NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 7, 2024*
Decided November 19, 2024

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1560

MUHAMMAD BEY,
Plaintiff-Appellant,

v.

CLARENCE AYERS, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 22-cv-2440

Steven C. Seeger,
Judge.

O R D E R

Muhammad Bey sued the Village of South Holland, Illinois, and several Village officials, for actions during and after his arrest in August 2020. Bey alleged that the defendants violated his constitutional rights, *see* 42 U.S.C. § 1983, and he also raised

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

several claims under state law. The district court dismissed Bey's suit for failure to state a claim, and it denied Bey's motion for leave to amend the complaint. We disagree only with the sliver of the district court's decision addressing the tort of malicious prosecution. Bey's complaint states a timely claim against defendant Ayers, and so we amend the judgment so that the malicious prosecution claim is dismissed without prejudice to Bey's right to refile the claim in state court; otherwise, we affirm.

We draw our account from the factual allegations in the complaint, which we assume to be true, and documents that Bey attached as exhibits—including a transcript of the videos of his interactions with police officers (captured by officers' bodyworn cameras). *See Williamson v. Curran*, 714 F.3d 432, 435–36 (7th Cir. 2013). At around 4:00 a.m. on August 3, 2020, officers Clarence Ayers and Kimberly Abogunrin of the Village of South Holland Police Department responded to a call from a "concerned" individual about a man—Bey—"standing in between the cars" at Manor Health and Rehab for roughly 30 minutes. The officers approached Bey in Manor Health's parking lot, and Bey asked if someone had called 911. Bey then told Ayers that he worked at Manor Health, that he was "fine," and that he was on the phone. Ayers requested Bey's identification. Bey replied that, absent cause, he had a "constitutionally secured right" to withhold his identification and that he did not have any identification on him. Ayers repeated his request twice more, and Bey maintained that he had no identification.

Ayers then asked Bey to "put [his] hands on the hood" of a car in the parking lot. Bey replied, "[O]hhh you are detaining me," and Abogunrin responded that Bey was not being detained. Bey asked if he could go back inside Manor Health, and Ayers stated that he could not. Bey again asked if he was being detained. Ayers responded, "You are gonna be detained," and again ordered Bey to put his hands on the car. Abogunrin then told Bey he was being detained for "obstruction of identification."[1] Ayers once more told Bey to put his hands on the car, and Bey again refused, stating that he was "not obligated to" because "there is no cause."

[1] "A person commits the offense of obstructing identification when he or she intentionally or knowingly furnishes a false or fictitious name, residence address, or date of birth to a peace officer who has: (1) lawfully arrested the person; (2) lawfully detained the person; or (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense." 720 ILCS 5/31-4.5.

Ayers and Abogunrin then grabbed Bey's hands and positioned themselves behind him, and Ayers stated: "If you[r] hands are not on the hood, then you are resisting." Bey continued to protest that the officers had "no cause of action" and declined to provide his name. Ayers ordered Bey to "have a seat" in the police car, and Bey replied, "Well, you can do it, I'm your liability." Because Bey refused to move, Ayers and Abogunrin started to "pull and push" Bey into the car. Bey allowed his body to go limp and kept challenging Ayers and Abogunrin: "put me in the car."

A supervising officer, Gerald Smith, arrived at the scene, and Bey confirmed to him that he had refused to get into the police car. The officers again instructed Bey to get into the car, and Bey told them to "put [him] in there" because he was "not volunteering to be detained." Ayers and Abogunrin then "physically lifted" Bey's upper body and pushed him into the police car. Because Bey refused to move his legs, Ayers "pull[ed], fold[ed,] and push[ed]" Bey's legs into the car.

Bey was transported to the police station. He was charged with one count of obstructing identification, 720 ILCS 5/31-4.5, and one count of resisting a peace officer, 720 LCS 5/31-1(a), and released on bond shortly thereafter. When Bey retrieved his cellphone from Officer Matthew McGeever, he consulted an application on his phone, which, Bey says, shows that his phone was unlocked at 6:40 a.m. at the station. About a year later, on May 12, 2021, a state-court judge dismissed both charges against Bey.

On May 9, 2022, Bey filed a complaint against the Village of South Holland; the South Holland Police Department; Ayers; Abogunrin; Smith; McGeever; Don De Graff, the mayor of South Holland; Shawn Staples, the police chief of South Holland; three John Does; and E-COM Public Safety Communications System.[2] The 15-count complaint, which spanned 27 pages and appended 200 pages of exhibits, was long and "incomprehensible" at times, according to the district court. But in general, it alleged that the defendants violated Bey's constitutional rights in various ways; further, it asserted several state-law claims including assault and battery, unlawful restraint, intimidation, malicious prosecution, hate crimes, and defamation.

The defendants moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the district court granted the motion. It concluded that Bey's allegations did not state a federal claim because, among other reasons, the officers had

[2] E-COM was dismissed at screening and is not participating in this appeal.

probable cause to seize him and had applied reasonable force in the face of his resistance. The state-law tort claims, the court determined, were untimely—except for malicious prosecution, which the court dismissed because it concluded that the officers had probable cause, a complete defense to the claim. The court then explained that it was dismissing the complaint with prejudice because there was "no realistic possibility" that Bey could file an amended complaint "that alleges a cause of action that withstands scrutiny," though it set a short deadline by which Bey could move to reopen the case and amend the complaint. (Nonetheless, the court entered a separate final judgment the same day. *See* FED. R. CIV. P. 58(a).)

Bey appeals. His brief does not discuss his claims of cruel and unusual punishment, discrimination, and conspiracy, or whether the police department was a proper defendant. Therefore, we do not examine those issues. *See Beverly v. Abbott Labs.*, 817 F.3d 328, 333 (7th Cir. 2016). With respect to the dismissal of his other claims, we review a dismissal under Rule 12(b)(6) de novo. *See Vergara v. City of Chi.*, 939 F.3d 882, 886 (7th Cir. 2019). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

Bey first contends that he stated a claim of false arrest (unreasonable seizure) under the Fourth Amendment because Ayers and Abogunrin lacked probable cause to arrest him. The existence of probable cause is determined at the time of arrest and depends on whether "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 … an offense." *Esco v. City of Chi.*, 107 F.4th 673, 677 (7th Cir. 2024) (cleaned up).

Ayers and Abogunrin had probable cause to arrest Bey for at least one offense, and that suffices to defeat his claim. Bey is correct that the officers did not have probable cause to arrest him for obstructing *identification*, which would require Bey to have given the officers false information, *see* 720 ILCS 5/31-4.5; here, nothing in the complaint suggests that Bey did so. But the officers had probable cause to arrest Bey for obstructing *a peace officer*. This offense includes any conduct that knowingly "impedes or hinders" an officer's performance of authorized duties—such as by disobeying an officer's orders. *Martinez v. City of Chi.*, 900 F.3d 838, 848 (7th Cir. 2018) (citation omitted); 720 ILCS 5/31-1(a)(2). The arrestee must also know that the person he is obstructing is a "peace officer." *Abbott v. Sangamon Cnty.*, 705 F.3d 706, 721 (7th Cir.

2013). Here, Bey repeatedly disobeyed Ayers's orders to place his hands on the hood of the car. And though Bey insists that he did nothing suspicious or criminal, a person obstructs a peace officer if he hampers "even an unlawful arrest." *Id.* at 720. Moreover, Bey was aware that Ayers and Abogunrin were police officers, because he asked them immediately upon their arrival whether someone had called 911, and soon after he referred to them as "law enforcer[s]."

Further, the officers' lack of probable cause to arrest Bey for obstructing identification has no bearing on whether they had probable cause to arrest Bey for obstructing a peace officer. Probable cause to arrest for *any* offense acts as a complete defense to false-arrest claims, *see id.* at 715, even if the officer did not have probable cause with respect to the offense charged. *See Devenpeck v. Alford*, 543 U.S. 146, 153–55 (2004). Therefore, Bey's false-arrest claim cannot stand.

Next, Bey argues that the district court wrongly concluded that the officers' use of force during his arrest was reasonable. Excessive-force claims are evaluated under the Fourth Amendment's objective-reasonableness standard, which requires courts to "balance the nature and quality of the intrusion" on the plaintiff's rights "against the importance of the governmental interests alleged to justify the intrusion." *Sangamon Cnty.*, 705 F.3d at 724 (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)). Not every "push or shove" violates an arrestee's Fourth Amendment rights. *Graham v. Connor*, 490 U.S. 386, 396 (1989) (citation omitted).

Here, Bey's "willful noncompliance" justified the officers' minimal use of force. *Phillips v. Community Ins. Corp.*, 678 F.3d 513, 525 (7th Cir. 2012). Ayers and Abogunrin grabbed Bey's hands, pushed and pulled him towards the police car, and lifted him inside, folding his legs to do so. This application of force was precipitated by Bey's refusal to follow orders; Bey even went limp as Ayers and Abogunrin attempted to get him to enter the police car. Police officers may use minimal force when an arrestee passively refuses to comply with orders. *See Smith v. Ball State Univ.*, 295 F.3d 763, 770–71 (7th Cir. 2002) ("unresponsiveness" could have been "reasonably misconstrue[d]" as resistance). Because the officers' use of force "was measured, brief and appropriate" to accomplish their goal of placing Bey in the police car, *Smith*, 295 F.3d at 771, Bey did not state a claim of excessive force.

Bey also contests the district court's determination that he failed to plead claims against De Graff (the mayor), Staples (the police chief), and McGeever (who returned

Bey's possessions). For a supervisor like De Graff or Staples to be liable under § 1983, however, the supervisor must have some personal responsibility for the deprivation of the plaintiff's constitutional rights. *See Iqbal*, 556 U.S. at 676. Here, the complaint alleges only that De Graff and Staples were "duly charged to ascertain contrary acts and have failed to do so"; that is not sufficient to state a claim against either supervisor.

As for McGeever, Bey alleges that his phone was unlocked while he was detained, that he received his phone from McGeever upon his release from detention, and that McGeever did not have authorization to access his phone. But even if we equated unlocking the phone with searching it, these allegations cannot give rise to a plausible inference that McGeever—or anyone in particular—performed the search. This is fatal to Bey's attempts to state a claim. *See Gonzalez v. McHenry Cnty.*, 40 F.4th 824, 828 (7th Cir. 2022) (dismissal of § 1983 claim against sheriff was appropriate because "[l]awsuits against individuals require personal involvement in the constitutional deprivation" (citation omitted)).

Bey also contests the dismissal of his state-law claims. First, he argues that he has an implied private right of action for his claims of assault and battery, unlawful restraint, and intimidation under the Illinois Criminal Code, but the code does not allow for private rights of action. *See* 720 ILCS 5/1-4 (preserving civil remedies authorized by law to be recovered or enforced in civil actions); *O'Malley v. Adams*, 227 N.E.3d 800, 811 (Ill. App. Ct. 2023) ("Hence, by explicitly preserving complementary civil causes of action and stating a civil injury is separate from the criminal offense, the Criminal Code is clear that no private causes of action are contained therein." (citation omitted)). Second, Bey maintains that his state-law tort claims are not barred by the one-year statute of limitations for actions against a local governmental entity or employee. 745 ILCS 10/8-101(a); *Paulsen v. Abbott Labs.*, 39 F.4th 473, 477 (7th Cir. 2022) (citation omitted). Bey contends that he did not know he had grounds for relief until May 2021, but the limitations period begins to run when the plaintiff learns that he has been injured. *See United States v. Norwood*, 602 F.3d 830, 837 (7th Cir. 2010). The complaint shows that Bey knew about his alleged injuries on August 3, 2020, so his state-law claims were untimely when he filed his lawsuit in May 2022—with one exception.

Bey's claim of malicious prosecution under Illinois law[3] is timely because his claim did not accrue until the prosecution terminated in his favor, and he sued within one year of the charges being dismissed. *See Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009); *Ferguson v. City of Chi.*, 820 N.E.2d 455, 459 (Ill. 2004). The district court dismissed the claim because Ayers had probable cause to charge Bey with a crime. But, under Illinois law, "probable cause to believe an individual committed one crime—and even his conviction of that crime—does not foreclose a malicious prosecution claim for additionally prosecuting the individual on a separate charge." *Holmes v. Village of Hoffman Est.*, 511 F.3d 673, 682 (7th Cir. 2007). In other words, "probable cause as to one charge will not bar a malicious prosecution claim based on a second, distinct charge as to which probable cause is lacking." *Id.*

Assuming the truth of Bey's factual allegations, Ayers did not have probable cause to arrest and charge Bey with obstruction of identification. As discussed above, the offense requires that the defendant provide the officer with false information, such as a fake name or address, *see* 720 ILCS 5/31-4.5, and there is no allegation that Bey did so. Nor does the complaint suggest that when Bey was first seized (told to put his hands on the hood), he was being "lawfully" arrested or detained yet. *See id.* Indeed, the transcript that Bey appended to his complaint bolsters his allegation that Ayers lacked probable cause for the identification charge. And Bey adequately pleaded that Ayers filed the criminal complaint, a state-court judge dismissed the charges, and Bey "sustained damages to his rights" and had the prosecution hanging over him for almost a year. *See Cairel*, 821 F.3d at 834. Further, Bey alleged that Ayers made comments supporting an inference that the arrest and prosecution arose from Ayers's personal animus towards Bey. *See* Dkt. 1, Complaint, at 19 ("Some people would either make you have to beat they a**, or f**king mess em, for stupid s**t"); *id.* ("This b**ch, this a**hole… I'm gonna put one of these things on his face and be like, cus you sure f**king look black to me"); *id.* ("Like my n****, you are obvious like ret***ed"). Because Ayers lacked probable cause to seize Bey for obstructing identification and then to initiate a charge for that offense, Bey stated a claim, even if there was probable cause with respect to another offense.

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[3] Although Bey did not explicitly state whether his malicious prosecution claim arose under state or federal law, his complaint lists the elements of a claim under Illinois law, *see Cairel v. Alderden*, 821 F.3d 823, 834 (7th Cir. 2016), and the district court concluded that the claim was brought under Illinois law. Bey has not objected to that framing, either in his opposition to the motion to dismiss or on appeal.

Given that Bey's federal claims were properly dismissed, and only a single state claim survives, relinquishing supplemental jurisdiction over the claim is the presumed course of action. 28 U.S.C. § 1367(c)(3); *see RWJ Mgmt. Co. v. BP Prod. N. Am., Inc.*, 672 F.3d 476, 479–80 (7th Cir. 2012). And despite the short statute of limitations, relinquishment would not leave Bey stuck with an untimely claim. Under 28 U.S.C. § 1367(d), the applicable statute of limitations was tolled during the federal action. And the Illinois savings statute, 735 ILCS 5/13-217, allows plaintiffs one year to refile state-law claims in state court after a federal court dismisses them for jurisdictional reasons. Our decision and mandate will modify the judgment to be without prejudice as a product of relinquished jurisdiction under § 1367(c), rather than with prejudice under Rule 12(b)(6). Therefore, Bey has one year from the issuance of our mandate to refile. *See Wilson v. Wexford Health Sources*, 923 F.3d 513, 518 (7th Cir. 2019); *Timberlake v. Illini Hosp.*, 676 N.E.2d 634, 637 (Ill. 1997) ("[A] dismissal for lack of supplemental jurisdiction has no different effect on a plaintiff's right to refile under section 13-217 than does a dismissal for lack of subject matter jurisdiction generally.").

Finally, Bey argues that the district court abused its discretion by dismissing his complaint with prejudice and concluding that amendment would be futile. When the basis for denying leave to amend is futility, our review is de novo. *See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015). An amendment indeed would be futile here. Bey's complaint is voluminous and contains numerous exhibits, including a verbatim transcript of Bey's arrest. No additional information or materials Bey could provide would render his constitutional claims legally viable or plausible. And no amendment could remedy the fatal deficiencies in Bey's state-law claims, except for malicious prosecution.

Accordingly, we AMEND the judgment to reflect that the malicious prosecution claim against Ayers (and only Ayers) is DISMISSED WITHOUT PREJUDICE. As so amended, the judgment is AFFIRMED.