

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

VINCENT J. SANTONI, JR.,            )  
                                                  )  
                                          Plaintiff                    )  
                                                  )  
v.                                            ) Civil No. 02-03-B-S  
                                                  )  
POSTMASTER GENERAL,            )  
et al.                                     )  
                                                  )  
                                          Defendants                    )

**RECOMMENDED DECISION ON MOTION FOR  
SUMMARY JUDGMENT**

The Court has before it a motion for summary judgment (Docket Nos. 20 & 21) brought by the two remaining defendants in the action initiated by Vincent Santoni, Jr. Santoni filed this federal complaint after he was acquitted of a state misdemeanor charge of indecent exposure, a prosecution triggered by an investigation by the United States Postal Service, his former employer. The federal defendants obtained summary judgment at an earlier stage in these proceedings. These two state defendants, Somerset County Sheriff Barry DeLong and Somerset County Deputy Sheriff Randy Wing, now move for summary judgment on the counts against them, all of which rise or fall on a determination as to whether Santoni's Fourth Amendment rights were violated by Wing when he participated in Santoni's arrest. Because this Court, in ruling on the earlier motion for summary judgment, has already determined that the warrant for Santoni's arrest was based on probable cause and that the arrest of Santoni was otherwise valid, Santoni's claims against Wing, and therefore against DeLong in his official capacity,

have no merit. Consequentially, I recommend that the Court also **GRANT** Wing and DeLong summary judgment.

***Material Facts in Brief***

In August 1999 Santoni's employer, the United States Postal Service, initiated an investigation of Santoni, who at that time was the postmaster of Solon, Maine. The Postal Service had received complaints alleging that Santoni had acted inappropriately toward female customers and had gone so far as to expose himself (off post office premises) to a fifteen-year-old girl who frequented the premises.<sup>1</sup>

Former co-defendant, United States Postal Inspector Michael Desrosiers approached Sheriff DeLong regarding the investigation. He asked for assistance from one of DeLong's officers in locating people who might need to be interviewed. DeLong assigned Wing to help Desrosiers locate people and addresses. DeLong had no further knowledge of or involvement in the investigation of any kind until Santoni's arrest.

Wing assisted Desrosiers by showing Desrosiers where the people Desrosiers was interested in interviewing lived. Wing sat in on two or three interviews but did not participate in them and take notes. He did not otherwise actively participate in the investigation.

Desrosiers himself applied for the warrant that led to Santoni's arrest. Wing had no involvement in applying for the warrant. Desrosiers told Wing that a warrant had been issued for Santoni's arrest only after the warrant had been procured. The warrant commanded a law enforcement officer for the State of Maine to execute the warrant. Though he may have thought it was unusual for an arrest warrant (as opposed to a

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<sup>1</sup> This paragraph of facts is included for the reader's convenience. The parties neglected to include this contextual back-drop in their statement of facts. This background is culled from earlier pleadings and orders.

summons) to issue for a misdemeanor offense, Wing believed that Desrosiers had a valid warrant and had no reason or information to lead him to believe that the warrant was defective in any way. Wing accompanied Desrosiers to Santoni's home to assist in executing the command of the warrant. After the arrest Wing drove Desrosiers and Santoni to the Somerset County Jail where Desrosiers booked Santoni.

### *Discussion*

Summary judgment is appropriate 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 that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

The four lingering counts against Wing and DeLong are as follows: Wing violated Santoni's Fourth Amendment Rights when he arrested him (Count XV); Wing is liable for punitive damages due to the unconstitutional nature of the arrest (Count XVI); DeLong is liable in his official capacity for failing to train Wing to only make arrests that conform to Constitutional requirements (Count XIV); and DeLong and Wing conspired with one another in violating Santoni's Fourth Amendment rights (Count XVII).<sup>2</sup>

In ruling on the federal defendants' motion for summary judgment this Court arrived at the following conclusions that are pertinent to the present motion:

...Defendant Desrosiers swore out an affidavit before a clerk of a state district court, who the parties agree was authorized to, and did, issue a criminal complaint and warrant for Plaintiff's arrest. A district court clerk may prepare a complaint for a Class D or E crime such as the one Plaintiff was charged with, "upon the request of any law enforcement officer." 15 M.R.S.A. § 708. Although the term "law enforcement officer" is not defined for purposes of Title 15, the phrase "any law enforcement officer" appears broad enough to encompass federal law enforcement officers such

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<sup>2</sup> In his response Santoni makes it clear that this conspiracy count is tethered to his Fourth Amendment claim. (Mem. Resp. Summ. J. at 6.)

as postal inspectors. The provision discussed above that specifies the "federal officers" who may make arrests in Maine places no restriction on who may swear out criminal complaints, see 25 M.R.S.A. § 1502-A, and the Court has found no other indication that the phrase "any law enforcement officer" should be read to exclude federal law enforcement officers from serving as complainants in criminal matters.

