

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 16-10190-RGS

MICHAEL WYNN,
Plaintiff

v.

HARRISON SCHMIDT, and
GREGORY LENNON,
Defendants

ORDER ON REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

September 20, 2017

STEARNS, D.J.

I agree with Magistrate Judge Dein's careful analysis of the record and her conclusions that: (1) the federal §1983 civil rights claim is defeated by qualified immunity; and (2) that the state malicious prosecution and intentional infliction of emotional distress claims fail on their merits.

This case well illustrates the aphorism that probable cause does not require that police prove right in every case. As the Supreme Court observed long ago, "[w]hen the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of the arrest would 'warrant a man of

reasonable caution in the belief that an offense has been committed.” *Beck v. Ohio*, 379 U.S. 89, 96 (1964). And I do not understand plaintiff to argue otherwise. Whether the police acted lawfully in persisting in the prosecution after learning of the contradictory GPS data is a closer question, but I agree with Magistrate Judge Dein that the court need go no further than her qualified immunity analysis. I also agree that the state law claims fail for a want of a showing of the malicious state of mind required to support a malicious prosecution claim, *see Conway v. Smerling*, 37 Mass, App. Ct. 1, 3 (1994), and for the failure to meet the “extreme and outrageous” standard required as a matter of law to sustain a claim of intentional infliction of emotional distress, *see Sena v. Commonwealth*, 417 Mass, 250, 264 (1994).

For the foregoing reasons, the Recommendation is ADOPTED, the motion for summary judgement is ALLOWED, and the Complaint is DISMISSED with prejudice. The Clerk will enter a judgment with prejudice for defendants and close the case.¹

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹ I note that Wynn has not filed an Objection to the Magistrate Judge’s Report and Recommendation.