Tartt v. Martin et al Doc. 38

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

JASON B. TARTT, et al.,

Plaintiffs,

v. CIVIL ACTION NO. 1:22-00327

DALTON T. MARTIN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendants' partial motion to dismiss. ECF No. 10. For the reasons explained below, the motion is **DENIED**.

I. Background[1]

On August 7, 2020, two McDowell County, West Virginia, Sheriff's Deputies, defendants Dalton T. Martin and Jordan A. Horn, questioned a retired African American couple, plaintiffs Donnie and Ventriss Hairston, about suspected marijuana plants being grown several properties away from where the Hairstons resided. See ECF No. 3 at ¶¶ 6-8, 11-12, 14, 27. The questioning occurred outside the Hairstons' residence, which they rented from plaintiff Jason Tartt who is also an African

[1] This factual background is based on plaintiffs' allegations, which the court accepts as true solely for purposes of this motion. See, e.g., Merriweather v. Kijakazi, No. 1:21-00391, 2022 WL 4813305, at *1 (S.D.W. Va. Sept. 30, 2022).

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American. See id. at ¶ 16. When the officers first arrived at the residence, the Hairstons anticipated a friendly encounter and nicely greeted them. See id. at ¶ 13. The Hairstons, however, soon realized that it was not a friendly encounter when the officers appeared agitated, questioned the Hairstons as to whether they grew marijuana, and searched the exterior of their home. See id. at ¶¶ 13, 16. As Officer Martin described it in his police report, "[u]pon our arrival we incountered [sic] by two elderly subjects who was [sic] on the porch and asked them if they growed [sic] marijuana and they stated 'No'.". Id. at ¶ 12.

During the encounter, the Hairstons summoned their landlord and neighbor, Mr. Tartt, because they felt threatened by the officers and wanted to notify him that the officers were investigating his property. See id. at ¶ 16. When Mr. Tartt arrived, he joined the Hairstons on their front porch and told the officers his name when they asked. See id. at ¶ 18.

As the situation progressed, the officers grew more agitated and demanding, and plaintiffs, none of whom had any criminal history, quickly realized that the officers had no legitimate reason to suspect them of any wrongdoing or to be angry with them. See id. at ¶¶ 14-15, 19. Plaintiffs suspected that the officers were racially profiling them and violating their civil rights. See id. at ¶ 19. Because plaintiffs were

"in a rural area with a history of police misconduct and official corruption," they felt that the officers endangered them. Id.

Body camera footage of the interaction captured Mrs. Hairston expressing her fear to the officers and her statement that "in the season we're living in," she would like to know the officers' names.[2] Id. at ¶ 20. Officer Martin mockingly responded, "I'll see if I can find my name" and never provided it. Id. The officers then became angrier and demanded Mr. Tartt's "name, date of birth and such." Id. at ¶ 24. But Mr. Tartt decided not to provide more than his name because, based on his experience as a former Military Police officer, he believed the officers were retaliating against him and the Hairstons for complaining about their treatment. See id. at ¶¶ 25, 28-29. To the shock of plaintiffs, Officer Martin entered the front porch and seized Mr. Tartt through "physical force . . . verbal intimidation and threats of violence." See id. at ¶ 30. Officer Martin also physically prevented the Hairstons from filming the incident and shoved them into their home, partially entering the home in the process. See id. at ¶ 31.

[2] According to the complaint, "Mrs. Hairston was clearly referring to the national proliferation of incidents of police misconduct—especially those involving white police officers and African American victims, such as the George Floyd and Breonna Taylor incidents, among many others." Id. at ¶ 20 n.1.

The officers arrested Mr. Tartt and charged him with obstruction of law enforcement officers. See id. at ¶¶ 32-33. On their way to the police station, Officer Martin relayed the events to his supervisors several times. See id. at ¶ 32. A prosecuting attorney later dropped the obstruction charge against Mr. Tartt because the officers failed to appear in court as witnesses. See id. at ¶ 34.

Based on these allegations, the Hairstons and Mr. Tartt sued (1) Officers Martin and Horn in their individual capacities, (2) Officers Martin and Horns' alleged supervisor, James "Boomer" Muncy, in his individual capacity, and (3) the McDowell County Commission (the "County Commission"). See id. at ¶¶ 7-10. Plaintiffs allege various claims under 42 U.S.C. § 1983 against Officers Martin and Horn for alleged constitutional violations, including unlawful seizure of Mr. Tartt, malicious prosecution of Mr. Tartt, unlawful search and seizure of the Hairstons, and unlawful retaliation against plaintiffs for exercising their free speech rights. See id. at Counts I-IV. Plaintiffs also claim that Officers Martin and Horn conspired to deprive them of their equal protection rights in violation of 42 U.S.C. § 1985. See id. at Count V. Plaintiffs bring § 1983 claims against Officer Muncy under a "supervisory liability" theory and against the County Commission for allegedly implementing an unconstitutional policy or custom that caused

their alleged constitutional injuries. See id. at Counts VI-VII.

Defendants filed this motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See ECF No. 10. They challenge the sufficiency of plaintiffs' allegations only as to their (1) § 1983 claim against the County Commission, (2) § 1985 conspiracy claim against Officers Martin and Horn, and (3) supervisory liability claim against Officer Muncy. See ECF No. 11. They do not contest the sufficiency of plaintiffs' allegations for their § 1983 claims against Officers Martin and Horn.

II. Legal Standard

"The purpose of a Rule 12(b)(6) motion is to test the [legal] sufficiency of a complaint; importantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edwards v. City of Goldsboro, 178 F.3d 231, 243-44 (4th Cir. 1999) (citations and internal quotation marks omitted). A Rule 12(b)(6) defense asserts that even if all the factual allegations in a complaint are true, they remain insufficient to establish a cause of action. This court is also mindful that "[w]hether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish

that ground, not on the nature of the ground in the abstract." Jones v. Bock, 549 U.S. 199, 215 (2007).

Accordingly, Federal Rule of Civil Procedure 8(a)(2) requires that "a pleading . . . contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" Ashcroft v. Iqbal, 556 U.S. 662, 677—78 (2009) (citing Fed. R. Civ. P. 8(a)(2)). The purpose of Rule 8(a)(2) is to ensure that "the defendant [receives] fair notice of what the . . . claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face" and "raise a right to relief above the speculative level." Wahi v. Charleston Area Med. Ctr., Inc., 562 F.3d 599, 615 n.26 (4th Cir. 2009).

The United States Supreme Court has maintained that "[w]hile a complaint . . . does not need detailed factual allegations, . . . a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations and internal quotation marks omitted). The court need not "accept as true unwarranted inferences, unreasonable conclusions, or arguments." E. Shore Mkts., Inc. v. J.D. Assocs. Ltd P'ship, 213 F.3d 175, 180 (4th

Cir. 2000). Courts must also take care to avoid confusing the veracity or even accuracy underlying the allegations that a plaintiff has leveled against a defendant with the allegations' likelihood of success. While "the pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action," 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004), "assum[ing]" of course "that all the allegations in the complaint are true (even if doubtful in fact)," Twombly, 550 U.S. at 555, it is also the case that "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations." Neitzke v. Williams, 490 U.S. 319, 327 (1989). Therefore, courts must allow a well-pleaded complaint to proceed even if it is obvious "that a recovery is very remote and unlikely." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. Discussion

a. § 1983 Claim Against County Commission

Plaintiffs seek redress from the County Commission for their alleged constitutional injuries. "Section 1983 provides a federal cause of action to redress constitutional harms committed under color of state law." Smith v. Travelpiece, 31 F.4th 878, 882-83 (4th Cir. 2022) (citing 42 U.S.C. § 1983)). The statute subjects "[e]very person" to civil liability to

redress such harms. 42 U.S.C. § 1983. "Every person" includes municipalities and other local government units. See Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658, 690 (1978). The County Commission is considered a municipality for purposes of § 1983 claims. See Revene v. Charles Cty. Comm'rs, 882 F.2d 870, 874 (4th Cir. 1989).

Plaintiffs may not hold the County Commission liable on a respondeat superior theory for the alleged acts of the individual officers. See Monell, 436 U.S. at 691. Instead, to state a valid § 1983 claim against the County Commission, plaintiffs must plausibly allege that their claimed constitutional injuries arose because the individual officers implemented or executed a "policy statement, ordinance, regulation or decision officially adopted and promulgated by [the County Comission's] officers[,]" in this case, the Sheriff. Id. at 690; see also Frye v. Lincoln Cty. Comm'n, No. 2:20-cv-00403, 2021 WL 243864, at *4 (S.D.W. Va. Jan. 25, 2021) ("The Fourth Circuit has recognized that 'in the realm of county law enforcement,' it is the 'sheriff [who] is the duly delegated policy maker for the county.'" (quoting Revene, 882 F.2d 874)). Customs include a "governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." Monell, 436 U.S. at 691.

Plaintiffs can establish a policy or custom through one of four means:

> (1) [T]hrough an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that manifest[s] deliberate indifference to the rights of citizens; or (4) through a practice that is so persistent and widespread as to constitute a custom or usage with the force of law.

Howard v. City of Durham, 68 F.4th 934, 952 (4th Cir. 2023).

In this case, plaintiffs allege that the County Commission, through the Sheriff's Office, implemented an unconstitutional express policy and also established unconstitutional customs through omissions and widespread practices of that office. See ECF No. 3 at ¶ 86. Defendants, however, argue that these allegations are insufficient to state a § 1983 claim because plaintiffs allege only conclusory allegations of a specific policy or practice and do not attribute that policy or practice to the County Commission, the final policy maker. See ECF No. 11 at 7.

The court begins by addressing plaintiffs' allegations that the individual officers acted according to an express policy of the County Commission. Plaintiffs allege that the County Commission had a "policy and practice of authorizing general searches of the curtilage of homes in the absence of probable

cause . . . ." ECF No. 3 at ¶ 86. Plaintiffs do not cite to a written policy or otherwise provide factual support for the existence of such express policy. The court, therefore, finds plaintiffs' allegations of an express policy insufficient. See, e.g., Inser v. City of Elkins, No. 2:21-CV-27, 2022 WL 1750630, at *4 (N.D.W. Va. May 31, 2022) (finding insufficient allegations of express policy where "[t]he Complaint includes only a conclusory statement that such a policy exists and then cites the facts at issue in this case."). The court next considers plaintiffs' allegations that the individual officers acted according to unofficial customs of the County Commission.

Plaintiffs allege that the County Commission established unconstitutional customs that caused the alleged constitutional injuries because (1) the County Commission knew of prior, similar incidents of Sheriff's Deputies violating individuals' constitutional rights, see ECF No. 3 at ¶ 89, (2) the County Commission knew of the specific incident and did nothing to prevent the subsequent prosecution of Mr. Tartt or to prevent future incidents, see id. at ¶¶ 87, 90, and (3) Officer Martin served as Officer Horn's supervisor and used the incident as "field training" for him, id. at ¶ 88.

These theories represent plaintiffs' efforts to plead a "custom by condonation." Bonner v. McDowell Cty. Comm'n, No. 1:21-00666, 2023 WL 2701427, at *3 (S.D.W. Va. Mar. 29, 2023)

(cleaned up). In other words, plaintiffs allege that the County Commission condoned the unconstitutional behavior, thereby making it customary. "Prevailing under such a theory is no easy task." Id. To do so, plaintiffs must prove (1) a persistent and widespread practice of municipal officials of a duration and frequency indicating the policy makers (2) had actual or constructive knowledge of the conduct, and (3) failed to correct it due to their "deliberate indifference." Id. (citing Spell v. McDaniel, 824 F.2d 1380, 1386-91 (4th Cir. 1987)). While plaintiffs must ultimately prove these elements, they must only plausibly allege them at this stage; proving a policy or custom under Monell is quite difficult, but pleading one is a lower burden. See Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 403 (4th Cir. 2014).

This court recently found that a plaintiff alleged a valid § 1983 claim against a county commission under Monell because (1) the county commission knew of similar alleged constitutional violations but failed to address the cause of them, and (2) failed to intervene to protect the plaintiff from the alleged constitutional violation. See Bonner, No. 1:21-00666, 2023 WL 2701427, at *3-4. The court accepted the general allegations of past events as true for purposes of the motion and, therefore, found that the plaintiff alleged a valid Monell claim. See id. at *4 (finding that the plaintiff's allegations "that municipal

officials have used excessive force on multiple occasions in the recent past, which the court must accept as true, plausibly support[s] his Monell claim because allegations of multiple instances of the same constitutional violation can establish a persistent, widespread pattern of practice that forms the basis of an impermissible custom.") (quoting Daniels v. City of Charleston, No. 2:20-cv-00779, 2021 WL 3624696, at *5 (S.D.W. Va. Aug. 16, 2021)).

Like Bonner, plaintiffs allege that the County Commission knew of and condoned prior instances of similar unconstitutional behavior and that it failed to correct the issues to prevent plaintiffs' alleged constitutional injuries. These allegations alone may satisfy the pleading standard for a Monell claim, because "[t]he recitation of facts need not be particularly detailed, and the chance of success need not be particularly high." Owens, 767 F.3d at 403 (citing Iqbal, 556 U.S. at 678). Plaintiffs, however, also allege that (1) Sheriff's Office supervisors knew of the allegedly unconstitutional conduct as it transpired, (2) that the Sheriff's Office failed to stop the allegedly unlawful prosecution of Mr. Tartt, despite this actual knowledge, and (3) that Officer Martin trained Officer Horn in these unconstitutional practices. If plaintiffs prove these allegations, a jury could find that the practices were customary of the Sheriff's Office, thereby establishing the County

Commission's liability. See, e.g., Spell v. McDaniel, 824 F.2d 1380, 1391 (4th Cir. 1987) ("Municipal fault for allowing such a developed 'custom or usage' to continue requires (1) actual or constructive knowledge of its existence by responsible policymakers, and (2) their failure, as a matter of specific intent or deliberate indifference, thereafter to correct or stop the practices."); see also Semple v. City of Moundsville, 195 F.3d 708, 713 (4th Cir. 1999) ("In order for a municipality to be liable pursuant to § 1983 under a theory of deficient training, those deficiencies in police training policies that result from policymaker fault must rise to at least the degree of deliberate indifference to or reckless disregard for the constitutional rights of persons within police force jurisdiction.").

For these reasons, plaintiffs adequately allege a § 1983 against the County Commission.[3]

b. § 1985 Conspiracy Claim

Claims brought under 42 U.S.C. § 1985 allow individuals to recover civil damages from persons that conspire to deprive the individuals of equal protection under the law. See Bray v.

[3] Defendants also argue that plaintiffs fail to attribute this custom to the County Commission. Plaintiffs, however, attribute it to the county Sheriff's Office, which is, as discussed above, considered a final policy maker for the County Commission in this respect. Plaintiffs therefore attribute the alleged custom to the County Commission.

Alexandria Women's Health Clinic, 506 U.S. 263, 268 (1993) (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). To establish a § 1985 conspiracy claim, plaintiffs must prove four elements:

> (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Unus v. Kane, 565 F.3d 103, 126 (4th Cir. 2009) (quoting Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995)). These elements require that "there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Alexandria Women's Health Clinic, 506 U.S. at 268-69 (quoting Breckenridge, 403 U.S. at 102).

