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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000023-MR

CHARLES T. CAHILL AND
CHARLOTTE CAHILL — APPELLANTS

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NOS. 01-CI-01921 & 02-CI-02022

CITY OF ELIZABETHTOWN, KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DYCHE AND SCHRODER, JUDGES; ROSENBLUM, SENIOR JUDGE.[1]

SCHRODER, JUDGE: This is an appeal from a summary judgment entered in favor of the City of Elizabethtown in an action claiming that the City's police falsely imprisoned appellant when they handcuffed him and put him in a police cruiser while police were waiting to verify the existence of a warrant for appellant's arrest. Appellant argues that police used

[1] Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

unreasonable restraint to detain him while attempting to verify the existence of the arrest warrant, which was ultimately found to not exist. We disagree with the lower court's ruling that the detention was not an arrest, but part of a lawful investigative stop. Nevertheless, we affirm based on our determination that, as a matter of law, the officers were entitled to qualified immunity where they had reasonable, albeit mistaken, grounds to believe that a valid warrant for appellant's arrest existed.

In 2001, appellant, Charles Cahill and his wife, Charlotte Cahill maintained a checking account with First Federal Savings Bank of Elizabethtown, Kentucky ("First Federal"). On October 10, 2001, the mobile home the Cahills were in the process of buying was destroyed by fire. On October 31, 2001, Charles received a $15,000 check from the insurance company of the seller of the mobile home to reimburse him for his down payment and improvements made to the mobile home. On November 9, 2001, Charles deposited the check in the Wal-Mart branch of First Federal in Elizabethtown. On November 15, 2001, Charles withdrew the $15,000 from his account. About a week after withdrawing the money, a clerk at the Wal-Mart branch of First Federal told Charles that payment had been stopped on the check because of an allegation of forgery and that his account was now overdrawn by $15,139.71. On December 19, 2001, First

Federal filed a civil action against the Cahills in the Hardin Circuit Court to recover the overdrawn amount. Summonses were issued on January 7, 2002, and served on the Cahills on January 12, 2002.

On January 29, 2002, the Cahills were shopping at the Wal-Mart in Elizabethtown. Upon seeing the Cahills, an employee of First Federal named Yvonne called the Elizabethtown Police Department and reported that the bank had issued a warrant for Charles Cahill's arrest in Breckenridge County and asked if Charles could be picked up by police on that warrant. The dispatcher responded that the bank would need to call the Breckenridge County Sheriff's office and have them fax a copy of the warrant. A short time later, Ray Brown, a security officer with First Federal, also called the Elizabethtown Police Department to request that an officer pick up Charles Cahill because the bank had caused a warrant to be issued for him and his wife. The dispatcher stated again that the police would need a copy of the warrant. When the dispatcher asked Brown if he knew for sure a warrant had been issued, Brown responded "yes, sir, I do. I'm the security officer with First Federal – and I'm following him right now – I'm out in the parking lot." Sometime thereafter, Yvonne from First Federal called the Elizabethtown Police Department again and stated that she had called the Breckenridge County Sheriff's Department and they had

informed her that they would fax a copy of the warrant as soon as they had an officer coming in to access the file.

Officer Virgil Willoughby from the Elizabethtown Police Department received the call from the dispatcher at approximately 7:30 p.m. that there was an individual in Wal-Mart for whom First Federal had issued an arrest warrant. Thereafter, Officer Willoughby located the individual at a Speedway gas station across from Wal-Mart. At that time, Brown, the loan officer from First Federal, pulled into the Speedway lot also. Officer Willoughby approached Charles Cahill as he was pumping his gas and informed him of the report that there was an outstanding warrant for his arrest. Charles denied that an arrest warrant had been issued for him and began trying to explain the dispute between him and the bank. Brown, however, insisted that there was an arrest warrant for Charles. Officer Willoughby handcuffed Charles and placed him in the back of his police cruiser. In Willoughby's affidavit, he stated that it was dark and Charles appeared nervous and fidgety. Willoughby further stated that he believed there was a reasonable possibility that Charles would attempt to flee the scene which would have placed Cahill, the police and possibly others in harms way since it was next to a busy intersection.

After Charles was placed in the back of the cruiser, the officers began calling Breckenridge County, where the

warrant was purportedly issued, to verify that a warrant had in fact been issued for Charles' arrest. At 7:41 p.m., Willoughby told the dispatcher that if they could not get an ETA on how long it was going to take to verify the warrant, they would have to "cut him loose." After contacting Breckenridge County and Hardin County and determining there was no such outstanding warrant, the police apologized and immediately let Charles go. Charles testified that he was in the police cruiser for less than ten minutes while the police were checking on the warrant. Charles further admitted that during the encounter, the police never raised their voices to him, did not manhandle him, and did not activate the sirens or lights on the police cruiser. According to the Cahills, the only individuals that they knew who witnessed the incident were their children who were in the Cahills' vehicle and allegedly became upset to see their father being handcuffed and put into the police cruiser.

The Cahills filed a false imprisonment action against First Federal and the City of Elizabethtown. The claim against First Federal was settled. The City of Elizabethtown moved for summary judgment on grounds that the detention of Charles by police was reasonable. The trial court granted the City's motion for summary judgment, adjudging that the detention of Charles did not amount to an arrest, but was a reasonable

restraint pursuant to a lawful investigatory stop. This appeal by Charles followed.

Summary judgment is proper only where the trial court, drawing all factual inferences in favor of the non-moving party, can conclude that there are no issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Fischer v. Jeffries, 697 S.W.2d 159 (Ky.App. 1985). Summary judgment should only be used to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991). The tort of false imprisonment is defined in Kentucky as:

> any deprivation of the liberty of one person by another or detention for however short a time without such person's consent and against his will, whether done by actual violence, threats or otherwise. Furthermore, false imprisonment requires that the restraint be wrongful, improper, or without a claim of reasonable justification, authority or privilege.

Banks v. Fritsch, 39 S.W.3d 474, 479 (Ky.App. 2001) (footnotes omitted).

Charles argues that the trial court erred in adjudging, as a matter of law, that the police's restraint of him in handcuffs in the police cruiser was reasonably justified as a lawful investigatory stop. In Terry v. Ohio, 392 U.S. 1,

88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the United States Supreme Court held that a law enforcement officer may briefly detain an individual for investigatory purposes without violating the Fourth Amendment if the officer possesses a reasonable and articulable suspicion that the individual has committed a crime. However, the scope of this brief investigatory detention must be limited to the "least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Florida v. Royer, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). "Officers cannot seek to verify their suspicions by means that approach the conditions of arrest." Id. at 500. "But there is no bright line that distinguishes an investigative detention from an arrest." United States v. Lopez-Arias, 344 F.3d 623, 628 (6th Cir. 2003) (citing Royer, 460 U.S. at 506).

In the instant case, Charles was detained because the police were informed that there existed an outstanding warrant for his arrest. Charles does not challenge the fact that the initial investigatory stop was lawful, and indeed it has been established that officers may make an investigatory stop of an individual "if there are reasonable grounds to believe that person is wanted for past criminal conduct." United States v. Hensley, 469 U.S. 221, 227, 105 S. Ct. 675, 679, 83 L. Ed. 2d 604 (1985) (quoting United States v. Cortez, 449 U.S. 411, 417,

n. 2, 101 S. Ct. 690, 695, n. 2, 66 L. Ed. 2d 621 (1981)). Rather, Charles contends that handcuffing him and placing him in the police cruiser exceeded the permissible scope of the investigatory stop and amounted to an arrest.

When officers make an investigative stop, they are authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo. Hensley, 469 U.S. at 235. In determining whether an investigative detention has crossed the line and become an arrest, the court should consider such factors as whether the detainee has been transported to another location, significant restraints on the detainee's freedom of movement, and the use of weapons or bodily force. Lopez-Arias, 344 F.3d at 627. The scope of the intrusion will vary as to the circumstances of the case and the justification for the initial stop. Royer, 460 U.S. at 500, 103 S. Ct. at 1325.

It has been held that the use of handcuffs, if reasonably necessary, does not automatically convert a Terry stop into an arrest. Houston v. Clark County Sheriff Deputy John Does 1-5, 174 F.3d 809 (6th Cir. 1999); United States v. Perdue, 8 F.3d 1455 (10th Cir. 1993); United States v. Taylor, 716 F.2d 701 (9th Cir. 1983). However, in all of the above cases, the Court found that circumstances in the case warranted the intrusion of handcuffing the suspect during the

investigatory stop. In Houston, the officers who handcuffed the suspects and placed them in their cruiser believed they may have been involved in the shooting of a police officer and, further, the suspects initially refused to comply with the officers' orders to throw out their keys and get out of the car. In Taylor, the suspect twice disobeyed orders to raise his hands and made furtive movements inside the truck where his hands could not be seen. And in Perdue, guns had been found on the property where the marijuana the defendant was suspected of cultivating was located. In the instant case, the alleged warrant for Charles' arrest was not for a violent crime. The officers knew from the information provided by the security officer, Brown, that the alleged warrant involved a monetary dispute between Charles and the bank. And, there was no evidence that Charles presented a threat to the officers at any time during the stop. There was no allegation that Charles refused to comply with any of the orders given by police or that he made any furtive movements indicating he might try to flee the scene. Officer Willoughby stated only that Charles appeared nervous and fidgety, which, in our view, anyone would be in that situation.

In Lopez-Arias, 344 F.3d at 628, the Court found that police crossed the line from an investigative detention into an arrest when they stopped the defendants, who were suspected only

of possessing illegal drugs, handcuffed them, placed them in the back of police cars, transported them from the scene, read them their Miranda rights, and questioned them. While the suspect in the case at hand was not transported to another area or questioned by police, we nonetheless believe the detention amounted to an arrest under the circumstances.

The test for determining whether a suspect is under arrest is whether a reasonable person in the suspect's position "would have felt that he was under arrest or 'otherwise deprived of his freedom of action in any significant way.'" United States v. Knox, 839 F.2d 285, 289 (6th Cir. 1988), cert. denied, 490 U.S. 1019, 109 S. Ct. 1742, 104 L. Ed. 2d 179 (1989) (quoting Miranda v. Arizona, 384 U.S. 436, 477, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)). In United States v. Richardson, 949 F.2d 851 (6th Cir. 1991) and United States v. Butler, 223 F.3d 368 (6th Cir. 2000), the Courts held that the actions of police were tantamount to an arrest when they placed the suspects in the back of their police cars. The Court in Richardson viewed the move from defendant's car to the police car as so severely restricting the defendant's freedom of movement that it elevated the detention to an arrest. Richardson, 949 F.2d at 857. In the present case, Charles was stopped on an alleged arrest warrant for a non-violent crime and gave the officers no reason to believe he was a threat to them or that he might flee.

Nevertheless, he was handcuffed and moved to the officers' cruiser. We believe at that point Charles' freedom of movement was restricted such that he was effectively placed under arrest. Accordingly, the lower court erred in ruling that the police lawfully detained Charles pursuant to an investigative stop.

We must now decide whether the summary judgment was nonetheless proper given our ruling above that Charles' detention constituted an arrest. A police officer may make an arrest when he has an arrest warrant, or has reasonable ground for believing a felony has been committed, or if an offense has occurred in his presence. Cowan v. Commonwealth, 308 Ky. 842, 215 S.W.2d 989 (1948). Clearly, the police would have been authorized to arrest Charles had there existed a valid warrant for his arrest. But there was no arrest warrant in this case. However, the evidence established that the officers relied in good faith on the dispatcher's information that there was an outstanding arrest warrant for Charles and Brown's claim at the scene that such a warrant existed, and detained Charles only to verify the existence of that warrant.

It has been held that probable cause determinations by police officers, even if they are wrong, are not actionable as long as such determinations pass the test of reasonableness, and reasonableness is a question of law to be decided by the court. Jeffers v. Heavrin, 10 F.3d 380 (6th Cir. 1993) (citing Hunter v.

Bryant, 502 U.S. 224, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991)). In Hunter, the United States Supreme Court held that police officers are entitled to qualified immunity for probable cause determinations, even if such determinations are mistaken, if their determinations are based on the facts and circumstances within their knowledge at the time and of which they had reasonably trustworthy information. Hunter, 502 U.S. at 228; see also Fultz v. Whittaker, 187 F. Supp. 2d 695 (W.D.Ky. 2001) and Crockett v. Cumberland College, 316 F.3d 571 (6th Cir. 2003). In the instant case, the determination was not a probable cause determination, but an assessment of whether a warrant for Charles' arrest existed, and we see no reason why the same rationale for qualified immunity would not be applied to that assessment. Since the report of the warrant was based on reasonably trustworthy information – the representation by the dispatcher that an arrest warrant existed and the statement of Brown, the security officer of the bank who was on the scene - we believe the officers' actions passed the test of reasonableness when they arrested Charles only for the short time it took them to verify the existence (here, nonexistence) of the warrant.

Our ruling is in line with Dugger v. Off 2nd, Inc., 612 S.W.2d 756 (Ky.App. 1980), wherein police officers were sued for false imprisonment for an arrest based on a warrant which

mistakenly identified the wrong individual to be arrested. In upholding the dismissal of the action against the police officers, this Court stated:

> Police officers must have some immunity from liability when they are carrying out the duties of their office. The arrest was made pursuant to a warrant which, at worst, was latently defective.

Id. at 757. Similarly, in the present case the officers had reasonable, albeit mistaken, grounds to believe that a valid warrant existed for Charles' arrest. Accordingly, the City of Elizabethtown is immune from liability in this case.

For the reasons stated above, the judgment of the Hardin Circuit Court is affirmed.

ROSENBLUM, SENIOR JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEF FOR APPELLANTS:

James T. Kelley
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BRIEF FOR APPELLEE:

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