

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

SHANE T. LANCOUR,

Plaintiff,

v.

CITY OF LA CROSSE, *et al.*,

Defendants.

OPINION AND ORDER

15-cv-105-wmc

Plaintiff Shane T. Lancour brings this proposed civil action under 42 U.S.C. § 1983, alleging that officers employed by the City of La Crosse Police Department used excessive force during his arrest. Because he was incarcerated at the time he filed suit, the court must screen his 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. § 1915A. At the same time, because he is a *pro se* litigant, Lancour is held to a “less stringent standard” in crafting pleadings. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Having reviewed the complaint, Lancour may now proceed on his claim that defendant Heath Parshall used excessive force against him in violation of the Fourth Amendment. Lancour’s claims against the other defendants -- Jason Nesbit, Tony DeLap, the City of La Crosse, and the La Crosse Police Department -- will be dismissed for failure to state a claim upon which relief may be granted.

OPINION

In his complaint, Lancour alleges that Officers Parshall and Nesbit responded to a 911 call regarding a domestic incident in June 2013. Upon arriving on the scene, the

officers detained and handcuffed Lancour. After Nesbit secured Lancour in the police vehicle, Parshall opened the opposite rear door and started yelling at Lancour, accusing him of hitting his pregnant fiancé and lying about it. Lancour alleges that Parshall then lunged across the seat, grabbed his face, smashed his head against the cage on the door, and forcefully grabbed him by the jaw, causing severe injury. Despite fellow officer DeLap telling Parshall not to do so, Lancour was subsequently taken to the police station for interrogation, which Parshall also conducted. Finally, Lancour alleges that Parshall exhibited PTSD and anger management issues.

Lancour's claim of excessive force arises under the Fourth Amendment, which protects citizens from unreasonable searches and seizures. U.S. Const. amend. IV. *See also Graham v. Connor*, 490 U.S. 386, 395 (1989) (holding that "all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard"). "An officer's use of force is unreasonable from a constitutional point of view if, judging from the totality of circumstances at the time of the arrest, the officer used greater force than was reasonably necessary to make the arrest." *Gonzalez v. City of Elgin*, 578 F.3d 526, 539 (7th Cir. 2009).

Relevant factors to be considered include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 390 U.S. at 396.

Under the less stringent pleading standards applicable to *pro se* litigants, the allegations here are sufficient to state a claim against Officer Parshall under the Fourth Amendment. Specifically, Lancour alleges that he had already been handcuffed and secured in a police vehicle when Parshall grabbed his head and jaw and smashed his face against the vehicle's interior, causing severe injury. At this early stage, it is reasonable to infer that Parshall's alleged use of force was greater than necessary under these circumstances. Lancour should be aware, however, that to be successful on this claim, he will have to prove that defendant used force maliciously and sadistically to cause him harm.

In contrast, Lancour has alleged no facts that would support a claim against Officers Jason Nesbit or Tony DeLap. Defendants can be liable under § 1983 only if they were "personally involved" in depriving Lancour of his constitutional rights. *Minix v. Canarecci*, 597 F.3d 824, 833–34 (7th Cir. 2010); *Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009). Lancour neither alleges that officers Nesbit or DeLap used excessive force against him, nor that they had the opportunity to intervene and prevent Parshall's actions. *Miller v. Gonzalez*, 761 F.3d 822, 826 (7th Cir. 2014) ("A police officer can be liable for another officer's excessive force only if that officer had a realistic opportunity to intervene and stop the first officer's actions."). Indeed, Lancour's allegations do not even suggest, much less allow for a reasonable inference, that either of these officers violated his constitutional rights in some other way.

So, too, the only allegations against Nesbit are his participation in Lancour's arrest and placement in the police vehicle. Similarly, his only allegation against DeLap relates

to his telling Parshall not to interrogate Lancour. Without more, these allegations do not permit an inference that Nesbit or DeLap violated Lancour's constitutional rights.

Finally, Lancour may not proceed with his proposed claims against the City of La Crosse or the La Crosse Police Department. Lancour does not allege that Parshall acted in accordance with an unconstitutional policy or custom of the City or Department, which is a requirement for liability of a municipality or other governmental unit under § 1983. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). The only allegation in Lancour's complaint that even appears to be directed to the City or Department is the statement that "allowing officers with mental issues [to] be on active duty" violated his constitutional rights. (Compl. (dkt. #1) at 6.) However, this statement is too vague and conclusory to support any inference that the City or Department had an unconstitutional policy or custom that "caused" violation of Lancour's constitutional rights. Lancour does not allege, for example, that the City or Department had a policy of permitting unfit officers to be on active duty despite knowing that such policy would likely result in the violation of constitutional rights. *See Jenkins v. Bartlett*, 487 F.3d 482, 492 (7th Cir. 2007). Accordingly, his claims against the Nesbit, DeLap, the City and the Department will be dismissed.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Shane T. Lancour is GRANTED leave to proceed on his claim that Officer Heath Parshall used excessive force against him in violation of the Fourth Amendment. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon this defendant.

- (2) Plaintiff is DENIED leave to proceed on any of his remaining claims. Defendants Jason Nesbit, Tony DeLap, the City of La Crosse, and the La Crosse Police Department are DISMISSED from this action.
- (3) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to the defendant's attorney.
- (4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 16th day of July, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge