

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

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LILAC SUNDSMO,

Plaintiff,

v.

MEMORANDUM and ORDER  
05-C-397-S

PAT BEGHIN, JAY YERGES  
and COLUMBIA COUNTY, WISCONSIN,

Defendants.

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Plaintiff Lilac Sundsmo commenced this action under 42 U.S.C. § 1983 claiming that her Fourth Amendment rights were violated by defendants Pat Beghin, Jay Yerges and Columbia County, Wisconsin. In her complaint she alleges that defendant Yerges used excessive force in arresting her.

On November 18, 2005 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

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 Lilac Sundsmo is an adult resident of the State of Wisconsin. Defendant Columbia County is a municipal corporation in the State of Wisconsin. Defendants Pat Beghin and Jay Yerges are deputies in the Columbia County Sheriff's Department.

On July 8, 1999 Deputies Beghin and Yerges were called to plaintiff's home by a 911 call from her husband (Lester Sundsmo) concerning a fight with their son (Leonard Sundsmo). Upon arrival

at the plaintiff's property the defendants began to investigate the dispute. Lester Sundsmo was injured by his son. Defendants were also informed that Lester had struck his son with a baseball bat possibly breaking his wrist and that Lester believed his son was in the nearby woods with a bow and arrow.

As defendant Beghin was interviewing Lester plaintiff came toward them and began repeatedly telling them to leave her property. She interrupted the questioning of Lester and became increasingly agitated in the process. Plaintiff's actions were making the investigation increasingly difficult. Defendant instructed plaintiff to calm down but she refused and began to use profanities. Defendant Beghin informed plaintiff he would arrest her if she did not calm down and quit interrupting the investigation.

Plaintiff then walked toward her husband. Defendant Yerges intercepted her and guided her away. As defendant Yerges attempted to grab plaintiff's arm she began yelling, screaming, flailing about, tossing her shoulders and kicking defendant Yerges. Both defendants told plaintiff she was under arrest and to stop resisting. Plaintiff refused and continued to resist.

While attempting to handcuff plaintiff, defendant Beghin was on plaintiff's left side and defendant Yerges was on her right side. Plaintiff successfully pulled her right arm away and was kicking defendant Yerges as well as flailing her arms and head.

Defendant Yerges used the inside of his left knee to push plaintiff into the squad car to immobilize her and secure her right arm. He then handcuffed her. She continued to resist by kicking and flailing her arms. Plaintiff was arrested for disorderly conduct.

Plaintiff sustained injury to her groin area.

On July 8, 1999 plaintiff was 5 feet 3 inches tall, weighed 124 pounds and was 48 years old. Defendant Yerges was 6 feet two inches tall and weighed 185 pounds. Defendant Beghin was 5 feet 8 inches tall and weighed 200 pounds.

#### MEMORANDUM

Plaintiff claims that her Fourth Amendment rights were violated because defendant Yerges used excessive force in arresting her. In Graham v. Connor, 490 U.S. 386, 394 (1989), the Court held that force used during the course of an arrest, investigatory stop or other seizure violates the Fourth Amendment where it is unreasonable.

To prevail on this claim plaintiff must prove that the force during the arrest was unreasonable. The question is whether the officer's actions are objectively reasonable in the light of the facts and circumstances confronting him. Saucier v. Katz, 533 U.S. 194 (2001). These circumstances include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he or she is actively

resisting arrest or attempting to evade arrest by flight. Id.

In this case it is undisputed that plaintiff was interfering with an investigation and resisting arrest. She does not dispute that she was kicking at defendant Yerges after she was told to stop resisting. Defendants were unable to hold her to handcuff her because of her resistance. Defendant Yerges pushed plaintiff against the car to gain control and handcuff her.

Based on the undisputed facts defendant Yerges use of force is objectively reasonable according to Graham and Saucier. Plaintiff's Fourth Amendment rights were not violated.

In the alternative where defendant's use of force was not objectively reasonable, he raises the defense of qualified immunity. An officer is entitled to qualified immunity if a reasonable officer could have believed that his conduct was constitutional in light of the clearly established law and the information the officer possessed at the time the incident occurred. Saucier v. Katz, 533 at 202. The Court stated at p. 205 as follows:

The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to

what the law requires is reasonable, however, the officer is entitled to the immunity defense.

In this case defendant Yerges would be entitled to the qualified immunity defense where he made a mistake as to whether the force he used against plaintiff was reasonable. Defendants' motion for summary judgment will be granted.

Defendants are entitled to judgment in their favor as a matter of law. Accordingly, their motion for summary judgment will be granted.

ORDER

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

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

Entered this 21<sup>st</sup> day of December, 2005.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge