IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TERRANCE D. NEWCOMB,

OPINION and ORDER

Plaintiff,

16-cv-273-bbc

v.

KYLE KNOTZ and DENNIS SMITH,

Defendants.

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Pro se prisoner Terrance Newcomb has filed a complaint in which he contends that defendant Dennis Smith (the sheriff of Dunn County, Wisconsin) and Kyle Knots (a deputy sheriff) violated his constitutional rights in the context of a traffic stop. Plaintiff has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(g), so his complaint is ready for screening under 28 U.S.C. § 1915A and § 1915(e)(2). Having reviewed the complaint, I am allowing plaintiff to proceed on claims under the Fourth Amendment that defendant Knotz prolonged a traffic stop without justification and used excessive force against plaintiff. However, I am dismissing the complaint as to Dennis Smith because plaintiff does not allege that Smith was personally involved in the alleged constitutional violations.

Plaintiff fairly alleges the following facts in his complaint.

ALLEGATIONS OF FACT

On July 4, 2015, defendant Knotz stopped plaintiff while he was driving on a highway in Dunn County. Knotz told plaintiff that he was stopped for having a "faulty license plate lamp." After taking plaintiff's license, registration and proof of insurance, Knotz asked plaintiff to exit the vehicle and plaintiff complied. Knotz then asked multiple times for consent to search plaintiff's car, but plaintiff refused. Knotz told plaintiff that he was free to go, but then changed his mind, ordered plaintiff to the rear of the car and continued to ask plaintiff for consent to search the car. This continued for approximately 10 minutes.

Defendant Knotz told plaintiff to take his hands out his pockets. Plaintiff complied, but later absentmindedly put them back in. Knotz said, "I am afraid for my safety" and told plaintiff that he was doing a pat down search. When plaintiff stated that he was not going to consent to a search, Knotz used a taser on him.

Ultimately, plaintiff was arrested for possessing methamphetamine and resisting an officer. The charges were later dismissed after the court concluded that defendant Knotz had violated plaintiff's Fourth Amendment rights.

OPINION

Plaintiff includes four "causes of action" in his complaint: (1) defendant Knotz violated the Fourth Amendment because "[n]o probable cause existed to keep questioning [plaintiff] or to search his vehicle after" telling him he was free to leave; (2) Knotz violated

the Eighth Amendment by using a taser on plaintiff; (3) defendant Knotz violated the Fourteenth Amendment "when he released [plaintiff] from his traffic stop only to call him back to do a second stop without probable cause"; and (4) defendant Smith (the sheriff) "must be held accountable" for failing to train Knotz properly.

The first and third "causes of action" are really one claim, so I will consider them together. In both claims, plaintiff's theory is that defendant Knotz did not have the authority to continue detaining plaintiff after telling him he was free to leave. Although plaintiff invokes the Fourth Amendment for one claim and the Fourteenth Amendment for the other, it is the Fourth Amendment that governs an officer's actions during a traffic stop. Navarette v. California, 134 S. Ct. 1683, 1687 (2014). The Fourteenth Amendment is relevant only because it gives courts authority to apply the Fourth Amendment to officers employed by the state rather than the federal government. Doe v. Heck, 327 F.3d 492, 509 (7th Cir. 2003).

Plaintiff frames the question with respect to this claim as whether defendant Knotz had probable cause to detain him, but an officer does not need probable cause to initiate or maintain a traffic stop. Rather, he needs only reasonable suspicion that the suspect has violated the law. Navarette, 134 S. Ct. at 1687. Plaintiff does not allege that defendant Knotz lacked reasonable suspicion that plaintiff had violated the law by driving with an expired license plate with a faulty lamp. Further, it is well established that an officer does not violate the Fourth Amendment simply by questioning a suspect, even if the questions are unrelated to the original purpose of the stop. Muehler v. Mena, 544 U.S. 93, 100-01

(2005); United States v. Taylor, 596 F.3d 373, 376 (7th Cir. 2010). The real question presented by this claim is whether defendant Knotz unreasonably prolonged the stop by continuing to detain plaintiff even after telling plaintiff he was free to leave.

Rodriguez v. United States, 135 S. Ct. 1609 (2015), provides some support for plaintiff's claim. In that case, the Court summarized the law as follows:

> A seizure for a traffic violation justifies a police investigation of that violation. . . . [T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety concerns. . . . Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

Id. at 1614 (internal quotations, citations and alterations omitted).

One reasonable interpretation of Rodriguez is that, once an officer tells a driver that he is free to go, regardless whether the officer issues a citation, this statement confirms the officer's view that the purpose of the stop has been fulfilled. See also Arizona v. Johnson, 555 U.S. 323, 333 (2009) ("Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave."). In addition, Rodriguez supports the view that, when the purpose of the stop is fulfilled, the officer cannot continue to detain the driver without a new basis for doing so. See also United States v. Kitchell, 653 F.3d 1206, 1217 (10th Cir. 2011) ("[O]nce an officer returns the driver's license and registration, the traffic stop has ended and questioning must cease; at that point, the driver must be free to leave."); United States v. Santiago, 310 F.3d 336, 341–42 (5th Cir. 2002) ("Once . . . the officer either issues a citation or determines that no

citation should be issued, the detention should end and the driver should be free to leave. In order to continue a detention after such a point, the officer must have a reasonable suspicion supported by articulable facts that a crime has been or is being committed."). Because plaintiff alleges that defendant Knotz continued to detain him without justification after telling him he was free to leave, I will allow plaintiff to proceed on this claim under the Fourth Amendment.

Plaintiff's second claim is that defendant Knotz violated his rights by using a taser on him. Plaintiff brings this claim under the Eighth Amendment, but, again, it is the Fourth Amendment that governs the use of force such as a taser during a traffic stop. Abbott v. Sangamon County, Illinois, 705 F.3d 706, 724–25 (7th Cir. 2013). The Eighth Amendment applies only to the treatment of a convicted prisoner. Currie v. Chhabra, 728 F.3d 626, 628 (7th Cir. 2013).

In evaluating an officer's use of force under the Fourth Amendment, the general question is whether the force used was reasonable under all the circumstances. These circumstances include the severity of the suspected crime, the danger posed by the suspect and whether the suspect is "actively resisting arrest" or attempting to flee. Abbott, 705 F.3d at 724–25. In the context of tasers in particular, the court of appeals has stated that the use of a taser is "reasonable only when exercised in proportion to the threat posed." Cyrus v. Town of Mukwonago, 624 F.3d 856, 863 (7th Cir. 2010).

In this case, plaintiff alleges that defendant Knotz deployed a taser immediately when plaintiff stated that he would not consent to a personal search. That allegation is sufficient

to state a claim under the Fourth Amendment. Cyrus, 624 F.3d at 859 (concluding that summary judgment was not appropriate when plaintiff alleged that officer deployed taser after suspect refused to comply with a single order to leave private property); Lewis v. Downey, 581 F.3d 467, 479 (7th Cir. 2009) ("[G]enerally [use of taser should] follow adequate warning[s].") (internal quotations omitted).

Finally, I am dismissing the complaint as to the sheriff for his alleged failure to train defendant Knotz. In claims such as plaintiff's brought under the Constitution, a person may not be held liable unless he was personally involved in the violation. This means that an official must have participated in the alleged conduct or facilitated it. It is not enough to show that a particular defendant is the supervisor of someone else who committed a constitutional violation. Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise."). Because plaintiff does not allege that defendant Smith had any involvement in defendant Knotz's alleged constitutional violations, Smith cannot be held liable.

ORDER

IT IS ORDERED that

1. Plaintiff Terrance Newcomb is GRANTED leave to proceed on his claims that: (1) defendant Kyle Knotz continued to detain plaintiff after the traffic stop concluded, in violation of the Fourth Amendment; and (2) defendant Knotz used a taser against him, in

violation of the Fourth Amendment.

2. Plaintiff is DENIED leave to proceed on all other claims for his failure to state a claim upon which relief may be granted. The complaint is DISMISSED as to defendant Dennis Smith.

3. For the time being, plaintiff must send defendant Knotz a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing 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 defendant or his 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.

5. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

6. A summons, a copy of plaintiff's complaint and this order are being forwarded to the United States Marshal, so that the marshals may make reasonable efforts to serve

defendant Knotz. Williams v. Werlinger, 795 F.3d 759 (7th Cir. 2015).

Entered this 14th day of June, 2016.

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