IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

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| LESTER ANTONIO DEWEY,<br><br>Plaintiff,<br><br>vs.<br><br>MIKE BROADHEAD, Riverton Police Chief, GARY CRUCE, Riverton Police Department Officer, individually and in their official capacities,<br><br>Defendants. | Case No. 11-CV-387-J |

**ORDER GRANTING MOTIONS TO DISMISS CIVIL RIGHTS COMPLAINT**

This matter has come before the Court on a prisoner civil rights complaint filed by the Plaintiff, Lester Antonio Dewey. Mr. Dewey brings this action against the Riverton Chief of Police, Mike Broadhead, and Riverton Police Officer, Gary CRUCE, in both their official and individual capacities. Mr. Dewey asserts, pursuant to 42 U.S.C. § 1983, a cause of action for unlawful arrest under the Fourth and Fourteenth Amendments of the United States Constitution. This Court has reviewed the entire file, and being fully advised, **FINDS** that Defendants' Motions to Dismiss should be **GRANTED.**

## BACKGROUND

The only facts set forth in Mr. Dewey's Complaint read as follows:

> On July 26, 2010 the Plaintiff was illegally and unlawfully arrested by Defendants Cruce, Gardner, and Cox at the Forest Drive Apartments in Riverton, Wyoming for an alleged crime on another enrolled member of the Northern Arapaho Tribe, a female. The crime was alleged to have taken place at the corner of Maryanne and Forest Drive in Riverton, Wyoming, both the situs of the alleged crime and apartment complex lie within the exterior boundaries of the Wind River Indian Reservation and/or in "Indian Country" as defined at the federal statute 18 U.S.C. § 1151*et seq*,. This cause of action/complaint is ***not*** an attempt to appeal the Plaintiff's subsequent criminal prosecution or conviction; rather it concerns his illegal arrest by the Defendants. (**See** EXHIBIT-A, page 1, #8). Plaintiff, after his arrest, sent a hand-written correspondence to the Riverton Police Department asking if they had arresting powers over him, presumably; they thought his inquiry a joke as they never bothered responding to it.

(Compl. [Doc.1] at 3, ¶ 10)(emphasis in original).

The only issue in Mr. Dewey's Complaint is whether the Riverton Police had "arresting powers" over him in the city limits of Riverton, Wyoming. He contends that his crime was committed against another Native American in Riverton, Wyoming, and that Riverton is within the exterior boundaries of the Wind River Indian Reservation and within "Indian Country" as defined in 18 U.S.C. §1151 *et seq.* Mr. Dewey alleges that his Fourth and Fourteenth Amendment rights were violated and requests declaratory relief and for this Court to award him "any and all forms of recoverable damages he incurred as a result of the

Defendants unlawful omissions ... including costs and attorney's fees." *Id.* at 6-7.

The Defendants have raised issues under Fed.R.Civ.P. 12(b)(6) alleging that Plaintiff has failed to state a claim. They argue that the issue raised by Mr. Dewey has been raised and considered by the Wyoming Supreme Court in *Yellowbear v. State*, 174 P.3d 1270, 1273-84 (Wyo. 2008) and decided against this Plaintiff. In addition, Defendants assert that the reasoning of the State Court was later considered and upheld in an action brought pursuant to 28 U.S.C. § 2254 in both the United States District Court for the District of Wyoming and in the Tenth Circuit Court of Appeals. The Defendants also allege that they are entitled to qualified immunity.

**STANDARD OF REVIEW**

Congress adopted the Prison Litigation Reform Act with the principal purpose of deterring the litigation of patently frivolous claims brought by prisoners under federal statutes. *Robbins v. Chronister*, 402 F.3d 1047, 1051-52 (10th Cir. 2005). The Prison Litigation Reform Act provides:

> (c) Dismissal
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> (1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks

> relief from a defendant who is immune from such relief.
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> (2) In the event that such a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

42 U.S.C. § 1997(e). "A pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2).

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

*Gee v. Pacheco,* 627 F.3d 1178, 1183 (10th Cir. 2010) (quoting *Ashcroft v. Iqbal,* 129 S.Ct. 1937, 1949 (2009)).

The Court explained that two principles underlie this standard. First, the Court emphasized that only factual allegations are given weight in the analysis. "[T]he tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Id.* The Court held that under *Twombly,* Rule 8 "demands more than

an unadorned, the defendant-unlawfully-harmed-me accusation[,]... 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action . . . .'" *Id.* (citations omitted). In addition, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

The second principle is that only plausible claims survive. The Court explained as follows:

> Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not shown–that the pleader is entitled to relief.

*Id.* at 1950 (internal quotation marks and citations omitted).

The Court is mindful that Mr. Dewey's *pro se* status obliges us to construe his Complaint liberally. *Hall v. Bellmon,* 935 F.2d 1106, 1110 (10th Cir. 1991). "[D]ismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." *Oxendine v. Kaplan,* 241 F.3d 1272, 1275 (10th Cir. 2001)(citation and quotation marks omitted).

**DISCUSSION**

Mr. Dewey's sole claim is that the city of Riverton, Wyoming is part of "Indian Country" as defined by 18 U.S.C. § 1151 and, because he is an enrolled member of the Norther Arapaho Tribe, the Riverton Police did not have jurisdiction to arrest him. (Compl. at 3, ¶ 10.) Mr. Dewey asserts that the Complaint "is not an attempt to appeal [his] subsequent criminal prosecution or conviction; rather it concerns his illegal arrest by the Defendants." *Id.*

The Wyoming Supreme Court addressed this issue in *Yellowbear v. State,* 174 P.3d 1270, 1273-84 (Wyo. 2008). In that case, the court had to decide whether Yellowbear's crime, which took place in the city limits of Riverton, Wyoming, occurred in "Indian country," as defined by 18 U.S.C. § 1151.[1] After a very thorough analysis, the Wyoming Supreme Court determined that the city of Riverton was not "Indian country":

The court held as follows:

> We conclude from all these factors that it was the intent of Congress in passing the 1905 Act [of Congress] to diminish the Wind River Indian Reservation and to remove from it the lands described as "ceded, granted, and relinquished" thereunder. While the City of Riverton may be located on lands that at one time were within the external boundaries of the reservation those

[1] If the Wyoming Supreme Court determined that Riverton was "Indian country" then the case would have been under the jurisdiction of the United States rather than the State of Wyoming. *Yellowbear,* 174 P.3d at 1273.

> lands are no longer part of the reservation, and are not "Indian country." Therefore, the State of Wyoming has jurisdiction in this criminal case.

*Yellowbear,* 174 P.3d at 1284.

Subsequently, Mr. Yellowbear sought federal habeas relief in this Court under 28 U.S.C. § 2254 for his state conviction for the murder of his daughter. (06-CV-82-B) This Court denied the petition. Mr. Yellowbear appealed this Court's decision and the Tenth Circuit Court of Appeals had the opportunity to review the Wyoming Supreme Court's interpretation of the federal law in *Yellowbear v. Attorney General of Wyoming,* 380 F.Appx. 740, 743 (10th Cir. 2010). The Tenth Circuit stated:

> Not only has Mr. Yellowbear failed to give us any reason to think the Wyoming Supreme Court's rejection of his jurisdictional argument was an objectively unreasonable application of Supreme Court precedent; he has also failed to give us any reason to think that decision was incorrect. Neither, given the thorough and detailed attention the Wyoming Supreme Court committed to the question, can we see anything that might be gained by repeating its analysis here. Instead, we direct the reader to that court's careful exposition of the question, *see Yellowbear,* 174 P.3d at 1273-84, and confirm that Mr. Yellowbear has not presented to this court any argument calling into question the correctness of that decision.

*Id.* at 743. In sum, Mr. Yellowbear failed to convince the Tenth Circuit Court of Appeals that the Wyoming Supreme Court's decision that Riverton was not "Indian country" according to the 1905 Act of Congress was erroneous.

Similarly, the issue in the instant case is whether the City of Riverton police officers

had jurisdiction to arrest Mr. Dewey at the Forest Drive apartments in Riverton, Wyoming. (Compl. at 3, ¶ 10.) Not only has the Wyoming Supreme Court expressly ruled that Riverton, Wyoming is not "Indian country" and jurisdiction lies with the State of Wyoming, the Tenth Circuit affirmed that decision. Therefore, even taking all allegations in the light most favorable to Mr. Dewey, the Court finds that he has failed to state a plausible claim for relief against Defendants in this case and his Complaint should be dismissed.

**QUALIFIED IMMUNITY**

Defendants also assert that they are entitled to qualified immunity. Qualified immunity shields public officials from civil damages liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton,* 483 U.S. 635, 638 (1987). "When a defendant pleads qualified immunity, the plaintiff has the heavy burden of establishing: (1) that the defendant's actions violated a federal constitutional or statutory right; and (2) that the right violated was clearly established at the time of the defendant's actions." *Greene v. Barrett,* 174 F.3d 1136, 1142 (10th Cir. 1999). [2]

"A constitutional right is clearly established when, at the time of the alleged violation,

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[2] The Court is free to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan,* 555 U.S. 223, 236 (2009).

the contours of the right were sufficiently clear that a reasonable official would understand that his actions violate that right." *Swanson v. Town of Mountain View,* 577 F.3d 1196, 1200 (10th Cir. 2009). Plaintiff must do more than identify, in the abstract, the clearly established right and then allege that the Defendants have violated it. *Id.* A court decision with an identical factual situation need not be shown, but Mr. Dewey must show that it is "apparent that in the light of preexisting law a reasonable official would have known that the conduct in question would have violated the constitutional right at issue." *Id.* A right is clearly established when a Supreme Court or Tenth Circuit precedent exits on point, or when the weight of authority from other courts has found the law to be as the Plaintiff maintains. *Id.*

In the case before the Court, Mr. Dewey has not identified any existing law that would put the Defendants on notice that they violated his constitutional rights by arresting him in the city limits of Riverton, Wyoming. In fact, the opposite is true. The decisions in the Yellowbear cases would have put the officers on notice that Riverton, Wyoming is not "Indian country" and that jurisdiction for his arrest lies with the Riverton Police Department. Accordingly, the Court finds that Defendants are entitled to qualified immunity and Mr. Dewey's Complaint should be dismissed.

**CONCLUSION**

For the reasons set forth above, Mr. Dewey has failed to state a claim upon which

relief can be granted as to Defendants named in this action. The Court, therefore, finds that Defendants' Motions to Dismiss should be granted and Mr. Dewey's claims must be dismissed with prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' Motions to Dismiss should be GRANTED (Docs. 20, 21) and Mr. Dewey's Complaint is DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that all pending motions before the Court shall be DENIED AS MOOT.

Dated this 30th day of April, 2012.

Alan B. Johnson
United States District Judge