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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

DAVID B. LEWIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 19-CV-2313**
	)	
MICHAEL BOWMAN, CODY BENSCHNEIDER, and VERMILION COUNTY METROPOLITAN ENFORCEMENT GROUP,	)	
	)	
Defendants.	)	

O R D E R

Pro se Plaintiff, David B. Lewis, filed a Second Amended Complaint ("Complaint") (#25) pursuant to 42 U.S.C. § 1983 on August 12, 2020. Following the court's Order (#36) on May 10, 2021, granting in part Defendants' Motion to Dismiss (#29), Plaintiff's remaining claims are unlawful search and seizure in violation of the Fourth Amendment against Defendant Agents Michael Bowman ("Bowman") and Cody Benschneider ("Benschneider") and a state law claim of indemnification against Defendant Vermilion County Metropolitan Enforcement Group ("VMEG").

Defendants filed a Motion for Summary Judgment (#49) on February 28, 2022, to which Plaintiff filed a Response (#53) on March 21, 2022, and Defendants filed a Reply (#55) on April 4, 2022. Plaintiff also filed a self-titled Dispositive Motion (#50) on March 1, 2022, to which Defendants filed a Response (#52) on March 10, 2022. For the

following reasons, Defendants' Motion for Summary Judgment (#49) is GRANTED, and Plaintiff's Dispositive Motion (#50) is DENIED.

I. BACKGROUND

The following background facts are taken from Defendants' Statement of Undisputed Material Facts in their summary judgment motion, as well as the exhibits attached by the parties to their briefs.

On summary judgment, the court is "required to take all evidence, including reasonable inferences from that evidence, in the light most favorable to the plaintiff" as the non-movant. *LaBrec v. Walker*, 948 F.3d 836, 839 (7th Cir. 2020).

However, it is nonetheless Plaintiff's "responsibility to point the Court to where exactly in the record a genuine issue of material fact exists which would preclude the Court from entering summary judgment." *Coffee v. Cox*, 218 F.Supp.2d 997, 999 n.3 (C.D. Ill. 2002). Here, Plaintiff has failed to respond to any of the Undisputed Material Facts in Defendants' motion. Therefore, the court will deem all of those facts to have been admitted by Plaintiff. See CDIL-LR 7.1(D)(2)(b)(6) (providing that "failure to respond to any numbered fact will be deemed an admission of the fact").

Therefore, based upon the summary judgment record, the relevant facts before the court are as follows.

On February 8, 2017, around 2:00 p.m., Plaintiff was dropped off at the corner of Voorhees and Sherman Streets in Danville, Illinois, intending to visit his friend Terrence Liggins at his nearby residence located at 1219 Sherman Street ("the Liggins residence").

At that same date and time, task force officers ("TFOs" or "agents") with the United States Drug Enforcement Administration ("DEA") were at the Liggins residence, after the target of a DEA drug investigation drove from Chicago to Danville to drop off a kilogram of cocaine at that residence. The TFOs were inside the residence conducting a search with Liggins' consent. Liggins and multiple other adults, as well as children, were inside the house during the search for drugs and weapons.

Defendants Bowman and Benschneider were acting as special agents with VMEG and were charged with protecting the security perimeter of the Liggins residence during the DEA search. Due to the cold weather that day, Bowman and Benschneider stood in the front entry of the house, between the closed screen door and the open front door. From that position, they saw Plaintiff turn from the public sidewalk onto the short walkway leading to the front door of the Liggins residence.

Bowman and Benschneider exited the front door to block Plaintiff from entering the residence. Benschneider stood on the front porch, while Bowman walked down the porch steps to stand behind Plaintiff. By the time he stopped walking, Plaintiff was only 2 or 3 feet from the steps leading to the porch and front door.

Bowman and Benschneider, who were wearing firearms, tactical gear, and vests that Plaintiff recognized as belonging to law enforcement, identified themselves and explained that the residence was being searched and no one was allowed to enter. They further inquired as to Plaintiff's reason for being at the residence. Plaintiff stated that he was looking for a lighter for his cigarette.

Because Plaintiff was in such close proximity to the residence and because they believed that he had no credible reason for being there, Bowman and Benschneider asked Plaintiff for his identification. After he produced a Kentucky ID card, he repeatedly put his hands into his pockets despite Bowman's reminders to take his hands out.

Due to his presence in or near the security perimeter of the DEA search, his placing of his hands in his pockets, and his apparent nervousness, Benschneider told Plaintiff that they were going to pat him down. At that time, Plaintiff raised his hands in the air and informed Defendants that he had a gun in his pocket. Upon searching Plaintiff, they found a loaded Wesson Governor .410 revolver, four grams of a white powdery substance that field-tested positive for cocaine, and $7,780 in cash.

During the above interaction between Plaintiff and Defendants Bowman and Benschneider, the DEA was still searching the Liggins residence.

Again, Plaintiff has not denied or otherwise responded to any of the above facts enumerated by Defendants in their Statement of Undisputed Material Facts (#49, at 2-7). The court will note, however, that Plaintiff attached the following exhibits to his Response:

(1) Testimony by Bowman at a hearing in a related criminal prosecution of Plaintiff, in which Bowman indicated that at the time Plaintiff approached the Liggins residence "everything [was] calm," the adults within the residence were being cooperative, the residence had been secured, and he was not afraid for his safety (#53-1, at 2-3);

(2) Testimony by Benschneider at a related criminal hearing in which he confirmed that, upon producing his ID, Plaintiff asked: "Can I just leave?" (#53-1, at 5);

(3) Transcript excerpts from the federal criminal case against Plaintiff, in which U.S. District Judge Sara Darrow explained her reasons for granting Plaintiff's motion to suppress evidence obtained by Bowman and Benschneider during the search of Plaintiff on February 8, 2017 (#53-1, at 7-30);[1] and

(4) Testimony by a non-party DEA agent, at a related criminal hearing, who testified as follows:

> Q. At the time that you were alerted to the fact that there was an individual outside of the residence being questioned, you said your search was basically done, right?
>
> A. At the time I learned about that, yeah, we were getting ready to leave the residence.
>
> Q. All of the evidence had been secured?
>
> A. That's what we were discussing. You know, when I came up from the basement, we were discussing, you know, do we have all of the evidence, and, you know, gathering everything that we needed to leave.

(#53-1, at 31).

[1] This court may take judicial notice of the related criminal proceedings. However, this court will not adopt the findings of fact following the hearing on the motion to suppress evidence. See *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997) ("[C]ourts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these findings are disputable and usually are disputed."). As already stated, at the summary judgment stage this court must accept Defendants' Statement of Undisputed Material Facts, which was unopposed by Plaintiff.

II. ANALYSIS

In Defendants' Motion for Summary Judgment (#49), they argue, first, that under *Michigan v. Summers*, 452 U.S. 692 (1981), and *United States v. Jennings*, 544 F.3d 815 (7th Cir. 2008), Bowman and Benschneider did not violate Plaintiff's Fourth Amendment rights because law enforcement officers are entitled to detain people who approach a premises where a search is in progress. Defendants discuss the extension of *Summers* and *Jennings* by district courts in this circuit, in order to justify a pat down search of individuals detained in these circumstances. See, e.g., *United States v. Banks*, 628 F.Supp.2d 811 (N.D. Ill. 2009).

Second, Defendants argue that Bowman and Benschneider are otherwise entitled to qualified immunity because even if they did violate Plaintiff's rights under the Fourth Amendment, the right in question was not clearly established at the time. Defendants further argue that VMEG would likewise be entitled to summary judgment because the indemnification claim against VMEG can only proceed if the underlying Fourth Amendment claim against Bowman and Benschneider survives summary judgment.

In Plaintiff's Dispositive Motion (#50), he does not argue that the court should enter summary judgment in his favor. Rather, he indicates that "this case should go to trial" because that will be his only recourse against Defendants.

A. Qualified Immunity Standard

Government officials are protected by qualified immunity unless a plaintiff pleads facts showing (1) that the officials violated a statutory or constitutional right (2) that was clearly established at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In order for a right to be "clearly established," the right "must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (cleaned up). Qualified immunity "provides ample room for mistaken judgments and protects all but the plainly incompetent and those who knowingly violate the law." *Green v. Newport*, 868 F.3d 629, 633 (7th Cir. 2017) (cleaned up).

Courts may grant qualified immunity on the ground that the asserted right was not "clearly established" by prior case law, without resolving the first question of "whether the purported right exists at all." *Reichle*, 566 U.S. at 664. In fact, resolving a case in this manner, when possible, is consistent with the Supreme Court's "usual reluctance to decide constitutional questions unnecessarily." *Reichle*, 566 U.S. at 664.

B. Plaintiff's Fourth Amendment Claim against Bowman and Benschneider

Under the Fourth Amendment, a lawful search of a residence carries with it the authority to detain the occupants while the search is conducted. *Summers*, 452 U.S. at

703-04.[2] This authority to detain occupants is "categorical" and need not be supported by probable cause or any particularized suspicion. *Muehler v. Mena*, 544 U.S. 93, 98 (2005); *Bailey v United States*, 568 U.S. 186, 193 (2013).

The Seventh Circuit has joined other circuits in extending the holdings of *Summers* and *Muehler* to permit law enforcement officers to detain a non-resident who merely *approaches* a premises while an authorized search is in progress, in order to "ensure that he [is] unarmed and uninvolved in criminal activity." *Jennings*, 544 F.3d at 818-19, citing *United States v. Bohannon*, 225 F.3d 615, 616 (6th Cir. 2000), *Baker v. Monroe Township*, 50 F.3d 1186, 1188-89 (3d Cir. 1995).

The authorization to detain incident to a search is justified by the officers' need "to ensure their own safety and the efficacy of the search." *Los Angeles County, California v. Rettele*, 550 U.S. 609, 614 (2007), citing *Muehler*, 544 U.S. at 98-99. The Seventh Circuit has specifically noted the "elevated risk of violence" inherent in searches for narcotics. *Jennings*, 544 F.3d at 818. And courts within the circuit have held that officers' "compelling need to maintain control" in these situations necessitates the extension of *Jennings* to authorize a pat down search of any individuals detained within

[2] *Summers* relates to a search pursuant to a valid warrant. Defendants note that the Seventh Circuit has not specifically considered whether there is any distinction between the search of a premises incident to a valid warrant versus with the occupant's consent. However, those circuits that have considered the question have drawn no distinction and have applied the authority to detain occupants, as outlined in *Summers*, to searches carried out with the occupant's consent. See, e.g., *United States v. Simpson*, 259 F. App'x 164, 166 (11th Cir. Nov. 30, 2007), *United States v. Bearden*, 213 F. App'x 410, 414-15 (6th Cir. Jan. 9, 2007).

the security perimeter. See *Banks*, 628 F.Supp.2d at 817, citing *United States v. Hendricks*, 319 F.3d 993, 1004 (7th Cir. 2003).

Here, based upon the record at summary judgment, Plaintiff approached the premises of an ongoing DEA search for narcotics.[3] He was just two to three feet from the front door to the Liggins residence when he was detained by Defendants Bowman and Benschneider. Under the Seventh Circuit rule established in *Jennings*, there would be no basis for Defendants, or any other reasonable officers, to believe that they were violating Plaintiff's rights in detaining him.

Moreover, in *Jennings* the Seventh Circuit specifically relied upon the Sixth Circuit's discussion in *Bohannon*. And the facts discussed in *Bohannon* are strikingly similar to the facts at issue here. Bohannon was detained when he "drove into the driveway of a suspected methamphetamine lab while a search was underway … got out of his car and walked toward the residence." *Jennings*, 544 F.3d at 818 (summarizing the facts of *Bohannon*); see also *Bohannon*, 225 F.3d at 617-18 (discussing as relevant to the

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[3] Again, pursuant to Local Rule 7.1(D)(2)(b)(6), Plaintiff's "failure to respond to any numbered fact will be deemed an admission of the fact." Therefore, it has been established that the search was ongoing when Plaintiff approached the Liggins residence.

However, even if the court were to consider Plaintiff's submission as an exhibit (#53-1, at 27) of testimony by an unidentified DEA agent that "[a]t the time that [he was] alerted to the fact that there was an individual outside of the residence being questioned [the] search was basically done" (i.e., DEA agents were discussing whether they had all of the evidence and were "getting ready to leave"), that would not change the court's analysis. The testimony submitted by Plaintiff establishes, at most, that one of the DEA agents who was conducting the search of the Liggins residence was not notified of Plaintiff's presence until the search had largely concluded. Nothing within this exhibit or elsewhere in the record establishes whether notification was provided to this particular DEA agent contemporaneously with Plaintiff's arrival at the premises.

reasonableness of his detention Bohannon's "apparent familiarity with the residence," production of a state-issued identification card instead of a driver's license, nervousness, and disregard of officers' directive to keep his hands out of his pockets).

In discussing with approval the Sixth Circuit's reasoning in that case, the Seventh Circuit recounted that "the court held that detaining [Bohannon] was reasonably necessary to protect the officers conducting the search, and that the man's arrival at a residence that housed a drug lab made it reasonable for the officers to suspect that he too was involved in criminal activity." *Jennings*, 554 F.3d at 818.

Here, Plaintiff directly approached the Liggins residence, indicated to the officers that he sought to ask the resident for a cigarette lighter (which they found implausible), produced an out-of-state ID when asked for identification, and repeatedly put his hands in his pockets even after Bowman directed him to take them out.

Again, "[t]he rule announced in *Summers* … does not require law enforcement to have particular suspicion that an individual is involved in criminal activity or poses a *specific* danger to the officers." *Bailey*, 568 U.S. at 193 (emphasis added). Likewise, despite Plaintiff's assertions that the scene of the search was calm when he approached the Liggins residence, the officers reasonably understood there to be an "elevated risk of violence" attendant to any search for narcotics, particularly where there were multiple occupants within the Liggins residence during the search. See *Jennings*, 544 F.3d at 818. Consistent with the Seventh Circuit's assessment, Defendant Bowman attested:

> The situation was dangerous for both the residents inside the home as well as the DEA agents searching the home. "Drug houses" (i.e., houses storing large quantities of drugs) often have both drugs and weapons inside, and persons

> frequently come and go from such places to either buy or sell drugs. Visitors to these residences are often armed. Further, persons coming to a house while the house is being searched may distract officers from their duties and embolden or agitate residents inside the house.

(#49-3, at 4, ¶ 8).

The significant factual parallels between the instant case and *Bohannon*, in which the Sixth Circuit held that Bohannon's detention was reasonably necessary and that a pat down search was likewise reasonable, and the Seventh Circuit's subsequent citation to these holdings with approval, suggests that reasonable officers in the position of Defendants Bowman and Benschneider would *not* have understood that what they were doing violated Plaintiff's rights.

The right asserted by Plaintiff in this case was not "clearly established" and Defendants Bowman and Benschneider are therefore entitled to qualified immunity.

C. Plaintiff's Indemnification Claim against VMEG

Plaintiff's indemnification claim is brought pursuant to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 Ill. Comp. Stat. 10/1-101 *et seq*. Pursuant to that Act, "[a] local public entity is … directed to pay any tort judgment or settlement for compensatory damages … for which it or an employee while acting within the scope of his employment is liable[.]"

Pursuant to the operative Complaint (#25) and the court's Order (#36) on Defendants' motion to dismiss, Plaintiff's only claim against VMEG was based upon its obligation to indemnify Defendants Bowman and Benschneider if a judgment was

entered against them on Plaintiff's Fourth Amendment claim. There was no independent claim brought against VMEG.

Because judgment has been granted in Defendants' favor on the underlying Fourth Amendment claim, there is no remaining claim for indemnification against VMEG.

IT IS THEREFORE ORDERED:

(1) Defendants' Motion for Summary Judgment (#49) is GRANTED in full. Judgment is entered in favor of Defendants and against Plaintiff on all claims.

(2) Plaintiff's Dispositive Motion (#50) is DENIED.

(3) The final pretrial date of June 17, 2022, and jury trial of June 28, 2022, are hereby VACATED.

(4) This case is terminated.

ENTERED this 12th day of May, 2022.

s/Colin Stirling Bruce
COLIN S. BRUCE
U.S. DISTRICT JUDGE