Brigance v. Las Vegas Metropolitan Police Department et al

2018 | Cited 0 times | D. Nevada | June 5, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * RICKY L. BRIGANCE,

Plaintiff(s), v. STATE OF NEVADA, et al.,

Defendant(s).

Case No. 2:17-CV-250 JCM (GWF)

ORDER

CF No. 35),

to which defendants replied (ECF No. 36). I. Facts

On May 24, 2016, at or around midnight, plaintiff and his friend Rayshawn Wesley

West Lake Mead Boulevard, turned north onto Revere Street, and eventually made a left onto Bartlett Avenue. Id. Both Revere and Bartlett are in residential neighborhoods with 25 miles per hour speed limits. Id. This route crossed from Las Vegas to North Las Vegas and then back into Las Vegas within four city blocks. Id.

As plaintiff turned from West Lake Meade onto Revere, Courtney and Cobb, both LVMPD officers, were travelling northbound on H Street. Id. Both officers were wearing body Id. H Street turns into Revere after the West Lake Meade intersection. Id. As the defendant officers approached the West Lake Meade/Revere intersection, the officers Id. at 4. Plaintiff Id. at Ex. A 21-22.

After plaintif Id. at Ex. D. Cobb then initiated his overhead lights and began to pursue plaintiff. Id. o travel at Id. at Ex. D.

ly pulled his vehicle over and remained compliant and non-resistant. Id. window holding a flashlight. (ECF No. 34). He stated that the basis for the arrest was plaintiff

speeding on H Street and asked if plaintiff had any firearms in the vehicle. Id. Plaintiff truthfully answered that he had a 9 mm handgun under his seat and thereafter complied with Id. Cobb searched the vehicle and located the gun. Id. It was subsequently determined that plaintiff was the lawful owner of the firearm. (ECF No. 25).

violating a North Las Vegas ordinance prohibiting the possession of any dangerous or deadly weapon in an automobile, truck, motorcycle, or other type of vehicle. (ECF No. 34 at 3) (citing North Las Vegas Code § 9.32.080). However, Courtney was unaware that the city ordinance had been repealed. (ECF No. 34). Believing that the ordinance was still valid, defendant officers told plaintiff that he was being arrested for violating the firearm ordinance. Id.

Plaintiff and Wesley were then arrested and transported to Las Vegas city jail. Id. Wesley was arrested on an unrelated outstanding warrant. Id. After arriving at the city jail, Courtney learned that the North Las Vegas firearm ordinance had been repealed. Id. The

Nev.Rev.Stat § 484B.653. Id. (citing Nev.Rev.Stat § 484B.653).

As defendant officers inquired about the city ordinance, plaintiff went through the standard booking process at the city jail. Id. A corrections officer later informed plaintiff that his arrest was for reckless driving instead of violating the firearm ordinance. Id. The officer did not explain why the charges against plaintiff were changed. (ECF No. 25).

On June 23, 2016, the reckless driving charge against plaintiff was dismissed by the municipal court. Id.

On January 1, 2017, plaintiff filed a complaint (ECF No. 1), which was later amended on June 8, 2017 (ECF No. 25). Plaintiff alleges five claims for relief in his amended complaint: (1) civil rights violations under 42 U.S.C. § 1983 against all defendants; (2) false arrest against all defendants; (3) false imprisonment against all defendants; (4) negligent hiring, training, supervision, and retention against LVMPD; and (5) intentional infliction of emotional distress against all defendants. II. Legal Standard

The Federal Rules of Civil Procedure allow summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, vant is entitled to a Celotex Corp. v. Catrett, 477 U.S. 317,

323 24 (1986).

For purposes of summary judgment, disputed factual issues should be construed in favor of the non-moving party. , 497 U.S. 871, 888 (1990). However, to be Id.

In determining summary judgment, a court applies a burden-shifting analysis. The moving bear the

burden of proof at trial, it must come forward with evidence which would entitle it to a

directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

By contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the non- case on which that party will bear the burden of proof at trial. See Celotex Corp., 477 U.S. at 323 24. If the moving party fails to meet its initial burden, summary judgment must be denied and the court need not See Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 60 (1970).

If the moving party satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient

, 809 F.2d 626, 631 (9th Cir. 1987).

In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. See Celotex, 477 U.S. at 324.

truth, but to determine whether there is a genuine issue for trial. See Anderson v. Liberty Lobby,

Inc. Id. at 255. But if the evidence of the

nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. See id. at 249 50. Moreover, when video evidence is available and blatantly contradicts the non- See Scott v. Harris, 550 U.S. 372, 380-81 (2007). III. Discussion

a. Civil rights violations under 42 U.S.C. § 1983 Section 1983 is not itself a source of substantive rights, but rather is a procedural vehicle that vindicates federal rights elsewhere conferred. See Albright v. Oliver, 510 U.S. 266, 271 (1994). To make out a prima facie case under § 1983, the plaintiff must prove that the defendant (1) acted under color of state law and (2) the conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. See Parratt v. Taylor, 451 U.S. 527, 535 (1981).

The defendants do not dispute that they acted under color of state law as LVMPD officers. (ECF No.

34 at 10). Therefore, the court will determine whether were violated. See Albright, 510 U.S. at 271.

i. Fourth Amendment challenge amend. IV. Fourth Amendment challenges involve an objective inquiry. See Terry v. Ohio, 392

Id. at 21-22.

A traffic stop constitutes a seizure. See Whren v. United States, 517 U.S. 806, 810 (1996) (holding that an automobile stop is subject to constitutional imperative that it not be unreasonable under the circumstances). Therefore, an officer must have probable cause before detaining a motorist. See id.

In determining whether an officer has probable cause at the time of an arrest, the court . were sufficient to warrant a prudent man in believing that the petitioner had committed or was

Edgerly v. City and Cnty. of San Francisco, 599 F.3d 946, 953-54 (9th Cir. 2010) (quoting Beck v. Ohio spec United States v. Struckman,

603 F.3d 731, 739 (9th Cir. 2010). Moreover, the Supreme Court recently held that probable cause See District of Columbia v. Wesby, 138 S.Ct. 577, 586 (2018).

Furthermore, when the underlying facts claimed to support probable cause are not in dispute, whether those facts constitute probable cause is an issue of law. See Ornelas v. United States, 517 U.S. 690, 696-97 (1996) (holding that the inquiry is whether the rule of law as applied to the established facts is or is not violated). Additionally, a police officer has immunity if the officer arrests with probable cause. Hutchinson v. Grant, 796 F.3d 288, 290 (9th Cir. 1986).

Here, although plaintiff was initially told that he was being arrested under the firearm ordinance, plaintiff was arrested for the original reckless driving offense. (ECF No. 34, Ex. B, C). Therefore, the inquiry is whether the defendant officers had the requisite probable cause to arrest plaintiff for reckless driving in violation of Nev.Rev.Stat § 484B.653(1)(a). See Edgerly, 599 F.3d at 954 (holding that an officer can have probable cause for any criminal offense, regardless of the

Although plaintiff disputes that he was driving recklessly and speeding in a residential neighborhood in his response (ECF No. 35), plaintiff testified that he did not know his speed and does not dispute that he was speeding. (ECF No. 34, Ex. A at 21-22). Furthermore, plaintiff acknowledged that he no 0 miles per hour in

a residential neighborhood. (ECF No. 34, Ex. D). The video also shows that Cobb drove 60 miles per hour for three-quarters of a mile before stopping plaintiff. Id.

Plaintiff argues that the body camera footage is incomplete because both defendant officers turned

off their body cameras in violation of standard officer protocol. (ECF No. 35). Plaintiff of fact as to whether exculpatory evidence was withheld that could confirm that the traffic stop

was without probable cause. Id. However, plaintiff does not dispute the accuracy of the driving captured on the unedited body camera video, thereby supporting the validity of the underlying footage. (ECF No. 35); see Scott, 550 U.S. at 378 (holding that video evidence is preferred when there are no allegations that the videotape was doctored or altered, nor any contention that what it depicts differs from what actually happened).

Uncontro establish undisputed facts surrounding the traffic stop and arrest. (ECF Nos. 34, 35). Therefore,

probable cause is a question of law. See Ornelas, 517 U.S. at 696-97. Because plaintiff was officers had probable cause to arrest plaintiff under Nev.Rev.Stat § 484B.653(1)(a). See United

States v. Reeves, 798 F.Supp 1459, 1464 (E.D. Wash. 1992) (holding that driving 20 miles per hour over the speed limit and weaving in and out of lanes without signaling is indicative of a willful disregard for the safety of others); see also Wesby, 138 S.Ct. at 586 (holding that probable cause is not a high bar).

No. 35 at 3); see Nev.Rev.Stat § 484A.730 (a police officer has the option to give a citation or

perform a custodial arrest of any individual stopped for any violation of chapters 484A to 484E, inclusive). Even though plaintiff disagrees with his arrest for reckless driving, this does not necessarily implicate probable cause. See Nev.Rev.Stat § 484A.730.

See Lujan, 497 U.S. at 888. Accordingly, the court will grant defendant See Hutchinson, 796 F.3d at 290.

ii. Qualified immunity Defendants alternatively argue that they are entitled to qualified immunity if the court concludes that summary judg claims. (ECF No. 34 at 15). Because this court concludes that defendants are entitled to summary ressed. . . . . .

b. False arrest and false imprisonment False arrest and false imprisonment claims are evaluated under the reasonableness standard of the Fourth Amendment. See Luchtel v. Hagemann, 623 F.3d 975, 984 (9th Cir. 2010) (affirming summary judgment on false arrest claim because the police had probable cause); see also United States v. Manzo-Jurado, 457 F.3d 928, 934 (9th Cir. 2006) (holding that reasonable suspicion constitutes legal justification for the restraint). Therefore, probable cause is an absolute defense to false arrest and false imprisonment claims. See Luchtel, 623 F.3d at 984.

Plaintiff asserts that defendants violated Nevada state law by falsely arresting and imprisoning him.

(ECF No. 25). As previously stated, the court concludes that defendant officers had probable cause to stop and arrest plaintiff for reckless driving. Accordingly, the court will

claims. See Luchtel, 623 F.3d at 984.

c. Negligent hiring, training, supervision, and retention exercise due care with respect to the plaintiff; (2) that the defendant breached this duty; (3) that

the bre , 2012 WL 4610803, at *11 (D. Nev. 2012)

(quoting Joynt v. Cal. Hotel & Casino, 835 P.2d 799, 801 (Nev. 1992)).

Plaintiff contends that LVMPD failed to adequately hire, train, supervise, and retain the admit they violated department protocol, that they did not know the law, and that they made a

plaintiff has failed to produce any evidence to substantiate these claims and has failed to establish how these accusations relate to his negligence cause of action against LVMPD. (ECF Nos. 25, 35, 36). Conclusory accusations that are unsupported by factual evidence cannot avoid summary judgment. See Taylor n for

. . .

d. Intentional infliction of emotional distress To prevail on an intentional infliction of emotional distress claim, plaintiff must establish or recklessly disregarded the causing of emotional distress; (3) that plaintiff actually suffered

lly or proximately Nelson v. Las Vegas, 665 P.2d 1141, 1145 (Nev. 1983).

severe emotional distress. (ECF No. 25 at 13). However, plaintiff fails to present any evidence of

See Nelson, 665 P.2d at 1145. Accordingly, the court will grant

claim. See Celotex, 477 U.S. at 323-24 (holding that the purpose of summary judgment is to isolate

and dispose of factually unsupported claims). IV. Conclusion

Accordingly, IT IS HEREBY summary judgment (ECF No. 34) be, and the same hereby is, GRANTED.

The clerk shall enter judgement accordingly and close the case. DATED June 5, 2018.
_____ UNITED STATES DISTRICT JUDGE