

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID HEATH CONRAD,)	
)	
Plaintiff,)	
)	
v.)	No. 16-2034-TMP
)	
DAVID S. OWEN, III, in his)	
Official and Individual)	
Capacity as Deputy Sheriff)	
of Lauderdale County,)	
Tennessee,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the court is defendant Deputy David S. Owen, III's motion for summary judgment, filed on November 22, 2016. (ECF No. 14.) Deputy Owen argues he is entitled to summary judgment on plaintiff David Heath Conrad's § 1983 claim for violation of his Fourth Amendment right against unreasonable seizures because he had probable cause to arrest Conrad as a matter of law, or alternatively, that he is entitled to qualified immunity from damages.¹ Conrad filed his response on January 3, 2017, and Owen filed his reply on January 12, 2017. (ECF Nos. 40, 43.)

¹Conrad has abandoned all of the state law claims asserted in the complaint. (ECF No. 40 at 16.) All claims asserted by co-plaintiff Jonathan Parr against Deputy Owen have been dismissed, and the court has entered a final judgment as to those claims. (ECF Nos. 41 & 42; see Fed. R. Civ. P. 54(b).)

For the reasons below, the court grants Deputy Owen's motion for summary judgment.

I. FINDINGS OF FACT

Unless otherwise noted, the following facts are not disputed for purposes of summary judgment. On January 16, 2015, Lauderdale County Deputy Sheriff David S. Owen, III and several other deputies were dispatched to a mechanic shop located at 305 Curve Nankipoo Road in Ripley, Tennessee, in response to a telephone complaint from a neighbor. (Defendant's Statement of Undisputed Facts ("DSUF") ¶¶ 1, 4, ECF No. 35-2.) The neighbor indicated there were several people at the mechanic shop and a strong smell of ammonia was coming from the shop. (Id. ¶ 2.) The shop was run by Anthony Griggs, and the property was owned by his father, Monte Griggs. (Plaintiff's Response to Defendant's Statement of Undisputed Facts and Counter-Statement of Disputed Facts ("PSUF") ¶ 2, ECF No. 40-2.)

Several vehicles were parked in front of the shop when the deputies arrived. (PSUF ¶ 5.) Deputy Owen asserts that he did not see anyone holding tools in their hands at the time he arrived, the inside of the shop was too cluttered for any work to be done there, it was extremely cold outside, and in his opinion there was not enough light outside to work on a vehicle. (DSUF ¶¶ 13, 15-16.) Conrad, on the other hand, claims that when Deputy Owen arrived, Anthony Griggs was working on a truck

with a tool in his hand and most of the people present were standing around the open hood of the truck while Anthony Griggs worked. (PSUF ¶¶ 12-13, 15-16.) For purposes of summary judgment, Deputy Owen does not dispute that he observed a truck with the hood open, Anthony Griggs had a flashlight strapped to his head, and Owen did not pay close attention to whether there were tools lying around in the grass. (Defendant's Reply to PSUF ("DR") ¶¶ 4-6, ECF No. 43-1.)

As Deputy Owen approached the shop, he noticed a coat being thrown to the ground. (DSUF ¶ 6.) Anthony Griggs indicated the coat belonged to him and gave Deputy Owen consent to search the coat. (Id. ¶ 7.) Deputy Owen found a cigar containing what he believed to be marijuana inside the coat. (Id. ¶ 8.) Griggs was then detained and Deputy Owen questioned all of the individuals present, including Conrad. (Id. ¶¶ 9-10.) For purposes of summary judgment, Deputy Owen does not dispute that Conrad was at the shop to drop off a vehicle to be worked on by Griggs. (DR ¶ 3.)

Deputy Owen obtained consent to search the shop from Anthony Griggs, and from Monte Griggs telephonically. (DSUF ¶¶ 17-18.) When Deputy Owen informed Monte Griggs that Conrad was at the shop, Monte Griggs told Deputy Owen that Conrad did not have permission to be there, and that Griggs had previously

informed Conrad of this.² (DSUF ¶¶ 19-20; Declaration of Monte Griggs ("Griggs Decl.") ¶ 5, ECF No. 35-7.) Conrad testified that he believed he was not allowed to be on "the other property" owned by Monte Griggs and he believed that Anthony Griggs was in the process of purchasing the mechanic shop property from Monte Griggs.³ (PSUF ¶¶ 19-20.)

In the course of searching the mechanic shop, Deputy Owen and the other law enforcement officers found a plastic bag containing the following items: a glass jelly jar partially filled with a clear liquid resembling lighter fluid, a partially filled thirty-two ounce bottle of drain cleaner, an open eighteen ounce bottle of crystal drano, a partially filled twelve ounce can of zippo lighter fluid, one AA lithium battery, a clear plastic bag with white granular pieces of fertilizer, and a white plastic bag wrapped in duct tape containing several lithium strips removed from batteries. (DSUF ¶¶ 22-23.) The bag containing these items was found inside an unlocked toolbox ten to twelve feet inside the shop. (Id. ¶ 24; PSUF ¶ 24; DR ¶ 14.) Conrad does not dispute that these items may be used to

²According to Monte Griggs, he did not want Conrad "on my property because prior to January of 2015, he had been charged and convicted of methamphetamine related charges that also involved a family member." (Griggs Decl. ¶ 6.) The record does not indicate whether Monte Griggs told this to Deputy Owen.

³The record does not indicate where this "other property" was located.

manufacture methamphetamine, but denies any participation in any manufacturing of methamphetamine. (DSUF ¶ 26; PSUF ¶ 26.) Owen was aware Conrad had been convicted of a methamphetamine charge in the past, that Conrad was on probation at the time, and that one of Conrad's co-defendants was also present at the shop. (DSUF ¶¶ 32-33.) For purposes of summary judgment, Deputy Owen does not dispute that he had no evidence Conrad either possessed or transported any of the items found in the toolbox. (DR ¶¶ 17, 19.)

Everyone at the shop denied ownership of the items found in the toolbox. (DSUF ¶ 25.) Deputy Owen then arrested everyone present, including Conrad, for the manufacture of methamphetamine.⁴ (Id. ¶ 28.) Because Conrad was unable to secure bond, he was incarcerated for ninety-five days in the Lauderdale County Jail before the charges against him were ultimately dismissed. (ECF No. 1 at 4-5; Declaration of David Heath Conrad ("Conrad Decl.") at 62.) For purposes of summary judgment, Deputy Owen does not dispute Conrad experienced sleepless nights, headaches, weight loss and emotional distress while in custody and suffered mental distress and depression over the loss of his fiancé and his possessions as a result of

⁴After Conrad was arrested but before he was placed in handcuffs, one of the deputies found two pieces of straw with residue on Conrad's person. The substance on the straws was never tested. (DSUF ¶ 34; PSUF ¶ 34.)

his arrest. (PSUF ¶ 31; DR ¶¶ 25-28.)

II. CONCLUSIONS OF LAW

A. Summary Judgment Standard

Federal Rule of Civil Procedure 56 provides that "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). In reviewing a motion for summary judgment, the court must view the facts in the light most favorable to the nonmovant. Huckaby v. Priest, 636 F.3d 211, 216 (6th Cir. 2011) (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). The movant bears the initial burden of production. Palmer v. Cacioppo, 429 F. App'x 491, 495 (6th Cir. 2011) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Once the movant meets its burden, the burden shifts to the nonmovant to present specific facts showing that there is a genuine issue for trial. Jakubowski v. Christ Hosp., Inc., 627 F.3d 195, 200 (6th Cir. 2010) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). If the nonmovant fails to make a sufficient showing on an essential element of the case with respect to which the nonmovant has the burden, the moving party is entitled to summary judgment as a matter of law. Thompson v. Ashe, 250 F.3d 399, 405 (6th Cir. 2001). The central issue is "whether the evidence presents a sufficient disagreement to

require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Palmer, 429 F. App’x at 495 (quoting Anderson, 477 U.S. at 251-52).

B. Section 1983 Claim

Conrad asserts a claim against Deputy Owen in his individual and official capacities under § 1983 on the grounds that Owen’s arrest of Conrad violated his Fourth Amendment right to be free from unreasonable seizures. “To state a claim under [42 U.S.C.] § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” Nouri v. Cnty. of Oakland, 615 F. App’x 291, 295 (6th Cir. 2015) (quoting West v. Atkins, 487 U.S. 42, 48 (1988) (alteration in original)). “A person who has been the victim of an unlawful arrest or wrongful seizure under the color of law has a claim based on the Fourth Amendment guarantee that government officials may not subject citizens to searches or seizures without proper authorization.” Brooks v. Rothe, 577 F.3d 701, 706 (6th Cir. 2009); see Emanuel v. Cnty. of Wayne, 652 F. App’x 417, 425 (6th Cir. 2016) (citing Crockett v. Cumberland Coll., 316 F.3d 571, 580 (6th Cir. 2003) (“[I]t is well established that any arrest without probable cause violates the Fourth Amendment.”)).

To succeed on a wrongful arrest claim under § 1983, “a

plaintiff must prove that the police lacked probable cause." Fridley v. Horrighs, 291 F.3d 867, 872 (6th Cir. 2002). An officer has probable cause to arrest if, at the time of the arrest, "the facts and circumstances within [the officer's] knowledge and of which [she] had reasonably trustworthy information [are] sufficient to warrant a prudent man in believing that the [plaintiff] had committed or was committing an offense." Wesley v. Campbell, 779 F.3d 421, 429 (6th Cir. 2015) (quoting Beck v. State of Ohio, 379 U.S. 89, 91 (1964) (alterations in original)). An officer "must consider the totality of the circumstances, recognizing both the inculpatory and exculpatory evidence, before determining if he has probable cause to make an arrest." Gardenhire v. Schubert, 205 F.3d 303, 318 (6th Cir. 2000). The existence of probable cause in a § 1983 action is generally a jury question "unless there is only one possible reasonable determination." Garner v. Grant, 328 F. App'x 325, 327 (6th Cir. 2009).

The Supreme Court has held that "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause." Devenpeck v. Alford, 543 U.S. 146, 153 (2004) (citing Whren v. United States, 517 U.S. 806, 812-13 (1996)). An officer "can lawfully arrest the plaintiff so long as there is probable cause to arrest her for some crime, even if the crime for which there is probable cause

is different from the stated crime of arrest.” D.D. v. Scheeler, 645 F. App'x 418, 424 (6th Cir. 2016) (citing Devenpeck, 543 U.S. at 155).

Deputy Owen argues there was probable cause to arrest Conrad as a matter of law for Promotion of methamphetamine manufacture under Tenn. Code Ann. § 39-17-433, Initiation of methamphetamine manufacture process under Tenn. Code Ann. § 39-17-435, and Criminal trespass under Tenn. Code Ann. § 39-14-405. The court need not address whether probable cause existed as to the methamphetamine-related offenses because Deputy Owen had probable cause to believe that Conrad was committing criminal trespass at the time of the arrest. Tenn. Code Ann. § 39-14-405 provides that:

[a] person commits criminal trespass if the person enters or remains on property, or any portion of property, without the consent of the owner. Consent may be inferred in the case of property that is used for commercial activity available to the general public or in the case of other property when the owner has communicated the owner's intent that the property be open to the general public.

Tenn Code Ann. § 39-14-405(a).⁵

It is undisputed that before Deputy Owen arrested Conrad, the property owner, Monte Griggs, told Owen over the telephone both that Conrad did not have Griggs' consent to be present at the mechanic shop at 305 Nankipoo Road and that Griggs had

⁵Criminal trespass is a class C misdemeanor. § 39-14-405(g).

previously told Conrad he did not have permission to be there. (DSUF ¶¶ 19-20; PSUF 19-20; Griggs Decl. ¶ 5.) While Conrad asserts he had permission to be at the shop from Anthony Griggs and believed Anthony Griggs was in the process of purchasing the shop from Monte Griggs, it is not disputed that Monte Griggs was in fact the owner of the property on January 16, 2015. (PSUF ¶ 24; Griggs Decl. ¶ 2.) In addition, there is no evidence in the record indicating that Deputy Owen was aware of Conrad's belief that Anthony Griggs was in the process of purchasing the shop. On these facts, viewed in the light most favorable to Conrad, there was probable cause to believe Conrad had entered and remained on the property without the consent of the owner. Because the facts known to Deputy Owen would warrant a prudent man in believing Conrad was committing criminal trespass, probable cause existed.

In his brief in opposition to the motion for summary judgment, Conrad argues that "Deputy Owen did not arrest [Conrad] for criminal trespass" and "Conrad was not charged with criminal trespass." (ECF No. 40-1 at 15.) Conrad acknowledges, however, that Deputy Owen's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Devenpeck, 543 U.S. at 153 (2004). If "the facts known to the arresting officers give probable cause to arrest" a person, the officers may arrest that

person consistent with the Fourth Amendment. Id. at 155. Accordingly, even if Deputy Owen did not subjectively intend to arrest Conrad for criminal trespass, the arrest did not violate the Fourth Amendment because the facts known to Owen, viewed objectively, gave rise to probable cause that Conrad was committing criminal trespass.

Conrad also points to Tenn. Code Ann. § 40-7-118, which states that

[a] peace officer who has arrested a person for the commission of a misdemeanor committed in the peace officer's presence . . . shall issue a citation to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate.

Tenn. Code Ann. § 40-7-118(b)(1); see also State v. Walker, 12 S.W.3d 460, 464 (Tenn. 2000) (“[T]he Tennessee ‘cite and release’ statute creates a presumptive right to be cited and released for the commission of a misdemeanor.”) (internal citations omitted). However, in Virginia v. Moore, the Supreme Court held “that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and that while States are free to regulate such arrests however they desire, state restrictions do not alter the Fourth Amendment's protections.” Virginia v. Moore, 553 U.S. 164, 176 (2008); see Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) (“If an officer has probable cause to believe

that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”); see also Graves v. Mahoning Cnty., 821 F.3d 772, 776 (6th Cir. 2016); Amobi v. D.C. Dep't of Corr., 755 F.3d 980, 989 (D.C. Cir. 2014); Courtney v. Oklahoma ex rel., Dep't of Pub. Safety, 722 F.3d 1216, 1223 (10th Cir. 2013); Cruz v. Davidson, 552 F. App'x 865, 868 (11th Cir. 2013); Sroga v. Weiglen, 649 F.3d 604, 607 (7th Cir. 2011); Edgerly v. City & Cty. of San Francisco, 599 F.3d 946, 956 (9th Cir. 2010); Rose v. City of Mulberry, Arkansas, 533 F.3d 678, 680 (8th Cir. 2008).

Accordingly, even if Deputy Owen lacked authority under Tennessee law to arrest Conrad for violating the criminal trespass statute, the arrest did not violate under the Fourth Amendment because Owen had probable cause to believe Conrad was committing a criminal offense in his presence. To the extent § 40-7-118 creates “a presumptive right to be cited and released for the commission of a misdemeanor,” such a right is a matter of Tennessee law that does not affect Conrad’s Fourth Amendment rights. Because Deputy Owen did not deprive Conrad of a constitutional right, Conrad’s § 1983 claim fails as a matter of law, and Owen is entitled to summary judgment.

Finally, the complaint names Deputy Owen as a defendant in both his individual and official capacities. “[I]ndividuals sued

in their official capacities stand in the shoes of the entity they represent.” Alkire v. Irving, 330 F.3d 802, 810 (6th Cir. 2003) (citing Kentucky v. Graham, 473 U.S. 159, 165 (1985)). Because Conrad has not suffered a constitutional deprivation, any § 1983 claim against Lauderdale County also fails.⁶

III. CONCLUSION

For the reasons stated above, the court grants Deputy Owen’s motion for summary judgment.

IT IS SO ORDERED.

S/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

February 17, 2017

Date

⁶Conrad asserts that Deputy Owen is “simply searching for a reason to validate his unlawful arrest after the fact.” (ECF No. 40-1 at 15.) However, the court is bound by the Supreme Court’s decisions in Devenpeck and Moore. Accordingly, the court does not address whether Deputy Owen had probable cause as to any methamphetamine-related offenses. Similarly, although Deputy Owen has asserted the defense of qualified immunity, the court need not address that issue.