Moreover, the clerk may issue a complaint to someone other than a law enforcement officer with the approval of the district attorney or his designee. 15 M.R.S.A. § 708. It is undisputed that Defendant Desrosiers discussed his investigation with ADA Benson before seeking the warrant and that he arranged for Heather to take a polygraph examination at Benson's request. It is also undisputed that the district attorney's office prosecuted Plaintiff on the charges reflected in the criminal complaint all the way to trial. There is no suggestion that any representative of the district attorney's office was surprised or troubled by the news that Defendant Desrosiers had sworn out a complaint against Plaintiff. The only reasonable inference from these facts is that the district attorney's office did, in fact, approve the prosecution. Thus, Defendant Desrosiers had statutory authority to swear out and receive the complaint, either as a law enforcement officer or as a private citizen under the direction of the district attorney's office.

Second, Defendant Desrosiers executed the warrant and arrested Plaintiff. Once the arrest warrant had issued, only an "authorized law enforcement officer" could execute it. (See Statement of Facts, Desrosiers Declaration at Ex. 6 (Docket # 7).); Me. R.Crim. P. 4(c)(1) ("The warrant shall be executed by any officer authorized by law.") As established above, Defendant Desrosiers was not "authorized" under Maine law to execute the warrant. However, Defendant Wing accompanied him to Plaintiff's house to accomplish the arrest. Maine law clearly permitted Defendant Wing, as a deputy sheriff, to execute outstanding arrest warrants. 15 M.R.S.A. § 602. In fact, it imposed a duty on him to do so. *Id.* It would be elevating form over substance to conclude that the validity of the arrest depended on which of the two men uttered the words "You are under arrest," or placed Plaintiff in handcuffs. Plaintiff was arrested on the basis of a validly issued arrest warrant in the presence of a county law enforcement officer who was required to execute that warrant. That Defendant Desrosiers was also present, even if he only had as much state law enforcement authority as an ordinary citizen, does not invalidate the arrest.

#### 4. The Warrant Was Based on Probable Cause

Heather reported to Defendant Desrosiers that Plaintiff had purposely attracted her attention while his pants were down and his hands were on his groin area. It is undisputed that Heather submitted to a polygraph examination based on this report, and the examiner concluded her report was truthful. There is no suggestion that Defendant Desrosiers fabricated or mischaracterized any of the information in his affidavit in

support of the complaint and arrest warrant. The Court agrees that the affidavit demonstrated probable cause to believe that Plaintiff had violated 17-A M.R.S.A. § 854, and Plaintiff does not contend otherwise.

....

Defendants Desrosiers and Wing arrested Plaintiff at home. Because the protections of the Fourth Amendment are at their height when the government seeks to intrude on an individual in his home, probable cause alone is insufficient to justify an in-home arrest on felony charges. See Payton v. New York, 445 U.S. 573, 589-90 (1980). In addition to probable cause, an officer must have an arrest warrant, exigent circumstances, or consent to enter. Id. at 576; Buenrostro v. Collazo, 973 F.2d 39, 43 (1st Cir.1992) (citing Payton, 445 U.S. at 590. As established above, however, Plaintiff was arrested on a validly issued and validly executed state arrest warrant. Thus, Defendant Desrosiers had both probable cause and a warrant, and the arrest did not violate the Fourth Amendment.

Santoni v. Potter, 222 F.Supp.2d 14, 22 -24 (D. Me. 2002) (footnotes omitted).

This is a legal decision that constitutes “the law of the case throughout the pendency of the litigation.” Ellis v. United States, 313 F.3d 636, 646 (1st Cir. 2002) (quoting Flibotte v. Pa. Truck Lines, Inc., 131 F.3d 21, 25 (1st Cir.1997)). Therefore, the conclusion that there was probable cause for the arrest warrant and that the arrest did not run afoul of the Fourth Amendment governs the resolution of this motion. Id.

Attempting to avoid the inevitable, Santoni points out that Wing did not see the arrest warrant, and was not aware of the specific facts supporting probable cause for the criminal charges. Santoni also attempts to establish facts to support a conclusion that Wing did not think that the arrest of Santoni was justified and that neither DeLong nor Wing received independent complaints of misconduct concerning Santoni. Further, Santoni states that these two defendants had indications from an individual -- friendly

with Wing, a postmaster, and a sheriff department employee – that this individual believed that the investigation was unfair.<sup>3</sup>

Notably, in a footnote in its earlier opinion, this Court made the following observation about Santoni's characterization of Wing's participation:

Plaintiff seeks to minimize Defendant Wing's role in the arrest with an affidavit swearing that Plaintiff heard Defendant Wing tell his attorney, "I am not the arresting officer[. T]he sheriff's department has nothing to do with this. This is the Desrosier's [sic] show." (See Santoni Aff. at ¶ 3 (Docket # 11).) Defendant Wing's reluctance to participate does not undercut the validity of the arrest, however, since he was aware of an outstanding arrest warrant, valid on its face, and had a legally imposed duty to execute it. 15 M.R.S.A. § 602.

Santoni, 222 F.Supp.2d at 23 n.7.

Whatever Wing's personal qualms might have been concerning the investigation and arrest of Santoni, he was justified in relying on Desrosiers' representation that he had a valid arrest warrant; he did not have to have a subjective belief that probable cause existed or have actually seen the warrant. See United States v. Hensley, 469 U.S. 221, 230-33 (1985); Whiteley v. Warden, 401 U.S. 560, 568 (1971); Rogers v. Powell, 120 F.3d 446, 453 (3d Cir. 1997). And, as this court has concluded that the warrant was indeed valid, no further inquiry into the predicates for the warrant must be made in this case. Compare Hensley, 469 U.S. at 233-36. And nothing more needs to be said on this score, save that, for reasons obvious, Santoni's count seeking punitive damages against Wing also falls by the wayside.

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<sup>3</sup> Santoni also lodges an attack on the defendants' version of the facts by noting that Wing, in his declaration, indicated that when first approached by Desrosiers he was aware of allegations about exposure incidents and that he told Desrosiers that he would make additional inquiries and provide names of people to interview. Santoni seems to want to suggest that Wing took a more active part in the investigation leading to the arrest. Drawing all reasonable inferences in Santoni's favor, the record evidence does not support a conclusion beyond that Wing helped facilitate interviews. Even if Wing did have a more active role in the investigation, I cannot see how this would change the complexion of this case.

With respect to the suit against DeLong in his official capacity, Santoni must proceed on a theory of municipal liability. See Brandon v. Holt, 469 U.S. 464, 471-73 (1985). Santoni's additional facts are aimed at establishing that there was a failure to train Wing on the proper procedures for assisting other law enforcement agencies with investigation and arrest. The Supreme Court has recognized that "under certain circumstances" a municipality may be liable under § 1983 for a failure to adequately train its police officers. City of Canton v. Harris, 489 U.S. 378, 380 (1989). However, in order to hold Somerset County liable for a failure to train, Santoni must establish that his Fourth Amendment right was infringed and that there was "a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." Id. at 385. Having determined that Wing did not violated Santoni's Fourth Amendment rights when he assisted in the investigation and Santoni's arrest, this court cannot but conclude that DeLong and Somerset County cannot be held liable for a failure to train.

The same holds true for Santoni's count alleging that Wing and DeLong conspired to violate Santoni's Fourth Amendment rights. Without there being a constitutional tort, this count has no independent viability. See Santoni, 222 F.Supp.2d at 28 (recognizing that civil conspiracy is not an independent tort in Maine and that liability can only attach if an independently recognized tort was actually committed).<sup>4</sup>

### *Conclusion*

For these reasons, I recommend that the Court **GRANT** defendants DeLong and Wing summary judgment on the remaining four counts of Santoni's complaint.

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<sup>4</sup> There is no need to discuss the parties' arguments concerning qualified immunity.

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.

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Margaret J. Kravchuk  
U.S. Magistrate Judge

**PORTLAND, STANDARD**

Dated May 2, 2003

**U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 1:02-cv-00003-GZS  
Internal Use Only**

SANTONI v. SHERIFF, SOMERSET, et al

Assigned to: Judge GEORGE Z. SINGAL

Referred to:

Demand: \$0

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 01/03/02

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights:

Other

Jurisdiction: Federal Question

**Plaintiff**

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V.

**Defendant**

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