

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN PARDO,

Plaintiff-Appellant,

v

DETROIT POLICE OFFICER TIMOTHY
EWALD, DETROIT POLICE OFFICER
BRIAN STAIR, DETROIT POLICE
SERGEANT FRANK LEWIS, and DETROIT
POLICE OFFICER MICHAEL SARINO,

Defendants-Appellees.

UNPUBLISHED

March 3, 2009

No. 282821

Wayne Circuit Court

LC No. 05-511031-NO

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Following the June 2003, indictment of 17 Detroit Police officers on corruption charges, Jason Metras asserted that two of the indicted officers and plaintiff planted a 9 mm semiautomatic pistol on him when they arrested him on January 9, 2002.¹ Metras indicated that the arrest had taken place in front of a Subway where he had just purchased food. Theresa Meza, the waitress who served Metras prior to the arrest, was interviewed.² She stated that while she did not know Metras, she recalled the incident of him coming in and placing an order, which she prepared. Meza stated that Metras handed her a one hundred dollar bill, and she was having difficulty making change. She asked Metras for a smaller bill, and watched him remove items

¹ The indictments included allegations that officers had illegally detained people on the street to search and question them, possessed stolen firearms, and planted drugs, guns or money on people chosen for an illegal arrest.

² This witness is identified as Teresa Mezza in plaintiff's brief, but as Theresa Meza in defendants' brief and the Joint Investigative Task Force witness interview report.

from his pants pockets, as well as his jacket pockets, in an attempt to find a smaller bill. Meza ended up accepting the one hundred dollar bill and making change in one-dollar bills. She stated that she never observed Metras with a gun or anything that even looked like a weapon. She watched Metras leave the store and have a discussion with some police officers; shortly thereafter, she observed the officers putting handcuffs on Metras and driving away. This evidence was submitted to a grand jury, which returned an indictment against plaintiff.

Metras had also stated that he was at a laundromat with a person whom he identified as his “wife” before he went to the Subway, and that after the arrest, the officers complied with his request to stop by the laundromat and turn over his money, the food, and his personal property to her. After plaintiff’s indictment, the woman who Metras called his “wife” was identified as Alena Miller. Miller was interviewed and stated that she had been in a romantic relationship with Metras in the past, but that she was never married to him. She indicated that that on the day in question, she gave Metras a hug before he went to the Subway, and felt a handgun in his front waistband.³ She stated that Metras had purchased the gun, a 9 mm semiautomatic pistol, from a friend of her cousin in Alabama. Following this interview, the prosecutor dropped charges against plaintiff.

Plaintiff filed suit against defendant police officers, alleging that they should have interviewed other people mentioned in Metras’s statement, including Miller, before charging him with a crime, and they should have investigated other matters that might have called Metras’ statement into question.⁴ More particularly, plaintiff stated claims for malicious prosecution, false arrest and false imprisonment, violation of 42 USC 1983, and gross negligence.

In granting summary disposition, the trial court concluded, inter alia, that any breach of a duty to investigate rested with the prosecutor, who in this case was a United States attorney.⁵ We do not reach this issue; we conclude, in the alternative, that there was probable cause to indict and arrest plaintiff at the time these actions were taken, and that the existence of this probable cause defeats plaintiff’s claims for relief.

³ It is unclear whether Miller may have initially defended Metras at the time of his arrest.

⁴ We note that another individual named in the statement was later interviewed and discredited Metras on a tangential matter, that other tangential facts may not have withstood further investigation, and that an examination of the Subway counter may have cast doubt on the waitress’s ability to fully observe whether Metras had a gun. While these matters would have called into question Metras’s already compromised credibility, we find them to be of little consequence with respect to the charge of filing a false police report regarding the gun found on Metras.

⁵ The defendant officers were working in conjunction with the Federal Bureau of Investigation and the United States Attorney’s Office in pursuing corruption charges against Detroit Police officers. Although there was disagreement on whether defendants were acting independently or under the authority of these other entities, we conclude that this determination is not necessary to the disposition of this appeal.

The fact that lack of probable cause is an element of the state law claims is established by *Walsh v Taylor*, 263 Mich App 618, 626-627; 689 NW2d 506 (2004) (lack of probable cause and or lack of legal authority is an element of false arrest and false imprisonment); *id.* at 632-633 (malicious prosecution requires that the person who initiated or maintained the prosecution lacked probable cause); and *Bell v Fox*, 206 Mich App 522, 525; 522 NW2d 869 (1994) (police officers who mistakenly arrested the wrong person but acted with probable cause were not grossly negligent). In *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 19; 672 NW2d 351 (2003), this Court stated:

Probable cause that a particular person has committed a crime “is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense” *People v Coutu*, 235 Mich 695; 235 Mich App 695, 708; 599 NW2d 556 (1999), quoting *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). Probable cause is not capable of being precisely defined, but rather, it is a commonsense concept dealing with practical considerations of everyday life that must be viewed from the perspective of reasonable and prudent persons, not legal technicians. *Ornelas v United States*, 517 US 690, 695-696; 116 S Ct 1657; 134 L Ed 2d 911 (1996).

“Where the facts are undisputed, the determination of whether probable cause exists is a question of law for the court to decide. *Peterson Novelties, Inc, supra* at 18. Questions of law are reviewed de novo. *Wold Architects & Engineers v Strat*, 474 Mich 223, 226; 229; 713 NW2d 750 (2006).

In the instant case, there was direct information from Metras that plaintiff had illegally planted a gun on him. This fact would give rise to a suspicion. Defendants do not assert, however, that Metras’ statement alone gave rise to a *reasonable* suspicion. Rather, the focus is on Metras’ statement coupled with that of the waitress, an independent and presumably unbiased witness who seemed to substantiate the information Metras had provided. Further, at the time of Metras’ allegations, two of the officers who were with plaintiff when Metras was arrested in front of the Subway had just been indicted for similar conduct. We conclude that, with this additional information, the suspicion became reasonable. There was no apparent reason to question the waitress’s credibility, and while more information may have been desirable, the reasonable ground of suspicion was sufficiently strong to warrant the belief that plaintiff was guilty of the offense.

We note that if Miller had been interviewed before an indictment was sought, the suspicion, if it survived at all, would not have been reasonable; it no longer would have been supported by circumstances “sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense” *Peterson Novelties, Inc, supra* at 19. Nonetheless, it does not establish that probable cause was absent before the interview was performed. Thus, while more investigation would have been fruitful, the failure to investigate further does not negate the fact that, at the time plaintiff was arrested, there was probable cause.

Plaintiff’s claim that his rights were violated in contravention of 42 USC 1983 also fails because defendants are entitled to qualified immunity. In *Ahlers v Schebil*, 188 F3d 365, 372-

373 (CA 6, 1999), the court held that such immunity attaches to a § 1983 claim if the governmental employee “acted under the objectively reasonable belief that his or her actions were lawful.” Thus, the defendant must have “acted knowingly or intentionally to violate [the plaintiff’s] constitutional rights”; “mere negligence or recklessness is insufficient.” *Id.* at 373. See also *Vakilian v Shaw*, 335 F3d 509, 517 (CA __ 2003) (“a plaintiff must establish: (1) a substantial showing that the defendant stated a deliberate falsehood or showed reckless disregard for the truth and (2) that the allegedly false or omitted information was material to the finding of probable cause”). In *Ahlers*, the plaintiff asserted that an investigator should have done more to ascertain the truth of a female inmate’s claim that a corrections officer had coerced her into performing fellatio. The court listed a number of additional actions that would have been fruitful in discrediting the claim. However the court held that despite these omissions, probable cause was established through the complainant’s statement and the fact that there was a window of time during which the assault could have occurred without witnesses. It held that “[o]nce probable cause is established, an officer is under no duty to investigate further or to look for additional evidence which may exculpate the accused.” *Ahlers, supra* at 371.

Ahlers is arguably distinguishable since the court noted the absence of facts indicating that the complainant may have been untruthful. Here, Metras stood to gain if he could discredit his convictions associated with possessing the gun. However, the waitress tended to substantiate the statement; the impression that it was otherwise significantly questionable arose only after Miller’s statement was taken. Nothing in the statement itself would have alerted defendants that Miller would discredit it. Accordingly, plaintiff failed to establish the absence of probable cause at the time of the indictment or a continuing duty to investigate.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering