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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

TIMOTHY EDWIN STEVENSON, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	15-CV-1340
	)	
MARTIN MEREDITH, et al.,	)	
	)	
Defendants.	)	

ORDER

JOE BILLY MCDADE, U.S. District Judge.

Plaintiff proceeds pro se on Fourth Amendment claims arising from Plaintiff's arrest on July 23, 2013 by Livingston County Deputy Brian Hoffmeyer. (2/4/16 Merit Review Order; 1/13/17 Order.) Plaintiff filed this case pro se from his incarceration in the Vandalia Correctional Center but has since been released.

The Court originally identified from Plaintiff's Complaint the following Fourth Amendment claims: (1) arrest without probable cause for violating an order of protection; and (2) the intentional destruction of Plaintiff's cell phone during the arrest. Id. Upon reconsideration, the Court concluded that the alleged cell phone

destruction did not state a federal claim because Plaintiff had state remedies to address this unauthorized deprivation of property. (1/13/17 Order.) Plaintiff has filed no objections to this conclusion, which is correct in any event, so the claim about the cell phone destruction is officially dismissed to the extent Plaintiff pursues a federal claim about that destruction.

Remaining is Plaintiff's Fourth Amendment claim for arrest without probable cause. Defendants' motion for summary judgment on this claim will be granted for the reasons explained below. In short, even though Deputy Hoffmeyer may have lacked probable cause to arrest Plaintiff for violating an order of protection under Plaintiff's version of the facts, Deputy Hoffmeyer did have probable cause to arrest Plaintiff for resisting or obstructing a peace officer's performance of his authorized duties. Probable cause to arrest for any crime, even for a crime different than the crime charged, negates a Fourth Amendment claim.

Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). A movant may demonstrate the absence of a material dispute through specific cites to admissible evidence, or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(B). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint, but instead must point to admissible evidence in the record to show that a genuine dispute exists. Id.; Harvey v. Town of Merrillville, 649 F.3d 526, 529 (7th Cir. 2011). At the summary judgment stage, the evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. Id.

Facts

For purposes of this order, the Court finds the following facts from its review of Defendants' motion for summary judgment and Plaintiff's response,[1] and the exhibits attached to both of those filings. Defendants ask in their reply to strike Plaintiff's response

[1] Plaintiff's response (d/e 42) contains the same exhibits as Plaintiff's motion to extend his deadline for responding (d/e 36).

as noncompliant with Local Rule 7.1(D)(2), but the simplicity of Plaintiff's claim weighs against that approach. The Court is able to understand from Plaintiff's response which facts he disputes.

On July 16, 2015, Woodford County Circuit Court Judge Feeney entered an emergency order of protection against Plaintiff, directing Plaintiff to stay away from Plaintiff's ex-girlfriend and the two minor children they had together. (Defs.' Undisp. Facts 5-6.) Five days later, Defendant Hoffmeyer,[2] a Livingston County Deputy, went to Plaintiff's residence to serve Plaintiff with the order of protection. (Defs.' Undisp. Fact 8.)

The parties dispute exactly what happened next.

According to Plaintiff's version, Deputy Hoffmeyer knocked on Plaintiff's door. Plaintiff admits that he did not bother to get up because people he knows come only to the back door. Plaintiff then looked out the window, and that is when, according to Plaintiff, Deputy Hoffmeyer saw Plaintiff and began beating on the door and demanding that Plaintiff open the door so that Deputy Hoffmeyer could serve Plaintiff with civil papers. (Pl.'s Dep. 36.) According to

[2] This Defendant's name is spelled "Hoffmeier" in the docket, but the correct spelling, according to Defendants' filings, is "Hoffmeyer."

Plaintiff, Deputy Hoffmeyer did not identify the civil papers as an order of protection, though Plaintiff assumed that the papers were in fact an order of protection arising from a case initiated by his ex-girlfriend in retaliation for incidents not relevant here. (Pl.'s Dep. 32-33, 37, 52-53.) Plaintiff admits that he did not open the door and that he told Deputy Hoffmeyer that he did not want the papers. (Pl.'s Dep. 54.) Then, according to Plaintiff, Deputy Hoffmeyer began beating on the window, which had a loosely attached air conditioner. Plaintiff maintains that Deputy Hoffmeyer stuck his hand through the window and pushed the air conditioner through the window onto the floor. (Pl.'s Dep. 35-36, 56.) According to Plaintiff, Deputy Hoffmeyer said that probable cause now existed to enter the home because the air conditioner was a fire hazard. (Pl.'s Dep. 36.) Plaintiff then capitulated and agreed to open the door but only after Deputy Hoffmeyer threatened to come in due to the purported fire hazard. (Pl.'s Dep. 36, 66.) Plaintiff opened the back door, and he was immediately handcuffed and told that he was being arrested for violating the order of protection. (Pl.'s Dep. 38.) One of the minor's listed in the protective order was in Plaintiff's home at the time, but, according to Plaintiff, Deputy Hoffmeyer

could not have seen the minor until after arresting Plaintiff, because the minor had moved to a room out of view. (Pl.'s Dep. p. 57, 60.) Plaintiff was taken to jail and released the next day, the prosecutor declining to pursue charges.

Deputy Hoffmeyer's account differs somewhat. Deputy Hoffmeyer avers that he repeatedly told Plaintiff through the door and window that he had an order of protection to serve. Deputy Hoffmeyer maintains that Plaintiff stated he would not open the door, admitted that he knew the papers were an order of protection, and said that he did not want the order. (Hoffmeyer Aff. ¶¶ 19-24.) Deputy Hoffmeyer says he "gently pulled the curtain aside" from the window "[w]ithout sticking [his] hand through a gap between the air conditioner unit and the window." (Hoffmeyer Aff. ¶ 26.) He maintains that is how he saw a minor child with Plaintiff. According to Deputy Hoffmeyer, Plaintiff orally confirmed that the child was one of the minors listed in the order of protection. (Hoffmeyer Aff. ¶ 29.) Deputy Hoffmeyer avers that he told Plaintiff that Plaintiff was in violation of the order of protection and ordered Plaintiff to come to the front door. (Hoffmeyer Aff. ¶ 33.) Plaintiff then stated he would go to the back door (where another deputy

was already stationed, unbeknownst to Plaintiff). However, according to Deputy Hoffmeyer, instead of going to the back door, Plaintiff first paced from room to room, in and out of sight and on the phone, while the child followed him, for an unspecified amount of time. The parties agree that when Plaintiff did open the back door he was arrested for violating the order of protection.

Analysis

The Court first notes that Plaintiff's allegations about Deputy Hoffmeyer sticking his arm through the window, pushing the window air conditioning unit onto the floor, and pressuring Plaintiff to open the door by warning that probable cause now existed to enter the home to prevent a fire hazard are not a part of this case. These allegations were not made in the Complaint. No such claims were identified in the Merit Review Order; Plaintiff did not move to add these claims; and Defendants have not addressed these claims. Reynolds v. Tangherlini, 737 F.3d 1093, 1106 (7th Cir. 2013)("[A] court will not imply a party's consent to try an unpleaded claim"). The Court limits its analysis to Plaintiff's claim that is proceeding in this case—whether Deputy Hoffmeyer and Sheriff Meredith had probable cause to arrest Plaintiff.

There is no evidence to support a finding that Sheriff Meredith was involved in any way in this incident. Sheriff Meredith cannot be held liable for the constitutional violations of his subordinates simply because he was in charge. Brown v. Randle, 847 F.3d 861, 865 (7th Cir. 2017)("Public officials are accountable for their own conduct, but they are not vicariously liable for the acts of their subordinates."); Matthews v. City of East St. Louis, 675 F.3d 703, 708 (7th Cir. 2012)(supervisor not liable unless supervisor facilitated, approved, or turned blind eye to subordinate's misconduct); Burks v. Raemisch, 555 F.3d 592 (7th Cir. 2009)(Public officials do not have a free-floating obligation to put things to rights, . . .). Summary judgment is granted for Sheriff Meredith.

Moving to the merits of Plaintiff's claim against Deputy Hoffmeyer, "[t]he Fourth Amendment permits warrantless arrests only if the arresting officer has probable cause to believe that a crime has been committed." Washington v. Haupert, 481 F.3d 543, 547 (7th Cir.2007). The question is whether an officer confronting the same situation could "'reasonably believe, in light of the facts and circumstances within [the officer's] knowledge at the time of the

arrest, that the suspect had committed or was committing an offense.'" Id. (quoted cite omitted); Venson v. Altamirano, 749 F.3d 641, 649 (7th Cir.2014)("[p]robable cause to make an arrest exists when a reasonable person confronted with the sum total of the facts known to the officer at the time of the arrest would conclude that the person arrested has committed, is committing, or is about to commit a crime."). If probable cause existed to arrest Plaintiff for *any* crime, then there was no Fourth Amendment violation, even if no probable cause existed to arrest Plaintiff for violating the protective order. Gill v. Milwaukee, 850 F.3d 335, 342 (7th Cir. 2017)("We have previously explained that 'probable cause to believe that a person has committed any crime will preclude a false arrest claim, even if the person was arrested on additional or different charges for which there was no probable cause....'").

Deputy Hoffmeyer argues that he had probable cause to arrest Plaintiff for violating the protective order because he saw the minor child in the residence and told Plaintiff about the protective order he was trying to serve. However, on summary judgment, the Court "must give the non-moving party the benefit of conflicts in the evidence about what the officers actually knew at the time."

Williams v. City of Chicago, 850 F.3d 335 (7th Cir. 2013). Plaintiff maintains that Deputy Hoffmeyer could not have known about the minor's presence until after Plaintiff's arrest because the minor was in a room not observable by Deputy Hoffmeyer. Further, Plaintiff maintains that he did not know for certain that the civil papers were an order of protection and that Deputy Hoffmeyer did not mention the order of protection until after Plaintiff's arrest. Whether Deputy Hoffmeyer had probable cause to arrest Plaintiff for violating the order of protection is arguably a materially disputed fact on this record.

However, Defendants also argue that probable cause existed to arrest Plaintiff for obstructing of a peace officer under 720 ILCS 5/31-1(a). This section provides that "[a] person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity commits a Class A misdemeanor." Defendants correctly point out that a physical act of obstruction or resistance is not required. *See* People v. Baskerville, 963 N.E.2d 898, 903 (Ill. 2012)("Although a person may commit obstruction of a peace officer by means of a physical

act, this type of conduct is neither an essential element of nor the exclusive means of committing an obstruction.")[3] Refusal to follow police orders can amount a violation of this statute. *See, e.g.*, People v. Synnott, 811 N.E.2d 236, 240 (Ill. App. 2d Dist.)(defendant's refusal of orders to exit car constituted obstruction under 702 ILCS § 5/31-(a)).

Defendants cite Libby v. Lowe, 2015 WL 5950790 (N.D. 2015)(not published in Fed. Reporter), a factually analogous case that is not controlling but is persuasive. In that case, Mr. Libby barricaded and hid himself inside his house in order to avoid being served with an emergency order of protection. Officers gained entry to the house with the wife's consent, but Mr. Libby continued to hide, refused commands, and then took 2-3 steps away from officers as they tried to serve him with the order. Mr. Libby was arrested for resisting/obstructing a peace officer and charged with obstruction of service of process. The charge was eventually dismissed. Mr. Libby sued for false arrest. Judge Blakely granted

[3] The Seventh Circuit has held that Illinois law requires some sort of physical resistance. Shipman v. Hamilton, 520 F.3d 775, 779 (7th Cir. 2008); Payne v. Pauley, 337 F.3d 776, 767 (7th Cir. 2003)("resistance must be physical—mere argument will not suffice."). That idea is not necessarily inconsistent with the idea that a physical act is not required. Physical resistance can be active or passive. Additionally, Shipman and Payne were decided before Baskerville. *See also* Abbott v. Sangamon County, 705 F.3d 706 n. 2 (7th Cir. 2013)(acknowledging Baskerville but expressing no opinion because conduct at issue occurred before Baskerville decided).

summary judgment to defendants, concluding that "a reasonable officer could have believed that Plaintiff had obstructed a peace officer by defying the Defendants' command, hiding, and attempting to elude them." 2015 WL 5950790 *4.

Plaintiff's obstruction in this case was not as dramatic as Mr. Libby's obstruction, but Plaintiff's behavior was enough to give probable cause to arrest Plaintiff for obstructing Deputy Hoffmeyer from performing an authorized act, the service of the order of protection. Plaintiff admits that he refused to open the door, told Deputy Hoffmeyer that he would not open the door, and told Deputy Hoffmeyer that he did not want the civil papers. Plaintiff was not simply arguing with Deputy Hoffmeyer. Plaintiff stated his intention to prevent service of the papers and then made good on that intention by refusing to open the door. This obstruction continued for about nine minutes according to Plaintiff, (Pl.'s Dep. 40), which is not the 30 minutes in Libby but still long enough to materially impede Deputy Hoffmeyer's ability to serve the order of protection. *Compare with* Skube v. Koester, 120 F.Supp.3d 825 (C.D. Ill. 2015)(12-second period of nonviolent objection not enough for probable cause to arrest for obstruction). Under these facts,

probable cause existed to arrest Plaintiff under 720 ILCS 5/31-1(a) for obstructing a peace officer's performance of an authorized duty as well as under 720 ILCS 5/31-3 for obstructing service of process (though Defendants do not cite this section). *See* Abdelnabi v. Cook County, 2017 WL 1246355 *4 (N.D. Ill.)(not published in Fed. Reporter)(finding probable cause for obstruction of service of process where Plaintiff did not open door, did not respond to deputies, and did not communicate her actions).

Additionally, the Court agrees with Deputy Hoffmeyer that he would be entitled to qualified immunity on this record even if probable cause was lacking. The Court has not found any precedent establishing beyond debate that an officer lacks probable cause to arrest for obstruction when a defendant intentionally and unambiguously refuses to accept service. White v. Pauly, 137 S.Ct. 548, 550 (stressing that existing case law must establish the purported right beyond debate); Tebbens v. Mushol, 692 F.3d 807 820 (7th Cir. 2012)("Qualified immunity protects officers who are 'reasonable, even if mistaken' in making probable cause assessments.")

IT IS THEREFORE ORDERED:

(1) Defendants' motion for summary judgment on Plaintiff's claim for false arrest is granted (d/e 33).

(2) Plaintiff's claim arising from the intentional destruction of his cell phone is dismissed for failure to state a federal claim. If Plaintiff was intending to pursue a supplemental state law claim based on the destruction of the cell phone, the Court relinquishes supplemental jurisdiction over that claim.

(3) The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. This case is closed.

(4) Defendants bill of costs is due within the time allotted by local rule. If Plaintiff objects to the imposition of costs, Plaintiff must demonstrate that he lacks the financial ability to pay those costs now or in the future.

(5) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis should identify the issues Plaintiff will present on appeal. See Fed. R. App. P. 24(a)(1)(c).

ENTERED: June 19, 2017

FOR THE COURT:

s/Joe Billy McDade
JOE BILLY MCDADE
UNITED STATES DISTRICT JUDGE