UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
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Filed: December 22, 2020

Mr. Joseph Findler IV
46036 Michigan Avenue
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Canton, MI 48188

Mr. Stephen K. Postema
Office of the City Attorney
P.O. Box 8647
Ann Arbor, MI 48107

Re: Case No. 20-1540, *Joseph Findler, IV v. Ann Arbor, City of, et al*
Originating Case No. : 2:19-cv-11404

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. David J. Weaver

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 20-1540

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JOSEPH FINDLER IV,	)	
	)	
Plaintiff-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
CITY OF ANN ARBOR, et al.,	)	MICHIGAN
	)	
Defendants-Appellees.	)	

O R D E R

Before: MOORE, ROGERS, and GRIFFIN, Circuit Judges.

Joseph Findler IV, a pro se Michigan resident, appeals the district court's order granting the defendants' motion to dismiss his civil rights complaint for failing to state a claim upon which relief can be granted. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In May 2019, Findler brought this civil rights complaint, pursuant to 42 U.S.C. § 1983, against the City of Ann Arbor, Interim Chief of Police Robert Pfannes, peace officers Tyler Fullerton, Erin Guenther, Garrett Marshall, and Skyler Verhelle, and various John Doe defendants. The complaint revolves around four instances in which Findler believes the defendants either tampered with or temporarily stole and then replaced items of his personal property. First, he claimed that in January 2019 he returned home to discover that his laptop and external hard drive were "displaced" from the location that he believed that he had left them, and he discovered malware on his laptop that he did not recognize. Second, on February 23, 2019, Findler returned home to discover that his iPhone was no longer on the kitchen counter where he believed that he had left it. He called the Ann Arbor Police, and Fullerton and Verhelle responded. After a search of the residence, the iPhone was discovered by the officers on a TV stand. Third, on March 3,

2019, Findler believed that he had left an external hard drive on his bed, but the hard drive was no longer there when he returned from a twenty-minute run to the gas station. He once again called the Ann Arbor Police, and this time Guenther responded. Guenther suggested that they search his belongings for the hard drive, and it was discovered in a large blue bin. Finally, on April 15, 2019, Findler could not find his work ID/badge, which he believed he had left on his bed. He again called the Ann Arbor Police, and Marshall responded. Marshall asked if anything else had been stolen and stated that he "need[ed] a little more than that to write a larceny report." Findler found the work ID/badge the next day. Findler therefore inferred that the officers must have broken into his residence and tampered with or temporarily stolen these items, and then used the pretext of his calls to the Ann Arbor Police to return the items surreptitiously and make it look like he had merely misplaced them.

Findler therefore claimed that: (1) the individual defendants who responded to his calls to the Ann Arbor police violated his Fourth, Fifth, and Fourteenth Amendment rights; (2) the City of Ann Arbor and Pfannes maintained a custom, policy, or practice of violating his constitutional rights; (3) the defendants negligently failed to provide him with police protection; (4) the defendants intentionally inflicted emotional distress upon him; and (5) the defendants intruded upon his right to privacy.

The defendants moved to dismiss the second amended complaint. The district court granted the motion, finding that Findler's factual allegations did not support an inference that the defendants committed any wrongdoing. The district court also determined that the two police bodycam pictures that Findler attached to his complaint were too difficult to decipher to support Findler's claim concerning his misplaced iPhone. On appeal, Findler argues that he adequately pled his claims to survive dismissal.

We review de novo a district court's judgment granting a Rule 12(b)(6) motion to dismiss. *See Bickerstaff v. Lucarelli*, 830 F.3d 388, 395-96 (6th Cir. 2016). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Pleadings drafted by pro se litigants should be held to a less

stringent standard than those drafted by lawyers and should liberally construed, *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004), but pro se litigants are not exempt from the requirements of the Federal Rules of Civil Procedure, *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989).

The facts alleged in the second amended complaint do not support a plausible inference that the defendants violated Findler's rights. Beginning with the factual allegations against the individual officers, Findler asserted that when he could not find items of his personal property in the locations that he believed he had left them, he called the Ann Arbor Police and the defendant officers responded to those calls. Those officers then asked him some questions and on two occasions assisted him with searching the residence. All of the missing items were ultimately found. Instead of considering the possibility that he might have simply misplaced the items or that some other person might have moved them, Findler instead *infers* that the police officers who responded to his calls must have previously broken into his residence and stolen the items, and then used his calls to the police as an opportunity to return them. Even under the more forgiving pleading standards applied to pro se litigants, this is not a plausible or reasonable inference and does not raise a right to relief above a speculative level. *See Iqbal*, 556 U.S. at 679; *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1051 (6th Cir. 2011). And the police bodycam pictures attached to the second amended complaint are too blurry and indecipherable to support his claims. Further, the factual allegations do not support a plausible inference that the City of Ann Arbor or Interim Chief of Police Pfannes instituted an unlawful custom, policy, or practice to violate Findler's constitutional rights, *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978), or that the defendants negligently failed to provide him with police protection, intentionally inflicted emotional distress upon him, or invaded his right to privacy.

For the reasons discussed above, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk