

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD HOEFT,

Plaintiff,

v.

MEMORANDUM and ORDER
05-C-24-S

TOM RENZ, JAMES KISSTNER,
JAMES JARECKI, KEVIN PETIT and
JOE SADJERA,,

Defendants.

Plaintiff Richard Hoeft was allowed to proceed on his Fourth Amendment claim against defendants Thomas Renz, James Kisstner, James Jarecki, Kevin Petit and Joe Sadjera. In his complaint he alleges that the defendants searched the trunk of his vehicle without probable cause.

On April 18, 2005 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts and conclusions of law, affidavits and a brief in support thereof. Plaintiff responded on May 5, 2005 and no further briefing is required.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to the following material facts.

Plaintiff Richard Hoeft is currently incarcerated in the Stanley Correctional Institution. Defendants Thomas Renz, Jeffrey Kistner and James Jarecki are Bayfield County Sheriff's deputies. Defendants Kevin Petit and Joe Sadjera are Sawyer County Sheriff's deputies.

On July 18, 2005 Deputy Renz contacted Benjamin Lehman regarding a number of burglaries and thefts that had occurred in various counties. After being provided Miranda warnings, Lehman agreed to cooperate and drove Renz to places from which he and Hoeft had stolen items. Lehman showed Renz the stolen items which had been sold or pawned and where they were hidden.

During the ride Lehman showed Renz where plaintiff's 1988 Ford Crown Victoria was located on a logging road in Ashland County. Other deputies from Bayfield County and Sawyer County joined them at plaintiff's vehicle. Lehman, who had the keys, opened the trunk and informed deputies that the items contained in the trunk were stolen. The contents were examined and returned to the trunk. The car was then towed to Rock's Service in Cable, Wisconsin.

The following day, July 19, 2003 Deputy Renz drove plaintiff to the service station and obtained his verbal and written consent to search his 1988 Ford Crown Victoria.

MEMORANDUM

Defendants move to dismiss plaintiff's complaint for improper service. The United States Marshall served the summons and complaint. Since any defect in service cannot be attributed to plaintiff, his complaint will not be dismissed for this reason.

The Court next addresses defendants' motion for summary judgment on plaintiff's Fourth Amendment claim.

A vehicle may be searched without a warrant if there is probable cause to believe it contains contraband or evidence of a crime. Illinois v. Gates, 462 U.S. 213, 238 (1983). Probable cause exists if given the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in the vehicle. All parts of the vehicle in which contraband or evidence could be concealed including closed compartments and trunks may be searched. United States v. Patterson, 65 F.3d 68, 70 (7th Cir. 1995). The existence of probable cause justifies the warrantless search or seizure of a vehicle lawfully parked in a public place. U.S. v. Bagley, 772 F. 2d 482 (9th Cir. 1985).

At the time plaintiff's trunk was searched defendant Renz had knowledge that Lehman was aware of thefts and burglaries committed in various counties and the location of this stolen property. Lehman directed Renz to plaintiff's vehicle and advised him that stolen property was located in the trunk. Based on the totality of these circumstances there was a fair probability that stolen property would be found in plaintiff's vehicle which included the trunk and closed compartments. Defendant Renz and the other defendants had probable cause to search plaintiff's vehicle and the trunk.

Plaintiff's Fourth Amendment rights were not violated. Accordingly, defendants are entitled to judgment in their favor and their motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained herein with prejudice and costs.

Entered this 6th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge