

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

DOMINIQUE SCOTT, by his next friend)
and mother, Yulanda Michelle Davis,)

Plaintiff,)

v.)

ANDREW PARR, Deputy Sheriff for)
Augusta County, sued in his individual)
capacity,)

Defendant.)

Civil Action No.: 5:04CV00054

MEMORANDUM OPINION

By: Hon. Glen E. Conrad
United States District Judge

Dominique Scott, by his next friend and mother, Yulanda Davis, brings this action pursuant to 42 U.S.C. § 1983 against Andrew Parr, alleging that the defendant violated his Fourth Amendment rights. The plaintiff also asserts a state law claim for malicious prosecution. Jurisdiction of this court is pursuant to 28 U.S.C. §§ 1331 and 1367. The case is currently before the court on the defendant's motion for summary judgment. For the following reasons, the court will grant the defendant's motion.

BACKGROUND

On May 11, 2003, three handguns were reported stolen from a grocery store in Craigsville, Virginia. According to an affidavit from Christina Sprouse, a grocery store employee, three young, black men entered the store that day between 11:00 a.m. and 11:30 a.m. and remained in the store for approximately five to ten minutes. Ms. Sprouse saw one of the men standing in the aisle where the gun showcase was located, and she saw another one of the men standing further down the same aisle. While the three men were in the store, Roy Thompson, another store employee, was outside helping a customer. When Mr. Thompson

returned inside and learned that the three men had left without purchasing anything, he looked around the store and discovered that three guns were missing from the showcase.

The theft was reported to the Augusta County Sheriff's Office, and Andrew Parr (Deputy Parr) was sent to the grocery store to investigate. Deputy Parr interviewed Ms. Sprouse and Mr. Thompson. The employees provided general descriptions of the three men who had been in the store just before the guns were discovered missing. The following day, Deputy Parr showed the employees photographs of six individuals. According to the affidavits from Ms. Sprouse and Mr. Thompson, both employees identified the plaintiff from the photographs as being one of those three men.

On May 15, 2003, Deputy Parr initiated proceedings against the plaintiff in the Augusta County Juvenile and Domestic Relations Court. The deputy stated under oath to the best of his knowledge that the plaintiff had unlawfully taken three firearms from the grocery store in violation of Va. Code § 18.2-95(iii).^{*} After the delinquency petition was issued, the plaintiff was arrested. The juvenile court held a detention hearing the following day, and ultimately determined that probable cause was established. The court ordered the plaintiff to remain in detention pending a hearing.

At the request of the Assistant Commonwealth's Attorney for Augusta County, the juvenile court held a transfer hearing on June 6, 2003. The court denied the attorney's request to transfer the case to the Circuit Court for Augusta County. However, on appeal, the circuit court granted the Commonwealth's Attorney leave to seek an indictment against the plaintiff. On July

^{*} Pursuant to § 18.2-95(iii), any person who "commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both."

28, 2003, the plaintiff was indicted by a grand jury for unlawfully stealing firearms from the grocery store.

On September 17, 2003, the plaintiff pleaded not guilty to the indictment and waived his right to a jury trial. The circuit court proceeded to hear evidence from the Commonwealth, and Ms. Sprouse and Mr. Thompson were called to testify. Neither employee could identify anyone in the courtroom as being one of the three men who had entered the store on the day the guns were stolen. The plaintiff's attorney moved to strike the Commonwealth's evidence. The circuit court granted the motion and dismissed the charge against the plaintiff.

DISCUSSION

This case is presently before the court on Deputy Parr's motion for summary judgment. Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is properly granted if "there is no genuine issue as to any material fact and the ... moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). For a party's evidence to raise a genuine issue of material fact to avoid summary judgment, it must be "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). In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party. Terry's Floor Fashions, Inc. v. Burlington Indust., Inc., 763 F.2d 604, 610 (4th Cir. 1985).

Plaintiff's § 1983 Claim against Deputy Parr

Section 1983 imposes liability for violations of constitutional and federal statutory rights by state actors. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979). Therefore, "the first inquiry" in a § 1983 action "is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws'" of the United States. Id. at 140 (quoting 42 U.S.C. § 1983). "If there is

no violation of a federal right, there is no basis for a section 1983 action.” Clark v. Link, 855 F.2d 156, 161 (4th Cir. 1988). In this case, the plaintiff alleges that Deputy Parr deprived him of his Fourth Amendment rights, by initiating the juvenile court proceedings without probable cause to believe that the plaintiff was involved in the theft of the guns.

The Fourth Amendment to the United States Constitution “provides all of the pretrial process that is constitutionally due to a criminal defendant in order to detain him prior to trial.” Brooks v. City of Winston-Salem, 85 F.3d 178, 184 (4th Cir. 2004). The Fourth Amendment “requires that arrests be made based upon probable cause and that a neutral and detached judicial officer evaluate probable cause as a condition of significant pretrial restraint of liberty.” Taylor v. Waters, 81 F.3d 429, 436 (4th Cir. 1996). In assessing the existence of probable cause, the court must examine the facts and circumstances known to the officer at the time of the arrest. Id. at 434. An officer has probable cause if the facts and circumstances known to the officer would warrant the belief of a reasonable officer that an offense had been or was being committed. Brown v. Gilmore, 278 F.3d 362, 367 (4th Cir. 2002). “Probable cause requires more than ‘bare suspicion’ but requires less than evidence necessary to convict.” Porterfield v. Lott, 156 F.3d 563, 568-571 (4th Cir. 1998) (quoting United States v. Gray, 137 F.3d 765, 769 (4th Cir. 1998)). “It is an objective standard of probability that reasonable and prudent persons apply in everyday life.” Gray, 137 F.3d at 769.

In this case, Deputy Parr contends that he had probable cause to believe that the plaintiff was involved in the theft of the guns, based on the photographic identifications by the store employees. Both Ms. Sprouse and Mr. Thompson stated in their affidavits that they initially identified the plaintiff as being one of the three men who had been in the grocery store just before the guns were discovered missing. In response to the deputy’s argument, the plaintiff has

submitted a copy of a letter that the Commonwealth's Attorney sent the plaintiff's attorney on September 10, 2003, in preparation for trial. According to the letter, "Deputy Parr stated that the witnesses from the store were able to identify [the plaintiff] from a lineup as being in the store at some point prior to the day of the theft but were unable to say that he was in the store on the day of the theft." The plaintiff argues that this letter creates a dispute of fact, which precludes the entry of summary judgment in favor of Deputy Parr. The court disagrees.

While the letter from the Commonwealth's Attorney indicates that at some point prior to trial, Deputy Parr learned that Ms. Sprouse and Mr. Thompson could no longer affirmatively state that the plaintiff was one of the three men who had been in the store on the day of the theft, the letter does not contradict the employees' sworn statements that they initially identified the plaintiff as being one of those three men. Considering the totality of the circumstances known to Deputy Parr at the time he initiated the proceedings against the plaintiff, the court concludes that there was sufficient information to warrant the belief of a reasonable officer that the plaintiff was involved in the theft of the guns. As Deputy Parr points out, the United States Court of Appeals for the Fourth Circuit has held that "[i]t is surely reasonable for a police officer to base his belief in probable cause" on a "reliable identification." Torchinsky v. Siwinsky, 942 F.2d 257, 262 (4th Cir. 1991). See also Bailey v. Town of Smithfield, 1994 U.S. App. LEXIS 3950, at *17 (4th Cir. March 4, 1994) ("The single positive identification of Bailey as the robber suffices to establish probable cause....").

In his supplemental memorandum in opposition to Deputy Parr's motion for summary judgment, the plaintiff also argues that the deputy lacked probable cause to believe that the plaintiff was involved in the theft of the guns, because the deputy "knew very early on" that none of the actual perpetrators implicated the plaintiff. The plaintiff bases this argument on Deputy

Parr's notes from an interview with Tyran Stuart on May 20, 2003. During the interview, Stuart admitted that he was in the grocery store with Marty Scott and James Jones on May 11, 2003, and that his companions stole the guns. While this additional information may be true, the information is not relevant to the determination of whether the deputy had probable cause to initiate the juvenile court proceedings. As previously explained, the court must only consider the facts and circumstances known to the deputy at the time of the arrest when assessing the existence of probable cause.

The plaintiff also emphasizes in his supplemental memorandum that even if the grocery store employees said that the plaintiff was in the store on the day the guns were stolen, the deputy knew by the time that the grand jury convened on July 28, 2003 that there were three co-defendants who did not implicate the plaintiff. Even assuming that the deputy did not disclose this exculpatory evidence, the existence of such evidence does not give rise to a Fourth Amendment violation. The Fourth Circuit has emphasized that "the failure of an officer to disclose exculpatory evidence after a determination of probable cause has been made by a neutral and detached magistrate does not render the continuing pretrial seizure of a criminal suspect unreasonable under the Fourth Amendment." Taylor, 81 F.3d at 436. See also Brooks, 85 F.3d at 184 (holding that the plaintiff's claim that the officer failed to attempt to have the criminal proceedings terminated after learning that the plaintiff was not the perpetrator failed to state a claim under the Fourth Amendment).

For the reasons stated, the court concludes that Deputy Parr had probable cause to believe that the plaintiff was involved in the theft of the guns at the time the deputy initiated the juvenile court proceedings. Since the evidence does not establish a violation of the plaintiff's Fourth Amendment rights, the deputy is entitled to summary judgment on the plaintiff's § 1983 claim.

Plaintiff's Malicious Prosecution Claim

The plaintiff also asserts a state law claim for malicious prosecution. Under Virginia law, “malicious prosecution is established by proof that a defendant: (1) instituted or procured a criminal prosecution of the plaintiff; (2) without probable cause; (3) acted maliciously; and (4) the prosecution was terminated in a manner not unfavorable to the plaintiff.” Brice v. Nkaru, 220 F.3d 233, 237 (4th Cir. 2000). The Virginia Supreme Court has defined probable cause, in the context of a malicious prosecution action, as “knowledge of such facts and circumstances to raise the belief in a reasonable mind, acting on those facts and circumstances, that the plaintiff is guilty of the crime of which he is suspected.” Stanley v. Webber, 260 Va. 90, 96, 531 S.E.2d 311, 314 (Va. 2000). The issue of whether a defendant had probable cause to believe that a crime was committed by the plaintiff is determined as of the time the defendant took the action initiating the criminal charges. Id., 260 Va. at 96, 531 S.E.2d at 314-315.

In this case, Deputy Parr initiated the juvenile court proceedings against the plaintiff on May 15, 2003, when he stated under oath that the plaintiff had unlawfully taken three firearms from the grocery store. Having concluded that the deputy had probable cause to believe that the plaintiff was involved in the theft of the guns at that time, the deputy is also entitled to summary judgment on the plaintiff's malicious prosecution claim.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all counsel of record.

ENTER: This 29th day of March, 2005.

/s/ Glen E. Conrad

United States District Judge

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ORDER
By: Hon. Glen E. Conrad
United States District Judge

This case is before the court on the defendant's motion for summary judgment. For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

that the defendant's motion for summary judgment is **GRANTED**.

The Clerk is directed to strike the case from the active docket of the court, and to send a certified copy of this Order and the attached Memorandum Opinion to all counsel of record.

ENTER: This 29th day of March, 2005.

/s/ Glen E. Conrad
United States District Judge