IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RAYMOND BRESETTE, #217468,

Plaintiff,

v.

OFFICER STEVE KNUDSEN;
SHERIFF ROBERT FOLLIS;
JAIL ADMINISTRATOR JOHN DOE; and
ATTORNEY CRAIG HAUKAAS,

Defendants.

ORDER

06-C-280-C

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This is a proposed civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff Raymond Bresette is presently confined at the Dodge Correctional Institution in Waupun, Wisconsin. He contends that defendants Steve Knudsen, Robert Follis, Jail Administrator John Doe and Craig Haukaas violated his Fourth Amendment rights by unlawfully arresting and detaining him in October 2005. Although plaintiff has paid the filing fee in full, because he is a prisoner, his complaint must be screened pursuant to 28 U.S.C. § 1915A. In performing that screening, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However,

it must dismiss the complaint if, even under a liberal construction, it is legally frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 42 U.S.C. § 1915(e).

From my review of plaintiff's complaint, I conclude that plaintiff has stated a false arrest claim against defendants Knudsen, Follis and John Doe. Therefore, I will allow him to proceed against these individuals. Plaintiff may not proceed against defendant Haukaas because, as a district attorney, he is immune from suit under § 1983.

On May 30, 2006, plaintiff filed unsworn "statements" from Laura Belanger, his girlfriend, and Tony Bresette, his brother. Plaintiff indicates that these statements are "to go with this case." I have considered them as part of his complaint. From the allegations in plaintiff's complaint, I understand him to be alleging the following.

## ALLEGATIONS OF FACT

On October 10, 2005, plaintiff Raymond Bresette attended a local festival in Bayfield County, Wisconsin with Tony Bresette, his brother, and Laura Belanger, his girlfriend. Tony Bresette, plaintiff's brother, purchased a can of beer for himself and a can of Pepsi for his brother. At some point, defendant Steve Knudsen, a police officer, approached plaintiff and told him that he had seen him "with a can of beer." Belanger and Tony Bresette pointed out that plaintiff was holding a can of Pepsi. Plaintiff was arrested for bail jumping and

transported to the Bayfield County jail. At the time of his arrest, he "was on a bond for an unrelated case." Some time later, plaintiff was taken to Memorial Medical Center to have blood drawn, after which he was returned to the jail and given a Breathalyzer test. The result was 0.00. Plaintiff was placed in a jail cell and held without a hearing or court appearance until October 19, 2005. These actions "were accomplished under the color of law and presumably according to policy as proscribed by defendant Robert Follis, the Sheriff of Bayfield County, and Jail Administrator John Doe."

On October 19, 2005, plaintiff was brought before Judge Anderson for a bail hearing. His bail was set at $1,000.00. Defendant Craig Haukaas, a district attorney, was present at the bail hearing and was familiar with what had happened to plaintiff. On November 20, 2005, the charge of bail jumping was dismissed because petitioner's blood test result had been 0.00, demonstrating that plaintiff had not consumed alcohol in violation of the terms of his bond. As a result of his arrest and detention, plaintiff "was terminated from one of his contracts" and incurred losses of $27,000.00 and unknown damages to the goodwill and value of his company. Also, he was unable to begin a contract and suffered damages in excess of $15,000.00 plus damage to the goodwill and value of his company.

## DISCUSSION

### A. Fourth Amendment

I understand plaintiff to allege that defendant Knudsen, Follis and Jail Administrator John Doe violated his Fourth Amendment rights by unlawfully arresting him on October 10, 2005 and detaining him until October 19, 2005. Unlawful or false arrest claims are cognizable under the Fourth Amendment, which protects individuals from unreasonable searches and seizures. E.g., Haywood v. City of Chicago, 378 F.3d 714 (7th Cir. 2004). The claim encompasses both plaintiff's arrest and detention. Snodderly v. R.U.F.F. Drug Enforcement Task Force, 239 F.3d 892, 900 n.9 (7th Cir. 2001) ("a claim for false arrest is a claim for the harm of being unlawfully imprisoned through some extrajudicial act that does not amount to legal process, for example, when a police officer performs a warrantless arrest without probable cause"). To comply with the Fourth Amendment, an arrest must be supported by probable cause. United States v. Askew, 403 F.3d 496, 506-07 (7th Cir. 2005). Probable cause exists where an officer reasonably believes, in light of the facts known to him at the time, that an individual has committed or is committing a crime. United States v. Reed, 443 F.3d 600, 603 (7th Cir. 2006). "It is a fluid concept that relies on the common-sense judgment of the officers based on the totality of the circumstances." Id. (citing United States v. Breit, 429 F.3d 725, 728 (7th Cir. 2005). "In determining whether suspicious circumstances rise to the level of probable cause, officers are entitled to draw reasonable inferences based on their training and experience. Reed, 443 F.3d at 603 (citations omitted). The existence of probable cause precludes an action for false arrest.

Morfin v. City of East Chicago, 349 F.3d 989, 997 (7th Cir. 2003); Fernandez v. Perez, 937 F.2d 368, 370 (7th Cir. 1991).

Plaintiff's allegations are sufficient to state a false arrest claim. He alleges he was arrested while free on bond and that one of the conditions of his bond was that he not consume alcohol. He alleges further that breath and blood tests taken after his arrest showed no trace of alcohol in his body. Although he alleges that defendant Knudsen arrested him after telling him that he had seen plaintiff "with a can of beer," it is possible that plaintiff will be able to introduce facts at a later stage of the case showing that defendant Knudsen lacked probable cause to arrest him. Therefore, he will be allowed to proceed on this claim.

Plaintiff should be aware that the "statement" provided by his brother could be evidence of probable cause. In his statement, Tony Bresette states that if "Officer Steve smelled beer he smelled it on me, because I was standing next to Ray." Plaintiff has not alleged that defendant Knudsen arrested him because he smelled beer on plaintiff. However, if defendant Knudsen smelled alcohol on plaintiff, he may have had probable cause to arrest him, even though plaintiff had not consumed any alcohol.

The only remaining question concerns the identity of the proper defendants. Obviously plaintiff may proceed against defendant Knudsen, the officer who arrested him. In addition to defendant Knudsen, plaintiff has named as defendants (1) Robert Follis, the Sheriff of Bayfield County; (2) a John Doe defendant who is the administrator of the

Bayfield County jail; and (3) Craig Haukaas, the district attorney who was present at plaintiff's bail hearing on October 19, 2005. None of these individuals are alleged to have participated personally in the arrest. Instead, plaintiff alleges that his arrest and detention were "accomplished . . . according to policy as proscribed by" defendants Follis and Doe and that defendant Haukaas "was familiar with the violations being foisted upon" plaintiff and failed "to rectify the problem."

Liability under § 1983 is based on an official's personal involvement in a constitutional deprivation. Davis v. Zirkelbach, 149 F.3d 614, 619 (7th Cir. 1998). Supervisory officials such as a sheriff may not be held liable for the acts of their subordinates under a respondeat superior theory. Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336, 1355 (7th Cir. 1985). However, he may be liable if there is a "causal connection, or an affirmative link, between the misconduct complained of and the official sued." Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). Plaintiff's allegation is sufficient to suggest an affirmative link between his arrest and a policy of defendants Follis and Doe. Therefore, he will be allowed to proceed against them. However, it will be plaintiff's burden to prove that defendants Follis and Doe implemented a policy or turned a blind eye to a repeated pattern of arrests without probable cause in order for them to be liable.

Plaintiff will not be allowed to proceed against defendant Haukaas because he is a prosecutor entitled to absolute immunity. In Buckley v. Fitzsimmons, 509 U.S. 259 (1993),

and Imbler v. Pachtman, 424 U.S. 409 (1976), the Supreme Court held that prosecutors are entitled to absolute immunity when they act as advocates for the state in preparing for and initiating a prosecution but are protected only by qualified immunity when engaged in investigatory conduct such as evidence gathering. Buckley, 509 U.S. at 272-73; see also Newsome v. McCabe, 256 F.3d 747, 749 (7th Cir. 2001) (absolute immunity forecloses action against prosecutor in case where prosecutor declined to put plaintiff on trial a second time after court vacated his conviction). Plaintiff alleges that defendant Haukaas "was present" at the bail hearing held on October 19, 2006. I understand this to mean that defendant Haukaas appeared at the hearing as an advocate for the state of Wisconsin. In that capacity, defendant Haukaas is entitled to absolute immunity for his actions at the hearing. Defendant Haukaas will be dismissed from this case.

B. Service of Process

The next step in this case is for plaintiff to serve his complaint on the defendants. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendants well before the deadline for doing so established in Rule 4. To help plaintiff understand the procedure for serving a complaint

on defendants Knudsen and Follis, I am enclosing with this order a copy of document titled "Procedure for Serving a Complaint on Individuals in a Federal Lawsuit." In addition, I am enclosing to plaintiff extra copies of his complaint and forms he will need to send to the defendants in accordance with the procedures set out in Option 1 of the memorandum.

Plaintiff will not be able to serve the unnamed defendant until he learns that person's identity. In a few weeks, Magistrate Judge Stephen Crocker will hold a preliminary pre-trial conference at which he will discuss with the parties the best method for discovering the identity of the unknown defendant. Once plaintiff learns this person's name, he must (1) file an amended complaint replacing "John Doe" with this person's name in the caption and in paragraph 7 of his allegations and (2) serve this person with a copy of his amended complaint.

ORDER

IT IS ORDERED that

1. Plaintiff Raymond Bresette is GRANTED leave to proceed on a Fourth Amendment claim of false arrest against defendants Steve Knudsen, Robert Follis and Jail Administrator John Doe;

2. Defendant Craig Haukaas is DISMISSED from this case;

3. Plaintiff is responsible for serving his complaint upon the defendants. A

memorandum describing the procedure to be followed in serving a complaint on individuals in a federal lawsuit is attached to this order, along with 2 copies of plaintiff's complaint and blank waiver of service of summons forms.

4. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer that will be representing the defendants, he 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 plaintiff has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 16th day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge