UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

RAYNALDO MARKEITH SAMPY, JR.

Plaintiff,

vs. **CASE NO. 6:19-CV-580**

JONATHAN PRICE RABB, BRANDON LAMAR DUGAS, IAN JAMES JOURNET, SEGUS RAMON JOLIVETTE, MICHAEL NICHOLAS DARBONNE, ASHER REAUX, JORDAN KAMAL COLLA, LAFAYETTE CITY PARISH CONSOLIDATED GOVERNMENT, and LAFAYETTE PARISH COMMUNICATIONS DISTRICT

Defendants.

PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

TO THE HONORABLE, THE UNITED STATES DISTRICT COURT IN AND FOR THE WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION:

Plaintiff Raynaldo Markeith Sampy, Jr., hereby moves the Court for leave to file a Second Amended Complaint (the "SAC"), pursuant to Federal Rule of Civil Procedure 15(a)(2), against Defendants Jonathan Price Rabb, Brandon Lamar Dugas, Ian James Journet, Segus Ramon Jolivette, Michael Nicholas Darbonne, Asher Reaux, Jordan Kamal Colla, Lafayette City Parish Consolidated Government, and Lafayette Parish Communications District (together, "Defendants").

BACKGROUND

The original complaint in this matter was filed on May 4, 2019. (Dkt. No. 1.) The action seeks money damages pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, and Fourteenth Amendments to the United States Constitution, and under the laws and constitution of

the State of Louisiana. The claims in this case arise from a May 5, 2018 dispatch by a 911 dispatcher of the Lafayette Parish Communication District that Mr. Sampy had driven his truck into and damaged an ice cooler machine, followed by nearly seven minutes of excessive and unnecessary police brutality (the "Incident"), which left Mr. Sampy with significant physical and emotional injuries, from which he still suffers to this day. Mr. Sampy was subsequently prosecuted in the City Court of Lafayette ("City Court") for operating while intoxicated, first offense ("OWI"), and for simple battery of a police officer.

Defendants Jonathan Price Rabb, Brandon Lamar Dugas, Segus Ramon Jolivette, Michael Nicholas Darbonne, Asher Reaux, Jordan Kamal Colla, and the Lafayette City Parish Consolidated Government were all served on May 9, 2019. (Dkt. Nos. 3-5). Defendant Ian James Journet was served on June 3, 2019. (Dkt. No. 13.)

On June 3, 2019, Mr. Sampy moved for leave to file a First Amended Complaint, which sought to clarify that defendant officers were being sued solely in their individual capacities, to add an additional defendant (the Lafayette Parish Communications District), and to correct certain Louisiana Civil Code article citations. (Dkt. No. 6.) Defendants did not oppose this motion, which the Court granted on June 4, 2019. (Dkt. No. 7.) The First Amended Complaint was deemed filed on June 4, 2019 (Dkt. No. 8), and Defendant Lafayette Parish Communications District was served on June 6, 2019 (Dkt. No. 11).

On June 6, 2019, Defendants filed an unopposed motion to stay these proceedings pending the outcome of Mr. Sampy's criminal trial (Dkt. No. 10), which this Court granted on June 10, 2019 (Dkt. No. 12). Mr. Sampy was found guilty in September 2019 after a bench trial and was sentenced to 125 days with 110 days of the sentence suspended, and the remaining 15 days to be served under home confinement.

In January 2020, Mr. Sampy appealed from his convictions, and the Louisiana Court of Appeal, Third Circuit affirmed his conviction on March 6, 2020. Mr. Sampy applied for a supervisory writ from the Louisiana Supreme Court, which denied his application on December 8, 2020.

On December 9, 2020, the parties filed a joint motion to lift the stay of these proceedings (Dkt. No. 14), which this Court granted on December 14, 2020 (Dkt. No. 15).

No Defendants have responded to the First Amended Complaint, and discovery has not yet commenced.

ARGUMENT

Under Federal Rule of Civil Procedure 15(a)(2), "[t]he court should freely give leave when justice so requires." The Fifth Circuit has made clear that the language in Rule 15(a) establishes a "presumption in favor of granting parties leave to amend," which serves the aim or "promoting litigation on the merits rather than on procedure technicalities." *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 425, 427 (5th Cir. 2004). The decision to grant a motion for leave is within the sound discretion of the Court, but "[i]n the context of motions to amend pleadings, 'discretion' may be misleading, because Fed. R. Civ. P. 15(a) 'evinces a bias in favor of granting leave to amend.'" *Martin's Herend Imports v. Diamond & Gem Trading*, 195 F.3d 765, 770 (5th Cir. 1999) (quoting *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597 (5th Cir. 1981)).

A. There Is No Substantial Reason to Deny Leave to Amend

Unless there is "a substantial reason, such as undue delay, bad faith, dilatory motive, or undue prejudice to the opposing party, the discretion of the district court is not broad enough to permit denial." *Id.* (internal quotations omitted). Here, there is no such substantial reason. While this action was filed in May 2019, the delay was a result of a nearly 18-month stay of the

proceedings, jointly agreed to by the parties. There is also no prejudice to Defendants. Discovery has not yet commenced, and no Defendants have filed responsive pleadings. *See Dueling v. Devon Energy Corp.*, 623 F. App'x 127, 130 (5th Cir. 2015).

In fact, granting leave to file an amended complaint promotes the efficient use of judicial resources. Recognizing that certain of Mr. Sampy's claims are likely barred by the United States Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), the proposed SAC strikes most of the claims set forth in the First Amended Complaint, leaving only those that would survive a motion to dismiss, and modifies and clarifies certain allegations based on evidence admitted at Mr. Sampy's criminal trial. In other words, the SAC rests on "the same underlying facts" and would not "fundamentally alter the nature of the case." *Mayeaux*, 376 F.3d at 427.

B. The Motion for Leave to Amend Is Not Futile

This motion also cannot be described as "futile" because the remaining claims in the proposed SAC are not barred by *Heck* and do not fail to state claims upon which relief could be granted. *See Stripling v. Jordan Production Co., LLC*, 234 F.3d 863, 873 (5th Cir. 2000); *see also Tyson v. Lafayette Police Dep't*, 2020 WL 609822, at *3 (W.D. La. Feb. 6, 2020) (granting motion to amend as not futile where excessive force claim was "separable" from convictions and, thus, not *Heck*-barred) (Whitehurst, M.J.). Under *Heck*, a plaintiff who has been convicted of a crime cannot recover damages for an alleged violation of his constitutional rights if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Ballard v. Burton*, 444 F.3d 391, 396 (5th Cir. 2006). Courts in this Circuit have consistently held that excessive force claims are not necessarily barred by *Heck*. *See, e.g.*, *Thomas v. Pohlmann*, 681 F. App'x 401, 406-08 (5th Cir. 2017) (excessive force claims not barred where plaintiff convicted of resisting an officer and disturbing the peace); *Bush v. Strain*, 513 F.3d 492, 499-500 (5th Cir. 2008)

(excessive force claims not barred where plaintiff convicted of resisting arrest); *Ballard*, 444 F.3d at 401 (excessive force claims not barred where plaintiff was convicted of simple assault on law enforcement officer).[1]

The inquiry as to whether an excessive force claim is barred under *Heck* is "analytical and fact-intensive" and depends upon whether "the factual basis for the conviction is temporally and conceptually distinct from the excessive force claim." *Bush*, 513 F.3d at 497-98. Here, Mr. Sampy was handcuffed immediately after he was forcibly removed from his vehicle and thrown to the ground and remained cuffed and restrained by multiple officers for the entirety of the Incident. (SAC ¶ 23.) He was then dragged to a nearby police vehicle, where he was pinned to the hood of the car by Defendant Dugas, who pressed his hand into Mr. Sampy's neck while Defendant Jolivette was holding Mr. Sampy's arm. (SAC ¶ 26.) The simple battery for which Mr. Sampy was convicted—a backwards kick to Defendant Rabb's shin—occurred while Mr. Sampy was pinned to the hood of the car. (SAC ¶ 29.)

Mr. Sampy was then abruptly pulled by the legs out of the hands of the restraining officers by Defendant Rabb, causing Mr. Sampy to land on the concrete parking lot face first, unable to brace his fall with his hands cuffed behind his back. (SAC ¶ 28.) Defendant Rabb then rested his body weight on a knee placed on Mr. Sampy's neck while Defendant Reaux then mounted with his body weight on Mr. Sampy's left knee. (SAC ¶ 30.) Mr. Sampy screamed in pain, repeatedly begging Defendant Rabb to get off his neck. *Id*. When Defendant Rabb finally moved his knee from Mr. Sampy's neck, he moved his knee and weight to Mr. Sampy's head, pressing his head

[1] *See also Magee v. Reed*, No. 14-1986, 2017 WL 930650, at *7-12 (E.D. La. Mar. 9, 2017) (finding excessive force claims not *Heck*-barred where plaintiff convicted of resisting arrest), *rev'd on other grounds*, 912 F.3d 820 (5th Cir. 2019); *Robinson v. Lipps*, No. 6:18-CV-01062, 2019 WL 136983, at *4 (W.D. La. Jan. 4, 2019) (same); *St. Cyr v. McDonald*, No. 07–539–FJP–SCR, 2009 WL 3242551, at *3 (M.D. La. Oct. 8, 2009) (same).

and face into the concrete. *Id*. Defendants Rabb and Reaux briefly got off Mr. Sampy, but he remained on the ground. (SAC ¶ 32.) A couple minutes later, Defendant Rabb inexplicably mounted Mr. Sampy again with his knees firmly planted in his upper back. (SAC ¶ 33.) Several minutes later, Mr. Sampy was finally put into a police vehicle and taken to the hospital for medical treatment. (SAC ¶ 35.)

Because the officers employed excessive force after Mr. Sampy was restrained and after he had committed the battery for which he was convicted,[2] a judgment in favor of Mr. Sampy for his excessive force claims would not necessarily imply the invalidity of the conviction. *See, e.g.*, *Bush*, 513 F.3d at 499 & n.18 (excessive force claims not barred where plaintiff was referring to conduct that occurred "after she was restrained"); *Magee*, 2017 WL 930650, at *8 (excessive force claim not barred where tasing occurred after plaintiff handcuffed); *Pratt v. Giroir*, No. 07-1529, 2008 WL 975052, at *6 (E.D. La. Apr. 8, 2008) ("Since the Court cannot rule out the possibility that excessive force was used after Pratt's battery on the officers had been completed and when she was no longer resisting them, Defendants' motion to dismiss is denied.")[3]

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[2] Mr. Sampy's OWI conviction also does not bar his excessive force claim. *See, e.g., Irwin v. Santiago*, No. 3:19-CV-2926-B, 2020 WL 1139885, at *6 (N.D. Tex. Mar. 9, 2020) (finding OWI conviction does not bar excessive force claim); *Bramlett v. Buell*, No. Civ.A.04–518, 2004 WL 2988486, at *5 (E.D. La. Dec. 9, 2004) (finding vehicular negligent injuring while under influence does not bar excessive force claim).

[3] *See also Broussard v. Kowalski*, No. 03-2875, 2007 WL 1461023, at *4 (E.D. La. May 15, 2007) ("The Court would be hard pressed to interpret *Heck* and *Hudson* as allowing excess force, possibly punitive in nature, after the occurrence of the crime for which Plaintiff was convicted."); *Bramlett*, 2004 WL 2988486, at *4 (excessive force claim not barred where officers shot at plaintiff "*after* the aggravated battery against [officer] had been consummated" (emphasis in original)); *Howard v. Del Castillo*, No. Civ.A. 00–3466, 2001 WL 1090797, at *4 (E.D. La. Sept. 17, 2001) (denying a motion for summary judgment because "[a] section 1983 claim that the police used excessive force after Howard's arrest does not necessarily imply the invalidity of Howard's battery conviction because this beating may have occurred after the battery [on the officers] was over."); *cf. Arnold v. Town of Slaughter*, 100 F. App'x 321, 324-25 (5th Cir. 2004) (excessive force claims barred where the allegations were "not that the police used excessive force after he stopped resisting arrest or even that the officers used excessive and unreasonable force to stop his resistance").

Similarly, Mr. Sampy's retaliation claim also would survive a motion to dismiss because judgment on that claim "has no bearing on the validity of the underlying convictions." *See Magee v. Reed*, 912 F.3d 820, 822-23 (5th Cir. 2019) (quotations and citations omitted). While courts will dismiss retaliation claims as *Heck*-barred where the alleged retaliatory act was an unlawful arrest, *see id.*, the alleged retaliatory act here was not Mr. Sampy's arrest but, rather, the unlawful excessive force (SAC ¶ 70). *See Ybarra v. Davis*, 2020 WL 5709254, at *6 (W.D. Tex. Sept. 24, 2020) (denying motion to dismiss retaliation claim based on excessive force); *White v. Jackson*, 2014 WL 99976, at *11 (N.D. Tex. Jan. 10, 2014) (same).

Finally, Mr. Sampy's intentional infliction of emotional distress claim also stems from Defendants' excessive force. (SAC ¶ 85.) Accordingly, and for the reasons discussed above, this claim is also not barred by *Heck*. *See Thomas v. Pohlmann*, 681 F. App'x 401, 409 (5th Cir. 2017).

Given the presumption in favor of permitting amendment, and the fact that Mr. Sampy's excessive force-based claims are not *Heck*-barred, this Court should grant Plaintiff's motion for leave and order the SAC be filed. *See Tyson*, 2020 WL 609822, at *3.

OBJECTION OF DEFENSE

Pursuant to Local Rule 7.6, undersigned counsel has emailed counsel for the Defendants a copy of the proposed Second Amended Complaint asking if they had any stated objections. Defense counsel replied, via email correspondence, that it had no objection.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully requests that the Court grant Plaintiffs' Motion for Leave to File a Second Amended Complaint.

Dated: February 23, 2021

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of February, 2021, I electronically filed a copy of the above and foregoing pleading with the Clerk of Court through use of the CM/ECF system which will send a notice of electronic filing to those who are on the list to receive e-mail notices for this case. I further certify that I served the foregoing document and notice of electronic filing by United States Mail or e-mail to any non-CM/ECF participants.

s/Marcus B. Hunter
MARCUS B. HUNTER