

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

KEVIN P. BRADLEY,

Plaintiff,

v.

MATHEW FLYNN,
LIEUTENANT TIM SCHUETZ and
DANE COUNTY, WISCONSIN,

Defendants.

OPINION AND ORDER

13-cv-859-bbc

In this civil action brought under 42 U.S.C. § 1983, pro se plaintiff Kevin P. Bradley contends that defendants Matthew Flynn, Tim Schuetz and Dane County, Wisconsin violated his constitutional rights by arresting him without probable cause and for recommending the issuance of a temporary restraining order against him without reasonable justification. He also contends that defendants Schuetz and Dane County are liable for the constitutional violations because they failed to properly train and supervise the officers under their control. Plaintiff is proceeding in forma pauperis, so I must screen his complaint under 28 U.S.C. § 1915.

In addressing 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 screening his complaint, I conclude that plaintiff may proceed on his false arrest claim but not on his

claim that the temporary restraining order was unlawfully recommended and issued.

Plaintiff makes the following allegations of fact in his complaint.

ALLEGATIONS OF FACT

In December 2011, plaintiff was a boarder in a home owned by another individual. Plaintiff and his landlord engaged in an argument, and the landlord demanded plaintiff's keys to the residence, threatening to stay in plaintiff's room until plaintiff handed over the keys. In response, plaintiff "gently pushed his proprietor out and locked the door." Plt.'s Cpt., dkt. #1, at 1. Plaintiff had paid his rent and had not violated any laws or rules.

Dane County police officers arrived at the residence and arrested plaintiff for domestic disorderly conduct. The officers also "recommended and issued a 72 hour temporary restraining order." Id. at 2.

OPINION

A. Arrest

Plaintiff argues that defendant Flynn should be liable for seizing him unreasonably in violation of the Fourth Amendment. The Fourth Amendment protects citizens against seizures that occur without a warrant or without probable cause that a crime has been committed. Mucha v. Village of Oak Brook, 650 F.3d 1053, 1056 (7th Cir. 2011). "Probable cause exists if 'at the time of the arrest, the facts and circumstances within the 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.” Id. (quoting Gonzalez v. City of Elgin, 578 F.3d 526, 537 (7th Cir.2009)).

In this case, plaintiff alleges that he “gently pushed” his landlord out of the room he rented. In Wisconsin, “[a] person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person’s property.” Wis. Stat. § 939.49(1). That person may use only “such degree of force or threat thereof . . . as the actor reasonably believes is necessary to prevent or terminate the interference.” Id. This suggests that plaintiff did not commit a crime when he used minimal force to remove his landlord from his property. Consequently, plaintiff has alleged facts from which it can be inferred that defendant Flynn arrested him without probable cause that he had committed a crime. He has therefore stated a claim on which he may proceed in this lawsuit.

Nevertheless, I note that “[i]n evaluating probable cause, [courts] look only to the *information known to the officer* at the time of arrest,” Mucha, 650 F.3d at 1057 (emphasis added). Thus, at summary judgment or trial, plaintiff must be prepared to show facts about the information defendant Flynn had about plaintiff at the time of his arrest.

B. Temporary Restraining Order

Plaintiff argues that his rights were violated when Dane County police officers “recommended and issued” a temporary restraining order against him. Plaintiff asserts this

claim against the individual officer defendants and he says that Dane County is liable for failing to properly train these officers. However, there is no reason to believe that police officers have the authority to issue temporary restraining orders in Wisconsin. Wis. Stat. § 813.12 (“A judge or circuit court commissioner shall issue a temporary restraining order”). Moreover, no claim exists for simply recommending a restraining order, in the absence of any showing that the police officer provided false information knowingly and unlawfully. A mere recommendation does not affect a person’s rights; it is the judge or court officer that ultimately decides the issue. And because it is not the police officer making the decision to issue the order, plaintiff cannot maintain a claim against Dane County for failing to train an officer on how to properly recommend or issue a restraining order. Consequently, plaintiff has failed to state a claim upon which relief may be granted with respect to his allegations that defendants caused a temporary restraining order to be issued against him.

ORDER

IT IS ORDERED that

1. Plaintiff Kevin P. Bradley is GRANTED leave to proceed on his claim that defendant Mathew Flynn arrested him without probable cause in violation of the Fourth Amendment.
2. Plaintiff is DENIED leave to proceed on all other claims.
3. Defendants Lieutenant Tim Schuetz and Dane County, Wisconsin are

DISMISSED from the case.

4. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's 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.

6. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendant.

Entered this 7th day of February, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge