

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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HIPOLITO MERCADO-GONZÁLEZ,

Plaintiff,

v.

EMILIO ACOSTA, a Puerto Rico Police
officer, et. al.,

Defendants.

Civil No. 12-1718 (JAF)

5
6 **OPINION AND ORDER**

7 We must decide whether a police officer and a municipal official violated the
8 Constitutional rights of a citizen.

9 **I.**

10 **Background**

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12 On September 9, 2011, Hipólito Mercado-González was in Yauco, Puerto Rico,
13 fundraising for the civic and social organization Asociación Puertorriqueña de Ayuda al
14 Paciente. (Docket No. 20 at 3). Mercado-González maintains that, while he was resting
15 in the driver's seat of a parked vehicle, Officer Emilio Acosta pulled up in a cruiser and
16 asked Mercado-González where he was from and what he was doing. (Id. at 4.) When
17 he said he was fundraising, Acosta asked to see his permit. Mercado-González told
18 Acosta that he was without a permit and was unaware that one was needed. (Id. at 4-5.)
19 Acosta then requested Mercado-González's driver's license and the vehicle's registration
20 papers, which Mercado-González attempted to provide only after the second request. (Id.
21 at 5.) Mercado-González conceded that his driver's license had expired but said his

1 brother, who was seated in the passenger seat of the vehicle, was driving and did have a
2 valid license. (Id. at 5-6.) Mercado-González could not produce the registration papers
3 but volunteered that, since the vehicle was rented, Acosta could contact the rental agency.
4 Acosta then asked Mercado-González to exit the vehicle—informing him that he was
5 under arrest. Mercado-González claims that Acosta arrested him in an extremely rough
6 manner, restraining him with two sets of handcuffs. (Id. at 7.) Acosta asked for the keys
7 to the rental vehicle and informed Mercado-González that the vehicle would be taken to
8 the police station. At the police station, Mercado-González received a written document
9 detailing his Constitutional rights. The city cited him for obstruction of justice and
10 driving with an expired license. He received three administrative tickets: (1) causing
11 unnecessary noise; (2) failing to produce a car’s registration documents; and (3) driving
12 without a valid driver’s license. He received a citation to appear in court on October 11,
13 2011. (Id. at 10.)

14 On September 13, 2011, Mercado-González visited Mayor Abel Nazario’s office
15 to deliver a letter expressing his concern about his arrest and to request a municipal
16 investigation into Acosta’s handling of the matter. (Id.) On October 11, 2011, Mercado-
17 González attended his court hearing. Acosta did not appear. On November 11, 2011,
18 Mercado-González attended an administrative hearing where his three tickets were
19 upheld, with a total fine of \$714.64. Mercado-González did not appeal these tickets. (Id.
20 at 11.)

21 On June 23, 2012, Mercado-González filed a pro-se complaint against Acosta and
22 Nazario in their official and individual capacities, their conjugal partnerships, as well as
23 the Municipality of Yauco. He claimed the defendants violated his Fourth Amendment
24 and Fourteenth Amendment rights and a right to damages for those violations under 42

1 U.S.C. § 1983. (Docket No. 2.) The contested constitutional claims allege that (1) Acosta
2 used excessive force and unlawfully arrested Mercado-González in violation of his
3 Fourth Amendment rights, and that (2) Nazario failed to prevent Acosta's actions,
4 depriving Mercado-González of due process and equal protection of law. (Id.) The
5 complaint also contains Commonwealth law claims asserted against both Acosta and
6 Nazario. (Id.) On January 18, 2013, defendants moved to dismiss. (Docket
7 No. 12.) Mercado-González filed an amended complaint on April 22, 2013 (Docket
8 No. 20), and defendants filed a motion to dismiss anew on May 6, 2013 (Docket No. 21).

9 II.

10 Standard of Review

11 A. Motion to Dismiss Standard

12 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts
13 to establish a plausible claim for relief. See Fed.R.Civ.P. 12(b)(6); Ashcroft v. Iqbal, 556
14 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In
15 assessing a claim's plausibility, the court must construe the complaint in the plaintiff's
16 favor, accept all non-conclusory allegations as true, and draw any reasonable inferences
17 in favor of plaintiff. San Geronimo Caribe Project, Inc. v. Acevedo-Vila, 687 F.3d 465,
18 471 (1st Cir. 2012) (citation omitted).

20 III.

21 Discussion

22 Because Petitioner appears pro se, we construe his pleadings more favorably than
23 we would those drafted by an attorney. See Erickson v. Pardus, 551 U.S. 89, 94 (2007).
24 Nevertheless, Petitioner's pro-se status does not excuse him from complying with
25 procedural and substantive law. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997).
26

1 **A. Claims Raised Under 42 U.S.C. § 1983**

2 Section 1983 creates a cause of action against those who, acting under color of
3 state law, violate a plaintiff's federal rights. See 42 U.S.C. § 1983; Maine v. Thiboutot,
4 448 U.S. 1, 4(1980).

5 **B. Illegal Arrest and Excessive Force Claim Against Officer Acosta**

6 Construing Mercado-González's complaint liberally and taking his allegations as
7 true, as we must, his allegations appear to state a claim for relief under 28 U.S.C. § 1983
8 for excessive force and illegal arrest in violation of the Fourth Amendment.

9 "[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment
10 where there is probable cause to believe that a criminal offense has been or is being
11 committed," Devenpeck v. Alford, 543 U.S. 146, 152 (2004). Probable cause exists
12 when the police know reasonably trustworthy information sufficient to warrant a prudent
13 person in believing that the accused had committed or was committing an offense.
14 United States v. Burhoe, 409 F.3d 5, 10 (1st Cir. 2005); see also Beck v. Ohio, 379 U.S.
15 89, 91 (1964). Accordingly, for a wrongful arrest claim to succeed under § 1983, a
16 plaintiff must prove that the police lacked probable cause." Correia v. Feeney, 620 F.3d
17 9, 12 (1st Cir. 2010).

18 Here, Acosta approached the automobile that Mercado-González was sitting in
19 and asked for verification that he had a municipal permit to fundraise. Mercado-
20 González conceded he did not have the permit. Acosta then requested his driver's license
21 and proof of his vehicle's registration. Even though Mercado-González was in the
22 driver's seat when Acosta approached, he told Acosta that he had no license and could
23 not find the vehicle's registration papers—first, because he said the vehicle was his
24 brother's and he did not know where the papers were, and later because he said the car

1 was a rental. It was after this exchange that Acosta placed Mercado-González under
2 arrest, impounding the vehicle. Even according to the way Mercado-González tells the
3 story, Acosta had probable cause to arrest him: Mercado-González was behind the wheel
4 of a vehicle without a driver's license or registration; he gave conflicting accounts of his
5 situation; and he lacked a municipal fundraising permit, which was required for the
6 activity in which Mercado-González was engaging.

7 Mercado-González's complaint also alleges that Acosta used "excessive and
8 unnecessary force." (Docket No. 20 at 7.) "[A]ll claims that law enforcement officers
9 have used excessive force ... in the course of an arrest, investigatory stop, or other seizure
10 of a free citizen should be analyzed under the Fourth Amendment and its reasonableness
11 standard" Graham v. Connor, 490 U.S. 386, 395 (1989). However, Mercado-
12 González merely asserts this claim—without alleging any factual support. A complaint
13 must contain "sufficient factual matter, accepted as true, to state a claim to relief that is
14 plausible on its face." Ashcroft v. Iqbal, 556 at 678. Not "every push or shove" will
15 reach the level required for actionable excessive force claim under Fourth Amendment.
16 Mlodzinski v. Lewis, 648 F.3d 24, 38 (1st Cir. 2011) (citation omitted). Mercado-
17 González's excessive-force allegations are, therefore, insufficient to withstand
18 Defendants' Rule 12(b)(6) motion because, without more, they do not constitute a clear
19 violation of Mercado-González's constitutional rights.

20 Finally, Mercado-González asserts that his vehicle was "illegally confiscated."
21 (Docket No. 20 at 7.) "Courts, including this one, have frequently held that
22 impoundments of vehicles for community caretaking purposes are consonant with the
23 Fourth Amendment so long as the impoundment decision was reasonable under the
24 circumstances." United States v. Coccia, 446 F.3d 233, 239 (1st Cir. 2006); see also,

1 United States v. Rodriguez–Morales, 929 F.2d 780, 786 (1st Cir.1991). Here,
2 impoundment was reasonable under the circumstances because Acosta was taking
3 Mercado-González into custody for an offense and the registration and ownership of the
4 vehicle could not be ascertained at the time of the arrest. (Docket No. 20 at 6.) That
5 arrest, at least as Mercado-González alleges it, did not violate the Constitution, and
6 neither did impounding his vehicle. Nor did Acosta’s search of the vehicle at the police
7 station violate Mercado-González’s Fourth Amendment rights. United States v.
8 Richardson, 514 F.3d 74, 85 (1st Cir. 2008) (Fourth Amendment permits a warrantless
9 inventory search if the search is carried out pursuant to a standardized policy.)

10 Therefore, Mercado-González’s complaint against Acosta and his conjugal
11 partnership is **DISMISSED WITH PREJUDICE**.

12 **C. Claims Against Mayor Nazario**

13 Nazario is correct that Section 1983 does not impose liability on the basis of
14 respondeat superior. Rizzo v. Goode, 423 U.S. 362, 375-77 (1976); Leavitt v. Corr. Med.
15 Servs., Inc., 645 F.3d 484, 502 (1st Cir. 2011) (supervisory officials cannot be held liable
16 for the conduct of their subordinates solely under a theory of respondeat superior); see
17 also Martinez-Velez v. Rey-Hernandez, 506 F.3d 32, 41 (1st Cir. 2007) (“Only persons
18 who were directly involved in the wrongdoing may be held liable.”) (citation omitted).
19 Under Section 1983, supervisory liability is limited to those circumstances where a
20 supervisor’s conduct constitutes “encouragement, condonation or acquiescence or gross
21 negligence ... amounting to deliberate indifference.” Grajales v. Puerto Rico Ports
22 Authority, 682 F.3d 40, 47 (1st Cir. 2012) (citation omitted). The parties agree that
23 Nazario’s involvement in this matter was limited to his official role as mayor and chief of
24 the Yauco municipal police. (Docket No. 20 at 10; 21 at 7.) All Mercado-González

1 alleges is that he visited Nazario's office to complain about his arrest and request an
2 investigation into Officer Acosta's conduct. As such, Mercado-González's claims
3 against Nazario fail to state a claim of supervisory liability under Section 1983.
4 Mercado-González's complaint against Nazario and his conjugal partnership is
5 **DISMISSED WITH PREJUDICE.**

6 **D. Fourteenth Amendment Claims**

7 Mercado-González's allegations appear to suggest a claim for malicious
8 prosecution. Malicious prosecution under § 1983 requires a constitutional deprivation
9 and no adequate state remedy. Torres v. Superintendent of Police of Puerto Rico, 893
10 F.2d 404, 410 (1st Cir. 1990). Here, Mercado-González has failed to state a claim for a
11 constitutional violation and, in any event, Commonwealth law provides remedies for
12 challenging police action in court. See, e.g., Ayala v. San Juan Racing Corp., 112 D.P.R.
13 804 (May 14, 1982). Mercado-González's malicious prosecution claim is **DISMISSED**
14 **WITH PREJUDICE.**

15 Mercado-González also alleges that Acosta and Nazario violated the equal
16 protection clause of the Fourteenth Amendment. To prove a violation of the equal
17 protection clause, Mercado-González must show that (1) compared with others similarly
18 situated, he was selectively treated; and (2) that such selective treatment was based on
19 impermissible considerations such as race, sex, or religion. Freeman v. Town of Hudson,
20 714 F.3d 29, 38 (1st Cir. 2013). Mercado-González, however, makes no allegations that
21 he was selectively treated nor does he allege that Acosta and Nazario acted because of
22 racial or class-based animus. As a result, Mercado-González's equal protection claim is
23 **DISMISSED WITH PREJUDICE.**

1 **E. Claims Against the Municipality of Yauco**

2 Mercado-González alleges that the Municipality of Yauco failed to properly
3 select, train, investigate, and discipline its police force. Under Monell, a municipality is
4 liable only for identifiable constitutional violations attributable to official municipal
5 policy. Monell v. Department of Social Services of City of New York, 436 U.S. 658, 691
6 (1978). But the municipality’s failure to train or supervise its police officers only
7 becomes a basis for liability when municipal policy “*caused a constitutional tort.*”
8 Monell, 436 U.S. at 691 (emphasis added); see also Kennedy v. Town of Billerica, 617
9 F.3d 520, 532 (1st Cir. 2010); Wilson v. Town of Mendon, 294 F.3d 1, 6-7 (1st Cir.
10 2002). We have rejected all alleged constitutional torts that could have formed a basis for
11 municipal liability. Because Mercado-González does not allege any other constitutional
12 torts that could be attributed to the Municipality of Yauco, his complaint against Yauco is
13 **DISMISSED WITH PREJUDICE.**

14 **F. Commonwealth Tort Claims**

15 We have discretion to decline supplemental jurisdiction over the remaining state
16 law claims since we have dismissed all of the claims over which we have original
17 jurisdiction. See 28 U.S.C. § 1367(c)(3); see also United Mine Workers v. Gibbs, 383
18 U.S. 715, 726 (1966) (“if the federal law claims are dismissed before trial...the state
19 claims should be dismissed as well). In exercising our discretion under § 1367(c), we
20 must consider the issues of “judicial economy, convenience, fairness, and comity.” Che
21 v. Massachusetts Bay Transp. Authority, 342 F.3d 31, 37 (1st Cir. 2003). Having
22 considered these factors, we decline to exercise supplemental jurisdiction over Mercado-
23 González’s Commonwealth law claims. Therefore, we **DISMISS WITHOUT**
24 **PREJUDICE** Mercado-González’s remaining Commonwealth law claims.

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IV.

Conclusion

Defendants' motions to dismiss, (Docket Nos. 12, 21), are **GRANTED**. Mercado-González's claims against Acosta, Nazario, their conjugal partnerships, and the Municipality of Yauco in his complaint, (Docket No. 12), and his amended complaint, (Docket No. 20), are **DISMISSED WITH PREJUDICE**. Mercado-González's Commonwealth law claims are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 25th day of June, 2013.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE