

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

ROBERT L. DIXON,)	
)	
Plaintiff,)	
)	
vs.)	2:11-cv-277-JMS-WGH
)	
THE TERRE HAUTE POLICE)	
DEPT., et al.,)	
)	
Defendants.)	

Entry Discussing Complaint and Directing Further Proceedings

Robert L. Dixon, an inmate at the Vigo County Jail, files this civil action against the Terre Haute Police Department, Officer Adam Loudermilk, and Officer Birchfield. Dixon alleges that Officers Loudermilk and Birchfield used excessive force during the course of Dixon's arrest. Dixon's claims are brought pursuant to 42 U.S.C. § 1983. He seeks money damages.

The complaint is now subject to the screening requirement of 28 U.S.C. § 1915A(b). *Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). This statute directs that the court dismiss a complaint or any claim within a complaint which, among other things, fails to state a claim upon which relief can be granted. To meet the pleading requirement of Rule 8(a)(2) of the *Federal Rules of Civil Procedure* a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quotations omitted).

Dixon's allegations support a claim that the defendant individuals violated Dixon's Fourth Amendment rights. *Graham v. Connor*, 490 U.S. 386, 395 (1989) ("all claims that law enforcement officers have used excessive force--deadly or not--in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard") (emphasis in original).

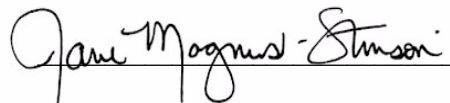
Even liberally construed, however, claims against the Terre Haute Police Department alleged by Dixon fail to state a claim upon which relief may be granted and must be dismissed. The Terre Haute Police Department is not a suable defendant. *See Sow v. Fortville Police Dept.*, 636 F.3d 293, 300 (7th Cir. 2011). Even if that claim is thought to actually be against the City of Terre Haute, moreover, there is no claim of a municipal policy or custom of the use of unconstitutional force in the course of its police officers making arrests. *Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978)("[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under 1983."). Any claim against the Terre Haute Police Department or against the City of Terre Haute is therefore dismissed as legally insufficient. Similarly, any claim against the defendant individuals in their official capacities is dismissed as legally insufficient because a 1983 claim for damages against the defendant individuals in their official capacities is effectively a suit against the City of Terre Haute. *Scott v. O'Grady*, 975 F.2d 366, 369 (7th Cir. 1992), *cert. denied*, 508 U.S. 942 (1993).

No partial final judgment shall issue at this time as to the claim(s) resolved in this Entry.

The clerk is designated, pursuant to *Fed. R. Civ. P.* 4(c)(3), to issue and serve process on the defendant individuals in the manner specified by *Fed. R. Civ. P.* 4(d)(1). Process shall consist of the complaint, applicable forms and this Entry.

IT IS SO ORDERED.

Date: 04/12/2012



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Note to Clerk: Processing this document requires actions in addition to docketing and distribution.

Distribution:

Robert L. Dixon
201 Cherry Street
Terre Haute, IN 47807

Adam Loudermilk #203
Terre Haute Police Department
1211 Wabash Ave.
Terre Haute, IN 47807

Officer Birchfield #214
Terre Haute Police Department
1211 Wabash Ave.
Terre Haute, IN 47807