

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

ERIC VON DEAN

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-162-S

CITY OF LOUISVILLE, et al.

DEFENDANTS

**MEMORANDUM OPINION**

Defendants<sup>1</sup> in this action have filed a Motion for Summary Judgment. For the reasons set forth below, defendants' motions will be granted with respect to plaintiff's claim brought under 42 U.S.C. §1983 (1994) ("§1983"). Having dismissed the only claim over which the court has original jurisdiction, we will not address plaintiff's additional state law claims. 28 U.S.C. §1367(c)(3).

**I. BACKGROUND**

In November of 1997, officers from the Metropolitan Narcotics Division ("Metro Narcotics") conducted an undercover investigation of drug activity in the "Shagbark" neighborhood of Southwest Jefferson County. On November 5, 1997 an undercover agent videotaped herself buying cocaine from a then-unidentified African-American male. Following an investigation, plaintiff was arrested and charged with two counts of Trafficking in a Controlled Substance, Schedule II-Cocaine. This arrest forms the basis of plaintiff's claims in this action.

During the drug investigation leading to plaintiff's arrest, an unrelated homicide investigation was ongoing. While it is unclear if plaintiff was a suspect, he was sought for

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<sup>1</sup>There are essentially two groups of defendants in this case. One group is made up of Jefferson County and several police officers from the Jefferson County Police Department. The other group is made up of the City of Louisville and one of its police officers. Each group has filed separate motions for summary judgment which contain similar arguments. Also, plaintiff has responded to both motions in a single response. Therefore, this opinion does not address each motion separately. Instead, it analyzes the arguments made by both groups of defendants.

questioning by the Jefferson County Police Department (“J.C.P.D.”). Plaintiff was arrested<sup>2</sup> in April of 1998 and was questioned about both the homicide and the drug transaction before he was released on bond.

Plaintiff was indicted in May of 1998 on charges of trafficking in cocaine in connection with the videotaped transaction referred to above. A bench warrant was then issued, and plaintiff was arrested pursuant to that warrant. Unable to post the \$60,000 cash bond, plaintiff was held at the Jefferson County Detention Center pending trial.

Plaintiff’s prosecution on the drug charges was set for trial in December of 1998. At that time, counsel for plaintiff informed the prosecutor assigned to his client’s drug case that the individual in the surveillance video was actually Darrell Smith. Based on this information, the trial was continued, and the Louisville Police Department (“L.P.D.”) investigated this claim. L.P.D. was able to confirm that the individual in the videotape was, in fact, Darrell Smith. The charges against plaintiff were then dropped, and he was released from custody.

Plaintiff filed suit in Jefferson Circuit Court on February 19, 1999 naming as defendants the City of Louisville (“City”), the Fiscal Court of Jefferson County (“County”), and several police officers from both the J.C.P.D. and the L.P.D. that were involved in his arrest and the surrounding investigations. Plaintiff seeks redress for alleged civil rights violations under §1983. In addition, plaintiff makes several state law claims. Plaintiff’s cause of action was removed to this court on March 17, 1999. After preliminary discovery, both the City Defendants and the County Defendants filed the motions now before the court.

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<sup>2</sup>The parties disagree over what actually led to plaintiff’s arrest. Plaintiff claims that police fabricated drug charges against him in order to question him about the homicide investigation. *See, e.g.,* Pl.’s Resp. at 27. Defendants claim that plaintiff was identified by police officers as the seller in the videotaped drug transaction. Also, plaintiff was wanted on an outstanding child support warrant. Finally, police acknowledge that plaintiff was sought for questioning in the homicide investigation. Defendants claim that these instances, taken together, justified plaintiff’s arrest. *See* County Def.’s Mem. in Supp. At 3-5. That this disagreement does not constitute a genuine issue of material fact is discussed below.

## II. STANDARD OF REVIEW

A motion for summary judgment will be granted only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). According to the Supreme Court, the standard 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.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202(1986). Faced with a motion for summary judgment, the nonmovant must come forth with requisite proof to support its legal claim, particularly where the opposing party has had an opportunity to conduct discovery. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In the Sixth Circuit, “[t]he mere possibility of a factual dispute is not enough.” *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6<sup>th</sup> Cir. 1992) (quoting *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 863 (6<sup>th</sup> Cir. 1986)). “[T]his standard requires a court to make a preliminary assessment of the evidence, in order to decide whether the plaintiff’s evidence concerns a material issue and is more than de minimis.” *Hartsel v. Keys*, 87 F.3d 795, 799 (6<sup>th</sup> Cir. 1996).

## III. DISCUSSION

### A. Plaintiff’s 42 U.S.C. §1983 Claim

§1983 provides, in part, that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .

The first inquiry in this case, therefore, is whether plaintiff has been deprived of a right “secured by the Constitution and laws.” *See, e.g., Collins v. Harker Heights*, 503 U.S. 115, 120, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992); *Baker v. McCollan*, 443 U.S. 137, 140, 99 S.Ct. 2689, 61

L.Ed.2d 433 (1979). In making this determination, plaintiff's claim must be "judged by reference to the specific constitutional standard which governs that right . . . ." *Graham v. Connor*, 490 U.S. 386, 394, 109 S.Ct. 1865, 104 L.Ed.2d 443(1989). If there has been such a deprivation, then the second inquiry is whether the defendants are responsible for it. *Collins* at 120. However, if there has been no deprivation, then plaintiff may not recover under §1983. *City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986).

### **1. Plaintiff's Fourth Amendment Claim<sup>3</sup>**

In order to comply with the Fourth Amendment, the arrest of an individual must be "objectively reasonable." U.S. Const. amend. IV; *Graham*, 490 U.S. at 388, 396-97. An arrest is reasonable if it is supported by probable cause. *Giordenello v. United States*, 357 U.S. 480, 485 -86, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958). "Probable cause exists when police officers, relying on reasonably trustworthy facts and circumstances, have information upon which a reasonably prudent person would believe the suspect had committed or was committing a crime." *United States v. Maguire*, 918 F.2d 254, 258 (1st Cir.1990), *cert. denied*, *Kavanagh v. United States*, 501 U.S. 1234, 111 S.Ct. 2861, 115 L.Ed.2d 1027 (1991). Therefore, plaintiff must show that his arrest was unreasonable in order to prevail under §1983.

Plaintiff claims that "Defendants did, without provocation or justification, pursuant to the custom, policy and directives of city and county officials, erroneously and illegally seize, detain, arrest and imprison him . . . ." 2<sup>nd</sup> Am. Compl. ¶10A. Specifically, plaintiff alleges that his arrest was not supported by probable cause and that he was, in fact, arrested solely to advance the investigation of the unrelated homicide. *See* Pl.'s Resp. at 27.

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<sup>3</sup>Plaintiff's Second Amended Complaint alleges violations of his Fourth, Eighth, and Fourteenth Amendment rights. Pl.'s 2<sup>nd</sup> Am. Compl. ¶10A. However, plaintiff makes clear in his response that the only constitutional violation alleged is a violation of his Fourth Amendment rights. *See* Pl.'s Resp. at 14-15. Therefore, this opinion is limited to discussion of that claim.

To support his allegations, plaintiff first asks the court to infer, solely from the inability of some defendants to remember when they identified plaintiff as the seller on the November 1997 videotape, that the identifications provided by those defendants could not have served as probable cause for plaintiff's arrest. *See* Pl.'s Resp. at 19-22 nn.31-44.. Plaintiff states that because defendants are unable to definitively state when their identifications were made, they must have been made after plaintiff was arrested. *See* Pl.'s Resp. at 21 n.39. Plaintiff offers no affirmative evidence to support this inference. While plaintiff is entitled to have "justifiable" inferences drawn in his favor, the court is unwilling to make such inferences in the absence of evidence which supports them. *Hunt v. Cromartie*, 526 U.S. 541, 552, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999). Here, plaintiff has failed to present such evidence.

Plaintiff alternatively argues that "the reliance by the remaining Defendants on these identifications is questionable at best, and certainly unreasonable." *See* Pl.'s Resp. at 22. However, the record indicates that plaintiff and Darrell Smith, the man actually videotaped selling drugs, resemble each other physically. *Compare* Blumeier Depo. at 35 (describing plaintiff as African-American, male, 5'8"-5'9", 150-60 lbs.) *with* Denton Depo. at 17. Also, the first officer to identify plaintiff as the man in the videotape was familiar both with plaintiff and with the area in which the investigation was carried out. *See* City Defendants' Reply at 6. Finally, the undercover agent who participated in the undercover operation, after looking at a photograph of plaintiff, determined that plaintiff was the individual who sold her the drugs in November. *See Id.*

As noted above, plaintiff is entitled to have only "justifiable inferences" drawn in his favor. *Hunt* at 552. Plaintiff has failed to come forward with evidence to rebut these facts. Plaintiff also may not rely on hindsight to provide such evidence. *Thompson v. Prince William County*, 753 F.2d 363, 365 (4<sup>th</sup> Cir. 1984). Therefore, lacking evidence on which to base an inference, plaintiff's claim must fail.

## **2. Defendants' Responsibility**

Because plaintiff has failed to show that a genuine issue of material fact exists with regard to a violation of his constitutional rights, it is unnecessary to address defendants' responsibility for such a violation.

**B. Plaintiff's State Law Claims**

In light of our disposition of the federal claim in this action, the court declines to address plaintiff's state law claims. 28 U.S.C. §1367(c)(3); *Landefeld v. Marion General Hosp., Inc.*, 994 F.2d 1178, 1182 (6<sup>th</sup> Cir. 1993).

**IV. CONCLUSION**

To survive defendants' Motion for Summary Judgment, plaintiff must go beyond the allegations set forth in his pleadings. Fed. R. Civ. P. 56(e); *Maki v. Laakko*, 88 F.3d 361, 364 (6<sup>th</sup> Cir. 1996). Plaintiff has failed to come forward with the requisite affirmative evidence to support his allegations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Therefore, the Court finds that the jury could not reasonably find for the plaintiff. *Id.* at 252.

In light of plaintiff's failure to show the existence of a genuine issue of material fact as required by Fed. R. Civ. P. 56(c), the court concludes that defendants' motion must be granted. A separate order will be entered this date in accordance with this opinion.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
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**ORDER**

For the reasons set forth in the memorandum opinion entered this date, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that:

1. the motion of defendants City of Louisville and Brian Nunn for summary judgment is **GRANTED**;

2. the motion of defendants, the Fiscal Court of Jefferson County, Steve Farmer, Teresa Spellman-Pifer, Barry Denton, and John Blumeier, for summary judgment is **GRANTED**;

3. plaintiff's motion for oral argument is **DENIED**;

3. plaintiff's claim brought pursuant to 42 U.S.C. §1983, as set forth in averment A. of plaintiff's Second Amended Complaint, is **DISMISSED**;

4. plaintiff's state law defamation claim, as set forth in averment B. of plaintiff's Second Amended Complaint, is **REMANDED** to Division 13 of the Jefferson Circuit Court for further proceedings;

5. plaintiff's state law outrageous conduct claim, as set forth in averment C. of plaintiff's Second Amended Complaint, is **REMANDED** to Division 13 of the Jefferson Circuit Court for further proceedings;

6. plaintiff's state law false imprisonment claim, as set forth in averment D. of plaintiff's Second Amended Complaint, is **REMANDED** to Division 13 of the Jefferson Circuit Court for further proceedings;

7. plaintiff's state law claim of intentional infliction of emotional distress, as set forth in averment E. of plaintiff's Second Amended Complaint, is **REMANDED** to Division 13 of the Jefferson Circuit Court for further proceedings.

This \_\_\_\_ day of \_\_\_\_\_, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record