# STATE OF MICHIGAN

# COURT OF APPEALS

DAVID HANCOCK,

Plaintiff-Appellant,

v

TIMOTHY HORVATH, BRYAN LEROY, INGHAM COUNTY SHERIFF, and COUNTY OF INGHAM,

Defendants-Appellees.

UNPUBLISHED
December 20, 2005

No. 256583
Ingham Circuit Court
LC No. 03-001536-CZ

Before: Fitzgerald, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendants' motion for summary disposition of his 42 USC § 1983 claims. Because defendants are immune from this suit, we affirm the trial court's decision.[1]

At the time of the underlying events, defendants Timothy Horvath and Bryan Leroy were deputies with the Ingham County Sheriff's Department. They conducted a traffic stop of plaintiff's truck because one of the deputies noticed that plaintiff was not wearing his seatbelt. Deputy Leroy approached the vehicle and obtained plaintiff's license, registration, and proof of insurance, which was expired. Ultimately, Deputy Leroy issued plaintiff a citation for failure to wear a seatbelt and no proof of insurance. Plaintiff informed the deputy that he would not be accepting the citation. There is a factual dispute regarding what happened next, but plaintiff failed to present any documentary evidence contradicting the deputies' testimony that Deputy Leroy was standing inches from plaintiff's truck when he loudly repeated that he would not accept the citation, put the truck in drive, and pulled away. Plaintiff also failed to refute that Deputy Leroy jumped out of the way to avoid plaintiff's truck as it pulled back onto the

[1] Plaintiff concedes that Ingham County and the Ingham County Sheriff's Department are entitled to governmental immunity and summary disposition, and he only argues on appeal that the court erred in finding that the individual defendants were entitled to immunity. Therefore, we only analyze the governmental immunity question in regard to the individual defendants.

roadway, or that Deputy Leroy attempted to throw the citation through plaintiff's open window.[2] Viewed in the light most favorable to plaintiff, he pulled away normally and heard the sound of paper fluttering outside his window, but the citation never flew into his truck.

The deputies got back in their patrol vehicle and attempted another stop with the lights and siren activated. Plaintiff did not stop again, but drove to his home with the deputies in pursuit. Once home, plaintiff got out of his truck and ran toward his house. Plaintiff did not dispute that the deputies shouted for him to stop, and he undisputedly continued to run toward the house with the deputies in pursuit on foot. Plaintiff closed the door behind him, and yelled through it that the deputies had no right to come into his home. Again viewing the facts in the light most favorable to plaintiff, he heard the doorknob click and repeated that the deputies had no right to enter. The deputies burst through the doorway, sprayed plaintiff with pepper spray, and wrestled him to the ground. According to plaintiff's deposition testimony, he was standing about six feet from the door with his hands at his side when the deputies burst through the doorway.

Plaintiff was charged with resisting and obstructing a police officer, MCL 750.479, felonious assault, MCL 750.82, and fourth-degree fleeing and eluding, MCL 750.479a(2). Following a preliminary examination, plaintiff was bound over to circuit court on all charges. In circuit court, the parties entered into a stipulation that the case would be remanded to district court, plaintiff would plead to a civil infraction of careless driving, and the three felony charges would be dismissed. Plaintiff filed this present action under 42 USC § 1983 alleging underlying violations of his constitutional rights in the form of assault and battery, false imprisonment, excessive force, and negligent training and supervision. The trial court granted defendants' motion for summary disposition finding, among other things, that all defendants were entitled to governmental immunity.

Plaintiff argues that the trial court erred when it granted defendants' motion for summary disposition for all defendants because questions of fact existed regarding whether governmental immunity applied to the deputies' entry of his house and whether the deputies used excessive force when they arrested plaintiff. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The federal statute that plaintiff relies on, 42 USC § 1983, provides an individual with legal recourse when the individual is deprived of a right secured by the Constitution or other laws by someone acting "under the color of" state law. "'In a suit against an officer for an alleged violation of a constitutional right,' however, the officer may invoke the defense of qualified immunity to avoid the burden of standing trial." *Hojeije v Dep't of Treasury*, 263 Mich App 295, 303; 688 NW2d 512 (2004), quoting *Saucier v Katz*, 533 US 194, 200; 121 S Ct 2151; 150 L Ed 2d 272 (2001). Contrary to plaintiff's arguments, legal issues regarding a police officer's qualified immunity are

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[2] In fact, defendant only presented documentary evidence from the preliminary examination (which consisted entirely of testimony from Deputy Horvath) and the deputies' deposition transcripts. Needless to say, this testimony was not favorable to plaintiff. It was defendants who attached portions of plaintiff's deposition testimony to their summary disposition brief, which still failed to refute these facts.

not left to a jury (which would defeat the purpose of immunity from trial), but are subject to a determination by the trial court at the earliest possible stages of litigation. *Saucier*, *supra* at 201. "[T]he plaintiff attempting to overcome qualified immunity in a § 1983 action bears the burden of establishing that a 'reasonable official in the defendant['s] position could [not] have believed that his conduct was lawful . . . .'" *Hojeije, supra* at 304, quoting *Cope v Heltsley*, 128 F3d 452, 459 (CA 6, 1997) (citation omitted). "The qualified immunity standard 'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" *Hunter v Bryant*, 502 US 224, 229; 112 S Ct 534; 116 L Ed 2d 589 (1991), quoting *Malley v Briggs*, 475 US 335, 343; 106 S Ct 1092; 89 L Ed 2d 271 (1986).

Plaintiff's complaint alleges two constitutional violations, the illegal entry of his home and the use of excessive force to procure his arrest. An officer may not enter a person's home to make an arrest without a warrant, absent probable cause and exigent circumstances. *Tope v Howe*, 179 Mich App 91, 104; 445 NW2d 452 (1989). However, "hot pursuit" of a felon is an exigent circumstance. *People v Raybon*, 125 Mich App 295, 301; 336 NW2d 782 (1983). In this case, plaintiff did not pull his vehicle over a second time,[3] even though he admitted that the deputies had activated the patrol vehicle's siren and lights and otherwise indicated that he should stop. Therefore, by all accounts, plaintiff appeared to be fleeing, which is a felony under MCL 750.479a(2). Because there was no break in the pursuit, the circumstances justified entry into plaintiff's home to execute plaintiff's arrest. *People v Joyner*, 93 Mich App 554, 559-560; 287 NW2d 286 (1979). Therefore, the deputies are immune from liability for entering plaintiff's house almost immediately after plaintiff ran in and shut the unlocked door behind him.[4]

Plaintiff also argued that the deputies used excessive force in arresting him. "Within reasonable limits, officers enjoy the discretion to determine the amount of force required by the circumstances and they are not guilty of wrong unless they arbitrarily abuse the power confided in them." *Alexander v Riccinto*, 192 Mich App 65, 69; 481 NW2d 6 (1991). Courts analyze excessive force claims under an "objective reasonableness" standard. *Graham v Connor*, 490 US 386, 388; 109 S Ct 1865; 104 L Ed 2d 443 (1989). In this case, plaintiff refused to accept a citation that was issued to him and drove away from a legal stop. He then refused to pull over as the deputies followed him with the lights and siren of the patrol car activated. Once arriving at his home, plaintiff again ran from the deputies into his home. Once inside his home, he yelled to the deputies that they could not enter his home. It was reasonable at this point for the deputies to

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[3] Plaintiff makes much of the fact that, according to plaintiff's version of events, the deputies had little, if any, reason to execute the second stop. Nevertheless, plaintiff does not claim damages resulting from a frivolous second stop executed by police, but damages that resulted when he refused to stop. Moreover, plaintiff pleaded guilty to careless driving, an infraction that occurred only after he decided to pull away from the original stop. This concession negates the argument that the deputies' second attempt to stop plaintiff was anything other than an action "in the lawful performance" of their duty, MCL 750.479a(1), so plaintiff's failure to stop was a felonious act.

[4] As the district court judge who bound plaintiff over explained, there is no "ole-ole-in-come-free" rule that allows fleeing felons to buy a few hours' peace to regroup, if only they can make it through the front door ahead of their pursuers.

be concerned for their safety and to subdue plaintiff with pepper spray and physical restraint. Although plaintiff alleged in his complaint that a deputy sprayed him again after handcuffing him, plaintiff offered no evidence to support this refuted allegation until after the trial court heard and granted defendants' motion for summary disposition. *Quinto v Cross & Peters Co*, 451 Mich 358, 366-367 n 5; 547 NW2d 314 (1996). The undisputed facts properly presented to the trial court before the summary disposition hearing[5] indicated that the deputies' employed an objectively reasonable amount of force during plaintiff's arrest, so the deputies are entitled to governmental immunity and summary disposition on plaintiff's excessive force claim.

Because the trial court properly determined that all defendants were protected by governmental immunity, it properly granted summary disposition, which was the only order substantively challenged in plaintiff's appellate brief. Therefore, we decline to address plaintiff's remaining, tangential arguments.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly

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[5] Plaintiff submitted additional evidence supporting the allegation in his motion for reconsideration, but the evidence was not submitted to the trial court when it considered defendants' motion for summary disposition and plaintiff does not assert any reason why the evidence could not have been submitted before the motion for summary disposition was decided. Therefore, we decline to consider the additional evidence. *Quinto*, *supra*. Moreover, the trial court did not abuse its discretion when it denied plaintiff's motion for reconsideration because the motion for reconsideration was based on facts that could have been presented to the trial court before it decided the original motion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).