

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

ALGEN M. LAMON,

Plaintiff,

v.

MEMORANDUM and ORDER

PAUL H. BELOUNGY
and JOHN FAHRNEY,

06-C-601-S

Defendants.

Plaintiff was allowed to proceed on his Fourth Amendment claim against defendant John Fahrney. In his complaint he alleges that defendant Fahrney falsely arrested him in Beloit in 2001. Defendant Paul Beloungy was dismissed on November 28, 2006.

On February 20, 2007 defendant moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, 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 defendant Fahrney's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Algen M. Lamon is an adult who is incarcerated at the Secure Prison Facility, Boscobel, Wisconsin. Defendant John Fahrney is a Police Detective with the Beloit Wisconsin Police Department.

On January 2, 2001 at about 3:24 a.m. Beloit Police officers were dispatched to investigate a report of a stalled vehicle. They

discovered Collins Brumfield in the trunk of the vehicle. He told them that an unknown person had robbed him at gun point and forced him into the trunk of Brumfield's vehicle. The suspect had driven around for several hours while Brumfield was in the trunk before abandoning the vehicle.

On January 3, 2001 defendant Fahrney was assigned to investigate this incident. Brumfield positively identified the plaintiff as the person who robbed him and placed him in the trunk of the vehicle.

On January 12, 2001 the Rock County District Attorney's office issued a criminal complaint charging plaintiff with armed robbery, kidnaping, felon in possession of a firearm and operating a motor vehicle without owner's consent. That same day the Rock County Circuit Court issued an arrest warrant for plaintiff for these charges.

On January 15, 2001 plaintiff voluntarily appeared at the Beloit Police Department. He was arrested, provided a copy of the criminal complaint and advised that a warrant for his arrest had been issued. He was fingerprinted, photographed and transported to the Rock County Jail.

On January 16, 2001 the Rock County Circuit Court found probable cause that plaintiff committed the crimes of armed robbery, kidnapping, in possession of a firearm and operating a motor vehicle without the owner's consent. After a jury trial he

was found guilty on July 18, 2001 of kidnaping and operating a motor vehicle without owner's consent.

Plaintiff's criminal defense attorney never disputed the validity of the arrest warrant.

MEMORANDUM

Plaintiff claims that his Fourth Amendment rights were violated because he was arrested without probable cause. There is no genuine issue of material fact remaining and this case can be decided as a matter of law.

Plaintiff was arrested pursuant to a valid arrest warrant. Accordantly, plaintiff's Fourth Amendment rights were not violated. Baker v. McCollan, 443 U.S. 137, 143-144 (1979).

The existence of probable cause for an arrest is an absolute bar to a 42 U.S.C. § 1983 claim for unlawful arrest. Fernandez v. Perez, 937 F. 368 (7th Cir. 1991). On January 16, 2001 the Rock County Circuit Court found probable cause that plaintiff had committed the crimes of armed robbery, kidnapping, felon in possession of a firearm and operating a motor vehicle without owner's consent. Accordingly, plaintiff's Fourth Amendment claim is barred.

Plaintiff also claims that his due process rights were violated when he was arrested. This claim is also barred by the Court's finding of probable cause. Id.

Defendant Fahrney would also be entitled to qualified immunity because his conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Rice v. Burks, 999 F. 2d 1172, 1174 (7th Cir. 1993).

Defendant Fahrney is entitled to judgment in his favor as a matter of law. His motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendant Fahrney's 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 therein with prejudice and costs.

Entered this 20th day of March, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge