

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IDA BLEICH,

vs.

EL CAJON POLICE OFFICER D.
EHLERS, BASIL ABDULAHAD and
DOES 1-20,

Defendant.

CASE NO. 08-CV-2189-H (WVG)

**ORDER GRANTING
DEFENDANT EHLERS'S
MOTION FOR SUMMARY
JUDGMENT**

[Doc. No. 26.]

On March 5, 2010, Defendant D. Ehlers filed a motion for summary judgment in this case. (Doc. No. 26.) On April 5, 2010, Plaintiff Ida Bleich filed her response in opposition to the motion for summary judgment. (Doc. No. 30.) On April 12, 2010, Defendant Ehlers filed his reply in support of the motion for summary judgment. (Doc. No. 33.) The Court held a hearing on the matter on April 19, 2010. Keith Rutman appeared on behalf of the Plaintiff. Steven Boehmer and Carrie Mitchell appeared on behalf of the Defendant. For the following reasons, the Court GRANTS Defendant Ehlers's motion for summary judgment.

Background

On June 9, 2008, Plaintiff Ida Bleich ("Plaintiff"), a 59-year-old pharmacist, was arrested by Defendant Darren Ehlers without a warrant on charges of violating California Penal Code § 442 (criminal threats) and § 646.9 (stalking). (Compl. ¶¶ 8, 10.) At all relevant times,

1 Defendant Ehlers was a law enforcement officer with the El Cajon Police Department. (Id. ¶
2 4.) Prior to June 9, 2008, Defendant Basil Abdulahad and Plaintiff worked together at the CVS
3 pharmacy in El Cajon, California. (Id. ¶ 8.) On June 9, 2008, Defendant Abdulahad reported
4 to Defendant Ehlers that on June 7, 2008, Plaintiff left a message on Abdulahad’s cell phone
5 threatening Abdulahad with death. (Id. ¶¶ 8-9.) Abdulahad told Ehlers that Plaintiff knew
6 where he lived and was acting strangely towards him at work. (Doc. No. 26-4, Ehlers Decl.
7 ¶ 10.) Abdulahad appeared visibly shaken and expressed to Defendant Ehlers that he was very
8 afraid. (Id. ¶ 4.) Defendant Ehlers listened to the message, made an audiotape recording of
9 the message, and prepared a typewritten document of its contents. (Id. ¶ 8.) The message
10 made specific threats against Abdulahad and stated that the caller knew where Abdulahad
11 lived, threatened to slit his throat and put him in a body bag, and purported to describe
12 Abdulahad’s movements on a recent night. (Id.) Defendant Ehlers believed the caller sounded
13 like a female with slow mumbling, rambling voice who was either drunk or high on
14 prescription drugs. (Id. ¶¶ 5-6.) Defendant Abdulahad told Defendant Ehlers that Plaintiff was
15 Abdulahad’s supervisor at the pharmacy and had access to prescription drugs. (Id. 6.)

16 Defendant Ehlers then went to the CVS pharmacy where Plaintiff worked to continue
17 the investigation. (Id. ¶ 12.) Defendant met with the store manager, Josephine Elaine Cavada,
18 and had her listen to the voice message. (Id. ¶ 13.) According to Defendant Ehlers, Cavada’s
19 “eyes went big and round and she stated, ‘That’s Ida. These are some serious threats. That
20 definitely sounds like Ida to me.’” (Id.) According to Defendant Ehlers, Cavada then
21 informed him that she had received customer complaints about Plaintiff stealing their pills and
22 manipulating prescriptions, and that customers complained of Plaintiff’s erratic behavior
23 involving yelling and cursing at people. (Id.) According to Defendant Ehlers, Cavada also
24 informed him about the fact that Plaintiff was noted for acting strangely toward Abdulahad.
25 (Id.) Defendant Ehlers then met with Plaintiff, who appeared agitated and defensive.¹ (Id. ¶
26 13.) Defendant Ehlers noticed that Plaintiff’s voice resembled that of the caller on the

27 ¹ Parties appear to dispute what was actually said by Defendant Ehlers and Plaintiff
28 during that meeting. (See Doc. No. 30-1 at 11-12.)

1 message. (Id. ¶ 15.) Defendant Ehlers also noticed that Plaintiff appeared to be “disoriented
2 and ‘not all there,’” and her behavior was erratic. (Id. ¶ 18.) After conferring with a senior
3 officer who was present during the interview, Defendant Ehlers concluded that probable cause
4 existed to arrest Plaintiff for making a criminal threat and stalking. (Id. ¶ 15.)

5 On June 20, 2008, a felony complaint was filed charging Ida Bleich with Penal Code
6 sections 422 (making a criminal threat) and 646.9 (stalking). (Doc. No. 26-3, Ex. A, Felony
7 Compl.) At the preliminary hearing, the Superior Court Judge found there was insufficient
8 evidence to bind over for trial and dismissed the case. (Doc. No. 30-10, Prelim. Hearing
9 Transcript.) The Judge then denied an oral motion for a factual finding of innocence pursuant
10 to California Penal Code section 851.8. (Id. at 39-40.) The court explained there was some
11 evidence that Bleich made the call to Abdulahad but the evidence was not strong enough to
12 bind her over for trial. (Id.) The court later denied Bleich’s written petition seeking a finding
13 of factual innocence, and the California Court of Appeal affirmed. See People v. Bleich, 100
14 Cal. Rptr.3d 288 (Ct. App. 2009), review denied (Jan. 13, 2010).

15 On November 25, 2008, Plaintiff filed her complaint against Defendants Ehlers and
16 Abdulahad. (Doc. No. 1.) Plaintiff’s complaint alleges Defendant Ehlers violated Plaintiff’s
17 Fourth Amendment right to be free from unreasonable seizures by unlawfully arresting her,
18 and seeks damages pursuant to 42 U.S.C. § 1983. (Id. ¶¶ 27-31.) Plaintiff alleges that a
19 reasonably prudent officer would have known that Plaintiff was not subject to detention or
20 arrest, and that Plaintiff sustained great emotional distress and shock and injury to her person
21 and nervous system as a result of Defendant’s actions. (Id. ¶¶ 28-30.)

22 On March 5, 2010, Defendant Ehlers filed a motion for summary judgment, arguing that
23 Plaintiff is collaterally estopped from relitigating the issue of probable cause. (Doc. No. 26-1
24 at 12.) Defendant’s motion also argues that probable cause existed as a matter of law, and that
25 Defendant is entitled to qualified immunity. (Id. at 16-20.)

26 ///

27 ///

28 ///

1 **I. Summary Judgment Standard**

2 Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil
3 Procedure if the moving party demonstrates the absence of a genuine issue of material fact
4 and entitlement to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322
5 (1986). A fact is material when, under the governing substantive law, it could affect the
6 outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Freeman
7 v. Arpaio, 125 F.3d 732, 735 (9th Cir.1997). A dispute is genuine if a reasonable jury
8 could return a verdict for the nonmoving party. Anderson, 477 U.S. at 248.

9 A party seeking summary judgment always bears the initial burden of establishing
10 the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving
11 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
12 essential element of the nonmoving party's case; or (2) by demonstrating that the
13 nonmoving party failed to establish an essential element of the nonmoving party's case on
14 which the nonmoving party bears the burden of proving at trial. Id. at 322-23. “Disputes
15 over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” T.W.
16 Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).
17 Once the moving party establishes the absence of genuine issues of material fact, the
18 burden shifts to the nonmoving party to set forth facts showing that a genuine issue of
19 disputed fact remains. Celotex, 477 U.S. at 322. The nonmoving party cannot oppose a
20 properly supported summary judgment motion by “rest[ing] on mere allegations or denials
21 of his pleadings.” Anderson, 477 U.S. at 256.

22 When ruling on a summary judgment motion, the court must view all inferences
23 drawn from the underlying facts in the light most favorable to the nonmoving party.
24 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court
25 does not make credibility determinations with respect to evidence offered. See T.W. Elec.,
26 809 F.2d at 630-31 (citing Matsushita, 475 U.S. at 587). Summary judgment is therefore
27 not appropriate “where contradictory inferences may reasonably be drawn from undisputed
28 evidentiary facts....” Hollingsworth Solderless Terminal Co. v. Turley, 622 F.2d 1324,

1 1335 (9th Cir. 1980).

2 **II. Discussion**

3 Plaintiff alleges Defendant Ehlers violated her Fourth Amendment right to be free
4 from unreasonable seizures by unlawfully arresting her. Plaintiff brings this lawsuit under
5 42 U.S.C. § 1983, which provides a cause of action “against any person acting under color
6 of law who deprives another ‘of any rights, privileges, or immunities secured by the
7 Constitution and laws’ of the United States.” S. Cal. Gas Co. v. City of Santa Ana, 336
8 F.3d 885, 887 (9th Cir.2003) (quoting 42 U.S.C. § 1983). To establish liability under 1983,
9 a plaintiff must show (1) that she has been deprived of a right secured by the United States
10 Constitution or a federal law, and (2) that the deprivation was effected “under color of state
11 law.” Broam v. Bogan, 320 F.3d 1023, 1028 (9th Cir.2003).

12 An arrest without probable cause is an actionable unlawful arrest. Atwater v. City
13 of Lago Vista, 532 U.S. 318, 354 (2001). Probable cause exists when the facts are such
14 that a reasonably prudent person would believe that a crime had been committed. Gerstein
15 v. Pugh, 420 U.S. 103, 111 (1975). Probable cause is based on what the officer knew at the
16 time of the arrest. Beck v. State of Ohio, 379 U.S. 89, 91 (1964) (“Whether that arrest was
17 constitutionally valid depends in turn upon whether, at the moment the arrest was made, the
18 officers had probable cause to make it-whether at that moment the facts and circumstances
19 within their knowledge and of which they had reasonably trustworthy information were
20 sufficient to warrant a prudent man in believing that the petitioner had committed or was
21 committing an offense.”)

22 Plaintiff was arrested for making a criminal threat pursuant to California Penal Code
23 section 422 and for stalking under section 646.9, subdivision (a). The crime of stalking is
24 established if a person repeatedly follows or harasses another person and makes a credible
25 threat with the intent to place that person in reasonable fear of death or great bodily injury.
26 People v. Ewing, 76 Cal. App.4th 199, 210 (1999). The offense of making a criminal threat
27 is established where the following five elements are present: (1) the defendant willfully
28 threatened to commit a crime which will result in death or great bodily injury to another;

1 (2) the defendant made the threat with the specific intent the statement would be taken as a
2 threat; (3) the threat was on its face and under the circumstances so unequivocal,
3 unconditional, immediate and specific as to convey to the person threatened a gravity of
4 purpose and an immediate prospect of execution of the threat; (4) the threat caused the
5 person threatened to be in sustained fear for his or his immediate family's safety; and
6 finally, (5) the threatened person's fear was reasonable under the circumstances. In re
7 Sylvester C., 40 Cal. Rptr.3d 461, 463-64 (Ct. App. 2006); People v. Maciel, 6 Cal. Rptr.3d
8 628, 632 (Ct. App. 2003).

9 Here, there is no disputed issue of material fact as to what was known to the officers
10 at the time of Plaintiff's arrest. Parties do not dispute that Abdulahad was threatened and
11 stalked. Abdulahad appeared visibly shaken and expressed to Defendant Ehlers that he was
12 very afraid. Defendant Ehlers listened to the message and believed that the voice sounded
13 like a female with a slow mumbling, rambling voice who was either drunk or high on
14 prescription drugs. Defendant Ehlers was then informed that Plaintiff was a female who
15 had access to prescription drugs. At the time of Plaintiff's arrest for making a criminal
16 threat and stalking, Defendant Ehlers knew that at least two persons believed the voice on
17 the cell phone message belonged to Plaintiff. Both Defendant Abdulahad and store
18 manager Cavada told Ehlers that the voice sounded like Plaintiff. Defendant Ehlers was
19 also told that Plaintiff had been acting strangely towards Abdulahad. During his contact
20 with Plaintiff, Defendant observed that her behavior was erratic, and her voice resembled
21 the caller's voice on the message. The Court concludes that Defendant Ehlers had probable
22 cause to arrest Plaintiff. Under the totality of the circumstances, a prudent person would
23 have concluded that there was a fair probability Plaintiff had committed a crime.²

24 ///

25 ///

27 ²Because the Court concludes that probable cause to arrest existed, the Court does not
28 reach the question of whether collateral estoppel or qualified immunity apply to Plaintiff's
claim.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Conclusion

For the reasons above, the Court GRANTS Defendant Ehlers's motion for summary judgment.

IT IS SO ORDERED.

DATED: April 20, 2010


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT