[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-10172

Non-Argument Calendar

JOHN JOHNS,

Plaintiff-Appellant,

versus

BROWARD COUNTY SHERIFF,
in his official capacity,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-61356-AHS

Before ROSENBAUM, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Plaintiff-appellant John Johns appeals the dismissal of his deliberate-indifference claims. We agree with the district court that Johns failed to state a claim upon which relief could be granted. Accordingly, we affirm.

I

On February 24, 2020, Johns was placed on pretrial supervision in a Broward County criminal case, subject to the special condition that he must be fitted for a "TAD" monitor prior to release from Broward Sheriff's Office ("BSO"). A TAD—Transdermal Alcohol Detector—is an ankle monitor that measures ingested alcohol through a sensor that sits on the wearer's skin.

Within days, Johns was fitted with a TAD at the BSO pretrial office in Fort Lauderdale "by a BSO officer who was responsible for adjusting the strap around the Plaintiff's ankle." In short order, Johns began complaining that the ankle bracelet "was installed too tight[,] which interfered with [his] ability to walk and caused injuries." Johns had no means of unilaterally removing the ankle bracelet or even adjusting its strap without violating Florida law, which made any such tampering a third-degree felony.

So, Johns "kept complaining by calling his pretrial officer that the strap of the monitoring device was too tight and that it interfere[d] with his walking and cause[d] him pain." He alleges

that he complained repeatedly from February 24, 25, or 26, 2020, until May 7, 2020. Sometime in March 2020, Johns' pretrial officer (whose name he does not remember) told him over the telephone that "'there was nothing she can do for him until he [Johns] sees the judge.'"

Finally, "the pain became so unbearable" that on May 7, 2020, Johns "presented himself in person at the BSO Probation/Pre-Trial Office" at the same location where the ankle device had been installed and "requested that the bracelet be loosened or removed." During that visit, an individual who Johns believes was "an electronic monitoring technician" removed Johns' ankle bracelet "on the BSO's order."

Later in the day on May 7, Johns went to the emergency room, complaining of a wound to his right ankle where his ankle monitor had previously been placed. The emergency room physician cleaned and irrigated the wound and then applied antibiotic ointment and dressed it. He prescribed antibiotics and gave Johns information on wound care. Several days later, Johns presented to a foot-and-ankle specialist for further treatment. Johns contends that his injuries were due to the "improper installation" of the ankle monitoring device by BSO's Probation/Pre-Trial Division and the "disregard" of his "complaints."

Johns sued the Broward County Sheriff, Gregory Tony, in the Southern District of Florida, alleging that his medical condition, "including, but not limited to, pain, irritation of the ancle [sic] area covered by the bracelet and diminished ability to walk, was so

obvious that even a lay person would easily recognize the necessity for a doctor's attention." That general allegation manifested in four counts: Deliberate indifference to a serious medical need in violation of the Fourteenth Amendment (Count I), excessive force in violation of the Fourth Amendment (Count II), state law battery (Count III), and state law negligence (Count IV). The Sheriff moved to dismiss under Federal Rule of Civil Procedure 12(b)(6).

The district court granted Tony's motion to dismiss. In its order, the court did not address the substance of the deliberate-indifference claim, but instead granted Johns' preemptive request to amend that claim. As to the excessive-force claim, the court determined that Johns had failed to state a facially plausible claim against Tony under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) because Johns had not identified the official who installed the ankle brace and had not established that Tony had instated "an official policy or unofficial practice or custom which caused police officers to use excessive force when installing ankle monitors." As to the state-law claims, the court determined that Johns' allegations "[we]re conclusory and lack[ed] specificity."

When Johns filed his amended complaint, the court granted Tony's Rule 12(b)(6) motion yet again. As to the amended deliberate-indifference count, the court found that Johns "provide[d] no support to buttress this claim to explain how the BSO has engaged in this pattern or practice. His claim [wa]s merely a conclusory allegation that [wa]s insufficient to survive a motion to dismiss." As to the amended excessive-force count, the court found that Johns

"again d[id] not provide any factual support to support [his] otherwise conclusory allegations." And, as to the amended state-law claims, the court declined to exercise supplemental jurisdiction, noting that the only claims over which the court had original jurisdiction had already been dismissed. Johns filed a timely appeal contesting the dismissal of the deliberate-indifference and excessive-force counts.

II

We review de novo a district court's grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir. 2009).

III

To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint's factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The plaintiff must articulate "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citing *Twombly*, 550 U.S. at 556).

Johns' assertions are, at best, "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 663. That's because the deliberate-indifference

and excessive-force counts allege no direct conduct on Sheriff Tony's part—and Johns does not establish that Tony had instated a policy, practice, or widespread custom that gave rise to the conduct at issue. A municipality (or entity performing a municipal function, such as the Sheriff) may be held liable under § 1983 only when the constitutional deprivation was undertaken pursuant to a policy or custom; *respondeat superior* is not an appropriate basis for suit. *Pembaur v. Cincinnati*, 475 U.S. 469, 478–81 (1986); *Monell*, 436 U.S. at 690, 694.

A policy or custom sufficient to establish municipal liability can be established in one of three ways: (1) an express policy, (2) a widespread practice that is so well-settled and permanent as to constitute a custom, or (3) the act or decision of an official with final policymaking authority. *Cuesta v. School Bd. of Miami-Dade Cnty.*, 285 F.3d 962, 966–68 (11th Cir. 2002). A policy or custom has been further defined as a "deeply imbedded traditional way[ ] of carrying out policy," *Fundiller v. Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1985) (citation omitted), or the tacit authorization or display of deliberate indifference towards police misconduct, *Brooks v. Scheib*, 813 F.2d 1191, 1193 (11th Cir. 1987) (citation omitted). However, "'[t]he deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant and of continued duration, rather than isolated occurrences.'" *Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir. 1999) (quoting *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990)).

An isolated occurrence is all Johns alleges here; he does not allege facts establishing that Tony had any policy, custom, or widespread practice that underlay his alleged injuries. Although his first amended complaint added some new preliminary allegations, none of those allegations evince broader county policies. Rather, the allegations are merely conclusory: "[The BSO] is engaged in a pattern and practice of deliberate indifference in a form of disregarding the suspects' or probationers' medical needs that led to the violation of the Plaintiff's constitutional right." Crucially, Johns never alleges that any other pre-trial supervisee had suffered from an improperly attached ankle monitor—or, for that matter, from any other ailment.

Accordingly, Johns failed to state a valid claim—and the district court did not err in granting Tony's motion to dismiss.

AFFIRMED.