

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DOCKET NUMBER **52**
DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
MAY 18 2000
FILED
JOSEPH W. SKUPNIEWITZ, CLERK
CASE NUMBER

JUDGMENT IN A CIVIL CASE

PATTY DOE,

Plaintiff(s),

v.

Case No.: 99-C-725-S

TOM WOODMANSEE and
LINDA DRAEGER,

Defendant(s).

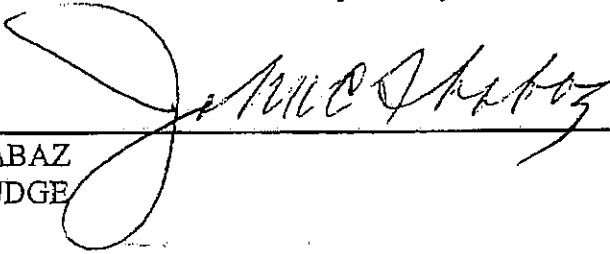
This action came for consideration before the court with DISTRICT JUDGE JOHN C. SHABAZ presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST PLAINTIFF DISMISSING PLAINTIFF'S COMPLAINT AND ALL CLAIMS CONTAINED THEREIN WITH PREJUDICE AND COSTS.

Approved as to form this 18th day of May, 2000.

JOHN C. SHABAZ
DISTRICT JUDGE



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Deputy Clerk

Joseph W. Skupniewitz, Clerk

by Deputy Clerk

MAY 18 2000

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PATTY DOE,

Plaintiff,

v.

MEMORANDUM and ORDER

TOM WOODMANSEE and
LINDA DRAEGER,

99-C-725-S

Defendants.

Plaintiff Patty Doe commenced this civil action under 42 U.S.C. § 1983. She claims that the defendants Tom Woodmansee and Linda Draeger violated her constitutional rights when she was arrested for obstructing an officer.

On April 17, 2000 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and briefs in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

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S. Rowe Secretary to Judge Shaban

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Plaintiff seeks to have defendants' motion for summary judgment dismissed because they have included immaterial facts in their motion which fail to comply with this Court's procedure. Defendants' motion for summary judgment will not be dismissed.

On March 22, 2000 the Court ordered plaintiff to certify that she had no information available or within her knowledge to answer interrogatories Nos. 7-9 and 12-22. She failed to comply with this order but instead submitted supplemental responses to these

interrogatories on May 9, 2000 which were untimely but did not prejudice defendants.

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to the following material facts.

Plaintiff Patty Doe is an adult resident of the State of Wisconsin who is legally blind. Defendants Tom Woodmansee and Linda Draeger are detectives with the City of Madison Police Department.

At about 4:10 a.m. on September 4, 1997 plaintiff telephoned 911 and reported she had been sexually assaulted. City of Madison police officers immediately responded to plaintiff's residence. Police Officer Thiesenhusen transported plaintiff to Meriter Park Hospital where she was examined. Plaintiff told Officer Thiesenhusen that the individual who assaulted her might have been Dominic Pena, her daughter's boyfriend.

On September 8, 1997 defendant Detective Woodmansee was assigned to investigate the alleged assault. He spoke by telephone with plaintiff who reported her suspicion that the assailant was Pena. On September 9, 1997 Woodmansee interviewed plaintiff at her residence.

On September 10, 1997 Woodmansee interviewed plaintiff's daughter who had been at plaintiff's residence the night of the alleged assault and had not heard any sounds. On September 10, 1997 Woodmansee interviewed Pena in the presence of defendant Draeger. Pena denied that he had assaulted plaintiff and had an alibi for the time of the assault.

On or before October 2, 1997 Woodmansee concluded there were inconsistencies and discrepancies in plaintiff's account of the alleged sexual assault. In addition, officers found no fingerprints on the objects that plaintiff had told them the alleged suspect had touched. The Wisconsin State Crime Lab advised Woodmansee that there was no identifiable indication of any sexual assault to plaintiff. Woodmansee concluded that plaintiff had made a false report to him and Officer Thiesenhusen about the alleged sexual assault.

At approximately 6:00 p.m. on October 2, 1997 defendants Woodmansee and Draeger met with plaintiff at the Detective Bureau in the Madison police station. Woodmansee explained to plaintiff that because of inconsistencies in her accounts of the alleged assault and the lack of physical evidence he believed that she had lied to him about the assault. Plaintiff then admitted that she had fabricated her account of the assault.

Woodmansee transported plaintiff to the Dane County Mental Health Center and advised the staff that he was concerned about plaintiff harming herself. Woodmansee took plaintiff home after she talked to a counselor. Plaintiff agreed to telephone the counselor in the morning.

On October 3, 1997 Woodmansee telephoned plaintiff who recanted her confession. On October 24, 1997 plaintiff was charged with obstructing an officer. The Dane County Circuit Court found plaintiff's confession was voluntary and not coerced. The obstructing charge was subsequently dismissed.

MEMORANDUM

Plaintiff pursues eight claims in her complaint. First she claims that her rights have been violated in violation of 42 U.S.C. § 1983. This claim will be dismissed because it does not specify which rights were violated. Plaintiff dismisses her retaliatory prosecution and interference with family relationships claims. Plaintiff claims she was falsely arrested, denied her right to counsel on October 2, 1997, coerced into confessing that she fabricated the sexual assault, maliciously prosecuted and subjected to a civil conspiracy.

Plaintiff claims she was falsely arrested for obstructing an officer, a violation of Wis. Stat. § 946.41. This statute

prohibits knowingly giving false information to a police officer. The existence of probable cause for an arrest is an absolute bar to a Fourth Amendment claim of false arrest. Mark v. Furay, 769 F.2d 166, 169 (7th Cir. 1985). Probable cause exists when at the moment the arrest was made the facts and circumstances within the officer's knowledge were sufficient to warrant a prudent person to believe that the person had committed an offense. Jones v. Watson, 196 F. 3d 774, 778 (7th Cir. 1997).

Plaintiff contends that she was falsely arrested when she was interviewed by the defendants on October 2, 1997. Defendants contend that she was not arrested because she was free to leave. Whether she was actually arrested at this point is immaterial to the determination of probable cause.

Plaintiff claims that on October 2, 1997 prior to her confession defendants did not have probable cause to arrest her. Prior to her confession defendants Woodmansee and Draeger knew there were inconsistencies in plaintiff's accounts of the morning of September 4, 1997 and that there was a lack of physical evidence that an assault had occurred. These facts within defendants' knowledge at the time they interviewed plaintiff on October 2, 1997 were sufficient to warrant a prudent person to believe that plaintiff had obstructed an officer by knowingly providing false information. Probable cause existed to arrest plaintiff for

a matter of law defendants are entitled to judgment in their favor on plaintiff's false arrest claim.

Plaintiff also claims that the defendants maliciously prosecuted her for obstructing an officer. To prevail on a claim of malicious prosecution under Wisconsin law plaintiff must establish that the defendants lacked probable cause for instituting the underlying proceeding. Johnson v. Hondo, Inc., 125 F. 3d 408, 416 (7th Cir. 1997).

Plaintiff has not established that defendants lacked probable cause for charging her with obstructing an officer. As a matter of law defendants are entitled to judgment in their favor on plaintiff's malicious prosecution claim.

Plaintiff claims that her Sixth Amendment right to counsel was violated when she was not provided an attorney on October 2, 1997. She had no Sixth Amendment right to counsel because the investigation never reached a "critical stage" which so required. United States v. Jungels, 910 F. 2d 1501, 1505 (7th Cir. 1990).

Plaintiff may have had a Fifth Amendment right to counsel where she requested counsel and the interrogation was not stopped. See Edwards v. Arizona, 451 U.S. 477, 484-485 (1981). It is disputed whether plaintiff requested counsel on October 2, 1997. Had she so requested, the interrogation should have ended. Her statements made on October 2, 1997, however, was never used against

obstructing an officer at the time defendants began the October 2, 1997 interview. Plaintiff's subsequent confession provided additional probable cause.

Had the officers lacked probable cause to arrest plaintiff on October 2, 1997 prior to her confession they would be entitled to immunity had they a reasonable belief that probable cause existed. Jones v. City of Chicago, 856 F. 2d 985, 994 (7th Cir. 1998). Given the lack of physical evidence that an assault had occurred together with discrepancies in plaintiff's account of the alleged assault, Woodmansee's belief that plaintiff had lied was reasonable.

Plaintiff argues that while investigating the September 4, 1997 assault report defendant Woodmansee failed to contact potential witnesses and failed to analyze evidence. She claims the arrest was without probable cause for these failures. Defendant Woodmansee had no duty to further investigate whether plaintiff lied to a police officer concerning the assault after he had acquired information prior to October 2, 1997 that probable cause existed that she had committed the offense of obstructing an officer. BeVier v. Hucal, 806 F.2d 123 (7th Cir. 1986).

Defendants had probable cause and a reasonable belief that probable cause existed for arresting plaintiff on October 2, 1997. Plaintiff was charged with obstructing an officer on October 24, 1997 after she had confessed to fabricating the sexual assault. As

her as evidence in a criminal trial. Accordingly, her Fifth Amendment rights were not violated. Mahoney v. Kesery, 967 F. 2d 1054, 1061-1062 (7th Cir. 1992).

Plaintiff claims that her due process rights were violated when she was coerced into confessing that she fabricated the sexual assault report. Whether plaintiff's confession was coerced, her due process rights would not have been violated unless the confession was used against her at trial. Id.; Sneed v. Rybicki, 146 F. 3d 478, 481-82 (7th Cir. 1998). Plaintiff's confession was not used against her at trial. As a matter of law defendants are entitled to judgment in their favor on this due process claim.

Plaintiff claims that the defendants conspired to violate her rights under 42 U.S.C. § 1983. This claim must be dismissed because she has not demonstrated any violation of her constitutional rights.

As a matter of law defendants are entitled to judgment in their favor on plaintiff's claims. Accordingly, defendants' motion for summary judgment will be granted.

ORDER

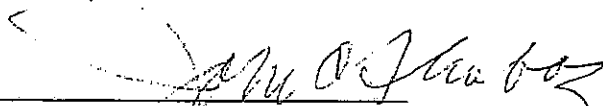
IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

Doe v. Woodmansee, et al., 99-C-725-S

IT IS FURTHER ORDERED that judgment be entered in favor of the defendants against plaintiff DISMISSING her complaint and all claims contained therein with prejudice and costs.

Entered this 18th day of May, 2000.

BY THE COURT:



JOHN C. SHABAZ
District Judge

Dane County Sheriff's Office



BONG, JOSEPH JAMES
90100146



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Joseph Bong (probably should not include name with image)