

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

ALI MEHDIPOUR,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-17-298-W
)	
CITY OF MIDWEST CITY et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Ali Mehdi pour brought this action seeking relief under federal and state law for his allegedly unlawful arrest and prosecution. He contended in his complaint filed on March 20, 2017, see Doc. 1, that on November 3, 2015, defendant Bruce Glover, a police officer employed by defendant The City of Midwest City ("Midwest City"), received a report of a stolen generator that "allegedly implicated [Mehdipour] . . . as having possession of such property." Id. at 2, ¶ 6. Glover contacted defendant The City of Oklahoma City ("City"), "presumably because the [generator] . . . was located at . . . [Mehdipour's] property in Oklahoma City." Id. ¶ 7.

In response, Officer Jeff Coffey, a City employee, went to Mehdi pour's property "and then trespassed . . . by allegedly looking through a crack in a door to observe the generator" Id. ¶ 8. That same day, defendants Brett Baker and Jeremy Zuniga, two Midwest City police officers, surveilled Mehdi pour's property and observed him leaving with another person.

Based on information provided by Glover, Baker, Zuniga and Coffey, "City police initiated a traffic stop¹ . . . and detained [Mehdipour] . . . until the Midwest City police arrived." Id. at 3, ¶ 9. Mehdipour "informed all [officers present] . . . that he, in fact, [had] borrowed the generator because his property recently had [had] a fire and [he] provided the name and address and contact information of the individual [from whom] he [had] borrowed it" Id. That "individual had lawfully purchased the generator from the son of the alleged victim, who stole it from his mother and sold it to a third party who lawfully loaned it to [Mehdipour]" Id. "Even though most of this information was readily ascertainable," id., no officer "verif[ie]d] any of the information that [Mehdipour had] . . . provided[.]" Id. Instead, pursuant to the Midwest City officers' request, see id. ¶ 10, City police officer Bradley Conley arrested Mehdipour.

That same date, Baker prepared an Affidavit of Probable Cause, see id. ¶ 11; Doc. 9-2, wherein he swore that probable cause existed for Mehdipour's arrest for receiving and concealing stolen property in violation of state law. See Doc. 1 at 3, ¶ 11; Doc. 9-2. In describing Conley's role in the events on November 3, 2015, Baker wrote:

(1) "Sgt. Conley with the Oklahoma City Police Department stopped [Mehdipour's] . . . vehicle[.]" id.;

(2) "Sgt. Conley ma[d]e contact with . . . [Mehdipour] and detained him[.]" id.;

(3) after I (Baker) had "confirm[ed] . . . the serial number [of the generator] provided by the victim[.]" id., Mehdipour "was placed under arrest[.]" id.; and

¹According to the Complaint/Information, No. 16-6654295, filed in the Municipal Court of The City of Oklahoma City, Mehdipour was stopped and ticketed for failure to stop at a stop sign, in violation of Oklahoma City Municipal Code § 32-281. See Doc. 9-1.

(4) "Sgt. Conley transported . . . [Mehdipour] to the Midwest City Police Department jail, where he was booked and held for bond." Id.

Two days later, on November 5, 2015, Mehdipour delivered to Midwest City the "affidavit of the [individual] . . . who purchased the generator from the victim's son." Doc. 1 at 3, ¶ 12. The "affidavit . . . attested that the generator [had been] . . . lawfully loaned to [Mehdipour]" Id. A bill of sale from the victim's son to the purchaser was also presented. See id.

On March 14, 2016, Mehdipour was charged in the District Court for Oklahoma County, Oklahoma, with one count of concealing stolen property in violation of 21 O.S. § 1713. State v. Mehdipour, No. CF-2016-2036. See Doc. 14-1. Mehdipour has contended that he was charged as a result of information supplied by Baker, Conley, Zuniga and Glover to the District Attorney for Oklahoma County, Oklahoma ("District Attorney"). See Doc. 1 at 3-4, ¶ 12. In September 2016, the District Attorney filed a Motion to Dismiss and Recall Warrant. See Doc. 13-3. The state court granted the motion and dismissed the case. See id. The reason stated for the dismissal: "Pending Further Investigation[.]" Id. See Doc. 1 at 4, ¶ 12.

The City, Midwest City, Baker, Glover and Zuniga answered the allegations in Mehdipour's complaint. See Docs. 8, 12. Defendant Conley filed a Motion to Dismiss, see Doc. 9, and challenged the two claims asserted against him. In Count V of the complaint, Mehdipour had alleged that Conley, individually, had deprived him of his right against unreasonable seizure protected by the fourth amendment to the United States Constitution in violation of title 42, section 1983 of the United States Code; in Count II,

Mehdipour had contended that Conley, individually, had maliciously "procured . . . [his] prosecution[.]" Doc. 1 at 5, ¶ 22, in violation of state law.

On June 15, 2017, the Court found that Conley was qualifiedly immune from liability with respect to Mehdi-pour's federal law claim. See Doc. 15. The complaint failed to contain enough well-pleaded facts that showed that Conley lacked probable cause to arrest Mehdi-pour and thus, failed to show that Conley had violated Mehdi-pour's fourth amendment right against unreasonable seizure. See id.

The Court further found, despite Mehdi-pour's assertion that Conley had taken "an active role in the procurement of the criminal charges[.]" Doc. 13 at 10, against him, that there were no well-pleaded facts in the complaint that showed how Conley, individually, had initiated or instigated the underlying criminal case; likewise, the complaint contained no facts that showed what information Conley had supplied to the District Attorney that "caused [the state court action] . . . to be instituted or continued against," Empire Oil & Refining Co. v. Williams, 184 Okla. 172, ___, 86 P.2d 291, 292 (1938), Mehdi-pour or that showed on what information provided by Conley the District Attorney had relied to "commence[] or continu[e] . . . [the] criminal . . . proceeding[.]" Id. Accordingly, the Court dismissed that claim as well and granted Conley's Motion to Dismiss. See Docs. 9, 15.

The matter now comes before the Court on Mehdi-pour's Motion for Leave to File First Amended Complaint filed pursuant to Rule 15(a), F.R.Civ.P. Mehdi-pour has sought permission to amend his complaint to join an additional defendant—Officer Coffey, and to reassert a federal law claim against Conley for false arrest. Midwest City, Baker, Glover and Zuniga have not opposed Mehdi-pour's request. The City, on Conley's behalf, and Conley himself have objected.

Rule 15(a)(2), supra, requires that leave to amend be "freely give[n] . . . when justice so requires." Confronted with this liberal standard, the Court has examined the record to determine whether the Rule's "mandate is to be heeded," Foman v. Davis, 371 U.S. 178, 182 (1962)(citation omitted), in this instance.

In determining whether "justice . . . requires," Rule 15(a)(2), supra, that Mehdipour be granted permission to amend his complaint, the Court must consider such reasons "as undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party . . . [and] futility of amendment[.]" Foman, 371 U.S. at 182. Neither the City, nor Conley has argued that Mehdipour has acted in bad faith or with a dilatory motive or argued that the proposed amendments would result in undue delay or undue prejudice. Their sole challenge is grounded in "futility of amendment."

In this circuit, "[a] proposed amendment is futile if the complaint, as amended, would be subject to dismissal." Anderson v. Suiters, 499 F.3d 1228, 1238 (10th Cir. 2007)(quoting Lind v. Aetna Health, Inc., 466 F.3d 1195, 1199 (10th Cir. 2006)(further quotation omitted)). Accordingly, the Court has considered the legal sufficiency of the proposed cause of action against Conley and whether, based upon the allegations in the proposed first amended complaint as a whole, this cause would fail to state a claim for relief against Conley. E.g., 6 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1487, at 743 (3d ed. 2010)(if complaint as amended cannot withstand motion to dismiss, amendment should be denied as futile); id. at 733 (if claim legally insufficient on its face, amendment should be denied).

In doing so, the Court is guided by the decision of the United States Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). In Twombly, the Supreme Court

held in accordance with Rule 8, F.R.Civ.P., that a complaint need not contain "heightened fact pleading of specifics," 550 U.S. at 570, or "detailed factual allegations," *id.* at 555 (citations omitted), but it must contain "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

The United States Court of Appeals for the Tenth Circuit has stated that Twombly imposes a "burden . . . on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he . . . is entitled to relief." Robbins v. Oklahoma, 519 F.3d 1242, 1247 (10th Cir. 2008)(quoting Twombly, 550 U.S. at 556). The allegations in the proposed first amended complaint must therefore "be enough that, if assumed to be true, . . . [Mehdipour] plausibly (not just speculatively) has a claim for relief [under section 1983 against Conley for false arrest]." *Id.* (footnote omitted).

As stated, the Court's task at this stage is to determine whether "there are well-pleaded factual allegations," Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009), in the challenged pleading; if so, the "[C]ourt should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citations omitted). As the Tenth Circuit has recognized, Twombly and Iqbal neither change Rule 8's notice requirement, nor Rule 12(b)(6)'s requirement that a complaint state a legally recognized claim for relief; these decisions only add the "requirement of plausibility [that] serves . . . to weed out claims that do not (in the absence of additional allegations) have a reasonable prospect of success[.]" Robbins, 519 F.3d at 1248.

This "requirement of plausibility" therefore obligates Mehdipour to set forth in his proposed pleading "either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Bryson v. Gonzales, 534 F.3d 1282, 1286 (10th Cir. 2008)(quotation and further citation omitted). And, while "[t]he nature and specificity of the allegations required to state a plausible claim will vary based on context[,]" Kansas Penn Gaming, LLC v. Collins, 656 F.3d 1210, 1215 (10th Cir. 2011)(citations omitted), neither "'naked assertion[s]' devoid of 'further factual enhancement[,]'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557), nor "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory allegations, [will] . . . suffice." Id. (citation omitted).

"[T]he Twombly/Iqbal standard recognizes a plaintiff should have at least some relevant information to make the claim[] plausible on . . . [its] face." Khalik v. United Air Lines, 671 F.3d 1188, 1193 (10th Cir. 2012). The Federal Rules of Civil Procedure "demand[] more than an unadorned, the-defendant-unlawfully-harmed-me accusation[,]" Iqbal, 556 U.S. at 678 (citations omitted), and more than "mere 'labels and conclusions,' and 'a formulaic recitation of the elements of a cause of action'" Kansas Penn Gaming, 656 F.3d at 1214 (quoting Twombly, 550 U.S. at 555). If the plaintiff's factual allegations "are 'merely consistent with' [the] . . . defendant's liability," Iqbal, 556 U.S. at 678 (quotation omitted), or "do not permit the [C]ourt to infer more than the mere possibility of misconduct," id. at 679, the plaintiff "has not 'show[n]' . . . 'that [he] . . . is entitled to relief.'" Id. (quotation omitted).

The proposed first amended complaint reasserts the allegations herein set forth; it also contains the following facts:

(1) on October 28, 2015, one of Mehdipour's family homes in Oklahoma City caught fire;

(2) on November 3, Michael Parks offered to loan Mehdipour a generator so he (Mehdipour) could secure that home;

(3) Mehdipour drove to 215 N. Douglass Avenue in Oklahoma City, and Parks put the generator on the sixteen (16)-foot trailer attached to Mehdipour's vehicle;

(4) Mehdipour intended to stop at Home Depot; when he neared Blackwelder Avenue, he noticed that he was being followed by a white Dodge truck;

(5) that concerned Mehdipour, and he drove to the home of a neighbor, who was employed by the City as a police officer;

(7) Mehdipour exited his vehicle and as he approached his neighbor's house, he noticed the Dodge truck park behind his vehicle;

(8) he also observed numerous City patrol cars approaching; when they arrived, the police officers in those vehicles walked to the trailer; and

(9) Conley, who had arrived in his patrol car, approached Mehdipour and advised him that he was under arrest; when asked why, Conley said, "[F]or stealing the generator[.]" Doc. 16-1 at 3, ¶ 12.

Mehdipour has further claimed in his proposed pleading

(1) that he explained to Conley that the generator belonged to Parks and that "Parks was located a few blocks away[.]" id. ¶ 13; and

(2) that when he asked Conley to question Parks about the generator, "Conley said that he would." Id.

Conley conducted no investigation. See at 4, ¶ 14. He instead arrested Mehdipour, put him "in the back of . . . [his (Conley's)] patrol car[, and] . . . transported [him] to the Midwest City Jail[,]" id., where he (Conley) handed . . . [Mehdipour] a ticket" Id. at 3-4, ¶ 13. Conley allegedly "never advised . . . [Mehdipour] of any traffic violations or any reason for a traffic stop until handing him the ticket at the . . . jail." Id. at 4, ¶ 16.

In Count V of his pleading, Mehdipour has asserted that his fourth amendment right to be free from unreasonable seizure was violated because he was arrested without probable cause. He has complained that he "was detained initially by . . . Conley[,]" id. at 9, ¶ 38, that such detention was "based on a subterfuge[,]" id., and that the citation issued by Conley "for a traffic violation [was] . . . a post hoc justification for the detention and arrest." Id.

Conley has argued that amendment is futile because the Court has already determined that he had probable cause to arrest Mehdipour and that he is therefore qualifiedly immune from suit. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009)(quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). "To state a claim for relief that is plausible on its face and to overcome [this affirmative] . . . defense . . . , . . . [Mehdipour] 'must allege facts sufficient to show (assuming they are true) that . . . [Conley] plausibly violated [his] constitutional rights, and that those rights were clearly established at the time.'" Valdez v. Derrick, 2017 WL 957179 *2 (10th Cir. 2017)(quoting Robbins, 519 F.3d at 1249)(cited pursuant to Tenth

Cir. R. 32.1). "'Qualified immunity is applicable unless' . . . [Mehdipour] can satisfy both prongs of the inquiry." Herrera v. City of Albuquerque, 589 F.3d 1064, 1070 (10th Cir. 2009)(quoting Pearson, 555 U.S. at 816). "If . . . [Conley's] conduct [about which Mehdipour has complained in his proposed pleading] did not violate a constitutional right, the inquiry ends and . . . [Conley] is entitled to qualified immunity." Wilder v. Turner, 490 F.3d 810, 813 (10th Cir. 2007)(citation omitted); e.g., Pearson, 555 U.S. at 232 (first prong of court's qualified immunity analysis asks whether facts plaintiff has alleged make out a violation of a constitutional right).

Although the fourth amendment guarantees the "right to be free from improper arrest[,]" Quinn v. Young, 780 F.3d 998, 1005 (10th Cir. 2015); e.g., U.S. Const. amend IV ("[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures[] shall not be violated"), "a warrantless arrest[, such as the arrest in the instant case,] may nonetheless comport with the [f]ourth [a]mendment 'where there is probable cause to believe that a criminal offense has been or is being committed.'" Quinn, 780 F.3d at 1006 (quoting Buck v. City of Albuquerque, 549 F.3d 1269, 1281 (10th Cir. 2008) (further quotation omitted)). "Consequently, in a [section] 1983 action based on a warrantless arrest, the defendant may be entitled to qualified immunity if he had probable cause to arrest the plaintiff." Id. (citation omitted).

"To determine whether an officer had probable cause to arrest an individual, [the Court must] . . . examine the events leading up to the arrest,² and then decide whether

²In the proposed first amended complaint, Mehdipour has repeated his allegations that Conley "initiated an alleged traffic stop . . . and detained . . . [him] until the Midwest City police arrived." Doc. 16-1 at 4, ¶ 15; e.g., id. at 9, ¶ 13. To the extent, if any, that "stop," which occurred after he (Mehdipour) had left his vehicle, is the subject of a fourth amendment unreasonable seizure claim, such cause of action would fail. While that stop may have been "a subterfuge," id., as Mehdipour has suggested, the first amended complaint contains no allegations that call into

these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." Valdez *2 (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)(further quotation omitted)). That is to say, probable cause is assessed "under an objective standard of reasonableness." Quinn, 780 F.3d at 1006 (citing Stonecipher v. Valles, 759 F.3d 1134, 1141 (10th Cir. 2014); United States v. Zamudio-Carrillo, 499 F.3d 1206, 1209 (10th Cir. 2007)). "[T]he 'facts and circumstances within the officer['s] knowledge, and of which [he] . . . ha[s] reasonably trustworthy information, [must be] . . . sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.'" ³ Fogarty v. Gallegos, 523 F.3d 1147, 1156 (10th Cir. 2008)(quotation omitted); e.g., Hunter v. Bryant, 502 U.S. 224, 227 (1991)(even law enforcement officials who reasonably but mistakenly conclude that probable cause is present entitled to immunity). The "officer's own subjective reason for the arrest is

question the correctness of Conley's decision to "issue[] a citation . . . for a traffic violation" Id. at 4, ¶ 16.

Regardless of an officer's actual motivation, his or her "decision to stop an automobile is reasonable [under the fourth amendment] where [he or she] . . . ha[s] probable cause to believe that a traffic violation has occurred." Whren v. United States, 517 U.S. 806, 810 (1996)(citations omitted); e.g., United States v. Morgan, 855 F.3d 1122 (10th Cir. 2017)(traffic stop is valid under fourth amendment if stop is based on observed traffic violation or if officer has reasonable articulable suspicion that traffic violation has occurred or is occurring). See United States v. Botero-Ospina, 71 F.3d 783 (10th Cir. 1995)(traffic stop is seizure within meaning of fourth amendment; to determine reasonableness, court asks whether officer's action was justified at inception and whether it was reasonably related in scope to circumstances which justified interference in the first place). Because the proposed pleading does not dispute that Conley had probable cause to believe that Mehdipour had committed a traffic violation, as evidenced by the citation, Mehdipour has not shown that Conley violated his constitutional right against unreasonable detention and seizure when he initially approached and detained him in his neighbor's yard.

³E.g., Hunter v. Bryant, 502 U.S. 224, 537 (1991)(probable cause existed if at moment arrest was made facts and circumstances within officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that plaintiff had violated law).

irrelevant, and it does not matter whether the arrestee was later charged with a crime." Quinn, 780 F.3d at 1006 (quoting Fogarty, 523 F.3d at 1156)(further citation omitted).

"Police work often requires officers to rely on the observations, statements, and conclusions of their fellow officers." Baptiste v. J.C. Penney Co., 147 F.3d 1252, 1260 (10th Cir. 1998); e.g., Foote v. Spiegel, 118 F.3d 1416, 1424 (10th Cir. 1997)(officers may rely on information furnished by other law enforcement officials to establish reasonable suspicion and probable cause for arrest).⁴ Even accepting as true Mehdipour's assertions in his proposed pleading that "Parks . . . [had] loan[ed] [him the] generator[.]" Doc. 16-1 at 3, ¶ 9, and "was located a few blocks away[.]" id. ¶ 13, and that officers could verify Mehdipour's version of the transaction through "readily ascertainable," id. at 4, ¶ 15,⁵ information, the Court finds, in light of Mehdipour's own account of the events that had occurred that day, that "an objectively reasonable police officer in [Conley's position] . . . could have found probable cause to arrest [Mehdipour for receiving and concealing stolen property] . . . based on," Valdez *3,

⁴See Stearns v. Clarkson, 615 F.3d 1278, 1286 (10th Cir. 2010)(when one officer requests another officer assist in executing an arrest, assisting officer is neither required to second-guess requesting officer's probable cause determination, nor required to independently determine that probable cause exists). See also id. (police officer who acts in reliance on what proves to be the flawed conclusions of fellow police officer may nonetheless be entitled to qualified immunity as long as officer's reliance was objectively reasonable); Oliver v. Woods, 209 F.3d 1179, 1190 (10th Cir. 2000)(police officers entitled to rely upon information relayed to them by other officers in determining whether reasonable suspicion exists to justify an investigative detention or probable cause to arrest but reliance must be objectively reasonable).

⁵See Romero v. Fay, 45 F.3d 1472, 1476-77 (10th Cir. 1995)(probable cause standard of the fourth amendment requires officers to reasonably interview witnesses readily available at scene, investigate basic evidence or otherwise inquire if crime has been committed at all before invoking power of warrantless arrest and detention, but does not require officers to investigate arrestee's alibi witnesses before arresting him); Munday v. Johnson, 257 Fed. Appx. 126, 134 (10th Cir. 2007)(police officers not required to forego making arrest based on facts supporting probable cause simply because arrestee offers different explanation)(cited pursuant to Tenth Cir. R. 32.1).

(a) the information provided by Glover, (i) who had received the stolen property report, see Doc. 16-1 at 2, ¶ 6, that "allegedly implicated [Mehdipour,]" id., and (ii) who had contacted the City for assistance, see id. ¶ 7; and

(b) the information revealed by Coffey, Baker and Zuniga's surveillance, see id. at 2, ¶ 8; id. at 4, ¶ 15, all of which had been reinforced by Baker's substantiation, immediately prior to Mehdipour's arrest, of the serial number of the generator, as evidenced by the Affidavit of Probable Cause to which Mehdipour has referred in his proposed pleading. See id. at 5, ¶ 17; Doc. 9-2.

Accordingly, the Court finds that the first amended complaint, as drafted, fails to contain enough well-pleaded facts that show that Conley lacked probable cause to arrest Mehdipour and that Mehdipour's arrest therefore violated his fourth amendment right against unreasonable seizure. Because Conley would be entitled to qualified immunity,⁶ Mehdipour's claim "would be subject to dismissal." Anderson, 499 F.3d at 1238 (quoting Lind, 466 F.3d at 1199 (further quotation omitted)).

The Court therefore, based on the foregoing,

(1) GRANTS in part and DENIES in part Mehdipour's Motion for Leave to File First Amended Complaint [Doc. 16] filed on June 27, 2017;

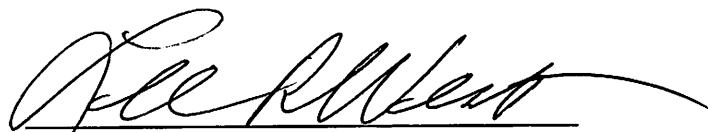
(2) PERMITS Mehdipour to amend his complaint to name Coffey as a defendant and DIRECTS Mehdipour to file his amended pleading⁷ within seven (7) days of this date; and

⁶Because the Court finds that Mehdipour has failed to make a sufficient showing with regard to the first prong, the Court has not addressed the second prong of the qualified immunity analysis in determining whether amendment would be futile.

⁷The Court notes that Mehdipour has referred to two (2) exhibits in his proposed first amended complaint, see Doc. 16-1 at 5, ¶ 17; id. ¶ 18; neither exhibit was attached.

(3) DENIES Mehdipour leave to amend his complaint to reassert a claim under section 1983 against Conley for false arrest.

ENTERED this 27th day of July, 2017.



LEE R. WEST
UNITED STATES DISTRICT JUDGE