

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COLIE BAXTER : CIVIL ACTION
:
v. :
: No. 01-CV-2341
POLICE OFFICER EDGAR MELENDEZ :
POLICE OFFICER TRACY BROOKS :

MEMORANDUM

Padova, J.

April , 2002

Plaintiff brought this action against two Philadelphia Police Officers pursuant to 42 U.S.C. § 1983 alleging that his stop, search and arrest by those police officers on drug charges constituted unlawful search and seizure, false arrest and illegal imprisonment in violation of the Fourth and Fourteenth Amendments to the United States Constitution. Before the Court is Defendants' Motion for Summary Judgment.¹ For the reasons that follow, the Motion is granted.

I. BACKGROUND

On February 18, 1999, members of the Philadelphia Police Department's 35th District "NET TEAM" set up surveillance in the area of 4939 Camac Street, a house belonging to Baxter's aunt. (Def. Ex. C at 2.) At 3:45 p.m., the police observed David Woods outside the garage door of that property. (Id.) At 4:08 p.m. Woods was approached by Kenny Mickens, the two men engaged in a brief conversation and then walked to the front of the garage.

¹Defendants' Motion was filed on January 14, 2002. Plaintiff has failed to respond to the Motion.

(Id.) Mickens knocked on the garage door which was opened by Raymond Young. (Id.) Woods then handed Young some money. (Id.) Young went back inside the garage and returned a few moments later and handed something to Woods, who then left. (Id.) The police stopped Woods around the corner from the garage, he was carrying nine yellow zip lock bags of crack cocaine base. (Id.) Later in the afternoon, the police officers witnessed similar drug sales to two more individuals. (Id.) The first of those individuals was stopped carrying four yellow bags of cocaine base and the second was stopped carrying one yellow bag of cocaine base. (Id.)

About 3:50 p.m. Baxter arrived at 4939 Camac Street to fix a toilet which he had installed inside the garage. (Def. Ex. E at 18-19.) He initially went inside the garage to fix the toilet, but was unable to do so because his cousin, Charles Richardson, had gone out to get parts for the toilet and had not yet returned. (Id. at 21.) About 4:20 p.m. he went outside to check the oil in his car. (Id. at 22.) The second and third drug sales observed by the NET TEAM occurred while Baxter was outside of the garage checking the oil in his car.

At 4:35 p.m., the NET TEAM approached the garage. (Def. Ex. C at 2.) Officer Brooks stopped Baxter. (Id.) Officer Melendez saw a firearm under Baxter's sweatshirt when he lifted his arms and alerted Officer Brooks. (Def. Ex. D at 32.) Officer Brooks then patted down Baxter and took a 9mm handgun from him. (Def. Ex. E at

48). Baxter was then made to stand against a wall and wait there for about a half-hour. (Id. at 36.) The police officers asked him for permission to search his car, he "told them go ahead, help yourself. You ain't gonna find nothing in there." (Id. at 48.)

Other police officers from the NET TEAM went to the garage where they observed drugs and drug paraphernalia. (Def. Ex. C. at 2.) The police officers obtained a search warrant and searched the garage and house at 9:30 p.m. (Id. at 3.) The officers recovered firearms, ammunition, cocaine base and currency from the garage and inside the home. (Id.) Baxter was arrested along with Young, Mickens and Richardson. (Id.) He was charged with four counts of possession, manufacture and delivery of a controlled substance and possession of drug paraphernalia. (Id.)

On August 3, 1999, a federal grand jury indicted Baxter, along with Young, Mickens and Richardson, with conspiracy to distribute five grams or more of cocaine base, distribution of cocaine base, possession with intent to distribute cocaine base, and carrying and aiding and abetting the carrying of a firearm during and in relation to a drug trafficking crime. (Def. Ex. G.) On August 16, 1999, at the request of the United States Department of Justice, the state charges against Baxter were withdrawn in favor of federal prosecution. (Def. Ex. I.) On January 3, 2000, the Government filed a motion to dismiss the charges against Baxter based upon its post-indictment investigation. (Def. Ex. J.) The Government

stated in the Motion that, during its post-indictment investigation, it became aware of information which was not known or knowable prior to indictment, indicating that Baxter was not guilty. (Id.) On January 5, 2000, the charges against Baxter were dismissed. (Def. Ex. K.) Mickens, Young and Richardson eventually pled guilty to the charges brought against them.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met

simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Evidence introduced to defeat or support a motion for summary judgment must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)). The Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "[I]f the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

The Complaint alleges a claim against Police Officers Melendez and Brooks pursuant to 42 U.S.C. § 1983, claiming that the actions of those defendants constituted unlawful seizure, unlawful search of Baxter and his car, false arrest, and illegal imprisonment in violation of the Fourth and Fourteenth Amendments.

Defendants argue that they are entitled to summary judgment on Baxter's § 1983 claim of unlawful search and seizure because they had reasonable suspicion to stop and frisk him based upon the drug sales they observed at the garage during the time in which he was inside the garage and outside working on his car. A police officer may, "consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Illinois v. Warlow, 528 U.S. 119, 123 (2000) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)). The police officer may also conduct a minimal search coincident with the arrest sufficient to discover whether the person stopped is carrying a weapon. Terry, 392 U.S. at 29-30. Reasonable suspicion is a less demanding standard than probable cause and requires only "a minimal level of objective justification for the stop." Warlow, 528 U.S. at 123. The police officer must have more than a hunch of criminal activity. Id. at 123-24. Although a police officer cannot stop someone merely for being present in a high crime area, that presence is a factor which may be considered in determining whether the police officer had

reasonable suspicion. Id. at 123. It is uncontroverted that the Police Officers observed Baxter in the garage and directly outside of the garage while three individuals purchased drugs from individuals inside the garage. Therefore, based upon the record before the Court, there is no genuine issue of material fact with regard to whether Officers Melendez and Brooks had reasonable suspicion to stop and pat down Baxter.

Defendants also argue that the search of Baxter's car did not violate his rights under the Fourth and Fourteenth Amendments because Baxter consented to the search. "A search undertaken pursuant to voluntary consent is not unconstitutional." United States v. Kikumura, 918 F.2d 1084, 1093 (3d Cir. 1990). Baxter admits that the police officers asked for permission to search his car and he told them to go ahead. (Def. Ex. E at 48.) Consequently, the search of Baxter's car did not violate his rights under the Fourth and Fourteenth Amendments.

Defendants also argue that they are entitled to summary judgment on Baxter's § 1983 claim for false arrest and illegal imprisonment because they had probable cause to arrest him. "[T]he proper inquiry in a section 1983 claim based on false arrest . . . is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense." Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995) (citing Dowling v.

City of Phila., 855 F.2d 136, 141 (3d Cir. 1988)). Moreover, "an arrest based on probable cause [can] not become the source of a claim for false imprisonment." Id. at 636. Probable cause exists for an arrest when:

at the time of the arrest, the facts and circumstances within the arresting officer's knowledge are "sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997). Probable cause need only exist as to any offense that could be charged under the circumstances. Graham v. Conner, 490 U.S. 386, 435 n.6, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). In determining whether probable cause exists, the court should assess whether the objective facts available to the arresting officers at the time of the arrest were sufficient to justify a reasonable belief that an offense had been committed. Sharrar, 128 F.3d at 817. Courts apply a common sense approach based on the totality of the circumstances. Paff, 204 F.3d at 436.

United States v. Jones, Crim. No. 00-242, 2000 WL 1839742, at *4 (E.D. Pa. Dec. 14, 2000). Defendants argue that they had probable cause to arrest Baxter based upon his presence inside and outside of the garage while sales of cocaine base were occurring at the door of the garage and based upon the presence of cocaine base, cash, firearms and ammunition inside the garage.

At the time of Baxter's arrest, the facts and circumstances known to the police officers were that Baxter had been seen entering and leaving a garage where the sale of cocaine base had been observed; Baxter was inside the garage during the sale of

cocaine base to Woods; Baxter had been seen standing outside of the garage, working on his car, while sales of cocaine base were taking place at the door of the garage; and cocaine base, cash, firearms and ammunition had been observed inside of the garage. (Def. Ex. C at 2-3.) No evidence has been submitted to suggest that Police Officers Melendez and Brooks lacked probable cause to arrest Baxter. Based upon the record before the Court, there is no genuine issue of material fact with regard to whether Police Officers Melendez and Brooks reasonably believed that Baxter was involved in the sale of cocaine base at the garage and, therefore, had probable cause for his arrest. Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997).

IV. CONCLUSION

The uncontroverted evidence in this case establishes that Police Officers Melendez and Brooks had reasonable suspicion to stop and frisk Baxter and that they had probable cause for his arrest on drug charges. In addition, Baxter admits that he consented to the search of his car. As there are no genuine issues of material fact for trial, Defendants' Motion for Summary Judgment on Baxter's claim, pursuant to 42 U.S.C. § 1983, that their actions constituted unlawful seizure, unlawful search, false arrest, and

illegal imprisonment in violation of the Fourth and Fourteenth Amendments is granted.²

An appropriate order follows.

²Defendants have also moved for summary judgment on Baxter's § 1983 claim for false arrest and false imprisonment the ground that they are entitled to qualified immunity. Since the Court has determined that Defendants had probable cause for Baxter's arrest, it need not address this argument.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COLIE BAXTER : CIVIL ACTION
: :
v. : :
: :
POLICE OFFICER EDGAR MELENDEZ :
POLICE OFFICER TRACY BROOKS : No. 01-CV-2341

O R D E R

AND NOW, this day of April, 2002, in consideration of Defendants' Motion for Summary Judgment (Docket No. 13) and supporting papers, **IT IS HEREBY ORDERED** that the Motion is **GRANTED** pursuant to Federal Rule of Civil Procedure Rule 56 and **JUDGMENT** is entered in favor of Defendants and against Plaintiff.

BY THE COURT:

John R. Padova, J.