

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ANITA D. BORLAWSKY,)
)
 PLAINTIFF)
)
 v.)
)
 TOWN OF WINDHAM, ET AL.,)
)
 DEFENDANTS)

Civil No. 99-272-P-H

**ORDER ON DEFENDANTS JOACHIM SCHNUPP'S AND
CUMBERLAND COUNTY'S MOTION FOR
SUMMARY JUDGMENT**

The defendants Schnupp and Cumberland County's motion for summary judgment is **GRANTED** as follows.

1. The plaintiff concedes that these defendants have no common law tort liability under Maine law. See Pl.'s Mem. of Law at 2. I therefore **GRANT** the motion on that claim.

2. The plaintiff concedes that Cumberland County has no federal liability. Id. I therefore **GRANT** the motion on that claim.

3. The plaintiff states that her Maine Civil Rights Act ("MCRA") claim should be analyzed in the same way as her federal claim, see Pl.'s Supp. Mem. of Law at 1, and therefore Cumberland County has no liability to her under the MCRA. I **GRANT** the motion on that claim.

4. The only issue, therefore, is whether the defendant Schnupp has any federal or MCRA liability toward the plaintiff. I conclude that he does not.

The plaintiff has admitted, see Pl.'s Statement of Material Facts at 2, the following factual assertions of the defendants:

(4) [Windham Police] Officer Denbow contacted the Cumberland County Sheriff's Department and requested that they assist in attempting to locate Plaintiff's vehicle. Upon making contact with the Sheriff's Department, Officer Denbow was informed that Sheriff's Deputies had already responded to a call from the Plaintiff's ex-husband, Defendant Scott Losciuto, and were with the Plaintiff and her children.

(5) Officer Denbow was placed in communication by the Cumberland County Sheriff's Department Dispatcher with the [Sheriff's Deputy] Joachim Schnupp who was with [the plaintiff] Anita Borlawsky. Denbow explained to Schnupp¹ what had been described by Janette Losciuto [Ms. Borlawsky's mother-in-law], and Denbow requested that Ms. Borlawsky be placed under arrest and transported to the Windham Police Department.

(6) Deputy Schnupp arrested the plaintiff without warrant and transported her to the Windham Police Department where she was turned over to the custody of the Windham Police Department.

(7) The reason provided by Officer Denbow to Deputy Schnupp for making the arrest was that Denbow "reasonably felt the assault would continue if the people or the children were still with her."

¹ According to the deposition transcript pages referenced in support, Denbow informed Schnupp that "I felt there was probable cause for an arrest for an assault . . . and I reasonably felt the assault would continue if the . . . children were still with her." Denbow Dep. at 27 ll. 12-15. The plaintiff maintains that "she simply slapped her daughter as reasonable punishment for Janelle having called her a 'fucking slut,'" and "that Janette Losciuto, the grandmother of Janelle Losciuto, reported an untrue version of the confrontation between the Plaintiff and Janelle to the Windham Police Department, and that Defendant Michael Denbow was the police officer who responded to the call." Plaintiff's Statement of Material Facts ¶¶ 1-2.

Defendants Joachim Schnupp and Cumberland County's Statement of Material Facts In Support of Mot. for Summ. J. ¶¶ 4-7.

Under Maine statutes, Deputy Schnupp had authority to make a warrantless arrest of Ms. Borlawsky for misdemeanor assault if the victim had a family relationship with her. See 17-A M.R.S.A. § 15(1)(A)(5-A) (West Supp. 1999). Under the admitted facts that family relationship element is clearly satisfied. Deputy Schnupp also had Officer Denbow's assurance that Officer Denbow had probable cause for the arrest. Although that statement would not make the arrest lawful if probable cause actually were missing, see Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 568 (1971), it does protect Deputy Schnupp from any civil liability under federal law. See United States v. Hensley, 469 U.S. 221, 232 (1985).² Deputy Schnupp has qualified immunity and I need not decide on this motion whether Officer Denbow himself had probable cause.

Because the plaintiff maintains that the MCRA and federal civil rights law provide the same analysis, Deputy Schnupp likewise has no liability under the MCRA. I therefore **GRANT** summary judgment to the defendant Schnupp on both.

² Although post-dating Harlow v. Fitzgerald, 457 U.S. 800 (1982), Hensley spoke in terms of "a good-faith defense to any civil suit." Hensley, 469 U.S. at 232. The result is the same under qualified immunity analysis of Harlow and Anderson v. Creighton, 483 U.S. 635 (1987). Given the information possessed by Deputy Schnupp—the assurance of Officer Denbow that he had probable cause for the arrest—a reasonable officer in Deputy Schnupp's circumstances, could reasonably conclude that he was not trampling over the plaintiff's Fourth Amendment right to be free of unreasonable seizure. See Anderson, 483 U.S. at 640-41.) Accord 2 Wayne R. LaFave, et al., Criminal Procedure § 3.3(e) at 110 (2d ed. 1999) (opining that Whiteley "apparently means that the arresting officer is himself not at fault and thus should not be held personally responsible in a civil action.")

Summary judgment shall be entered for the defendants Schnupp and Cumberland County.

SO ORDERED.

DATED THIS 31ST DAY OF MARCH, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 99-CV-272

BORLAWSKI v. WINDHAM, TOWN OF, et al
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$0,000
Lead Docket: None
Dkt # in CCSC : is 99-426
Cause: 42:1983 Civil Rights Act

Filed: 09/03/99
Jury demand: Both
Nature of Suit: 440
Jurisdiction: Federal Question

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