

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

THOMAS KLEIN,

Plaintiff,

v.

MEMORANDUM and ORDER
04-C-909-S

LAFAYETTE COUNTY, JOSEPH
THOMPSON and MARY PAISLEY,

Defendants.

Plaintiff Thomas Klein claims that defendant Joseph Thompson violated his Fourth Amendment rights by arresting him on April 22, 2003 without probable cause. He also claims that defendant Mary Paisley violated his Fourteenth Amendment rights by detaining him until April 28, 2003 in the Lafayette County Jail.

On March 15, 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. 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 Thomas Klein is an adult resident of Wisconsin. Defendant Joseph Thompson is a Detective Sergeant with the Lafayette County Sheriff's Department and defendant Mary Paisley is a Sergeant. Defendant Lafayette County is a governmental subdivision of the State of Wisconsin.

On June 13, 2002 David Paulson filed a petition with the Lafayette County Circuit Court for a Harassment Injunction against

plaintiff. On June 24, 2002 the Lafayette County Circuit Court entered a two year Harassment Injunction against plaintiff. The injunction specifically prohibited the following conduct: harassing Mr. P. and contact with Mr. Paulson or family at home or place of business. The injunction further provided that violation of this order shall result in immediate arrest.

On Saturday April 19, 2003 while the injunction was in effect plaintiff placed an order for flowers to be sent to Paulson's place of business, My Turn Pub, with a card that read, "Happy Anniversary, George." The flowers were delivered and plaintiff paid for them.

Dave Paulson subsequently contacted the police. On Monday April 21, 2003 Sergeant James R. Poss of the Lafayette County Sheriff's Department called Dave Paulson regarding his complaint. On Tuesday April 22, 2003 Sergeant Poss talked to the florist and determined that plaintiff had sent the flowers to Paulson. Sergeant Poss then met with David Paulson, Sue Paulson and Alice Hochhausen and reviewed the harassment injunction.

Around 1:30 p.m. on April 22, 2003 Sergeant Poss met with Detective Sergeant Thompson and informed him of his investigation. Poss told Thompson that he believed plaintiff had violated the harassment injunction. Thompson proceeded to plaintiff's residence because he believed he had sufficient probable cause to arrest him for violation of the harassment injunction.

Thompson arrived at plaintiff's home at about 3:47 p.m. He asked plaintiff if he had sent the flowers and he denied sending them. Thompson read plaintiff his Miranda rights before placing him under arrest. Upon arrival at the Lafayette County Jail plaintiff was booked by Deputy Jim Jacobson on a charge of violating a harassment injunction.

The only circuit judge in Lafayette County, William Johnston had recused himself from any of plaintiff's court matters. Lafayette County District Attorney Charlotte Doherty had also removed herself from making any decisions concerning plaintiff. As a result Sheriff Pedley and his staff sought the assistance of the District Court Administrator in Madison requesting that a judge from another county be assigned to review the Probable Cause statement and related documents.

On Thursday April 24, 2003 at about 11:50 a.m. Thompson prepared and faxed a probable Cause Statement and Judicial Determination along with supporting documents to the District Court Administrator. Within 48 hours of plaintiff's arrest Circuit Judge John C. Albert made a determination of probable cause that plaintiff had violated the harassment injunction. Larry Nelson, Assistant District Attorney of Iowa County, was assigned to prosecute plaintiff's case.

On Friday April 25, 2003, at 3:00 p.m. plaintiff's attorney Stephen Buggs prepared a writ of habeas corpus and presented it to

Court Commissioner Steven Haverty to sign. He then presented the signed writ to the jail requiring plaintiff be produced at the Commissioner's office.

Defendant Paisley refused to produce plaintiff because of her concerns about producing plaintiff to Commissioner Haverty's office rather than the courthouse. Attorney Buggs left the jail and returned to the Commissioner's office to discuss the situation. Attorney Buggs, who believed that he had no other choice because court reporters were unavailable, Commissioner Haverty and Larry Nelson agreed to conduct plaintiff's bail hearing on Monday afternoon. Haverty contacted the jail advising them that plaintiff should be produced at the courthouse pursuant to the writ on Monday April 28, 2003. On Monday plaintiff was released on a \$500.00 signature bond.

MEMORANDUM

Plaintiff claims that defendant Thompson violated his Fourth Amendment rights by arresting him without probable cause. A warrantless arrest is lawful under the Fourth Amendment if supported by probable cause. Beck v. Ohio, 379 U.S. 89, 90 (1964). Probable cause exists, "if at the moment the arrest was made the facts and circumstances within the officers' knowledge and of which he had reasonably trustworthy information were sufficient to

warrant a prudent man in believing that the arrestee was committing an offense.” Jones v. Watson, 106 F.3d 774, 779 (7th Cir. 1997).

Based on the investigation of Sergeant Poss who had reviewed the harassment injunction, Thompson believed he had probable cause to believe that plaintiff had violated the harassment injunction. The harassment injunction prohibited plaintiff from “harassing Mr. P. and contact with Mr. Paulson or family at home or place of business”. Plaintiff sent flowers to Paulson’s place of business with a card signed with the nickname George. Although plaintiff argues that sending the flowers was not harassment, a reasonable person could have believed that this was harassing behavior in violation of the injunction. Thompson had probable cause to arrest plaintiff for violating the injunction.

Had a factual issue been raised by plaintiff with respect to probable cause, defendant Thompson would be entitled to summary judgment on the basis of qualified immunity. Government officials are shielded from liability insofar as their conduct does not violate clearly established statutory or constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity is determined by the Court as a matter of law. Rakovich v. Wade, 850 F. 2d 1180, 1202 (7th Cir. 1988), cert. denied, 109 U.S. 497.

Defendant Thompson is entitled to qualified immunity where he acted in an objectively reasonable manner. To avoid summary judgment on the issue of qualified immunity plaintiff would have to

show that no reasonable officer, based upon the facts of this case, could have believed that there was probable cause to arrest him for a crime. Plaintiff has not met this burden. A reasonable officer could have believed there was probable cause to arrest plaintiff for violating the harassment injunction.

Plaintiff's Fourth Amendment rights were not violated. Defendant Thompson's motion for summary judgment on this claim will be granted.

Plaintiff claims that his due process rights were violated by defendant Paisley when he was detained after his arrest on April 22, 2003 until his bail hearing on April 28, 2003. In Coleman v. Frantz, 754 F.2d 719, 723 (7th Cir. 1985), the Court held that Coleman's 18 day detention without an appearance before a judge or magistrate was a deprivation of liberty without due process of law. The Court found that although the sheriff's conduct offended substantive due process, he was entitled to qualified immunity because he reasonably attempted to fulfill his duties and because he did not violate a "clearly established" right.

In Armstrong v. Squadrito, 152 F.3d 564, 573 (7th Cir. 1998), the Court held that the denial of a first appearance offends the due process clause. Due process regulates the period of confinement between the initial determination of probable cause and the initial appearance or bail hearing. The Court found that a jail officer would be culpable for violating a detainee's due

process rights where his or her conduct was deliberately indifferent to a protected interest. The Court defines deliberate indifference as conscious disregard of known or obvious dangers. Id., at 577. The Court held where deliberate indifference is found the final question is whether viewed in the totality of the circumstances the jail officer's conduct shocks the conscience. Id., 581.

Plaintiff was arrested on April 22, 2003. A judge made a probable cause determination on April 24, 2003 two days after plaintiff was arrested. The next day, Friday, April 25, 2003 plaintiff's attorney attempted to have plaintiff brought before a Court Commissioner for a bail hearing. He had the Court Commissioner sign a writ of habeas corpus which was presented to defendant Paisley. She refused to produce plaintiff because of her concerns about producing him to Commissioner Haverty's office rather than the courthouse.

Plaintiff was represented by Attorney Steven Buggs. On Friday afternoon around 4:00 p.m. Buggs discussed the situation with Commissioner Haverty and Larry Nelson, the assigned district attorney. Because of the non-availability of court reporters, Buggs agreed to a postponement of plaintiff's bail hearing until the following Monday.

Once plaintiff's attorney agreed to the delay defendant Paisley was no longer liable for plaintiff's continued detention.

She was responsible for detaining him only from the afternoon of April 24, 2003 when the judicial probable cause determination was made until the afternoon of April 25, 2003 when plaintiff by his counsel agreed to have his initial appearance delayed until Monday.

In Baker v. McCollan, 443 U.S. 137, 144-45 (1979), the Court held that a three-day detention after probable cause was found did not violate due process. Defendant Paisley's detention of plaintiff for one day after probable cause was determined was not deliberately indifferent to his due process rights nor does it shock the conscience. Accordingly, plaintiff's due process rights were not violated by defendant Paisley. Defendants' 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 defendants against plaintiff DISMISSING his complaint and all claims contained herein with prejudice and costs.

Entered this 22nd day of April, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge