

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSEPH S. SANDERS, JR.,)
)
 Plaintiff,)
)
 v.) Civ.A. No. 97-694-SLR
)
TROOPER RODNEY L. WORKMAN)
and COL. ALAN ELLINGSWORTH)
of the Delaware State Police,)
)
 Defendants.)

MEMORANDUM ORDER

I. INTRODUCTION

On December 23, 1997, plaintiff Joseph S. Sanders, Jr. filed a civil rights action pursuant to 42 U.S.C. § 1983 alleging that defendant Trooper Rodney L. Workman used excessive force during plaintiff's arrest and that defendant Col. Alan Ellingsworth failed to properly train Workman. (D.I. 2 at 3a-3b) On July 28, 2000, defendants filed a motion to dismiss arguing: (1) the complaint fails to allege any violation of plaintiff's constitutional rights; (2) the doctrine of qualified immunity prevents defendants from being held liable in their individual capacities; (3) the U.S. Constitution's Eleventh Amendment prevents defendants from being held liable in their official capacities; and (4) the complaint must be dismissed pursuant to Fed. R. Civ. P. 4(m) for failure to serve the complaint on defendants within 120 days. (D.I. 16) Currently before the court is defendants' motion to dismiss plaintiff's complaint.

For the reasons discussed below, defendants' motion to dismiss is denied in part and granted in part.

II. BACKGROUND

The following recitation of events is based upon the allegations set forth in plaintiff's complaint. On November 27, 1996, at approximately 2:30 p.m., Workman knocked on plaintiff's parked car window and ordered him to exit the car. (D.I. 2 at 3a) Workman then placed plaintiff in handcuffs and proceeded to bend plaintiff's wrists causing him to holler in pain. (Id.) Workman told plaintiff to "shut up nigger" and then pulled plaintiff's jacket over his head to muffle the hollering. (Id.)

Plaintiff was placed in the front seat of an unmarked police car. (Id.) Workman sat in the back seat.¹ (Id.) While driving to Troop #7, Workman grabbed plaintiff from behind with his left arm and pushed his right thumb into plaintiff's head, below his right ear, which caused plaintiff pain. (Id.) Workman continued to choke and hit plaintiff until they arrived at Troop #7. (Id.)

Upon arrival at Troop #7, while restricted by shackles and handcuffs, plaintiff was punched by Workman and he fell to the ground. (Id.) When plaintiff asked Workman why he continued to assault him, Workman replied, "You should not have run from me a couple of nights ago." (Id.) Workman continued to assault

¹It is assumed from plaintiff's allegations that someone other than Trooper Workman drove the unmarked police car to Troop #7.

plaintiff each time plaintiff was moved. (D.I. 2 at 3b) There were no witnesses to these assaults. (Id.)

Upon arriving at Sussex Correctional Institute, plaintiff was evaluated by "Nurse Kim" after complaining of pains in his ear, throat, and arms. (Id.) Nurse Kim's evaluation allegedly reported plaintiff's right hand was swollen and his ear was red and bruised. (Id.)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v.

Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996).

The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991). Following this standard, the court turns to an examination of the sufficiency of plaintiff's complaint.

IV. DISCUSSION

A. Failure to State a Claim

1. Plaintiff's Fourth Amendment Claim

Plaintiff alleges that Workman's use of excessive force during his arrest was a violation of his Fourth Amendment rights. The Fourth Amendment and its "reasonableness" standard should be used to analyze all claims which allege that law enforcement officers have used excessive force in the course of an arrest of a free citizen. Graham v. Connor, 490 U.S. 386, 395 (1989). The Fourth Amendment's reasonableness standard is "not capable of precise definition or mechanical application." Id. at 396 (quoting Bell v. Wolfish, 441 U.S. 520, 559 (1979)). The reasonableness test requires careful analysis of the "facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to officer safety and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)). The reasonableness of force used "must be judged from the perspective of a reasonable officer on the scene, rather

than with the 20/20 vision of hindsight." Id. (citing Terry v. Ohio, 392 U.S. 1, 20-22 (1968)). The question to be answered is "whether the officers' actions were 'objectively reasonable' in light of the specific facts and circumstances confronting them [at that particular moment, regardless] of their underlying intent or motivation." Id. at 397 (citing Scott v. United States, 436 U.S. 128, 137-139 (1978)); see also Terry, 392 U.S. at 21. "An officer with evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Id.

Plaintiff has presented sufficient evidence from which one could reasonably conclude that Workman's use of force during plaintiff's arrest was not objectively reasonable. First, having been ordered to exit his car, plaintiff was immediately handcuffed and placed in the front seat of an unmarked police car. There are no allegations in defendants' brief to indicate that Workman had not gained the necessary control over plaintiff. Therefore, one could reasonably conclude that plaintiff did not pose an immediate threat to officer safety, was not resisting arrest, and did not have the ability to evade arrest by flight. Second, after plaintiff was in custody and seated in the police car, Workman allegedly grabbed plaintiff from behind and pressed his thumb into plaintiff's head. Third, Workman allegedly

continued to assault plaintiff by pushing and shoving him while he remained in handcuffs and shackles. Workman's actions allegedly caused injuries to plaintiff's ear and hand.

The court concludes that plaintiff's allegations are sufficient to support a claim that Workman's actions may have been unreasonable and in violation of plaintiff's Fourth Amendment rights.

2. Plaintiff's Failure to Properly Train Claim

Plaintiff alleges that Ellingsworth's failure to properly train Workman violated plaintiff's civil rights under 42 U.S.C. § 1983. "[T]he inadequacy of police training may serve as the basis for § 1983 liability 'only where the failure to train amounts to deliberate indifference to the rights of persons with whom the [police] come into contact.'" Daniels v. Delaware, 120 F. Supp.2d 411, 423 (D. Del. 2000) (quoting City of Canton v. Harris, 489 U.S. 378, 388 (1989)). "To establish a Section 1983 claim for failure to train and supervise employees, a plaintiff must (1) identify with particularity what the supervisory officials failed to do that demonstrates deliberate indifference and (2) demonstrate a close causal link between the alleged failure and the alleged injury." Id. (citing Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989)). Where the plaintiff is a pro se litigant, the court has an obligation to construe the

complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972).

Plaintiff has alleged sufficient evidence from which one could reasonably conclude that Ellingsworth failed to properly train Workman. Plaintiff alleges that Workman has a history of abusing minorities. Plaintiff also alleges that Ellingsworth failed to train Workman. Together, these allegations by plaintiff, a pro se litigant, are sufficient to support a Section 1983 civil rights claim.

B. Qualified Immunity

In their answer to plaintiff's complaint, defendants contend that they cannot be held liable in their individual capacities under the doctrine of qualified immunity. Government officials performing discretionary functions are immune from liability for civil damages, provided that their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). A right is "clearly established" when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987); accord In re City of Philadelphia Litig., 49 F.3d 945, 961 (3d Cir. 1995).

In analyzing a qualified immunity defense, the court must first ascertain "whether plaintiff has [alleged] a violation of a constitutional right at all." Larsen v. Senate of the Com. of Pa., 154 F.3d 82, 86 (3d Cir. 1998). Next, the court must inquire whether the right was "'clearly established' at the time the defendants acted." In re City of Philadelphia Litig., 49 F.3d at 961 (quoting Acierno v. Cloutier, 40 F.3d 597, 606 (3d Cir. 1994)). Finally, the court must determine whether "'a reasonable person in the official's position would have known that his conduct would violate that right.'" Open Inns, Ltd. v. Chester County Sheriff's Dep't., 24 F. Supp.2d 410, 419 (E.D. Pa. 1998) (quoting Wilkinson v. Bensalem Township, 822 F. Supp. 1154, 1157 (E.D. Pa. 1993) (citations omitted)). If on an objective basis "'it is obvious that no reasonably competent officer would have concluded that [the actions were lawful],'" defendants are not immune from suit; however, "'if officers of reasonable competence could disagree on this issue, immunity should be recognized.'" In re City of Philadelphia Litig., 49 F.3d at 961-62 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

In the case at bar, the court has determined that plaintiff sufficiently stated claims for a Fourth Amendment excessive force violation and failing to properly train a police officer. At the time of the events at issue, plaintiff's Fourth Amendment right against excessive force and his right to be arrested by properly trained police officers were clearly established. Accepting

plaintiff's allegations as true, the court finds that no reasonably competent officer would conclude that his conduct was consistent with governing legal principles. Consequently, the court concludes that, at this point in the litigation, defendants are not entitled to qualified immunity.

C. Eleventh Amendment

Defendants contend that they cannot be held liable in their official capacities under the Eleventh Amendment. "In absence of consent, a suit [in federal court] in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This preclusion from suit includes state officials when "the state is the real, substantial party in interest." Id. at 101 (quoting Ford Motor Co. v. Dept. of Treasury, 323 U.S. 459, 464 (1945)). "Relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." Id. (quoting Hawaii v. Gordon, 373 U.S. 57, 58 (1963)). A State may waive its Eleventh Amendment immunity. Such waiver must be in the form of an "unequivocal indication that the State intends to consent to federal jurisdiction that otherwise would be barred by the Eleventh Amendment." Ospina v. Dep't. of Corrs., 749 F. Supp. 572, 578 (D. Del. 1990) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)). Because the State of

Delaware has not consented to plaintiff's suit or waived its immunity, the Eleventh Amendment protects defendants from liability in their official capacities.

D. Insufficient Service of Process

Defendants allege that plaintiff's complaint must be dismissed for failure to serve the complaint on defendants within 120 days. Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve the summons and complaint on defendants within 120 days after filing the complaint unless the plaintiff can show good cause.² Federal Rule of Civil Procedure 4(c)(2) entitles a party proceeding in forma pauperis to have the summons and complaint served on the defendants by the U.S. Marshal.³ Where the U.S. Marshal fails to properly effect service of process

²Fed. R. Civ. P. 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action . . . provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

³Fed. R. Civ. P. 4(c)(2) provides:

Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or is authorized to proceed as a seaman under 28 U.S.C. § 1916.

through no fault of the litigant, the incarcerated pro se plaintiff proceeding in forma pauperis should not be penalized. See Fed. R. Civ. P. 4(m) Supplementary Practice Commentary C4-38, Forgiven Pro Se Plaintiffs for Marshal's Omissions (citing Puett v. Blandford, 912 F.2d 270 (9th Cir. 1990)). "The marshal's failure to carry out the tasks assigned by Rule 4 is automatically 'good cause' for forgiving the in forma pauperis plaintiff within the meaning of Rule 4(m)." Id. (citing Sellers v. United States, 902 F.2d 598 (7th Cir. 1990)).

The court records reflect that plaintiff has met the service of process requirements for Rule 4(m) under the good cause exception. Plaintiff's complaint satisfied the court filing prerequisites on May 20, 1999. Thus, plaintiff had 120 days, until approximately September 17, 1999, to serve process on defendants. (D.I. 9) On May 28, 1999, plaintiff signed the required U.S. Marshal Process Receipt and Return forms which shifted the duty of effecting service of process from plaintiff to the U.S. Marshal. (D.I. 12-14) Subsequently, these forms were received and co-signed by the U.S. Marshal on August 20, 1999, approximately 30 days before service of process was due to defendants. (Id.) The court records further reflect that the U.S. Marshal did not serve process to defendants until December 6, 1999, well over two months after the September deadline. (Id.) The U.S. Marshal's failure to properly effect service of process automatically constitutes good cause for forgiving

plaintiff. Therefore, the court concludes that plaintiff has met his service of process requirements.

V. CONCLUSION

Therefore, at Wilmington, this 26th day of March, 2001;

IT IS ORDERED that:

1. Defendants' motion to dismiss (D.I. 15) is denied with respect to plaintiff's claims against defendants in their individual capacities.

2. Defendants' motion to dismiss (D.I. 15) is granted with respect to plaintiff's claims against defendants in their official capacities.

United States District Judge