

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

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| <p>ABRA FAITH NEWMAN,</p> <p style="padding-left: 40px;">Plaintiff,</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Civil Action No. 7:02cv01024</p> |
| <p>v.</p> | <p>)</p> <p>)</p> | <p><u>MEMORANDUM OPINION</u></p> |
| <p>WILLIAM M. BOWEN, <u>et al.</u>,</p> <p style="padding-left: 40px;">Defendants</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>By: Hon. Samuel G. Wilson</p> <p>Chief United States District Judge</p> |

Plaintiff Abra Faith Newman, proceeding pro se, brings this action under 42 U.S.C. § 1983 for alleged constitutional violations arising out of her arrest and criminal prosecution for driving without a motor vehicle license and obstruction of justice. Newman sued various state officers¹ and alleged a host of constitutional claims; however, this court previously dismissed all of Newman’s claims except for an excessive force claim against William M. Bowen and Jonathan D. Delp. Newman v. Alexander Civil Action No. 7:02cv01024 (Apr. 1, 2003). At that time, the court took under advisement Bowen’s and Delp’s motion for summary judgment² in order to view a videotape of the arrest. Although the videotape submitted did not depict an unconstitutional display of excessive force, Newman now avers that the videotape is not an accurate representation of what occurred. Consequently, the court now denies Bowen’s and Delp’s motions for summary judgment. The court also denies all of Newman’s

¹The defendants in this case are: Franklin County Circuit Court Judge William N. Alexander II; Franklin County General District Court Judge George A. Jones, Jr.; Franklin County Commonwealth’s Attorney Clifford F. Hapgood; Franklin County Assistant Commonwealth’s Attorney Patrick Thomas Nix; Virginia State Trooper William N. Bowen; Virginia State Trooper Jonathan D. Delp; and the Franklin County Sheriff’s Department.

²Bowen and Delp filed motions to dismiss for failure to state a claim, but this court will treat their motions as summary judgment motions. Fed. R. Civ. P. 12(b)

pending motions.

I.

On September 12, 2000, Bowen and Delp, both Virginia State Troopers, stopped Newman's car at a traffic checkpoint in Franklin County, Virginia. Newman refused to give her name or a driver's license to Bowen and Delp and refused to exit her car when asked; consequently, Bowen decided to arrest Newman for obstruction of justice. Then, according to Newman:

BOWEN used excessive force to pull Plaintiff out of the vehicle while assaulting her. Bowen and Delp, metal handcuffed her arms and hands behind her back with hands pointed upwards, then placed her like that into Trooper BOWEN'S right front passenger seat, seatbelted in for about 40 minutes, with deliberate indifference to Plaintiff's severe pain and suffering. Plaintiff's right shoulder and wrists were in excruciating pain for the entire time in the squad car. It was necessary that she see a Chiropractor to work on her back as a direct result of the abusive treatment, with shoulder area being tender for months thereafter. Plaintiff was mortified, terrified and punished by said use of excessive force and abuse and suffers severe trauma caused thereby to this day.

On August 16, 2001, a jury found Newman guilty of operating a motor vehicle on the highway without a valid driver's license and obstruction of justice.

Newman later brought this action, alleging that Bowen and Delp used excessive force while arresting her. Delp and Bowen submitted to this court a videotape of the arrest which shows Bowen and Delp using reasonable force to remove Newman from her car after she refused to provide the troopers with her name or driver's license. The videotape did not depict an assault on Newman or an unreasonable handcuffing. Newman has filed a signed affidavit with this court stating:

the beginning of WILLIAM M. BOWEN's aggressive and hostile acts toward me are not on any videotape because they either were not recorded or were edited out of the recording that was made. The videotape provided to this Court, taken from the State court file, is an edited tape that does not contain a good part of what went on at the

traffic stop. Part of the assault on myself was edited out of the State court videotape when I saw it in the State court proceedings. . . . Also not shown on the videotape is the assault Mr. Bowen and Mr. Delp committed on me after they dragged me out of view of the video camera. This occurred when Bowen and Delp handcuffed me with the handcuffs being overly tight and causing excruciating pain at the points of contact and in the wrist and shoulder joints by twisting them into an unnatural position. The wrists were bent past the limit of their natural reach and my arms were put so that my hands were held up near my neck and felt as if my shoulders were being twisted out of their sockets. I was strapped into this unnatural position in the police car by Bowen and Delp for 45 minutes or more. . . I told Bowen and Delp they were causing me sever pain and suffering at the time but they did not care.

The case is before the court now on Bowen's and Delp's motions for summary judgment as well as numerous motions filed by Newman.

II.

Because there is a genuine issue as to whether Bowen and Delp unreasonably assaulted Newman, the court denies summary judgment.

Claims alleging excessive force by law enforcement officers are analyzed under the Fourth Amendment. Graham v. Connor, 490 U.S. 386, (1989). In order for the plaintiff to succeed on an excessive force claim, she must show that the officers' actions are objectively unreasonable "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397. Based upon the current record, the court cannot determine whether the officers acted reasonably. Although the defendants have submitted a videotape of the encounter which does not depict the officers using excessive force, Newman has sworn that the videotape is not an accurate representation of what occurred and that the officers assaulted her and unnecessarily twisted her arms. Because a court "may not make credibility determinations or weigh the evidence" during a summary judgment motion, Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150 (2000), this court

must accept Newman's allegations as true for the purposes of this motion. If Newman's allegations are true, then she may be able to show that Bowen and Delp used unreasonable force during the arrest. Consequently, the defendants' motions for summary judgment as to the excessive force claim are denied.

Furthermore, Bowen and Delp are not entitled to qualified immunity at this stage of the proceedings. Qualified immunity protects law enforcement officers from liability unless the officers violate a clearly established right. Saucier v. Katz, 533 U.S. 194, 201-02 (2001). A constitutional right is clearly established if "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Id. at 202. In the present case, a reasonable officer would know that assaulting and unnecessarily twisting an arrestee's wrists is unlawful. Consequently, Bowen and Delp are not entitled to qualified immunity at this time, and the court denies their motion for summary judgment.

III.

Newman has filed a plethora of motions attacking this court's previous orders, requesting leave to file amended and supplemental complaints, requesting entry of default judgment against the defendants, and requesting extension of time to file various documents. The court finds all of these motions unfounded and denies all of them.

Newman has filed numerous motions asking this court to reconsider and vacate its earlier orders. This court finds that all of the prior orders were correctly decided and denies Newman's motions. Furthermore, to the extent Newman is challenging this court's decision to dismiss her illegal search and seizure claim, the court finds the claim was properly dismissed both for the reasons stated in

Newman v. Alexander, Civil Action No. 7:02cv01024 (Apr. 1, 2003) (dismissing claim because it impermissibly challenged the validity of a state conviction), and because the evidence clearly establishes that Newman was constitutionally stopped at a traffic checkpoint.³

Newman also moves for leave to file a supplemental complaint so that she can challenge the validity of another traffic ticket issued to her by another Virginia State Trooper. Newman alleges that the Virginia State Trooper issued her these citations as retaliation for the present law suit. However, these allegations involve conduct not directly related to the present case. More fundamentally, these allegations would require the court to improperly interfere with state criminal proceedings. See Heck v. Humphrey, 512 U.S. 477 (1994) (holding that plaintiffs cannot recover damages under § 1983 for an allegedly unconstitutional conviction if the conviction remains valid); Younger v. Harris, 401 U.S. 37 (1971) (holding that federal courts should not intervene by way of injunction or declaration in state criminal proceedings). Consequently, the court denies Newman's motion for leave to file a supplemental complaint.

Newman moves for a default judgment, arguing that Bowen and Delp never filed an answer. However, defendants filed a timely motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), and Rule 12(a)(4) states "the responsive pleading shall be served within 10 days after notice of the court's action" regarding a Rule 12 motion. Consequently, Newman is not entitled to a default

³See Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (upholding constitutionality of sobriety checkpoints). Newman argues the checkpoint was illegal because the officers failed to get approval from their supervisors. Failure to abide by state procedures however does not make an otherwise constitutional checkpoint unconstitutional.

judgment.⁴

All of Newman's remaining motions are denied as moot.

IV.

For the reasons stated, the court denies Bowen's and Delp's motions for summary judgment and denies all of Newman's pending motions.⁵ The action will be set for trial.

ENTER: This ____ day of January, 2004

Chief United States District Judge

⁴ Newman also faults Bowen and Delp for not promptly filing the videotape of the arrest with this court. However, failure to promptly file the videotape would not entitle Newman to a default judgment, so the motion for default judgment is denied.

⁵The court holds under advisement the motion for sanctions filed by defendants Franklin County Sheriff's Department, Nix, and Hapgood until after trial so that the court may determine whether Newman has brought the present action and accompanying motions in good faith.

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| ABRA FAITH NEWMAN, |) | |
| Plaintiff, |) | Civil Action No. 7:02cv01024 |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| WILLIAM M. BOWEN, <u>et al.</u>, |) | By: Hon. Samuel G. Wilson |
| Defendant |) | Chief United States District Judge |
| |) | |

In accordance with the Memorandum Opinion entered this day, it is hereby **ORDERED** and **ADJUDGED** that: (1) Bowen's and Delp's motions for summary judgment are **DENIED**; (2) all of Newman's pending motions are **DENIED**.

ENTER: This ____ day of January, 2004

CHIEF UNITED STATES DISTRICT JUDGE