UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JAMI SARGENT, Plaintiff v. COMMONWEALTH OF PENNSYLVANIA, et al., Defendants	CIVIL ACTION NO. 3:13-CV-00730 (MEHALCHICK, M.J.)

MEMORANDUM OPINION

This is a 42 U.S.C. § 1983 action concerning excessive use of force, false arrest, and malicious prosecution claims arising out of an incident on March in March 24, 2011. Presently before the Court is the motion for partial summary judgment of Defendants Corporal Joseph Kulick and Trooper Robert Cuvo. Specifically, Defendants move for summary judgment on Counts V through VIII of the complaint, alleging false arrest and malicious prosecution. The motion has been fully briefed, and oral argument on both motions was held on May 6, 2015. For the reasons that follow, the motion (Doc. 42), will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Jami Sargent, instituted this lawsuit against the Commonwealth of Pennsylvania, the Pennsylvania State Police, Corporal Joseph Kulick, and Trooper Robert C. Cuvo, Jr. on March 20, 2013, asserting violations of their constitutional rights under the Fourth Amendment; specifically, excessive use of force, false arrest, and malicious prosecution under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

The undisputed facts are as follows. At approximately 9:00 p.m. on March 24, 2011, Plaintiff Jami Sargent ("Sargent"), exited Mt. Airy Casino Resort in Monroe County, Pennsylvania, with her friend, David Comstock ("Comstock"). (Doc. 44, at ¶ 2; Doc. 52, at ¶ 2). Upon arrival at Sargent's vehicle, Sargent could not locate her keys. (Doc. 44, at ¶ 3; Doc. 52, at ¶ 3). Security officers posted at the Casino had witnessed Sargent struggle to locate her keys and requested that Defendant Corporal Kulick respond to the parking lot of the Casino to assist Sargent in search for her keys, as they suspected Sargent and Comstock to be intoxicated. (Doc. 44, at ¶ 5; Doc. 52, at ¶ 5). Defendant Trooper Cuvo accompanied Defendant Kulick to the scene, where they detected a strong odor of alcohol on Sargent's and Comstock's breath. (Doc. 44, at ¶ 7, ¶ 8 ; Doc. 52, at ¶ 7, ¶ 8). Defendant Kulick advised Sargent and Comstock that operation of a vehicle while under the influence would constitute a DUI offense. (Doc. 44, at ¶ 9; Doc. 52, at ¶ 9). As the conversation came to a close, Sargent approached Defendant Kulick who was standing with Comstock and pointed her finger in Defendant Kulick's face. (Doc. 44, at ¶ 10; Doc. 52, at ¶ 10). As a result of this incident, Sargent was arrested and charged with aggravated assault, resisting arrest, harassment, disorderly conduct, and public drunkenness. (Doc. 44, at ¶ 13; Doc. 52, at ¶ 13). At the time of the incident, Sargent's blood alcohol content was approximately .27-.29, over three times the legal limit. (Doc. 44, at ¶ 16; Doc. 52, at ¶ 16). She has no recollection of the events that occurred in the parking lot on March 24, 2011. (Doc. 44, at ¶ 14; Doc. 52, at ¶ 14).

On February 17, 2015, Defendants filed the instant motion for summary judgment (Doc. 42), together with a brief in support of their motion (Doc. 43), corresponding exhibits (Doc. 47), and a statement of facts (Doc. 44). In their motion, Defendants seek dismissal of the false arrest and malicious prosecution claims (Counts V through VIII of Sargent's complaint), on the basis

that Sargent has failed to establish an essential element of these claims – the absence of probable cause in effectuating the arrest and commencing the proceedings against her. On March 9, 2015, Sargent filed a brief in opposition (Doc. 53), together with corresponding exhibits (Doc. 54), and with a statement of facts (Doc. 52). Defendants filed a reply brief on March 20, 2015. (Doc. 55).

This matter, having been fully briefed and presented at oral argument, is now ripe for disposition.

II. SUMMARY JUDGMENT STANDARD

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment should be granted only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" only if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of material fact is "genuine" only if the evidence "is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. In deciding a summary judgment motion, all inferences "should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." *Pastore v. Bell Tel. Co. of Pa.*, 24 F.3d 508, 512 (3d Cir. 1994).

The party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion," and demonstrating the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant makes such a showing, the non-movant must set forth specific facts, supported by the record, demonstrating that "the evidence presents a sufficient disagreement to require submission to a jury." *Anderson*, 477 U.S. at 251–52. Bald assertions that genuine issues of material fact exist are insufficient.

Indeed, where there is a complete failure of proof on an essential element of the nonmoving party's case, all other facts become immaterial, and the moving party is entitled to judgment as a matter of law.

III. DISCUSSION

A. COUNTS V & VI: FALSE ARREST

Defendants seek dismissal of Counts V and VI of the complaint on the basis that there is no genuine issue of material fact with respect to whether probable cause existed to arrest Plaintiff. Specifically, Defendants argue that Sargent has no recollection of what occurred in the parking lot, and therefore, can neither contradict the testimony offered by Defendants, nor dispute the evidence presented in the affidavit of probable cause.[1] (Doc. 43, at 8). Moreover, at oral argument, Defendants advanced the proposition that as probable cause existed to arrest Sargent for public drunkenness, the false arrest claim with respect to all other charges must be defeated. Sargent argues in response that while she does not recall the events in the parking lot on the night of March 24, 2011, the security footage and testimony of Comstock show a material dispute of fact with respect to whether probable cause existed to arrest Sargent.

[1] Defendants rely on *Brown v. Borough of Chambersburg*, 903 F.2d 274, 277-78 (3d Cir. 1990), for the proposition that summary judgment is appropriate when a plaintiff is unable to proffer evidence contradicting defendants' testimony, especially when his admitted inability to remember was caused by his "drunken condition." While the procedural posture of *Brown v. Borough of Chambersburg* differs from that of the case presently before the Court, as that case was brought before the Third Circuit on appeal from a directed verdict entered in favor of the defendants, the standard for summary judgment mirrors the standard for a directed verdict. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986). Nevertheless, regardless of whether Defendants' complete recitation of the facts must be deemed entirely unopposed due to Plaintiff's inebriation, this Court finds that considering only those undisputed facts recalled by the inebriated party and her witness yields the same result.

False arrest is defined as an arrest made without probable cause. "Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Orsatti v. New Jersey State Police,* 71 F.3d 480, 482–83 (3d Cir. 1995). "The determination that probable cause exists for a warrantless arrest is fundamentally a factual analysis that must be performed by the officers at the scene." *Sharrar v. Felsing,* 128 F.3d 810, 817 (3d Cir. 1997). Probable cause "requires more than mere suspicion . . . [but] does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt." *Young v. City of Pittsburgh*, 562 F. App'x 135, 140 (3d Cir. 2014) (citing *Orsatti v. N.J. State Police,* 71 F.3d 480, 482–83 (3d Cir. 1995)).

"The ultimate finding of guilt or innocence, or dismissal of charges arising out of an arrest and detention has no bearing on whether the arrest was valid." *Valenti v. Sheeler*, 765 F. Supp. 227, 230 (E.D. Pa. 1991) (citing *Pierson v. Ray,* 386 U.S. 547, 555 (1967)). A court need only find that "[p]robable cause . . . exist[ed] as to any offense that could be charged under the circumstances." *Barna v. City of Perth Amboy,* 42 F.3d 809, 819 (3d Cir. 1994). Hence, "'[t]he existence of probable cause [for one offense] . . . justifie[s] the arrest—and defeats [the plaintiff's] claim of false arrest—even if there was insufficient cause to arrest on the [second offense] alone.'" *Johnson v. Knorr,* 477 F.3d 75, 85 (3d Cir. 2007) (quoting *Edwards v. City of Phila.,* 860 F.2d 568, 576 (3d Cir. 1988)).

Here, Sargent was arrested and charged with aggravated assault, resisting arrest, harassment, disorderly conduct, and public drunkenness. At stated above, Defendants argue that probable cause existed to arrest Sargent for public drunkenness. The Pennsylvania criminal statute defining public drunkenness states "[a]person is guilty of a summary offense if he

appears in any public place manifestly under the influence of alcohol . . . to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity." 18 Pa.C.S.A. § 5505. It is undisputed that Defendant Kulick was dispatched to the parking lot of the casino at the request of the casino's security shift supervisor to assist Sargent and Comstock, who appeared to be intoxicated and unable to locate the keys to Sargent's vehicle. (Doc. 47-2, at 6). It is undisputed that Defendant Kulick detected a strong odor of alcohol on Sargent's and Comstock's breath and on the basis of that observation, advised them that if they were to operate the vehicle, it would constitute a DUI offense. (Doc. 47-2, at 6). It is further undisputed that Sargent's blood alcohol content at the time of the incident was approximately .27 to .29, or three times the legal limit. (Doc. 47-6, at 4). It is undisputed that the communication between the four individuals present in the parking lot "escalated quickly." (Doc. 47-2, at 9; Doc. 54, at 48). Finally, it is also undisputed that Sargent approached Defendant Kulick, who was talking with Comstock, and proceeded to waive her index finger in his face, a movement that Defendant Kulick perceived as an attempt to strike him, which resulted in her arrest. (Doc. 44, at 3, Doc. 52, at 2). Accordingly, Defendants submit that, on the basis of these undisputed facts, probable cause existed to arrest Sargent for public drunkenness.

In response, Sargent argues that a genuine issue of material fact exists with respect to the underlying circumstances leading up to her arrest; namely, whether she attempted to strike Defendant Kulick, or merely pointed her finger at his face. She argues that her behavior did not create probable cause to arrest her. In support of her position, she cites the deposition testimony of Comstock, who testifies that while he does not recall the details of the incident – specifically, whether Sargent shouted obscenities at Defendant Kulick, he does remember Sargent pointing her finger at Defendant Kulick as if "she was sticking up for [Comstock]."

(Doc. 54, at 48). However, Comstock admits that his overall recollection of that night is "fuzzy." Sargent also references the existence of a video surveillance tape in support of her position that the surveillance tape provides an unbiased account of the events that occurred in the parking lot, which creates a genuine issue of material fact with respect to the issue of probable cause. However, that tape is not included in the record before this Court.

Drawing all reasonable inferences and resolving all factual disputes in favor of Sargent, Sargent has not offered controverted evidence establishing that Defendants lacked probable cause to arrest her for public drunkenness. Indeed, Sargent has not met her burden of identifying facts in the record demonstrating a genuine issue from which a jury could conclude that the officers lacked probable cause to arrest her. Specifically, Sargent has not placed into the record this referenced surveillance tape that she alleges would create a genuine issue of material fact with respect to the circumstances of her arrest. Rather, the evidence she cites to in the record, including the testimony of Comstock, actually supports the conclusion that Defendants had probable cause to arrest her for public drunkenness, as she was visibly inebriated and was acting in a manner suggesting that she could be a threat to herself or others. As stated above, a court need only find that "[p]robable cause . . . exist[ed] as to any offense that could be charged under the circumstances." *Barna v. City of Perth Amboy,* 42 F.3d 809, 819 (3d Cir. 1994); *see also Johnson v. Knorr,* 477 F.3d 75, 85 (3d Cir. 2007) (quoting *Edwards v. City of Phila.,* 860 F.2d 568, 576 (3d Cir. 1988)). Accordingly, Defendants' motion for summary judgment is granted with respect to Plaintiff's false arrest claim under 42 U.S.C. §§ 1983 and 1988 as set forth in Count V and Count VI of the complaint.

B. COUNTS VII & VIII – MALICIOUS PROSECUTION

Defendants also contend that they are entitled to summary judgment on the claims of malicious prosecution (Counts VII & VIII), on the basis that Sargent has failed to present evidence establishing probable cause, malice, or a sufficient deprivation of liberty as a consequence of a legal proceeding. (Doc. 43, at 9-13).

To prevail on a malicious prosecution claim, a plaintiff must establish that:

> (1) the defendant initiated a criminal proceeding; (2) the criminal proceeding ended in his favor; (3) the defendant initiated the proceeding without probable cause; (4) the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding.

Johnson v. Knorr, 477 F.3d 75, 81–82 (3d Cir.2007).

With respect to the issue of probable cause, as stated above, where no issues of material fact are in dispute, the existence of probable cause may be properly determined as a matter of law on a motion for summary judgment. Here, Sargent has failed to overcome her summary judgment burden of identifying facts in the record establishing a genuine issue for trial with respect to element of probable cause. Sargent identifies neither a factual dispute nor a legal argument that controverts Defendants' recitation of the facts that would prevent the Court from determining as a matter of law that probable cause existed for her arrest. Accordingly, her malicious prosecution claim fails. [2] Defendants are thus entitled to summary judgment on

[2] This Court need not resolve whether Sargent failed to set forth credible evidence supporting the malice and seizure elements of a malicious prosecution claim, as this Court has determined that Sargent has failed to identify facts in the record controverting the absence of probable cause element.

Plaintiff's malicious prosecution claim as set forth in Count VII and Count VIII of the complaint.

IV. CONCLUSION

For the foregoing reasons, the Court will **GRANT** Defendant's motion for summary judgment with respect to Counts V through VIII of Plaintiff's complaint (Doc. 42).

An appropriate Order will follow.

Dated: May 15, 2015

s/ Karoline Mehalchick

KAROLINE MEHALCHICK
United States Magistrate Judge