UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MUTAZ M. ABUSHAWISH and
MHAMMAD A. ABU-SHAWISH,
Plaintiffs,

v. **Case No. 20-cv-1914**

MILWAUKEE COUNTY et al.,
Defendant.

DECISION AND ORDER

Plaintiffs Mutaz M. Abushawish ("Mutaz") and Mhammad A. Abu-Shawish ("Mhammad") bring this action under § 1983 alleging that the defendants Milwaukee County, Milwaukee County Sheriff Earnell Lucas, and Milwaukee County Sheriff's Deputies Michael Galezewski and Daniel Humphreys violated their Fourth Amendment rights by unreasonably searching and seizing a rental van and its contents and by arresting Mutaz without probable cause.[1] Defendants move for summary judgment, and plaintiffs move for partial summary judgment against defendants Galezewski and Humphreys.

I. BACKGROUND

On April 27, 2019, Mutaz rented a U-Haul van to transport sound equipment owned by his father, Mhammad. Mutaz and Mhammad intended to use the sound equipment that night at Mhammad's wedding reception. Mutaz enlisted the help of his friend, Mario Navarro, to help transport the equipment. On the way to the venue, Navarro drove the U-

[1] Because Mutaz Abushawish and Mhammad Abu-Shawish have similar last names, I will refer to them by their first names.

Haul van while Mutaz drove his own car. Galezewski stopped Navarro for rolling through a stop sign and failing to yield to another car. The parties do not dispute the validity of this traffic stop. During the stop, Navarro informed Galezewski that his license may have been suspended due to a ticket. Galezewski then reported to dispatch that Navarro was an unlicensed driver, and that there was an unverified warrant for his arrest. Galezewski also ordered a tow truck. A few minutes later, Mutaz arrived at the scene. Galezewski informed dispatch that another car had arrived and that he believed the two drivers had been travelling together. Mutaz began speaking to Galezewski and plaintiffs assert that Mutaz identified himself as the renter of the U-Haul before asking if he could take the van. Defendants assert that Mutaz did not explain who he was or how he was connected to the U-Haul but simply demanded that he be allowed to take the van. The conversation was captured on video, however, and the video makes clear that Mutaz said, "I just have a question, the U-Haul is signed in my name." ECF no. 22-1 at 9:55-10:02. Mutaz then asked a question that is unintelligible to which Galezewski replied, "No, have a seat in your car, this car is being towed." *Id.* at 10:03-10:10. Galezewski and Mutaz argued for several minutes.

Humphreys then arrived at the scene and Galezewski told him to ticket Mutaz for illegal parking if Mutaz did not "take off." Mutaz then agreed to leave and parked at a gas station across the street. Galezewski then handcuffed Navarro, and Humphreys began conducting an inventory of the van. Approximately two minutes after moving his car, Mutaz returned on foot. Humphreys told Mutaz to leave and, when Mutaz asked to drive the van, Humphreys arrested him. Humphreys later stated that he arrested Mutaz for

interfering with the traffic stop. The deputies then arrested Navarro and impounded the van.

II. DISCUSSION

A. Seizure of the Van

The Fourth Amendment protects against unreasonable searches and seizures. Both parties move for summary judgment regarding whether the impoundment of the van was a reasonable seizure. The ultimate touchstone of the Fourth Amendment is "reasonableness." *Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (*citing Riley v. California*, 573 U.S. 373, 380 (2014)). In *United States v. Duguay*, the Seventh Circuit addressed when impounding a vehicle is reasonable and explained that the seizure "must either be supported by probable cause, or be consistent with the police role as [community caretaker] and completely unrelated to an ongoing criminal investigation." 93 F.3d 346, 352 (7th Cir. 1996). When police impound unattended vehicles to remove them from public streets or parking lots, they are acting consistently with their role as community caretakers. *Duguay*, 93 F.3d at 353. But the impoundment of a vehicle for community caretaker purposes can only be valid under the Fourth Amendment if the driver or owner "is otherwise unable to provide for the speedy and efficient removal of the car from public thoroughfares or parking lots." *United States v. Cartwright*, 630 F.3d 610, 614 (7th Cir. 2010) (*quoting Duguay*, 93 F.3d at 353). In other words, without probable cause an officer cannot reasonably impound a vehicle if a driver is on the scene, willing to move the vehicle, and legally entitled to do so. Impounding a vehicle without regard to whether the driver or owner "can provide for its removal is patently unreasonable if the ostensible purpose for the impoundment is for the 'caretaking' of the streets.'" *Duguay*, 93 F.3d at

353. In assessing the reasonableness of an officer's actions, the "Fourth Amendment inquiry is one of 'objective reasonableness' under the circumstances." *Molina v. Cooper*, 325 F.3d 963, 973 (7th Cir. 2003) (internal quotation marks omitted) (citing *Graham v. Connor*, 490 U.S. 386, 399 (1989)). I consider "whether the officers' actions were "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

1. Galezewski

Defendants argue that Galezewski's refusal to release the van to Mutaz was reasonable under the community caretaker standard because he did not know that Mutaz was the renter of the van and because he followed department policy regarding the towing of a vehicle. Although defendants state multiple times that that Galezewski had "probable cause" to impound the van, in fact their arguments address the community caretaker standard. To the extent that defendants intend to argue that Galezewski had probable cause to conduct a warrantless search and seizure of the van, their argument fails. Probable cause exists when, given all the circumstances, there is "a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Dumes*, 313 F.3d 372, 380 (7th Cir. 2002). Defendants do not identify any reason to believe that the van contained evidence of a crime or contraband.

Regarding the community caretaker standard, the parties do not dispute that Mutaz was able and willing to drive the van away before the deputies had it towed. The parties, however, dispute when the van was seized and what information Galezewski had at the time. Defendants argue that Galzewski seized the van when he decided that he was going

to impound it, or at the latest when he called a tow company. Plaintiffs argue that he seized the van when he told Mutaz that he could not drive it.

Plaintiffs are correct. A seizure of property occurs when "there is some meaningful interference with an individual's possessory interests in that property." *Soldal v. Cook County, Ill.*, 506 U.S. 56, 61 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). Here, Mutaz had a possessory interest in the van because he had lawfully rented it. The seizure occurred when Mutaz asked if he could take the van and Galezewski responded, "No, it's being towed." When he refused to release the van to Mutaz, Galezewski interfered with plaintiffs' possessory interests by denying them access to the van and its contents. Galezewski's decision to tow the van before Mutaz arrived did not interfere with the plaintiffs' possessory interests because it did not prevent them from exercising control over the van or its contents.

Defendants do not provide any reasons for asserting that Galezewski's decision to call the tow company was a seizure but seem to rely on language in *Duguay* stating that: "the decision to impound (the "seizure") is properly analyzed as distinct from the decision to inventory (the "search"). 93 F.3d at 351 (1996). But this comment was not meant to suggest that a seizure occurs the moment an officer decides to impound a vehicle. Moreover the standard for determining when a seizure of property occurs was established by the Supreme Court years before *Duguay*. *Soldal*, 506 U.S. at 61; *Jacobson*, 466 U.S. at 133.

Defendants next assert that Galezewski had no reason to believe that Mutaz had a right to take the van. But the video evidence contradicts this assertion. Mutaz told Galezewski that the U-Haul was "signed in my name". ECF no. 22-1 at 9:50-10:30. The

video makes clear that Mutaz told Galezewski that he had a right to the U-Haul. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment"). A reasonable officer in Galezewski's position would understand from this comment that Mutaz had rented the van and defendants point to no evidence that Galezewski had reason to doubt Mutaz. Defendants also suggest that Galezewski did not know whether Mutaz was a licensed driver. But Mutaz was driving a car when he arrived from which a reasonable officer would infer that he had a driver's license. If Galezewski doubted that Mutaz was a licensed driver, he could have simply asked to see Mutaz's license. Had he done so, he would have learned that Mutaz had a valid license. Instead, Galezewski refused to release the van without regard for whether Mutaz had a license.

Defendants also argue that impounding the van was reasonable because Galezewski complied with the Milwaukee County Sheriff's Department policy on towing vehicles. But the "existence of a police policy, city ordinance, or state law alone does not render a particular search or seizure reasonable or otherwise immune from scrutiny." *Cartwright*, 630 F.3d at 614. Moreover, Galezewski did not follow the policy. The policy provides that, "it shall be the policy of this agency to tow any vehicle when the driver and/or owner is arrested and no responsible person is present, at the time of the arrest, to take control of the vehicle." ECF no. 21 at ¶ 8. The policy further states that the "person taking control of the vehicle must be at the scene prior to the tow arriving." *Id*. In other words, the policy allows an officer to tow a vehicle if, at the time the driver or owner is

arrested, no responsible person is available who can move the car before a tow truck arrives. It is undisputed that Mutaz arrived on the scene before Navarro was arrested and before a tow truck arrived.

The impoundment of a vehicle as part of an officer's community caretaker role is only valid if the driver or owner is unable to provide for the "speedy and efficient removal of the car from public thoroughfares or parking lots." *Duguay,* 93 F.3d at 353. Here, Mutaz was on the scene at the time of Navarro's arrest, told Galezewski that he had rented the van, and asked to be allowed to remove it. Thus, a reasonable factfinder would have no alternative but to conclude that Galezewski seized the van without regard to whether a driver was available to provide for its removal. Under the Fourth Amendment, such conduct is "patently unreasonable." *Id.*

Finally, defendants argue that Galezewski is entitled to qualified immunity. "The doctrine of qualified immunity shields officers from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *City of Tahlequah v. Bond,* 149 S.Ct. 9, 11 (2021) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). The inquiry consists of two questions: (1) whether the evidence, taken in the light most favorable to the plaintiff, supports a finding that the defendant violated the plaintiff's constitutional rights; and (2) whether that right was clearly established at the time of the alleged violation. *Day v. Wooten*, 947 F.3d 453, 460 (7th Cir. 2020). In determining whether a right is clearly established, existing precedent may not merely suggest a rule. Instead, the "rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" *Hardeman v. Curran*, 933 F.3d 816, 820 (7th

Cir. 2019) (quoting *District of Columbia v. Wesby*, 138 S.Ct. 577, 590 (2018)). I have already determined that the evidence supports a finding that Galezewski violated the plaintiffs' constitutional rights. And with respect to the second prong, years before the incident *Duguay* clearly established that it is unreasonable to impound a vehicle under the community caretaker rationale when a valid driver is available to remove it. 93 F.3d at 353. Thus, Galezewski is not entitled to qualified immunity.

For the reasons explained above I will grant plaintiffs' motion for summary judgment as regards Galezewski's impoundment of the van and deny defendants' motion for summary judgment on the same issue.

2. Humphreys

Defendants argue that Humphreys cannot be found liable for the seizure because he was not involved in the decision to impound the vehicle. Plaintiffs counter that Humphreys participated in the seizure by refusing to allow Mutaz to take the van. But Humphreys arrived after Mutaz explained that he had rented the van, and plaintiffs point to no evidence that Humphreys knew that Mutaz had a right to take the van or that Galezewski was seizing the vehicle unreasonably. Thus, a reasonable factfinder could not conclude that Humphreys acted unreasonably. Accordingly, on this issue I will grant defedants' summary judgment motion as regards Humphreys' role in the seizure.

B. Search of the Van

Plaintiffs argue that they are entitled to summary judgment on the issue of whether Humphreys' search of the van violated their constitutional rights. However, the operative complaint makes no mention of a search of the van. Generally, a plaintiff may not amend a complaint through arguments in a summary judgment brief. *Anderson v. Donahoe*, 699

F.3d 989, 997 (7th Cir. 2012). When a plaintiff raises a new claim at summary judgment, I must consider "whether [the new claim] changes the complaint's factual theory, or just the legal theories plaintiff has pursued so far." *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 860 (7th Cir. 2017). If the new claim changes the complaint's factual theories, I must construe it as an impermissible attempt to alter the complaint. *See id.* at 859. On the other hand, if the new claim adds another legal theory based on facts already alleged in the complaint, I will allow it to proceed "unless the changes unfairly harm the defendant or the case's development—for example, by making it more costly or difficult to defend the case, or by causing unreasonable delay." *Id.* (quotations omitted). Here, plaintiffs did not mention the search of the van in their complaint. ECF no. 2-1. Thus, this claim relies on factual theories not present in the complaint. Thus, plaintiffs are not entitled to summary judgment on this issue.

C. Humphreys' Arrest of Mutaz

Defendants move for summary judgment on the issue of Mutaz's arrest, arguing that Humphreys had probable cause to arrest him for obstructing an officer. Probable cause to justify an arrest exists if the totality of the facts and circumstances known to the officer at the time of the arrest would warrant a reasonable, prudent person in believing that the arrestee had committed, was committing, or was about to commit a crime. *Abbott v. Sangamon County, Ill.*, 705 F.3d 706, 714 (7th Cir. 2013). Probable cause does not require a certainty that a crime was committed. *Beauchamp v. City of Noblesville, Ind.*, 320 F.3d 733, 742-43 (7th Cir. 2006). The existence of probable cause depends on the elements of the predicate offense. *Abbott*, 705 F.3d at 715. Under Wisconsin law, a person is guilty of obstruction if: (1) the person obstructed an officer, meaning his conduct

prevented or made more difficult the officer's performance of his duties; (2) the officer was acting in an official capacity; (3) the officer was acting with lawful authority; and (4) the person knew the officer was acting in his official capacity and with lawful authority and that his conduct would obstruct the officer. *State v. Young*, 294 Wis.2d 1, 34 (Wis. 2006).

Plaintiffs do not dispute that Mutaz's actions gave defendants probable cause to believe that he was interfering with the officers' seizure of the van. Plaintiffs argue, however, that that the seizure of the van was unlawful and therefore Mutaz could not have committed obstruction. But the test for whether an officer had probable cause is not whether a crime was committed but whether "a reasonable officer would have believed the person had committed a crime. If so, the arrest is lawful even if the belief would have been mistaken." *Kelley v. Myler*, 146 F.3d 641, 646 (7th Cir. 1998) (internal quotations omitted). The determination turns on the facts as they would have appeared to Humphreys at the time he arrested Mutaz. *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1246 (7th Cir. 1994). As explained above, plaintiffs point to no evidence that Humphreys had a reason to believe that Mutaz was entitled to drive the van or that Galezewski had seized the van unlawfully. Mutaz never explained to Humphreys who he was or that he had rented the van. Without such information, a reasonable officer in Humphreys' position would have understood the seizure of the van to be lawful because the driver was being arrested and no other valid driver was available. Thus, a reasonable officer in Humphrey's position would have had probable cause to believe Mutaz was interfering with a lawful seizure and was committing obstruction. Because probable cause existed, I will grant defendants' motion for summary judgment on the issue and deny plaintiffs' motion for summary judgment.

D. *Monell* Claim

Defendants argue that I should grant summary judgment in their favor on plaintiffs' claim against Milwaukee County because plaintiffs cannot show that a County policy caused the constitutional injury. Plaintiffs argue that the violation of their constitutional rights was caused by a failure to properly train the officers on when the impoundment of a vehicle is appropriate. To state a claim against the County, plaintiffs must show that an official County custom or policy caused their constitutional deprivation. *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658, 694-95 (1978). "In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). However, a "municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Id.* To succeed on such a claim, plaintiffs must show deliberate indifference to the rights of the persons with whom the untrained employees come into contact, which requires proof that a municipal actor disregarded a known or obvious consequence of his actions. *Id.* "A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train." *Id.* at 62 (internal quotations omitted). Without such a pattern to provide notice, decisionmakers cannot be said to have deliberately chosen a training program that would cause violations of constitutional rights. *Id.*

Here, plaintiffs do not show a pattern of violations. They point to no incidents other than the one at issue in this case. Nor do they point to other evidence that would have

put Milwaukee County decisionmakers on notice that the training of sheriff's deputies was inadequate. Accordingly, the evidence is not sufficient for a jury to find Milwaukee County decisionmakers were deliberately indifferent for purposes of failure to train, and I will grant defendants' motion for summary judgment as regards the *Monell* claim.

E. Punitive Damages

Defendants argue that plaintiffs' claim for punitive damages fails as a matter of law. Punitive damages are available under § 1983 when a defendant is "motivated by evil motive or intent" or manifests "reckless or callous indifference" to a plaintiff's constitutional rights. *Smith v. Wade*, 461 U.S. 30, 56 (1983). A reasonable factfinder could find that Galezewski behaved recklessly by ignoring Mutaz's statements that he had rented the van and was able and willing to remove it. Thus, I will deny defendants' motion for summary judgment on the issue.

F. Other Claims

Defendants also move for summary judgment on claims against Sheriff Lucas and claims under the Fourteenth Amendment. Because plaintiffs do not oppose this motion, I will grant it.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that plaintiff's motion for summary judgment at ECF no. 19 is **GRANTED IN PART** and **DENIED IN PART** as explained above.

IT IS FURTHER ORDERED that defendants' motion for summary judgment at ECF no. 13 is **GRANTED IN PART** and **DENIED IN PART** as explained above.

Dated at Milwaukee, Wisconsin, this 8th day of June, 2022.

/s/Lynn Adelman
LYNN ADELMAN
United States District Judge