IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Samuel Gonzalez,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 24-cv-11448
	)	
Village of Summit, Illinois,	)	*(Chief Judge Kendall)*
Summit Police Officers Donato,	)	
#155, and Pasquel, #310,	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

The disputed facts in this case cannot be fairly resolved without a trial. The Court should therefore deny defendants' motion for summary judgment.

I. Plaintiff's Claims

The parties agree that plaintiff presents two federal claims and one state law claim:

1. Defendants Donato and Pasquel arrested plaintiff without probable cause, in violation of the Fourth Amendment;

2. Defendants Donato and Pasquel caused plaintiff to be maliciously prosecuted in violation of the Fourth Amendment; and

3. Defendant Village of Summit, through its employees, caused plaintiff to be maliciously prosecuted in violation of Illinois law.

The parties agree that plaintiff's false arrest claim turns on whether the officers had probable cause to arrest plaintiff. (ECF No. 25 at 4.) Plaintiff's malicious prosecution claims turn on whether the officers had probable cause to initiate the charges against plaintiff. The determinative question on plaintiff's state law malicious prosecution claim is whether there is enough evidence for a jury to infer malice.

II. Summit's Solicitation Ordinance Is Not Relevant

Probable cause to arrest, even "arguable probable cause," is "an *ex ante* test," *Mwangangi v. Nielsen*, 48 F.4th 816, 828 (7th Cir. 2022), that turns on what the officers knew when they made the arrest.

Defendants learned, after arresting plaintiff, that he may have been violating Summit's solicitation ordinance.[1] (Plaintiff's Response to Defendants' Rule 56.1(b)(2) Statement, ¶ 4.) Defendants also learned, after arresting plaintiff, that he would frequently use obscenities. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 18.) Neither is material to probable cause to arrest.

The "*ex ante*" rule means that the officers may not rely on facts they learned after making an arrest because "an officer's later discovery of additional support for probable cause that was "unknown at the time of the arrest

[1] Chapter 12, Section 5-12-1 of the Municipal Code of the Village of Summit makes it unlawful to go door-to-door seeking "to obtain orders for the purchase of … services of any kind." The ordinance is not at issue in this case.

is irrelevant to whether probable cause existed at the crucial time." *Richardson v. Vill. of Dolton*, No. 20 C 4254, 2022 WL 4606063, at *5 (N.D. Ill. Sept. 30, 2022) (cleaned up). The Court should therefore decline to consider defendants' argument about "multiple 911 calls." (ECF No. 25 at 5.)

III. The Facts Are In Dispute about Probable Cause to Arrest

Probable cause to arrest is based on "the totality of the facts and circumstances known to the officer at the time of the arrest" and "entails a purely objective inquiry." *Abbott v. Sangamon County*, 705 F.3d 706, 714 (7th Cir. 2013). Whether probable cause exists depends on the elements of the underlying criminal offense, as defined by state law. *Id.* at 715 (citing *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979).)

Defendants argue that they had probable cause to arrest plaintiff for assault, 720 ILCS 5/12-1(a), or for obstruction and resisting arrest, 720 ILCS 5/31-1. (ECF No. 25 at 5-6.) The Court should reject these arguments because they rely on disputed facts.

First, plaintiff denies that he uttered any obscenities as he approached defendant Pasquel's police vehicle. (Plaintiff's Response to Defendants' Rule 56.1(b)(2) Statement, ¶¶ 8, 9, 11, and 13.) Plaintiff affirmatively testified at his deposition that he did not speak as he approached defendant Pasquel. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 7.) And plaintiff disputes defendant

Pasquel's testimony that plaintiff told the officer, "I'm going to fuck you up." (Plaintiff's Response to Defendants' Rule 56.1(b)(2) Statement, ¶ 9.) Defendants offer a different version. (ECF No. 26 at 2-3, Defendants' Rule 56.1(a)(3) Statement, ¶¶ 8, 9, 11, and 13.)

Second, the law was clearly established in 2023 that "[w]ords alone seldom if ever are sufficient to constitute an assault; rather, there must be an accompanying gesture that is either inherently threatening or made so by the accompanying words." *Abbott v. Sangamon Cnty*, 705 F.3d 706, 715 (7th Cir. 2013). Here, the only threatening conduct that defendants could identify were verbal threats. (Plaintiff's Rule 56.1(b)(3) Statement, ¶¶ 9-11.)

Rule 56 of the Federal Rules of Civil Procedure does not permit the Court to rely "on one party's version of disputed facts to grant summary judgment." *Whitaker v. Dempsey*, 144 F.4th 908, 917 (7th Cir. 2025). Plaintiff, as the non-moving party, is entitled to "the benefit of conflicting evidence and any favorable inferences that might be reasonably drawn from the evidence." *Runkel v. City of Springfield*, 51 F.4th 736, 741 (7th Cir. 2022).

Defendants also assert that plaintiff approached defendant Pasquel in in a "threatening, belligerent, and physically aggressive" manner. (ECF No. 25 at 5.) This claim is belied by the dashcam video showing that plaintiff did not interfere while Pasquel exited his vehicle. (Plaintiff's Rule 56.1(b)(3)

Statement, ¶ 8.) The dashcam video also shows that plaintiff stood about three feet away from Pasquel and neither raised nor moved his arms as Pasquel exited his vehicle. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 10.)

The Seventh Circuit has made plain that there is not probable cause to arrest for assault based on words unless the statement was "accompanied by a threatening gesture, or a raised fist." *Fox v. Hayes*, 600 F.3d 819, 838 (7th Cir. 2010). "And assault lies only if the threatening gesture creates in the victim an objectively reasonable apprehension of an imminent battery." *Abbott v. Sangamon County*, *supra*, 705 F.3d at 715.

Defendant Pasquel, the alleged victim of assault, conceded at his deposition that plaintiff had not interfered while Pasquel was getting out his vehicle. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 9.) Defendant Pasquel also acknowledged that plaintiff did not raise his arms and that plaintiff stood three feet away from Pasquel when Donato reached the two men. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 10.) Pasquel admitted that the only act of interference was the words he claims plaintiff spoke. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 11.) Plaintiff, however, denies speaking those words. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 7.)

Defendants claim that plaintiff "pulled his arm away from Donato as he tried to cuff him." (ECF No. 26 at 4, Defendants' Rule 56.1(a)(3) Statement,

¶ 21.) This claim is inconsistent with the video evidence, which shows that plaintiff was fully compliant and did not interfere with the officers when they were handcuffing him. (Plaintiff's Rule 56.1(b)(2) Statement, ¶ 14.)

Equally without merit is defendants' argument that plaintiff ignored "repeated commands from Officer Donato to stop and speak with him." (ECF No. 25 at 6.) This contention is contrary to the dash cam video. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 5.) This factual dispute, like the other disputes listed above, requires a trial.

The dashcam video (Plaintiff's Exhibits 1 and 2) shows that plaintiff was engaged in a conversation with defendant Pasquel when Donato exited his police vehicle. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 10.) The video evidence is also inconsistent with Donato's claims that plaintiff "ignored" Donato's orders. (Plaintiff's Rule 56.1(b)(3) Statement, ¶ 5.) These factual disputes cannot be resolved on summary judgment.

IV. The Court May Not Resolve Credibility Disputes on Summary Judgement

The facts of this case are analogous to *Richardson v. Vill. of Dolton*, 20 C 4254, 2022 WL 4606063 (N.D. Ill. Sept. 30, 2022), where police officer defendants sought summary judgment, arguing that there was probable cause to arrest the plaintiff for assault and for resisting. This Court denied the

motion as to Defendant Carr because, as in this case, all the relevant facts were disputed. *Id.* at *5-*6.

Defendants argue that the testimony of Donato and Pasqual is "objective, reasonable, and corroborated by plaintiff's own admissions." (ECF No. 25 at 6.) This argument turns on defendants' interpretation of plaintiff's statements made after he was arrested. Those statements are not relevant to probable cause. In any event, the interpretation of the statements is a question for the jury. "It is for the jury to make credibility determinations about which version of the alleged facts is most compelling." *Smith v. Cook Cnty.*, No. 14 C 1789, 2017 WL 3278914, at *6 (N.D. Ill. Aug. 2, 2017)

V. Federal Malicious Prosecution

Although defendants misunderstand the Fourth Amendment cause of action for malicious prosecution that emerged from the decisions of the Supreme Court in *McDonough v. Smith*, 588 U.S. 109 (2019), *Thompson v. Clark*, 596 U.S. 36 (2022) and *Chiaverini v. City of Napoleon*, 602 U.S. 556, 558-59 (2024), the parties agree that probable cause to prosecute is an element of a federal malicious prosecution claim.[2] As plaintiff explained above, this factual question cannot be resolved without a trial because the facts are

[2] Defendants limit their federal malicious prosecution argument to whether there was probable cause to prosecute. (ECF No. 25 at 8-9.)

disputed. *See Richardson v. Vill. of Dolton*, No. 20 C 4254, 2022 WL 4606063, at *5-*7 (N.D. Ill. Sept. 30, 2022)

VI. State Malicious Prosecution

Defendants limit their argument against plaintiff's state law malicious prosecution claim to whether plaintiff can show malice. (ECF No. 25 at 9-10.) Under Illinois law, malice is "the initiation of a prosecution for an improper motive. *Beaman v. Freesmeyer*, 2021 IL 125617, ¶ 141, 183 N.E.3d 767, 792 (2021). Moreover, "malice may be inferred from a lack of probable cause when the circumstances are inconsistent with good faith by the prosecutorial team and lack of probable cause has been clearly proved." *Id.*

As explained above, the record viewed in the light most favorable to plaintiff shows a lack of probable cause from which a jury could infer malice A jury would also be entitled to find that defendants decided to prosecute plaintiff because he had been assertive about his rights, and made plain that he intended to sue for false arrest.

VII. Unlawful Detention for 48 Hours Establishes a Fourth Amendment Violation

Defendants rely on cases decided before *McDonough v. Smith*, 588 U.S. 109 (2019), to argue that the 48 hours plaintiff was detained after his arrest before he was released from police custody on a personal recognizance bond does not "demonstrate a constitutional deprivation of liberty." None of the cases cited by defendants survive *McDonough v. Smith*, 588 U.S. 109 (2019),

where the Supreme Court recognized a Fourth Amendment malicious prosecution claim where the plaintiff had been " arrested, arraigned, and released (with restrictions on his travel) pending trial." *McDonough v. Smith*, 588 U.S. 109, 113 (2019). The Court should therefore reject this meritless argument.

VIII. Conclusion

The Court should therefore deny defendants' motion for summary judgment.

Respectfully submitted,

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