Plaintiffs claim that Officers Martin and Horn "conspired for the purpose of depriving . . . plaintiffs of the equal protection of the laws of the United States[,]" ECF No. 3 at ¶ 79, because the officers suspected plaintiffs of growing marijuana simply because they are African Americans and lived on the street where someone allegedly grew marijuana. See id. at ¶ 80. Plaintiffs argue that a factfinder could infer a discriminatory animus from this incident because the officers knew of only plaintiffs' race and had no other cause for

suspicion when the officers confronted plaintiffs, searched the Hairstons' property, and arrested Mr. Tartt. See ECF No. 13 at 10-11. Defendants, however, ask the court to dismiss this claim, challenging only the sufficiency of plaintiffs' allegations related to the first element of a § 1985 claim: that Officers Martin and Horn formed a conspiracy. See ECF No. 11 at 10.

A conspiracy claim under § 1985 requires "an agreement or a meeting of the minds by [the] defendants to violate the [plaintiff's] constitutional rights." A Soc'y Without A Name v. Virginia, 655 F.3d 342, 346 (4th Cir. 2011) (quoting Simmons, 47 F.3d at 1377). The standard required to prove a § 1985 conspiracy is "relatively stringent." Simmons, 47 F.3d at 1377. These claims rarely survive the summary judgment stage:

> [The Fourth Circuit] has rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a section 1985 conspiracy, such that the claim can withstand a summary judgment motion. Indeed, [the court has] specifically rejected section 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.

Id. But this burden is necessarily lower at the pleading stage: "[T]he nature of conspiracies often makes it impossible to provide details at the pleading stage and . . . the pleader should be allowed to resort to the discovery process and not be

subject to dismissal of his complaint." Brever v. Rockwell Int'l Corp., 40 F.3d 1119, 1126 (10th Cir. 1994) (citing 5 C. Wright & A. Miller, Federal Practice & Procedure, § 1233, at 257 (2d ed. 1990)). To establish a civil rights conspiracy, plaintiffs need not identify an express agreement; they may establish the conspiracy through circumstantial evidence showing that the defendants acted jointly in concert toward the same conspiratorial objective. See, e.g., Hinkle v. City of Clarksburg, 81 F.3d 416, 421 (4th Cir. 1996).

In this case, plaintiffs do not allege an express agreement between Officers Martin and Horn, nor would they likely have evidence of any such agreement before the discovery process. Instead, plaintiffs put forth allegations that if proven, represent circumstantial evidence that the officers acted in concert to deprive plaintiffs of equal protection under the law. According to plaintiffs' allegations, Officers Martin and Horn acted jointly to unlawfully seize the Hairstons and search their home, to unlawfully arrest Mr. Tartt, and to unlawfully retaliate against plaintiffs for asserting their constitutional rights. Also, according to those allegations, the officers suspected plaintiffs of wrongdoing solely because of their race and attenuated proximity to the alleged marijuana plants. These allegations, taken as true, support a plausible inference that the officers acted in concert to discriminate against plaintiffs

because of their race. Plaintiffs, therefore, sufficiently allege a meeting of the minds between Officers Horn and Martin.

Plaintiffs allege a valid § 1985 claim.

c. Supervisory Liability Claim

Under specific circumstances, a plaintiff may sue a supervisory official for constitutional injuries inflicted by his subordinates. See Shaw v. Stroud, 13 F.3d 791, 798 (4th Cir. 1994) (citing Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984)). Although this is the case, the term "supervisory liability" is a misnomer. See King v. Riley, 76 F.4th 259, 269 (4th Cir. 2023) (citing Iqbal, 556 U.S. at 677). Such liability is not premised upon respondeat superior but upon "a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care." Stroud, 13 F.3d at 798 (quoting Porter, 737 F.2d at 372-73). In other words, a supervisor is liable only for his own misconduct, but he may commit misconduct if: (1) the supervisor knew of the subordinates' misconduct and its pervasive and unreasonable risk of constitutional injury, (2) the supervisor's response to that knowledge demonstrates deliberate indifference to the risk of constitutional injury or a tacit authorization of the conduct, and (3) there is an "affirmative causal link" between the supervisor's inaction and the plaintiff's

constitutional injury. See Timpson v. Anderson Cty. Disabilities and Special Needs Bd., 31 F.4th 238, 257 (4th Cir. 2022) (citing Stroud, 13 F.3d at 799).

In any event, a supervisor must possess more than "mere knowledge" that his subordinates are engaged in unconstitutional conduct. Riley, 76 F.4th at 269. A complaint must contain specific allegations of each individual's conduct and state of mind, and at the summary judgment stage, a plaintiff must offer evidence to support the allegations. See id. When a plaintiff alleges a supervisory liability claim, they assume a heavy burden of proof that is not easily satisfied. See Timpson, 31 F.4th 258 (citing Porter, 737 F.2d 373).

In this case, plaintiffs allege (1) that Officer Muncy supervised Officers Martin and Horn when he served as Chief Deputy and later as Sheriff, see ECF No. 3 at ¶ 94, (2) that Officer Muncy knew of a pattern of unconstitutional acts by his subordinates, see id. at ¶ 96, (3) that Officers Martin and Horn kept their supervisors apprised of their interaction with plaintiffs as the allegedly unconstitutional events unfolded, see id. at ¶ 32, (4) that Officer Muncy was "deliberately indifferent in failing to train and/or supervise employees[,]" id. at ¶ 98, and (5) that Officer Muncy's alleged misconduct caused plaintiffs' alleged constitutional injuries, see id. at ¶ 99. Defendants, however, ask the court to dismiss this

supervisory liability claim, arguing that plaintiffs "have not alleged any specific factual information regarding [Officer] Muncy's knowledge or response." ECF No. 11 at 11.

These allegations, if proven, establish that Officer Muncy knew that Officers Martin and Horn deprived plaintiffs of their constitutional rights and had done so to other individuals. They also establish that Officer Muncy was deliberately indifferent to or tacitly approved the deprivation of the alleged victims' constitutional rights by failing to intervene either to prevent the malicious prosecution of Mr. Tartt or to prevent the entire incident from occurring. If true, these allegations make Officer Muncy's alleged inaction an affirmative cause of plaintiffs' alleged constitutional injuries. Plaintiffs, therefore, plausibly allege every element of a supervisory liability claim against Officer Muncy. While these allegations may be difficult to prove, they are sufficient to state a claim upon which relief may be granted. See, e.g., Hall v. Putnam Cty. Comm'n, 637 F.Supp.3d 381, 400 (S.D.W. Va. 2022) ("While Plaintiffs will need to further support the facts asserted in the Complaint, as of now they would be sufficient to allege supervisor liability against the specific supervisor(s) of Defendant Deputies for the limited purposes of plausibility pleading."); Braley v. Thompson, No. 2:22-cv-00534, 2023 WL 2351881, at *6 (S.D.W. Va. Mar. 3, 2023) (denying motion to

dismiss because plaintiff alleged deputies used excessive force on prior occasions, that the supervisor knew of these incidents, and that supervisors failed to intervene); Braswell v. Jividen, No. 2:20-cv-00872, 2021 WL 5890667, at *4-5 (S.D.W. Va. Dec. 13, 2021) (denying motion to dismiss because plaintiff alleged that supervisors knew of prior improper behavior and did not address it); Gold v. Joyce, No. 2:21-cv-00150, 2021 WL 2593804, at *9 (S.D.W. Va. June 24, 2021) (denying motion to dismiss supervisory liability claim because plaintiff alleged that supervisor oversaw subordinates, directed some of their actions, and was an affirmative causal link to the constitutional injury).

Plaintiffs adequately allege a supervisory liability claim.

IV. Conclusion

For the above reasons, defendants' motion to dismiss (ECF No. 10) is **DENIED**. The Clerk is directed to send a copy of this Memorandum Opinion to counsel of record.

IT IS SO ORDERED this 21st day of September, 2023.

ENTER:

David A. Faber
Senior United States District Judge