

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DANIEL M. LEMIEUX,)
)
 Plaintiff)
)
 v.) Civil No. 03-07-P-H
)
 SGT. DONALD FOSS and THE)
 CUMBERLAND COUNTY)
 SHERIFF’S OFFICE,)
)
 Defendants)

**RECOMMENDED DECISION ON MOTION
FOR SUMMARY JUDGMENT**

Daniel M. Lemieux has filed an action against Sergeant Donald Foss and the Cumberland County Sheriff’s Office claiming that his arrest by Foss on December 25, 2002, violated his federal and state law rights. (Docket Nos. 1 & 4.) The defendants have filed a motion seeking summary judgment vis-à-vis the entire action (Docket No. 22) and I now recommend that the Court **GRANT** this motion.

Summary Judgment Standard

The defendants are entitled to summary judgment only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact” and the defendants are “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is material if its resolution would “affect the outcome of the suit under the governing law,” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and the dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving

party,” id. I review the record in the light most favorable to Lemieux, the opponent of summary judgment, and I indulge all reasonable inferences in his favor. See Feliciano De La Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir. 2000).

In responding to the motion for summary judgment Lemieux has filed a half page response listing three fragmented objections to the motion. Lemieux has not filed an opposing statement of material facts as required by District of Maine Local Rule of Civil Procedure 56(c). As a consequence, Lemieux has not placed a single one of the defendants’ facts in dispute and I deem their properly supported facts as admitted, see Faas v. Washington County, 260 F. Supp. 2d 198, 201 (D. Me. 2003). Lemieux is proceeding pro se but this status does not relieve him of his duty to conform his pleadings to the rules, see Parkinson v. Goord, 116 F.Supp.2d 390, 393 (W.D.N.Y 2000) (“[P]roceeding pro se does not otherwise relieve a litigant of the usual requirements of summary judgment”), and this Court must, in fairness to the defendants, apply the rules governing summary judgment proceedings, see Fed. R. Civ. P. 56; Dist. Me. Loc. R. Civ. P. 56. On this score I note that Lemieux should not be surprised by the expectation that he conform his pleadings to the summary judgment rules. (See Docket Nos. 10 & 19.)

Discussion

Complaint allegations

In his amended complaint Lemieux claims that on December 25, 2002, his civil rights were violated by Sergeant Foss and the Cumberland County Sheriff’s Office. (Docket No. 4.) He states that on that night he was falsely arrested and detained at the residence of Pattie Dixon without probable cause; that a “moot” investigation was conducted; that he was falsely incarcerated without cause and proper investigation of the

charges; that he had suffered similar experiences of illegal entry and detainer on several occasions in violation of federal and state laws; and that he has suffered emotionally and economically as a consequence of the defendants' negligence. He seeks monetary damages and an injunction barring further illegal harassment and trespass.

Undisputed material facts

On the evening in question, Sergeant Donald Foss responded to a call from dispatch informing him of a domestic disturbance at 43 Hillcrest Drive, Casco, Maine. Foss was told by dispatch that a person named Peter Dyer had called stating that a resident at that address, Patty Dixon, was having a fight with her live-in boyfriend, Lemieux, and that Lemieux had struck Dixon with a shoe.

Foss and another officer, Sergeant David Hall proceeded to the Hillcrest address and when they arrived they spoke with Lemieux. At this juncture Foss observed that Lemieux was slurring his speech. Foss asked to speak with Dixon separately and Dixon and Foss went into the home's finished basement. Dixon stated to Foss that she and Lemieux had been arguing, Lemieux had become very angry, and that he had thrown a boot at her, striking her on the front of her right shoulder. She indicated that her shoulder was sore. Dixon told Foss that Dixon's daughter, Ashley Carl, had witnessed the incident. Lemieux remained upstairs during this discussion.

Foss then spoke with Ashley who told him that she was present when Lemieux struck Dixon on the arm/shoulder with a shoe. She also said that Dixon told her to call the police and that she had given this message to Dyer, who called dispatch. Lemieux was not present during this conversation.

Foss then sought out Lemieux so that he could ask him questions concerning the incident. He found Lemieux talking to Sergeant Hall and noted that Lemieux was slurring his speech and appeared unsteady on his feet. Lemieux refused to talk to Foss about the incident with Dixon.

Based on his own observations and the eyewitness reports of Dixon and Ashley, Foss concluded that he had probable cause to arrest Lemieux for domestic violence/assault. Accordingly, Foss proceeded to place Lemieux under arrest and informed him of the charge. He put handcuffs on Lemieux and transported him to the Cumberland County Jail in Foss's cruiser. Hall remained at the Dixon residence to obtain witness statements from Dixon and Ashley.

42 U.S.C. § 1983 arrest without probable cause claim

Assuming that Lemieux is seeking to plead a violation of his federal rights under the United States Constitution, the undisputed material facts do not support a claim for arrest without probable cause. With respect to this genre of Fourth Amendment claim, the First Circuit has stated:

For a warrantless arrest, the Fourth Amendment is taken to require "probable cause," Wong Sun v. United States, 371 U.S. 471, 479 (1963), and the broad outlines of the concept are familiar. See generally, 2 LaFare, Search and Seizure ch. 3 (3d ed.1996). But the case law on probable cause harbors one central ambiguity and a host of smaller issues. The ambiguity exists because the Supreme Court has told us that probable cause means more than "bare suspicion" but less than what would be needed to "justify ... conviction." Brinegar v. United States, 338 U.S. 160, 175 (1949). A good deal of territory lies in between.

Within this territory, the Supreme Court has said that the question is whether the evidence would "warrant a man of reasonable caution" in believing that a crime has been committed and committed by the person to be arrested. Beck v. Ohio, 379 U.S. 89, 96 (1964). See United States v. Reyes, 225 F.3d 71, 75 (1st Cir.2000). The emphasis is on calculating likelihoods. E.g., Brinegar, 338 U.S. at 175. Whether this excludes all other factors and whether the likelihood must be "more likely than not" are

questions arguably unsettled; but, centrally, the mercurial phrase "probable cause" means a reasonable likelihood. Illinois v. Gates, 462 U.S. 213, 235 (1983).

Valente v. Wallace, 332 F.3d 30, 32 (1st Cir. 2003) (footnote omitted).

While as a phrase "probable cause" may be mercurial, the answer to the question whether Foss, on these facts, had probable cause to arrest Lemieux on December 25, 2002, is not at all elusive. He did. He personally interviewed Dixon and Ashley. Dixon reported experiencing and Ashley reported witnessing Lemieux hit Dixon in the arm/shoulder area with a shoe. Dixon also relayed that Lemieux had been arguing with her and that he had become very angry. When asked by Foss, Lemieux refused to discuss the incident, leaving the Dixon/Ashley account unchallenged.

A person is guilty of assault under Maine law if "[t]he person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person." 17-A M.R.S.A. § 207(a). Furthermore, § 15(5-A) of title 17 authorizes the warrantless arrest of any person who an officer has probable cause to believe has committed "[a]ssault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members."¹

¹ Foss had been told that Lemieux was Dixon's live-in boyfriend. At the time of the arrest the definition of "family or household members" encompassed "spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member." 15 M.R.S.A. § 321(1). The definition operative for purposes of 17 M.R.S.A. § 15(5-A) now provides:

"Family or household members" means spouses or former spouses, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of this chapter only, includes individuals presently or formerly living together and individuals who are or were sexual partners.

19-A M.R.S.A. § 4002.

The evidence before Foss on that evening would “warrant a man of reasonable caution” in believing that a crime had been committed and had been committed by Lemieux. Beck, 379 U.S. at 96. As there is no constitutional violation by Foss in making the arrest, there is no liability on the part of the Cumberland County Sheriff’s department on a theory of municipal liability. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986); Jarrett v. Town of Yarmouth, 331 F.3d 140, 151 (1st Cir. 2003).² I need not delve into Foss’s qualified immunity defense as Lemieux does not even pass this threshold test. See Saucier v. Katz, 533 U.S. 194, 201 (2001); Dirrane v. Brookline Police Dept., 315 F.3d 65 69-70 & n. 2.

State Law Tort Claim

Foss and the Sheriff’s department assert that they are absolutely immune from liability in this action due to the Maine Tort Claims Act, 14 M.R.S.A. § 8101 through § 8118. While this argument seems well supported by their pleadings,³ so is their simpler alternative argument that the existence of probable cause forecloses Lemieux’s false imprisonment claim. Under Maine law the tort of false imprisonment can lie when there is “unlawful detention or restraint of an individual against his will.” Nadeau v. State, 395 A.2d 107, 116 (Me. 1978) (citing Palmer v. Maine Central R.R. Co., 92 Me. 399, 42 A. 800 (1899)). “To be actionable,” however, “the authority upon which plaintiff is confined must be unlawful.” Id. I have already concluded that, based on this summary judgment record, probable cause inhered and, therefore, there can be no liability for false arrest.

² It is also true that there are no facts in this record that would support the existence of the linkage of sheriff department policy or custom to this one incident. Lemieux includes a custom type claim in a fledgling state in his complaint, but he has failed to present any facts or record evidence to support this assertion of having suffered recurring illegal entry and detainer.

³ The summary judgment record indicates that in the year 2002 Cumberland County was a member of the Maine County Commissioners Association of Self-Funded Risk Pool; the Pool’s coverage expressly provides that the members do not waive their Maine Tort Claims Act immunities; and the County and Sheriff’s office have no other liability insurance for the year 2002.

The First Circuit reached a similar conclusion in a similar context when applying Nadeau. See Thompson v. Olson, 798 F.2d 552, 555 (1st Me. 1986) (“The District Court correctly found that the officers had probable cause to arrest Thompson Thus, the officers were not guilty of false arrest.”). And, although the complaint speaks of a lack of investigation of the charges, there is absolutely no summary judgment record to support a conclusion that after the arrest Lemieux was falsely imprisoned. See id. 555-56 (discussing a claim of false imprisonment under Maine Law).⁴

Conclusion

For these reasons I recommend that the Court **GRANT** the defendants’ motion for summary judgment on the entirety of Lemieux’s complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court’s order.

October 7, 2003.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

⁴ I agree with the defendants that there is no basis for a separate emotional distress claim.