

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

KAREN SHEEDY : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, POLICE :
COMMISSIONERS JOHN TIMONEY and :
SYLVESTER JOHNSON, POLICE :
OFFICER WILLIAM HOLMES, and :
RICHARD P. GILLY : NO. 03-06394-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 15, 2005

Plaintiff, Karen Sheedy, brought this action to recover damages sustained as a result of her having been arrested and briefly imprisoned on criminal charges of which she was later exonerated. Named as defendants are her ex-husband (who was her husband at the time) Richard P. Gilly, the police officer who made the arrest, William Holmes, and the City of Philadelphia and various City officials. Plaintiff asserted claims under the Civil Rights Act, and under state law (malicious prosecution and false arrest/imprisonment). A jury found both Mr. Gilly and Officer Holmes to be liable, and awarded damages. Mr. Gilly now seeks judgment as a matter of law or a new trial. Plaintiff seeks judgment as a matter of law against the defendant police officer and the City.

There was very little dispute about the facts at trial. Plaintiff and Mr. Gilly were married to each other, had two

children, and owned their residence as tenants by the entireties. The marriage was apparently a stormy one. Plaintiff eventually moved out of the house, taking the children with her, and returned to live with her parents. Immediately thereafter, Mr. Gilly changed the locks on the doors and refused to allow plaintiff to re-enter the premises.

About a year later, plaintiff filed suit for divorce, and the parties were in the process of attempting to achieve an equitable distribution of their property, both real and personal. Plaintiff sought to arrange to return to the residence in order to identify and obtain personal property which she believed to be hers from before the marriage, and to arrange with her husband for a division of the jointly-owned personal property. Mr. Gilly took the position that plaintiff should furnish him a list of exactly which items she was claiming, whereupon, if he agreed with her assessment, he would deliver the items to her at some agreed-upon time, in front of the residence. This proposal was unsatisfactory to plaintiff because, among other reasons, she needed to visit the premises to refresh her recollection as to various items of furniture, etc.

The events giving rise to this lawsuit occurred some 15 months after the parties had separated, and some three or four months after the divorce action was filed. In the meantime, Mr. Gilly had acquired a fiancée, who was living with him in the residence. Plaintiff learned that Mr. Gilly and his friend were

going to be absent on a business trip to Europe. Accompanied by her brother, a moving van, and a locksmith, she went to the residence, caused the locks to be replaced, and gained possession of what she considered to be her own pre-marital property (which had already been segregated in the basement of the residence) together with what she believed to be her fair share of the jointly-owned furniture, most of which, she testified, had been given to her by members of her own family, and not purchased by Mr. Gilly. She left a note for Mr. Gilly, explaining what she had done and where he could find the keys to the changed locks.

When Mr. Gilly returned to the residence a few days later, he contacted the police and caused plaintiff to be charged with the crimes of burglary, malicious trespass, and theft. He made repeated telephone calls to the police to ascertain the status of the charges. He filed a written declaration in which he asserted that plaintiff had broken into his house and stolen his property. The defendant police officer, William Holmes, incorporated these assertions into an affidavit of probable cause which he submitted to a magistrate, who issued an arrest warrant. The plaintiff was informed of the outstanding warrant, and, with her lawyer, arranged to self-surrender, whereupon she was immediately imprisoned. Because of delays in setting and obtaining bail, she was not released until two days later. Eventually, the criminal charges were dropped.

The information which Mr. Gilly furnished to the police did not disclose the fact that plaintiff was a joint owner of the residence, and of most of the personal property within the residence; neither did it disclose that Mr. Gilly and plaintiff were then still married to each other. Mr. Gilly is a law school graduate, who practices patent law.

The jury, by answers to interrogatories, found that there was no conspiracy between Mr. Gilly and the police, hence Mr. Gilly was a private actor and could not be held liable under the Civil Rights Act; that Officer William Holmes was entitled to immunity, hence neither he nor the other City defendants could be held liable under the Civil Rights Act; but that both Mr. Gilly and defendant Holmes were liable under state law for malicious prosecution and false arrest/imprisonment. The jury awarded modest compensatory damages (the out-of-pocket expenses sustained by plaintiff, amounting to \$3,075). But the jury also awarded punitive damages, against Mr. Gilly alone, in the sum of \$500,000.

A. Mr. Gilly's Post-Trial Motions

The trial of this case did not proceed smoothly. There were two principal difficulties. Defendant's trial lawyer, a distinguished leader of the Bar, was experiencing hearing-loss. As a consequence, throughout the trial he kept interrupting others (apparently unaware that they were speaking) and spoke more loudly than anyone else. A more difficult problem stemmed

from the fact that defendant's trial counsel had convinced himself that the fact that plaintiff was a joint owner of the residence and a joint owner of most of the property therein was entirely irrelevant to the issue of probable cause for her arrest for burglary. Counsel persisted in maintaining that position throughout the trial, and felt that the court's charge was grossly unfair because the court entertained a different view of the legal rights of the parties. Frankly, I found it difficult to accept the notion that Mr. Gilly, himself a lawyer, could charge his wife with burglary for entering their jointly-owned residence. From their verdict, it appears that the jury agreed with this assessment.

Defendant's motion for judgment as a matter of law could be granted only if one were to ignore most of the evidence presented at trial, accept only the isolated snippets favorable to the defendant, and accept the theory that plaintiff could be guilty of burglary by entering a house of which she was co-owner. Apart from that, as a fall-back position, defendant argues that, even if there was no probable cause to believe plaintiff was guilty of burglary or malicious trespass, plaintiff could still be properly charged with theft because at least one of the items she removed from the property had belonged to the defendant before the marriage. The item in question was a used VCR. According to the plaintiff, however, she did not intentionally remove that item, it was erroneously loaded on the moving van by

others, by mistake. Moreover, according to plaintiff, that item was not operable and had virtually no value, and she has always been perfectly willing to return it to the defendant. The jury could reasonably have accepted this explanation.

The contention that Mr. Gilly was really prosecuting plaintiff for having removed his VCR must be considered in light of the undisputed fact that Mr. Gilly submitted to the District Attorney's Office a detailed list of all of the items allegedly stolen by plaintiff (and claiming it was all his separate property), having an aggregate value of approximately \$12,000 (at obviously exaggerated valuations), virtually all of which was jointly owned by the parties.

There was, in short, ample evidence to support the jury's finding that Mr. Gilly was liable for malicious prosecution and false arrest.

In support of his motion for a new trial, defendant asserts a laundry-list of alleged trial errors, but I am not persuaded that any significant error occurred. Defendant asserts that the jury gave inconsistent answers to the interrogatories pertaining to co-defendant Holmes. Interrogatory No. 1 asked if defendant Holmes had violated plaintiff's civil rights under the Fourth Amendment, and the jury answered "No"; in answer to Interrogatory No. 4, the jury found that there was no probable cause for arresting plaintiff. Defendant now argues that these answers are inconsistent, because if there was no probable cause,

Holmes as a state actor must have been guilty of the civil rights violation. This overlooks the fact that the jury also found that Holmes was entitled to qualified immunity, since he reasonably believed that there was probable cause. Thus, there was no inconsistency.

Defendant contends that the answers to the interrogatories applicable to himself were also inconsistent. I disagree. Having found that Mr. Gilly was not a state actor (since he did not conspire with the police), it was entirely appropriate for the jury to find that Mr. Gilly was not liable to plaintiff for a civil rights violation. This does not mean, as defendant now argues, that there must have been probable cause for the arrest.

The jury was instructed, in effect, that Mr. Gilly could not be held liable for mistakes made by the police officer or the magistrate who issued the arrest warrant, unless he had knowingly failed to disclose pertinent information which would have caused them to act otherwise. Conversely, if the defendant knowingly failed to disclose important information which would have undermined a finding of probable cause, then he could be found liable for malicious prosecution and false arrest, if he acted with the requisite malicious intent. I also informed the jury that, as a matter of law, if the affidavit had disclosed the fact that plaintiff was a co-owner of the premises and of its contents, the magistrate would not have had probable cause to

issue the arrest warrant on a charge of burglary or malicious trespass. The jury was told:

"And so, the only thing she could possibly be convicted of would be if you conclude that she knowingly and intentionally stole property that was the sole property of Mr. Gilly."

"On that subject, if you accept plaintiff's testimony that the movers inadvertently included that and she wasn't aware of it until later, obviously, she would not be guilty of theft and she would not be guilty of the theft that she was charged with, even if later, she discovered that she had the VCR or whatever it was and refused to return it...."

The jury was also told that, although the affidavit in support of the arrest warrant omitted material facts, this would not result in liability on the part of Mr. Gilly unless he intentionally concealed facts from the police and the District Attorney's Office, was not acting in good faith, but was "acting maliciously in causing his wife to be arrested." The charge included the following:

"Now to the extent that all that Mr. Gilly did was lay the facts before the police and the District Attorney's Office, in the good faith belief that he was the victim of a crime and that the wife should be arrested, [if] he was acting in good faith, there is no liability. If, on the other hand, he was being less than completely forthright and was acting in a vindictive spirit to get even with his wife, then the situation would be exactly the opposite."

I have carefully considered each of the other alleged errors but conclude that they amount to mere nit-picking and do

not require discussion. I am persuaded that the charge to the jury was proper and fair to both sides.

The only significant issue raised by the defendant is the alleged excessiveness of the punitive award against him, \$500,000. I readily agree that, compared to the compensatory award, the punitive award exceeds the "single-digit multiple" guideline suggested in BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed.2d 809 (1996) and State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed.2d 585 (2003). The entire issue of excessiveness of punitive damage awards has very recently been addressed extensively by the Third Circuit Court of Appeals in Willow Inn, Inc. v. Public Service Mut. Ins. Co., ___ F.3d ___ (3d Cir. Feb. 14, 2005).

From these reported decisions, it is clear that a punitive damage award should bear some reasonable relationship to the compensatory damages actually sustained as a result of the defendant's conduct, and should take into account the relative outrageousness of the defendant's conduct. If, as the jury's answers to interrogatories can be read to suggest, the jury concluded that plaintiff's compensatory damages actually totaled only \$3,075, then the \$500,000 punitive award cannot possibly be upheld. But it seems obvious that, in this case, the compensatory damages award included only plaintiff's actual out-of-pocket expenses (lawyer's fee and bail money), and did not

include the very substantial non-economic damages she sustained. A respectable housewife with young children, she suffered the humiliation and embarrassment of being arrested, and of spending two days in durance vile. For the rest of her life, she will have a police record, which will have to be explained in any future employment application or similar circumstances. I have no doubt whatever that the jury's \$500,000 punitive award actually included a substantial amount of compensatory damages.

The amount of a punitive award must also be viewed in light of the defendant's ability to pay. The only record evidence on that subject is that, at the time of these occurrences, the defendant was earning about \$200,000 per year, as a partner in a large law firm. He is now a sole practitioner, and there is some suggestion in the post-trial briefs that his financial fortunes have declined somewhat.

On balance, I conclude that the punitive award should be reduced. In my view, a fair compensatory award would not exceed \$100,000, and it is reasonable to conclude that the portion of the jury's award actually attributable to punitive damages is \$400,000. In my view, given the defendant's limited resources, I conclude that a punitive award in this case cannot reasonably exceed \$200,000. I therefore conclude that the jury's verdict must be molded to reflect an award in favor of the plaintiff and against the defendant Gilly in the total sum of \$300,000.

In all other respects, the defendant's motion for a new trial will be denied.

B. The Cross-Motions of Plaintiff and the Defendant William Holmes for Judgment as a Matter of Law

Plaintiff contends that, as a matter of law, the jury's findings as to the defendant Holmes established that he is liable to plaintiff for violating her Fourth Amendment rights, under 28 U.S.C. § 1983. Defendant Holmes contends that the jury correctly absolved him of civil rights liability, but erroneously imposed liability under state law for false arrest/imprisonment. I conclude that the jury's answers to the interrogatories established that Mr. Holmes is entitled to the defense of qualified immunity for the civil rights violation, and also established that he cannot be held liable under state law in view of the provisions of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, *et seq.* Since the jury found that Mr. Holmes reasonably believed that there was probable cause for the arrest, and that he acted in good faith in submitting the affidavit for the search warrant, he cannot be considered to have committed a "willful" act, and is therefore immune from liability. Plaintiff's motion will therefore be denied, and defendant's will be granted.

An order follows.

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OFFICER WILLIAM HOLMES, and :
RICHARD P. GILLY : NO. 03-06394-JF

ORDER

AND NOW, this 15th day of February 2005, IT IS HEREBY
ORDERED:

1. The motion of defendant Richard P. Gilly for judgment
as a matter of law is DENIED.

2. The motion of defendant Richard P. Gilly for a
new trial is DENIED.

3. Plaintiff's motion for judgment as a matter of law as
to the defendant Holmes is DENIED.

4. The motion of defendant William Holmes for judgment as
a matter of law is GRANTED, and all claims against defendant
Holmes are DISMISSED with prejudice.

5. JUDGMENT is ENTERED in favor of the plaintiff Karen
Sheedy and against the defendant Richard P. Gilly only in the
total sum of \$300,000.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.