

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Robert L. Hillman,	:	
Plaintiff-Appellant,	:	
v.	:	No. 18AP-896 (C.P.C. No. 15CV-2664)
David Larrison,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *Robert L. Hillman, pro se.*

On brief: *Zach Klein, City Attorney, and Timothy J. Mangan, for appellee.*

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Plaintiff-appellant, Robert L. Hillman, appeals the judgment of the Franklin County Court of Common Pleas finding that his accusation by affidavit filed pursuant to R.C. 2935.09 was not meritorious, referring the matter to the prosecuting attorney, and closing the case. Because we find the trial court did not abuse its discretion when it found that the accusation by affidavit was not meritorious, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶ 2} Hillman initiated this proceeding on March 27, 2015, by filing an accusation by affidavit under R.C. 2935.09. He alleged that defendant-appellee, David Larrison, a city of Columbus police officer, committed perjury in violation of R.C. 2921.11 by making false

statements when testifying during Hillman's criminal trial. The trial court dismissed the case on July 15, 2015, and Hillman appealed.

{¶ 3} This court reversed and remanded the case on the ground that the trial court had "summarily dismissed" the matter without applying R.C. 2935.10, which affords the reviewing official only two options: "(1) issue a warrant for the arrest of the person charged in the affidavit, if the judge, clerk, or magistrate has no reason to believe that it was not filed in good faith or the claim is not meritorious, or (2) refer the matter to the prosecuting attorney for investigation prior to the issuance of a warrant, if the judge, clerk, or magistrate has reason to believe that it was not filed in good faith or the claim is not meritorious." *Hillman v. Larrison*, 10th Dist. No. 15AP-730, 2016-Ohio-666, ¶ 10 ("*Hillman I*"). Accordingly, we remanded with instructions to the trial court to follow the procedures set forth in the statute.

{¶ 4} On remand, the trial court dismissed the case, but did so on the ground that Hillman's accusation by affidavit was invalid because it lacked a notary stamp or seal. Hillman appealed the trial court's decision.

{¶ 5} We again reversed. Because our previous decision considered Hillman's affidavit to be facially valid, we held that the law of the case doctrine prevented the court from dismissing the case without complying with the mandate to apply the procedure set forth in R.C. 2935.10. *Hillman v. Larrison*, 10th Dist. No. 16AP-374, 2016-Ohio-7971 ("*Hillman II*").

{¶ 6} On remand, the trial court examined Hillman's affidavit and concluded that it was not meritorious. Accordingly, the trial court referred the matter to the county prosecutor for investigation, overruled a number of pending motions filed by Hillman, and ordered the case closed. Hillman again appealed the trial court's decision.

{¶ 7} We again reversed and remanded the case to the trial court finding that it did not properly examine all the evidence Hillman presented in support of his accusation by affidavit. *Hillman v. Larrison*, 10th Dist. No. 17AP-160, 2018-Ohio-184 ("*Hillman III*"). We again directed the trial court "to consider whether Hillman has made a meritorious allegation of perjury, based on his affidavit and the documentation in the record he submitted in support of the allegation." *Id.* at ¶ 15.

{¶ 8} On remand, after thoroughly considering all of the evidence Hillman presented in support of his accusation, the trial court found that "the Affidavit and Complaint filed by complainant Hillman lacks probable cause and therefore is not meritorious." Based upon that finding, and pursuant to the requirements of R.C. 2935.10(A), the trial court referred the matter to the county prosecuting attorney for investigation.

{¶ 9} Hillman appeals, assigning the following errors:

[1.] APPELLANT CONTENDS THAT THE TRIAL COURT DENIED HIM SUBSTANTIVE DUE PROCESS AS WELL AS EQUAL PROTECTION OF THE LAW WHEN IT IGNORED OVERWHELMING EVIDENCE THAT THE DEFENDANT-APPELLEE COMMITTED THE CRIME OF PREJURY, AS DEFINED BY R.C. 2921.11 AND THUS, RULED CONTRARY TO WELL ESTABLISHED OHIO AND UNITED STATES SUPREME COURT PRINCIPLES OF LAW IN VIOLATION OF APPELLANT'S 1ST, 5TH, AND 14TH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTIONS TO FAIRLY PETITION THE GOVERNMENT FOR REDRESS OF INJURIES.

[2.] APPELLANT CONTENDS THAT THE TRIAL COURT APPLIED THE WRONG STANDARD OF REVIEW, WHEN DETERMINING WHETHER PROBABLE CAUSE EXIST, THUS IT'S JUDGMENT WAS AGAINST THE MANIEST WEIGHT OF THE EVIDENCE AND, A DENIAL OF APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND, EQUAL PROTECTION OF THE LAW UNDER THE 1ST, 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS.

[3.] APPELLANT CONTENDS THAT THE TRIAL COURT HAS DENIED HIM SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION OF LAW UNDER THE OHIO AND UNITED STATES CONSTITUTIONAL AMENDMENTS 1ST, 5TH AND 14TH WHERE THE TRIAL COURT ABUSED IT'S DISCRETION BY REFUSING TO ABIDE BY THE APPELLATE COURTS REMAND ORDERS TO ADDRESS APPELLANT'S CLAIMS THAT HE WAS ILLEGALLY IMPOSED COURT COSTS AND FILING FEES ASSOCIATED WITH FILING A R.C. 2935.09 AFFIDAVIT BY ACCUSATION.

(Sic passim.)

LEGAL ANALYSIS

{¶ 10} This court applies an abuse of discretion standard to "a judge's decision not to issue a warrant based on an accusation by affidavit filed pursuant to R.C. 2935.09 and 2935.10." *Hillman v. O'Shaughnessy*, 10th Dist. No. 16AP-571, 2017-Ohio-489, ¶ 7, citing *In re Slayman*, 5th Dist. No. 08CA70, 2008-Ohio-6713, ¶ 19. An abuse of discretion is more than merely an error of judgment; it connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 11} Pursuant to R.C. 2935.09(D), the following procedures must be followed when a private citizen seeks to cause an arrest or prosecution of another person: (1) the private citizen completes an affidavit charging the offense committed; (2) the private citizen files the affidavit with a reviewing official; and (3) the reviewing official reviews the affidavit to determine if a complaint should be filed with the prosecuting attorney. Hillman filed his accusation by affidavit pursuant to this provision.

{¶ 12} R.C. 2935.10 sets forth subsequent procedures that must be followed by a judge, clerk, or magistrate upon the filing of an accusation by affidavit pursuant to R.C. 2935.09 that alleges a felony, as Hillman's affidavit does here. In such circumstances, the judge, clerk, or magistrate has only two options: (1) issue a warrant for the arrest of the person charged in the affidavit; or (2) refer the matter to the prosecuting attorney for investigation if the judge, clerk, or magistrate believes that the affidavit was not filed in good faith or that the claim asserted is not meritorious, i.e., without probable cause. *Hillman III* at ¶ 10.

{¶ 13} When R.C. 2935.09 is read in *pari materia* with R.C. 2935.10, it is clear that the mere filing of an affidavit claiming that a crime was committed does not require the issuance of an arrest warrant. *State ex rel. Strothers v. Turner*, 79 Ohio St.3d 272, 273 (1997). Moreover, in the context of R.C. 2935.10, the absence of a meritorious claim is viewed the same as the absence of probable cause. *Hillman II* at ¶ 7, citing *State ex rel. Brown v. Jeffries*, 4th Dist. No. 11CA3275, 2012-Ohio-1522, ¶ 9.

{¶ 14} Although Hillman's first assignment of error is couched in constitutional terms (deprivation of substantive due process and equal protection), the arguments he advances in support of this assignment of error solely challenge the factual basis for the trial court's decision. He does not present any arguments or case law that implicate

substantive due process or equal protection claims. Therefore, we will consider Hillman's first assignment of error in conjunction with his second assignment of error, wherein he argues that the trial court's judgment is against the manifest weight of the evidence.¹

{¶ 15} Hillman's accusation by affidavit alleges that Officer Larrison, on or about February 19 and 20, 2014, during the course of a jury trial presided over by Judge David Cain in the Franklin County Court of Common Pleas, deliberately committed the crime of perjury, a felony of the third degree pursuant to R.C. 2921.11. (Compl. & Aff. at ¶ 2.) The crime of perjury is set forth in R.C. 2921.11, which provides in pertinent part as follows:

(A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

(B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.

{¶ 16} In order for the trial court to issue a warrant for the arrest of Officer Larrison for the crime of perjury, Hillman had to demonstrate there was probable cause that Larrison, while under oath testifying at Hillman's criminal trial, knowingly made a false statement capable of affecting the outcome of Hillman's criminal trial.

{¶ 17} Hillman alleged Officer Larrison committed perjury when he testified about three separate factual issues. The trial court addressed all three factual issues and found Hillman's claims not meritorious. On appeal, Hillman challenges only one of these three factual issues, i.e., Officer Larrison's testimony that the run report he reviewed indicated that the 911 caller (Dunn) identified the person Dunn saw crawl through an apartment window as a black male.

{¶ 18} Hillman advances two arguments to support his allegation that Officer Larrison committed perjury when he testified about what the run report indicated: (1) Dunn's purported trial testimony that Dunn did not see a black male climb through the

¹ Hillman's second assignment of error also alleges constitutional violations but all of his arguments center on the evidence he presented in support of his accusation. Hillman presents no argument nor cites any case law implicating a due process or equal protection violation.

window and that he did not relay that information to the 911 dispatcher; and (2) a copy of a document entitled "Event Information" that does not identify a black male as the person reported to have climbed through a window. After reviewing Hillman's arguments, we conclude that the trial court did not abuse its discretion when it concluded that Hillman's accusation by affidavit and supporting documents did not establish probable cause that Officer Larrison committed perjury.

{¶ 19} As noted by the trial court, Hillman did not provide the trial court with a transcript of Dunn's trial testimony. Therefore, the trial court could not determine the validity of Hillman's assertions about Dunn's alleged testimony.

{¶ 20} With respect to the "Event Information" document, we find no abuse of discretion by the trial court when it determined the document did not demonstrate probable cause that Officer Larrison committed perjury. As noted by the trial court, the "Event Information" document was not authenticated. The document also contains a number of shorthand abbreviations the meaning of which are not completely clear and are not explained. There is no indication that Officer Larrison was presented with this document during his testimony. Most notably, it is unclear whether the "dispatch run" referred to by Officer Larrison in his testimony is the "Event Information" document Hillman submitted in support of his accusation by affidavit. Even if the "dispatch run" referred to by Officer Larrison is the same document as the "Event Information" document Hillman provided, and even if Officer Larrison was incorrect when he stated the "dispatch run" indicated that a black male was seen crawling through the window, there is no evidence that Officer Larrison knowingly made a false statement under oath. For all these reasons, the trial court did not abuse its discretion when it found that Hillman did not present a meritorious claim for perjury against Officer Larrison. Therefore, we overrule Hillman's first and second assignments of error.

{¶ 21} In his third assignment of error, Hillman alleges that the trial court denied him substantive due process and equal protection of the law when it failed to address his claim that court costs and filing fees were illegally imposed on him. We disagree.

{¶ 22} First, the trial court's judgment entry in this matter does not impose court costs on Hillman. Therefore, Hillman has not been adversely affected and the issue of court costs is not properly before us in this appeal. Second, the record in this case does not

indicate that Hillman paid any filing fees. In fact, Hillman filed an affidavit of indigency with his complaint and the clerk accepted his filing. Therefore, Hillman is not aggrieved and the issue of filing fees is not properly before us. For these reasons, we overrule Hillman's third assignment of error.

{¶ 23} Having overruled Hillman's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER and BRUNNER, JJ., concur.
