

United States District Court
Southern District of Texas

ENTERED

October 17, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THEODORE EISENBACH,

Plaintiff,

VS.

MARK ZATZKIN, et al,

Defendants.

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CIVIL ACTION NO. 4:15-CV-1685

MEMORANDUM AND ORDER

Pending before the Court is Defendant's Motion for Summary Judgment (Doc. No. 24). After considering the parties' filings and the applicable law, the Court finds that the motion should be and hereby is granted.

Defendant has raised a defense of qualified immunity. In assessing a qualified immunity defense, the Court asks two questions: 1) whether Plaintiff has alleged a violation of a constitutional right, and 2) whether Defendant's conduct was objectively reasonable in light of clearly established law at the time the challenged conduct occurred. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Tarver v. City of Edna*, 410 F.3d 745, 750 (5th Cir. 2005). "If, upon viewing the evidence in the light most favorable to the [plaintiff], reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity." *Haggerty v. Tex. S. Univ.*, 391 F.3d 653, 655 (5th Cir. 2004).

In this case, the undisputed evidence shows that Plaintiff returned to the scene of Defendant's investigation shortly after being told to leave the area. Defendant subsequently arrested Plaintiff for a violation of Section 38.15 of the Texas Penal Code, interference with public duties. Although Plaintiff argues that his behavior did not rise to the level of probable cause for arrest under Section 38.15, he has failed to show that *no* reasonable officer would have

arrested him under the circumstances. Moreover, courts have previously found arrests to be lawful under similar circumstances. *See Haggerty*, 391 F.3d at 657; *Spencer v. Rau*, 542 F. Supp. 2d 583, 591 n.5 (W.D. Tex. 2007). Given this case law, reasonable public officials could differ on the lawfulness of arresting Plaintiff under the circumstances. Therefore, Defendant is entitled to qualified immunity.

It is therefore ORDERED that Defendant's Motion for Summary Judgment (Doc. No. 24) is **GRANTED**. Plaintiff's claims against Defendant are **DISMISSED WITH PREJUDICE**.

SIGNED at Houston, Texas on this the 17th day of October, 2016.

A handwritten signature in black ink, appearing to read "Keith P. Ellison". The signature is written in a cursive style with some loops and flourishes.

HON. KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE