. Plaintiff alleges that defendants arrested him at the controlled buy on July 30, 2012, seized his car and personal property, and then held him for prosecution, all without probable cause. Plaintiff also alleges that, in connection with his false arrest, defendants concealed evidence, submitted false declarations, and pressured the State's Attorney's Office to bring charges.

In his amended complaint, plaintiff alleges additional facts about his reasons for being in Rockford on July 30 and about his post-arrest interrogation. According to the amended complaint, plaintiff hired Jose Sanabria-Sanchez to complete a drywall project. Mr. Sanabria-Sanchez needed to obtain his identification card from his brother in Rockford, and so plaintiff drove him there. Once in Rockford, plaintiff alleges that he drove Mr. Sanabria-Sanchez to several locations looking for his brother. Their final stop was a parking lot—the location of the controlled buy—and Mr. Sanabria-Sanchez got out of the car. Plaintiff alleges that he noticed that Mr. Sanabria-Sanchez had taken plaintiff's bag with him, and so plaintiff got out of the car to follow Mr. Sanabria-Sanchez. When plaintiff returned to his car, he was cut off by plainclothes officers and arrested. It is unclear from plaintiff's complaint whether he had recovered his bag at this point, but booking forms from the Winnebago County Sheriff's office indicate that the bag contained "a large amount of [U.S. currency]." Dkt. 9-3, at 1.

Following his arrest, plaintiff alleges that he was interrogated for eight hours, asked to sign an abandonment form for \$190,000, asked to "set up some people" by making phone calls

to order drugs, and asked to sign a written statement. Dkt. 14, ¶¶ 24-29. Plaintiff was initially charged in Illinois state court, but those charges were dismissed in favor of federal charges.

ANALYSIS

Plaintiff's amended complaint does not state a claim upon which relief can be granted. I understand plaintiff to allege that defendants violated his Fourth Amendment rights by unlawfully arresting him on July 30, 2012. To succeed on such a claim, plaintiff must prove that defendants arrested him without probable cause. *McBride v. Grice*, 576 F.3d 703, 706 (7th Cir. 2009).¹ Probable cause exists if, at the time of plaintiff's arrest, "the facts and circumstances within the [arresting] officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Wheeler v. Lawson*, 539 F.3d 629, 634 (7th Cir. 2008). "It is a fluid concept that relies on the common-sense judgment of the officers based on the totality of the circumstances." *United States v. Reed*, 443 F.3d 600, 603 (7th Cir. 2006) (citing *United States v. Breit*, 429 F.3d 725, 728 (7th Cir. 2005)). The existence of probable cause precludes a § 1983 suit for false arrest. *Morfin v. City of E. Chi.*, 349 F.3d 989, 997 (7th Cir. 2003).

In the initial screening order, I noted that plaintiff had attached police reports and other exhibits to his complaint that adequately articulated the officers' probable cause for arresting plaintiff. Dkt. 11, at 4-6. I indicated that plaintiff had failed to allege specific inaccuracies in the

¹ I note that *Heck v. Humphrey*, 512 U.S. 477 (1994), does not automatically bar plaintiff's unlawful arrest claim. The Seventh Circuit explains "that any § 1983 claim for damages resulting from a false arrest is not barred by *Heck* and accrues immediately after the arrest, because such alleged violations of the Fourth Amendment would not necessarily impugn the validity of a conviction." *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 897 (7th Cir. 2001). At this point in the case, the record is not developed enough to determine whether plaintiff's § 1983 claim would impugn the validity of his conviction.

officers' accounts of the controlled buy that, if true, would demonstrate a lack of probable cause. Although plaintiff's amended complaint describes his version of the events leading up to his arrest, he does not dispute that he drove Mr. Sanabria-Sanchez to a controlled drug buy or that he was in the immediate vicinity when the buy occurred and when officers appeared to make arrests. Plaintiff vaguely alleges that two officers "prepared false 'probable cause statement' and 'criminal complaint' reports containing multiple and highly significant fabrications to justify the warrantless search and seizure which they had conducted." Dkt. 14, ¶ 31. But plaintiff does not elaborate on what these fabrications were. Instead, plaintiff alludes to the fact that Mr. Sanabria-Sanchez and his brother were part of a Mexican drug cartel and that officers could not possibly believe that plaintiff, an African-American, would be welcome in such an organization. *Id.* ¶ 35.²

Accepting plaintiff's allegations about his reasons for being in Rockford as true for purposes of screening the amended complaint, he has not presented a basis from which to conclude that officers lacked probable cause to arrest him. "Generally, a controlled buy, when executed properly, is a reliable indicator as to the presence of illegal drug activity." *United States v. Sidwell*, 440 F.3d 865, 869 (7th Cir. 2006); *see also United States v. Slone*, 636 F.3d 845, 849-50 (7th Cir. 2011). According to the amended complaint, plaintiff was not a direct participant in the controlled buy. But he nevertheless drove a participant to the event and he had some connection to the duffel bag in which officers found a large amount of currency. Even if plaintiff's assertions are true and accurately describe the full extent of his involvement, these

² Plaintiff's complaint also alleges that an Illinois state court "invalidated" his arrest when it dismissed plaintiff's state criminal case in favor of federal charges. Dkt. 14, ¶¶ 43-45. These claims are part of a separate lawsuit that plaintiff has filed in this court, concerning what he views as a violation of his rights under the full faith and credit clause. *See Flournoy v. McKenzie*, No. 14-cv-554 (W.D. Wis. filed Aug. 11, 2014). That complaint has been dismissed for failure to state a claim upon which relief can be granted.

facts were more than adequate to support a reasonably prudent person's belief that plaintiff had committed or was about to commit a crime. This is the conclusion that the Northern District of Illinois reached in denying plaintiff's motion to suppress. *United States v. Sanabria-Sanchez*, No. 12-cv-50044 (N.D. Ill. May 29, 2013) (order denying motion to quash arrest and suppress physical evidence) (“[I]t was abundantly reasonable to conclude that defendant was providing the funds for the purchase of the cocaine when he dumped the money into [the undercover officer's] vehicle.”).

The existence of probable cause precludes a suit for false arrest under § 1983, and plaintiff's amended complaint affirmatively demonstrates that officers had probable cause to arrest him. I must therefore dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted.

ORDER

IT IS ORDERED that:

1. Plaintiff Michael Flournoy is DENIED leave to proceed on his Fourth Amendment claim against defendants for false arrest, and the complaint is DISMISSED in its entirety for failure to state a claim upon which relief can be granted.
2. The clerk's office is directed to close this case.

Entered March 10, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge