

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

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JELTRETA TEJEDA,

Plaintiff,

v.

OPINION & ORDER

THOMAS WEBSTER,  
PHILLIP YAHNKE, and  
SCOTT FAVOUR,

15-cv-431-jdp

Defendants,

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JELTRETA TEJEDA,

Plaintiff,

v.

OPINION & ORDER

JOHN DOE, JOHN DOE,  
JOHN DOE, and JANE DOE,

15-cv-432-jdp

Defendants.

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Pro se plaintiff Jeltreta Tejeda has filed two proposed civil actions against Madison police officers and Dane County jail staff. She alleges the same facts in both complaints: that defendants hurt her by excessively restraining her when they arrested and detained her. Because plaintiff is proceeding *in forma pauperis*, I must screen her complaints and dismiss any portion that is legally frivolous, malicious, or 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(e)(2). In addressing any pro se litigant's complaint, I must read the allegations generously. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010).

Having reviewed plaintiff's complaints, I conclude that plaintiff has stated a claim for excessive force against some of the defendants. Because the two complaints are nearly identical and address the same issues, I will direct the clerk to docket the complaint from case No. 15-cv-432-jdp in case No. 15-cv-431-jdp. Both complaints will be the operative pleading going forward, and the '432 case will be dismissed. Plaintiff will not be required to pay the filing fee for that case.

#### ALLEGATIONS OF FACT

The following facts are taken from plaintiff's complaints. Dkt. 1.<sup>1</sup> Plaintiff suffers from mental health disorders, including post-traumatic stress disorder, severe anxiety, and bipolar disorder. When she suffers an episode, plaintiff tends to become agitated and angry. On August 3, 2013, plaintiff suffered an episode while at home with her wife and daughter. Plaintiff attempted to leave the house to cool off, but her family tried to make her stay. They called the police.

Defendant Madison officers Phillip Yahnke and Scott Favour arrived to plaintiff's house while she was standing in the backyard smoking a cigarette. Favour spoke with plaintiff's wife, while Yahnke approached plaintiff with his hand on his gun. Plaintiff did not resist. Yahnke handcuffed plaintiff and escorted her to the front of the house, where defendant Sargent Thomas Webster was waiting. Favour helped plaintiff into the squad car. She told him that she was suffering from severe leg pain, but he "shoved her into the back seat, forcing [her] leg down extremely hard." Dkt. 1, at 3. Plaintiff asked to be able to stand

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<sup>1</sup> The docket citations are to either complaint because they are nearly identical.

while waiting to leave, and Favour let her out to lean against the car. Webster then noticed and asked why plaintiff was not yet in the car, so Favour helped plaintiff back into the car.

When they arrived at the Dane County jail, staff members, named as John Does, placed plaintiff in a “restraining chair” over her objections. Plaintiff struggled, and the staff members forcefully moved her into place. They also choked her and put a bag over her head. Staff members then wheeled plaintiff into the jail, as she was having an anxiety attack. One staff member asked plaintiff why she was “behaving” that way, and she responded that she had “served a sentence in prison the judge never gave [her].” Dkt. 1, at 4. She told him that she was afraid that they would not let her leave, and he responded that she had “better not mention that to anyone else.” *Id.* Plaintiff feared for her life.

Plaintiff was then asked about her health, but she responded that she was not allowed to tell her. Plaintiff was then placed in a cell. After some time, a mental health professional came to the cell to speak with plaintiff, and then had an officer release plaintiff from the “restraining chair.” Plaintiff had bruises on her face, neck, arm, and leg. Her lower back and leg were in pain. Plaintiff also suffered mental distress, which persisted after her release.

## ANALYSIS

Plaintiff alleges a claim under 42 U.S.C. § 1983 for excessive force. To establish liability under § 1983, she must establish that: (1) she had a constitutionally protected right; (2) she was deprived of that right in violation of the Constitution; (3) the defendants intentionally caused that deprivation; and (4) the defendants acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009). The Fourth Amendment applies to plaintiff’s arrest and the Fourteenth Amendment applies to her subsequent detention.

Because plaintiff was an arrestee and had not been convicted of any crime, the force used against her would violate her constitutional rights if it was objectively unreasonable, given the situation. *Graham v. Connor*, 490 U.S. 386, 397 (1989) (applying the Fourth Amendment); *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015) (applying the Fourteenth Amendment). That depends on the facts. To determine whether the force was reasonable, the court considers:

the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

*Kingsley*, 135 S. Ct. at 2473. In this case, the question might depend on whether plaintiff was subdued before defendants applied force or whether plaintiff was resisting. *Abbott v. Sangamon Cty.*, 705 F.3d 706, 732 (7th Cir. 2015) (“Police officers [may] not use significant force on nonresisting or passively resisting suspects.”).

Plaintiff alleges that only one of the Madison police officers who arrested her used any force against her. She contends that Favour forced her leg down very hard after she had told him that it was hurt. This is enough to state a claim against Favour. Plaintiff has not alleged any facts against Yahnke or Webster to support a claim, so both of those defendants will be dismissed.

Plaintiff also alleges that the jail staff used excessive force against her. Plaintiff was at least somewhat resistant to being restrained, and appears from the pleading to have struggled against the staff. The Doe defendants responded with force, choking plaintiff and putting a bag over her head, and plaintiff suffered injuries as a result. It will be a question of fact

whether any of the defendants' use of force was objectively reasonable, but at this point, plaintiff has stated a claim. She will be allowed to proceed against the Doe defendants.

At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain the process for plaintiff to use discovery to identify the name of the Doe defendants and to amend the complaint to include the proper identity of those defendants. In the meantime, I will name David J. Mahoney, the Dane County Sheriff, as a nominal defendant for the purpose of serving the combined complaints and ascertaining the identities of the Doe defendants.

Plaintiff has also asserted that she "did not receive medical care for [her] mental state." Dkt. 1, at 4. Federal Rule of Civil Procedure 8 requires a short and plain statement with facts showing the plaintiff is entitled to relief. But plaintiff has not provided enough facts relating to this allegation to determine what treatment plaintiff needed, whether any of the defendants were aware of that need, and how they fell short of adequately addressing it. Therefore, I will not allow plaintiff to proceed on this claim. However, I will give plaintiff a short deadline to respond with an amended complaint elaborating on this claim.

## ORDER

IT IS ORDERED that:

1. The clerk is directed to docket the complaint from case No. 15-cv-432-jdp into case No. 15-cv-431-jdp. The combined complaints will serve as the operative pleading going forward.
2. The '432 case is DISMISSED. Plaintiff is not required to pay the filing fee for that case.
3. Plaintiff Jeltreta Tejeda is GRANTED leave to proceed on excessive force claims against defendant Scott Favour and the John Doe defendants.

4. David J. Mahoney is added to the case as a defendant for the purpose of serving the Doe defendants.
5. Defendants Thomas Webster and Phillip Yahnke are DISMISSED.
6. Plaintiff has until September 13, 2016, to file a proposed amended complaint to include her mental health care claim.
7. For the time being, plaintiff must send defendants a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, she should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that she has sent a copy to defendants or to defendants' attorney.
8. Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents.
9. Plaintiff should not attempt to serve defendants on her own at this time. The court will send copies of plaintiff's combined complaint and this order to the United States Marshal for service on defendants Favour and Mahoney.
10. Plaintiff is obligated to pay the unpaid balance of her filing fee for the '431 case.
11. If plaintiff moves while her case is pending, it is her obligation to inform the court of his new address. If she fails to do this and defendants or the court are unable to locate her, her case may be dismissed for her failure to prosecute it.

Entered August 23, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge