NO. COA13-148
NORTH CAROLINA COURT OF APPEALS

Filed: 17 September 2013

JULIA (STYSLINGER) CRAFT,
Plaintiff,

v. Craven County
No. 09 CVS 2090

THE CITY OF NEW BERN,
Defendant.

Appeal by Plaintiff from judgment and order entered 23 February 2012 by Judge Charles H. Henry in Craven County Superior Court. Heard in the Court of Appeals 14 August 2013.

Hicks Law Firm, PLLC, by Thomas S. Hicks, for Plaintiff.

Sumrell, Sugg, Carmichael, Hicks & Hart, PA, by Scott C. Hart and Anakah D. Harrison, for Defendant.

STEPHENS, Judge.

Factual Background and Procedural History

This case arises out of an investigation following the death of Amy Hall ("Hall"). Hall died from an accidental overdose of methadone on 6 August 2006. Gregory Brooks ("Brooks"), a detective with the New Bern Police Department, was the lead investigator into Hall's death, and Cecil Cherry

("Cherry"), Special Agent with the North Carolina State Bureau of Investigation, partnered with Brooks to determine the source of the methadone. During the investigation, Brooks and Cherry determined that David Welsh ("Welsh")[1] had given methadone pills to Hall prior to her death. Welsh informed Brooks and Cherry that he had purchased methadone from Jeffrey Styslinger ("Styslinger"), who was then married to Julia Craft ("Plaintiff").

On 21 September 2006, Brooks and Cherry coordinated an undercover operation with Welsh serving as a confidential informant. Welsh had agreed to purchase methadone pills from Styslinger, who was staying at Plaintiff's apartment. Welsh wore a recording device so that the officers, including Brooks and Cherry, could listen to the exchange. After Welsh knocked on the door, Plaintiff answered and allowed Welsh to enter the apartment. Welsh then purchased methadone from Styslinger.

After leaving the apartment with the methadone, Welsh returned the pills to the officers and was interviewed by Brooks and Cherry. During the interview, Welsh stated that he thought

[1] The transcript consistently refers to this person as "Welch." However, both parties refer to him as "Welsh," and Defendant specifically notes that "Welch" is incorrect. Accordingly, we employ the spelling used by the parties.

Plaintiff recognized him when she opened the door of the apartment. Welsh also stated that Plaintiff witnessed the exchange and did not object to the transaction of money in exchange for methadone. Welsh's account of the transaction did not describe the layout of the apartment or where the exchange actually took place.

Based on their investigation, Brooks and Cherry met with members of the Craven County District Attorney's Office. Brooks and Cherry disclosed the facts as they knew them at that time,[2] and the members of the office advised Brooks and Cherry that they were "confident" there was probable cause to initiate the arrest of Plaintiff on those facts.

On 25 September 2006, Brooks and Cherry proceeded to the Craven County Magistrate's Office and "presented the same information to the magistrate . . . ." Neither officer suggested a particular crime for the magistrate to charge. The magistrate

[2] The recording device worn by Welsh effectively transmitted the conversation between Welsh and Styslinger to the officers as it was happening, and the officers relied on their memory of that conversation, in part, to determine whether they had probable cause to seek Plaintiff's arrest. We note, however, that there was some question at trial about whether the taped recording of the conversation was in working order. Though Brooks and Cherry both testified that they could not recall, Cherry eventually assented to the statement that "the recording of the transaction that [he] had was . . . inaudible . . . ."

determined that probable cause of criminal activity existed and issued a warrant for Plaintiff's arrest, alleging conspiracy to traffic in methadone. The warrant stated that Plaintiff "conspire[d] with Jeffrey Styslinger to commit the felony of trafficking to sell to David Welsh and deliver to David Welsh 90-95(H)(4)(I) minimum 90 months [sic] and max[imum] 225 months [sic] of methadone."

Brooks and Cherry arrested Plaintiff around noon on 26 September 2006. Plaintiff was then employed as a nurse with Craven Regional Medical Center, where she made approximately $1,400 per week. She worked five or six nights per week, in twelve-hour shifts, and slept during the day. Because of her unusual schedule, Plaintiff was asleep in her bedroom when the officers came to her home. She was awakened by her roommate, who informed her that people were there to see her. Plaintiff went to the living room and met with officers Brooks and Cherry. When Plaintiff asked if she would be arrested, they replied that she would. She became "very hysterical" and began crying. Plaintiff was allowed to dress and then escorted to the parking lot, handcuffed, and placed in a police cruiser. She continued crying for much of that time.

Plaintiff was incarcerated for twenty-four days on a $250,000 bond. While there, she lost more than 20 pounds, was often ill, and had to sleep on a mat on the floor in a cell occupied by other women. Plaintiff testified that the conditions of the jail cell and her sudden arrest caused her to suffer from a number of symptoms that have decreased the quality of her life. She testified she now has a fear of leaving her home unaccompanied, trouble sleeping, and a fear of law enforcement officers. Plaintiff only drives herself for necessary medical appointments or for work when her husband is unavailable; otherwise, Plaintiff has someone drive her.

After she was released from jail, Plaintiff learned that she was no longer employed and had been placed under investigation by the nursing board. She was required to meet with a psychiatrist and submit to drug screens, which she passed. The nursing board also required her to disclose her pending felony charges to potential employers. She secured new employment in January of 2007, earning about $750 per week, slightly more than half of her original pay.

On 30 November 2007, the State dismissed the charges against Plaintiff for lack of sufficient evidence that she had knowledge of Styslinger's activities or committed any

wrongdoing. Two months later, on 30 January 2008, the nursing board concluded that the complaint against Plaintiff was unfounded. Plaintiff brought this action against the City of New Bern ("the City") and Brooks, in his official and personal capacity, on 28 September 2009 alleging (1) negligent infliction of emotional distress, (2) negligence, (3) negligent supervision, (4) negligent retention, (5) malicious prosecution, (6) violation of Plaintiff's federal constitutional rights, and (7) violation of Plaintiff's state constitutional rights. On 13 August 2010, Brooks was dismissed as a defendant in his personal capacity. On 28 November 2011, the trial court granted the City's motion for summary judgment on the claims of (1) negligent supervision, (2) negligent retention, (3) violation of Plaintiff's federal constitutional rights, and (4) violation of Plaintiff's state constitutional rights.

The only claims remaining for trial were negligent infliction of emotional distress, negligence, and malicious prosecution. At trial, Plaintiff testified that she answered the door on 21 September 2006 and allowed a man to enter her kitchen and speak with her husband. Plaintiff then returned to the living room sofa where she had been sleeping before the knock on the door. Because of the cabinets and the breakfast bar

separating the living room from the kitchen, Plaintiff testified that she could not see the exchange that took place between Welsh and her husband. On 23 February 2012, at the close of Plaintiff's evidence, the trial court granted the City's motion for a directed verdict on Plaintiff's remaining claims. Plaintiff appeals.

Standard of Review

"The standard of review of directed verdict is whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury." *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991) (citation omitted).

> In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant's claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant's favor.

Turner v. Duke Univ., 325 N.C. 152, 158, 381 S.E.2d 706, 710 (1989).

Discussion

On appeal, Plaintiff asserts that the trial court erred in granting the City's motion for directed verdict on her claims of malicious prosecution, negligence, and negligent infliction of emotional distress because she presented adequate evidence of each element of those claims at trial. We are constrained to disagree.

I. Malicious Prosecution

> Plaintiff must establish four elements to support a malicious prosecution claim: (1) [the] defendant initiated the earlier proceeding; (2) malice on the part of [the] defendant in doing so; (3) lack of probable cause for the initiation of the earlier proceeding; and (4) termination of the earlier proceeding in favor of the plaintiff.

Best v. Duke Univ., 337 N.C. 742, 749, 448 S.E.2d 506, 510 (1994) (citation omitted).

It is undisputed that Brooks, in his official capacity as a detective for the City, initiated a criminal action against Plaintiff. Further, it is undisputed that the criminal proceeding terminated in favor of Plaintiff. Therefore, Plaintiff's claim for malicious prosecution succeeds or fails on whether she presented sufficient evidence at trial to establish that (1) her arrest was made without probable cause and (2) Brooks was acting with malice.

A. Probable Cause

"Where the claim is one for malicious prosecution, probable cause has been properly defined as the existence of such facts and circumstances, known to the defendant at the time, as would induce a reasonable [person] to commence a prosecution." *Id.* at 750, 448 S.E.2d at 510 (citations, quotation marks, brackets, and ellipsis omitted). Thus, probable cause is present when the officer has knowledge of reasonably trustworthy facts and circumstances sufficient to warrant a prudent person's belief that the suspect committed an offense. *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 618, 538 S.E.2d 601, 611 (2000) (citation and quotation marks omitted), *appeal dismissed and disc. review denied*, 353 N.C. 372, 547 S.E.2d 811 (2001). Probable cause is a question of law and fact, but where the facts are admitted or established, the existence of probable cause is a question of law. *Cook v. Lanier*, 267 N.C. 166, 171, 147 S.E.2d 910, 914 (1966) (citations omitted).

> The Fourth Amendment requirement that no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing persons or things to be seized, applies to arrest warrants as well as to search warrants. The judicial officer issuing such warrant must be supplied with sufficient information to support an independent judgment that there is probable cause for issuing the arrest

warrant. The same probable cause standards under the Fourth and Fourteenth Amendments apply to both federal and state warrants.

The standard applied to determinations of probable cause is not a technical one. . . . Probable cause is a flexible, common-sense standard. It does not demand any showing that such a belief be correct or more likely true than false. A practical, non-technical probability is all that is required. At minimum, a supporting affidavit for an arrest warrant must show enough for a reasonable person to conclude that an offense has been committed and that the person to be arrested was the perpetrator.

. . .

Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. Probable cause for an arrest has been defined to be a reasonable ground of suspicion, supported by circumstances strong in themselves to warrant a cautious [person] in believing the accused to be guilty. The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.

. . . Probable cause for an arrest warrant is presumed valid unless [the] plaintiff presents allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.

. . .

Plaintiff urges us to view the issuance of the arrest warrant[] with hindsight, knowing

> that the criminal charges against [her] were ultimately dismissed. . . . [I]n reviewing the existence of probable cause, [however,] we cannot use hindsight, but instead we must determine whether the evidence viewed as a whole provided a sufficient basis for the magistrate's finding at the time the arrest warrant was issued and whether the evidence presented to the magistrate was based upon deliberate falsehood or reckless disregard for the truth.

Beeson v. Palombo, __ N.C. App. __, __, 727 S.E.2d 343, 347-49 (citations and certain quotation marks omitted) (holding that the information given to the magistrate by a police captain that a teacher had touched the breast area of two female students was sufficient to support a determination of probable cause for arrest warrants), *disc. review denied*, 366 N.C. 389, 732 S.E.2d 352 (2012). "Allegations of negligence or innocent mistake are insufficient" to rebut probable cause for a warrant. *See Cox v. Roach*, __ N.C. App. __, __, 723 S.E.2d 340, 348 (2012), *disc. review denied*, __ N.C. __, 736 S.E.2d 497 (2013).

i. The Facts Presented to the Magistrate

> In order for a defendant to be found guilty of the substantive crime of conspiracy, the State must prove there was an agreement to perform every element of the underlying offense.
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> . . .
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> In order to prove conspiracy, the State need not prove an express agreement; evidence

> tending to show a mutual, implied understanding will suffice. Nor is it necessary that the unlawful act be completed. The existence of a conspiracy may be established through direct or circumstantial evidence. Direct proof of the charge is not essential, for such is rarely obtainable. It may be, and generally is, established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy.

State v. Dubose, 208 N.C. App. 406, 409–10, 702 S.E.2d 330, 333 (2010). Selling, manufacturing, delivering, transporting, or possessing four grams or more of an opiate, including methadone,[3] or any mixture containing such substances is felonious "trafficking in opium or heroin" in violation of N.C. Gen. Stat. § 90-95(h)(4) (2011).

In support of her argument that the trial court erred in granting the City's motion for directed verdict, Plaintiff asserts that the facts presented to the magistrate were

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[3] "'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability." N.C. Gen. Stat. § 90-87(18) (2011). Methadone falls within the meaning of this term. *See State v. Beam*, 201 N.C. App. 643, 688 S.E.2d 40 (2010) (finding no error in the trial court's denial of the defendant's motion to dismiss the charge of trafficking in an opium derivative by delivery when the defendant delivered methadone and hydrocodone tablets to an undercover police officer).

insufficient to establish probable cause that she conspired to traffic in methadone. Specifically, Plaintiff observes that: (1) her mere presence in the apartment during the transaction was not sufficient to establish her culpability, (2) there was no evidence introduced that Welsh had a reliable track record as an informant, (3) Brooks testified that he lacked evidence of a conspiracy when he submitted his affidavit to the magistrate, and (4) Brooks did not know the weight or identity of the substance that was purchased by Welsh, an essential element of the offense of trafficking. We are unpersuaded.

Plaintiff's arguments fail to address the core question relevant to any probable cause determination as it relates to the issuance of an arrest warrant: whether, at the time they sought the arrest warrant, the officers had knowledge of reasonably trustworthy facts and circumstances sufficient to warrant a prudent person's belief that the suspect committed the offense. While Plaintiff's observations might be relevant in a criminal prosecution, they do not address whether the officers had probable cause to believe that she conspired to traffic in methadone, given what was known at the time the warrant for her arrest issued. As we noted in *Beeson*, "it is a judicial official's function to determine whether probable cause exists

and a law enforcement officer's function to explain the facts to the judicial official so that such a determination may be made." *Beeson*, __ N.C. App. at __, 727 S.E.2d at 350 (citation omitted). Further, an arrest warrant is presumed to be supported by probable cause unless the plaintiff presents allegations of "deliberate falsehood or . . . reckless disregard for the truth[.]" *Id.* Because Plaintiff presents no argument that the officers acted with reckless disregard for the truth or deliberately falsified the information in this case, she is limited to an analysis of the extent to which the facts as they were known by Brooks, Cherry, and the magistrate at the time the warrant issued supported a determination of probable cause. *See id.*

At trial, Brooks and Cherry testified that they had informed the magistrate of all the evidence they gathered in the case. That information consisted of the interviews with Welsh before and after the undercover-controlled purchase and their own memory of the conversation occurring between Welsh and Styslinger during the methadone transaction. During the interviews, Welsh stated that Plaintiff opened the door and let him into her home, that Welsh felt Plaintiff recognized him, that Welsh purchased methadone from Styslinger, and that

Plaintiff was in the room during the transaction and did not object to the exchange of money for pills. Further, Brooks and Cherry's testimony regarding their memory of the conversation being transmitted to them via the recording device worn by Welsh indicates that a female answered the door, invited Welsh inside, and did not object to or protest the transaction. These facts, taken together, are sufficient to establish probable cause that Plaintiff was involved in a conspiracy to traffic in methadone. Consequently, Plaintiff's arguments regarding the officers' subjective states of mind, Welsh's reliability as an informant, and the importance of her presence in the apartment are inapposite and overruled.

ii. The Validity of the Arrest Warrant on its Face

Plaintiff also contends that the magistrate's failure to include the weight of the suspected methadone pills on the warrant — providing a punishment range instead — establishes a *prima facie* lack of probable cause. We disagree.

As the City points out in its brief, "[w]hile the information contained within the four corners of an arrest warrant . . . may affect the outcome of the criminal proceedings against a person, it has no bearing on whether probable cause exists as a matter of law." As noted above, the facts known by

officers Brooks and Cherry at the time the arrest warrant was issued were sufficient to independently establish probable cause that Plaintiff conspired to traffic in methadone. The magistrate's inartful description of the suspected criminal offense is immaterial.

B. Malice

A claim of malicious prosecution requires, ***inter alia***, (1) that probable cause was lacking for the commencement of the prosecution ***and*** (2) that the defendant acted with malice. Because we have already determined that probable cause was not lacking in this case, Plaintiff's claim for malicious prosecution cannot succeed. Therefore, we need not address Plaintiff's argument that the officers acted with malice.

II. Negligence

Plaintiff also contends that the trial court erred by granting the City's motion for directed verdict on her negligence and negligent infliction of emotional distress claims because she presented adequate evidence of each element of those claims. We disagree.

"In a negligence action, a law enforcement officer is held to the standard of care that a reasonably prudent person would exercise in the discharge of official duties of a like nature

under the circumstances." *Best*, 337 N.C. at 752, 448 S.E.2d at 511–12 (citation and quotation marks omitted). Plaintiff bases her negligence claims on the allegation that Brooks arrested her without probable cause. Because we have already held that the action of obtaining an arrest warrant from the magistrate was lawful and based on probable cause, Plaintiff has no wrongful action in which to root her negligence claims. *See, e.g.*, *Cox*, __ N.C. App. at __, 723 S.E.2d at 351 ("As the 'criminal process' plaintiffs were subject to was lawful, plaintiffs have no wrongful action upon which to base their claim of gross negligence."). This argument is therefore overruled.

Conclusion

Despite Plaintiff's unsuccessful appeal, we are not insensitive to the traumatic ordeal she has suffered. Indeed, it is unsettling, at best, to learn that this nurse was taken from her home and held in a jail cell for twenty-four days on a $250,000 bond for her perceived involvement in Styslinger's activities. Nonetheless, we cannot expect our police officers to divine the truth of a person's guilt at the outset of every case, especially when the evidence would lead them elsewhere. Here, the facts known by Brooks and Cherry at the time the warrant issued indicated a substantial likelihood that Plaintiff

was guilty of conspiracy to traffic in methadone. Therefore, despite Plaintiff's probable innocence, we must conclude that the arrest warrant was validly issued and the trial court properly granted the City's motion for directed verdict.

AFFIRMED.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).