

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 LUIS F. CRUZ-ACEVEDO, et al.,

4
5 Plaintiffs,

6
7 v.

8 PEDRO TOLEDO-DÁVILA, et al.,

9
10 Defendants.

Civil No. 07-2104 (JAF)

11 **ORDER**

12 On July 15, 2009, we issued an Opinion and Order in which we
13 found colorable grounds for summary judgment in favor of Defendant
14 Jorge González-Pérez ("González"). (Docket No. 112.) Noting an
15 apparent lack of evidence against González, we ordered Plaintiff
16 Luis F. Cruz-Acevedo to show why partial summary judgment would be
17 inappropriate. (Id.) On July 31, 2009, Cruz-Acevedo filed a motion
18 pursuant to our order. (Docket No. 116.)

19 We need not recite the facts or the procedural standard in this
20 case, which we have amply set out before. (See Docket No. 112.)
21 Cruz-Acevedo argues against summary judgment on two grounds:
22 (1) that, contrary to our contention (id.), Plaintiffs' amended
23 complaint named González as a participant in the execution of a
24 fraudulently-obtained search warrant; and (2) that a triable issue
25 remains regarding González' supervision of allegedly-culpable police
26 officers during the search of Cruz-Acevedo's home. (Docket No. 116.)

1 First, we need not reinterpret Plaintiffs' amended complaint,
2 because the record fails to establish González' violation of the
3 Fourth Amendment by conducting either a search or an arrest without
4 probable cause. To establish a claim for an illegal search founded
5 upon a defendant's misplaced reliance on a fraudulently-obtained
6 search warrant, a plaintiff must show that a reasonable officer in
7 the defendant's position would have been aware of the defect, thereby
8 vitiating his justification to conduct the search. See Wilson v. City
9 of Boston, 421 F.3d 45, 56 n.12 (1st Cir. 2005) (noting that
10 arresting officer who reasonably relied on facially-valid arrest
11 warrant may avoid liability under § 1983 despite subsequent discovery
12 of defects); Briggs v. Malley, 748 F.2d 715, 721 (1st Cir. 1984)
13 (holding that officer may enjoy qualified immunity in executing
14 defective search warrant unless he "should have known that the facts
15 recited in the affidavit did not constitute probable cause"). There
16 is no indication that a reasonable officer in González' position
17 would have known that the search warrant had been procured by false
18 affiant testimony.

19 To establish a case for a warrantless arrest without probable
20 cause, a plaintiff must show that the defendant lacked evidence that
21 would have led a reasonable person to believe that the plaintiff had
22 committed a crime. Valente v. Wallace, 332 F.3d 30, 32 (1st Cir.
23 2003). The record is devoid of evidence to suggest that González was
24 aware that the evidence leading to Cruz-Acevedo's arrest had been

1 planted. Despite an apparent discrepancy between González' and
2 Plaintiffs' accounts relating to the precise location on Plaintiffs'
3 property where officers allegedly planted the evidence (Docket
4 Nos. 116; 118), this variance does not imply that González knew that
5 the evidence was false.

6 Second, we agree with Cruz-Acevedo that there remains a genuine
7 issue of material fact with respect to the sufficiency of González'
8 supervision of officers who allegedly arrested Cruz-Acevedo without
9 probable cause. "To demonstrate [a supervisor's] deliberate
10 indifference a plaintiff must show (1) a grave risk of harm, (2) the
11 defendant's actual or constructive knowledge of that risk, and
12 (3) his failure to take easily available measures to address the
13 risk." Camilo-Robles v. Hoyos, 151 F.3d 1, 7 (1st Cir. 1998). For
14 supervisory liability to attach, a plaintiff must establish an
15 "affirmative link" between the defendant's deliberate indifference
16 and the resulting violation committed by his subordinates. Maldonado
17 v. Fontanes, 568 F.3d 263, 275 (1st Cir. 2009). "[A] pattern of
18 misconduct sufficient to put the [defendant] on inquiry notice" may
19 satisfy this test. Maldonado-Denis v. Castillo-Rodríguez, 23 F.3d
20 576, 583 (1st Cir. 1994).

21 We previously opined that the record failed to affirmatively
22 link González' actions to his subordinates' alleged misdeeds.
23 (Docket No. 112.) However, we recall that Plaintiffs had submitted
24 evidence on the reputation of the allegedly-culpable officers.

1 (Docket Nos. 99-2; 105-2.) During his deposition, Defendant José
2 Nieves-Soler testified that he and Defendants Miguel Arocho-Irizarry
3 and Rubén Colón-Pérez had a local reputation in Aguadilla for being
4 corrupt officers. (Id.) Given this reputation, and the fact that
5 González remained at the entrance while Nieves-Soler, Arocho-
6 Irizarry, and Rubén Colón-Pérez, his immediate subordinates,
7 conducted the search inside the house (Docket No. 116-2), there is a
8 genuine issue as to whether González deliberately failed to prevent
9 the false arrest. See Maldonado-Denis, 23 F.3d at 583. While the case
10 is weak, resolution of this question is the province of a jury as we
11 must "view the record in the light most favorable to the non-movant."
12 Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

13 Lastly, because no federal claims remain against Defendants
14 Pedro Toledo-Dávila, José Dennis-Tavarez, William Orozco-Sánchez,
15 William Ruiz-Borrás, and Edwin Rosado-Morales, we decline to exercise
16 supplemental jurisdiction over Cruz-Acevedo's claims under Puerto
17 Rico law against them. See 28 U.S.C. § 1367(c)(3); Rivera v. Murphy,
18 979 F.2d 259, 264 (1st Cir. 1992).

19 In view of the foregoing, we hereby:

20 1) **GRANT** Cruz-Acevedo's motion to show cause (Docket No. 116)
21 and **DENY** partial summary judgment with respect to González.

22 2) **DISMISS WITHOUT PREJUDICE** Cruz-Acevedo's claims under Puerto
23 Rico law against Toledo-Dávila, Dennis-Tavarez, Orozco-Sánchez, Ruiz-
24 Borrás, and Rosado-Morales (Docket No. 70).

