

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000648-MR

TRISHA ANN WILLIAMS

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM EVANS LANE, JUDGE
ACTION NO. 10-CI-90269

RANDY CLINE AND
KEITH MCCORMICK

APPELLEES

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: STUMBO, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Trisha Ann Williams brings this appeal from a March 19, 2013, Findings of Fact, Conclusions of Law, and Judgment of the Rowan Circuit Court dismissing Williams' claims of negligence and malicious prosecution upon grounds of immunity. We vacate and remand.

Williams filed a complaint against Randy Cline, in his individual capacity and in his official capacity as a police officer of the Morehead Police Department, and against Keith McCormick, in his individual capacity and in his official capacity as a prosecutor of the Rowan County Attorney's Office. Specifically, Williams claimed that she was mistakenly arrested and jailed upon a criminal complaint charging her with first-degree trafficking in a controlled substance. Williams alleged three causes of action against the defendants – malicious prosecution, abuse of process, and negligence. By summary judgment orders entered January 14, 2011, and February 18, 2011, the circuit court dismissed all claims against Cline and McCormick upon the grounds of absolute immunity and qualified official immunity. Thereupon, Williams pursued a direct appeal (Appeal No. 2011-CA-000444-MR) to the Court of Appeals.

In Appeal No. 2011-CA-000444-MR, the Court of Appeals affirmed in part, reversed in part, and remanded to the circuit court. The Court of Appeals affirmed the circuit court's dismissal of the abuse of process claim but reversed upon its dismissal of malicious prosecution and negligence claims. Upon the malicious prosecution claim, the Court of Appeals noted that the charge of trafficking in a controlled substance was dismissed upon an agreement with the Commonwealth and with a stipulation by Williams that probable cause existed to believe she committed the crime of trafficking in a controlled substance. To prevail upon a malicious prosecution, the Court of Appeals determined that Williams must demonstrate that the criminal proceedings were instituted or

maintained without probable cause to believe she committed the crime of trafficking in a controlled substance. The Court of Appeals concluded that Williams' claim of malicious prosecution would fail if the agreement containing the stipulation of probable cause was valid. The Court of Appeals then determined that the validity of the agreement was dependent upon three factors as outlined in the Sixth Circuit Court of Appeals decision of *Coughlen v. Coots*, 5 F.3d 970 (6th Cir. 1993). The Court of Appeals remanded and specifically directed the circuit court to hold an evidentiary hearing to determine whether the agreement was valid by applying the three factors as set forth in *Coughlen*, 5 F.3d 970.¹ The Court of Appeals also reversed and remanded upon the claim of negligence. The Court of Appeals held that McCormick and Cline's actions were discretionary and remanded for the circuit court to determine whether they acted in good faith so as to be entitled to qualified official immunity.

Upon remand, the circuit court conducted an evidentiary hearing and rendered Findings of Fact, Conclusions of Law, and Judgment on March 19, 2013. In its judgment, the circuit court found that both Cline and McCormick acted in good faith and were cloaked with immunity. The circuit court dismissed Williams' claims of malicious prosecution and negligence. This appeal follows.

Williams contends that the circuit court erred by dismissing her claims of malicious prosecution and negligence against Cline and McCormick. We agree

¹ The circuit court was directed to determine whether "(1) the agreement was voluntary; (2) there was no evidence of prosecutorial misconduct; and (3) enforcement of the agreement will not adversely affect relevant public interests." *Coughlen v. Coots*, 5 F.3d 970, 974 (6th Cir. 1993).

to the extent that the circuit court did not follow this court's directions from the first appeal. We thus address each claim *seriatim*.

Malicious Prosecution Claim

In its March 19, 2013, judgment, the circuit court found that “the stipulation of probable cause was intelligent, knowledgeable, and voluntary.” In the previous appeal (Appeal No. 2011-CA-000444-MR), the Court of Appeals directed the circuit court to determine if the agreement with the stipulation of probable cause was valid by applying the three factors in *Coughlen*, 5 F.3d 970. However, on remand, the circuit court failed to analyze whether the agreement containing the stipulation of probable cause was valid by applying the three factors set forth in *Coughlen*, 5 F.3d 970. The circuit court's failure to do so constitutes reversible error.

The circuit court is bound by and must follow the mandate of an opinion of the Court of Appeals. This duty is not discretionary but rather is mandatory. *Buckley v. Wilson*, 177 S.W.3d 778 (Ky. 2005). Consequently, we vacate the circuit court's judgment as to the validity of the agreement with the stipulation of probable cause and remand for the circuit court to specifically address the three factors set forth in *Coughlen*, 5 F.3d 970, as previously mandated by our Court in Appeal No. 2011-CA-000444-MR.

Negligence Claim

As to Williams' negligence claim, the circuit court was directed by the Court of Appeals (Appeal No. 2011-CA-000444-MR) to determine whether

McCormick and Cline acted in good faith so as to be entitled to qualified official immunity. In its March 19, 2013, judgment, the circuit court concluded that both McCormick and Cline acted in good faith and were entitled to qualified official immunity. For the reasons set forth below, we believe the circuit court committed an error of law.

To determine whether an official acted in good faith for qualified immunity purposes, our Supreme Court has explained that good faith has both an objective component and a subjective component:

The objective element involves a presumptive knowledge of and respect for “basic, unquestioned constitutional rights.” [*Wood v. Strickland*, 420 U.S. 308, 322, 95 S. Ct. 992, 1001, 43 L.Ed.2d 214 \(1975\)](#). The subjective component refers to “permissible intentions.” [*Ibid.*](#) Characteristically, the Court has defined these elements by identifying the circumstances in which qualified immunity would *not* be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official “*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], *or* if he took the action *with the malicious intention* to cause a deprivation of constitutional rights or other injury....” [*Ibid.*](#) (emphasis added).

[*Yanero v. Davis*, 65 S.W.3d 510, 523 \(Ky. 2001\)](#) (quoting [*Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#)). As further elucidated, the

Supreme Court explained:

Objectively, a court must ask whether the behavior demonstrates “a presumptive knowledge of and respect for basic, unquestioned constitutional rights.” [*Id.*](#) (quoting [*Harlow*, 457 U.S. at 815](#)). Subjectively, the

court's inquiry is whether the official has behaved with “permissible intentions.” *Id.* (quoting [Harlow, 457 U.S. at 815](#)).

Bryant v. Pulaski County Det. Center, 330 S.W.3d 461, 466 (Ky. 2011). Thus, to conclude that an official acted in good faith for qualified official immunity, the court must examine both the objective and subjective components of good faith.

In its March 19, 2013, judgment, the circuit court failed to address both aspects of good faith (objective and subjective) as required by the Supreme Court in *Yanero*, 65 S.W.3d 510. A court must determine whether the official acted both objectively and subjectively in good faith in order to be entitled to qualified official immunity. Thus, we vacate and remand for the circuit court to specifically determine whether McCormick and Cline acted both objectively and subjectively in good faith. To assist the court in this regard, the circuit court is cited to *Yanero*, 65 S.W.3d 510, and its progeny.

Upon remand, we would emphasize to the circuit court that it is not trying this case as fact-finder under Kentucky Rules of Civil Procedure (CR) 52.01. Rather, this matter came before the circuit court initially upon a motion for summary judgment. CR 56. The circuit court is limited to determining whether material issues of fact exist and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The case was remanded to the circuit court by the previous panel of this Court to conduct evidentiary proceedings to address the elements of the defenses asserted by appellees upon which the summary judgment was granted. This Court has

concluded that the circuit court failed to properly address the prior directives and thus remand for further proceedings. If material facts are disputed, the circuit court should not issue findings of fact but rather, must deny granting a summary judgment. The disputed factual issues will then be resolved at a trial.

To summarize, we vacate and remand the circuit court's March 19, 2013, judgment. Upon remand, the circuit court shall follow the mandate of this Court's previous Opinion in Appeal No. 2011-CA-000444-MR and determine whether the agreement stipulating probable cause was valid by applying the three factors set forth in *Coughlen*, 5 F.3d 970. Further, upon remand, the circuit court shall determine whether McCormick and Cline acted objectively and subjectively in good faith so as to be entitled to qualified official immunity.

For the foregoing reasons, the judgment of the Rowan Circuit Court is vacated and remanded for proceedings consistent with this opinion.

STUMBO, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

THOMPSON, JUDGE, DISSENTING: Respectfully, I dissent. I believe the circuit court acted appropriately in light of our previous instructions in *Williams v. Cline*, 2011-CA-000444 (Ky. App. 2011) (unpublished) (footnote omitted)² by holding an evidentiary hearing and finding qualified immunity.

² This opinion was ordered not to be published by the Kentucky Supreme Court.

On the malicious prosecution claim, we reversed and remanded for an evidentiary hearing and a determination of whether the release-dismissal agreement was enforceable and, thus, a defense under the *Coughlen v. Coots*, 5 F.3d 970, 974 (6th Cir. 1993), factors: “(1) the agreement was voluntary; (2) there was no evidence of prosecutorial misconduct; and (3) enforcement of the agreement will not adversely affect relevant public interests.” The opinion explained the trial court’s responsibilities on remand as follows:

If the court chooses not to allow the dismissal agreement as a defense based upon its findings, it shall only consider actions taken by Cline or McCormick during the period in which they were acting as investigators as delineated in *McCollum [v. Garrett]*, 880 S.W.2d 530 (Ky. 1994), *supra*, and apply a qualified immunity analysis. Their actions taken subsequent to formal prosecution are cloaked with absolute immunity. *Id.*

Williams, 2011-CA-000444 at 10.

On the negligence claim, our Court determined McCormick and Cline’s actions during the investigation would be protected under qualified immunity so long as they acted in good faith and we reversed and remanded for the court to consider this issue. We noted there was a question as to “whether Cline and McCormick learned that Williams ‘was misidentified as the offender during the investigation and prior to prosecution, but nevertheless initiated the prosecution.’” *Id.* at 11 (quoting *McCollum*, 880 S.W.2d at 535). Therefore, we instructed the court to “consider whether the Commonwealth was in possession of

audio/video recordings that were exculpatory yet knowingly proceeded against Williams anyway.” *Id.* at 11-12.

Following a four hour long evidentiary hearing, the circuit court determined Cline and McCormick acted in good faith as investigators and granted summary judgment on both claims.

On appeal, Williams’ only basis for arguing bad faith is her claim that Cline and McCormick violated her “constitutional right not to be arrested, incarcerated and prosecuted for a crime she did not commit.” However, there is no such right. While there is a Fourth Amendment constitutional right to be free from unreasonable searches and seizures, even when considering the evidence in the most favorable light to Williams, Cline and McCormick’s actions did not violate this right.

“The Constitution does not guaranty that only the guilty will be arrested.” *Baker v. McCollan*, 443 U.S. 137, 145, 99 S. Ct. 2689, 2695, 61 L.Ed.2d 433 (1979). An arrest of the wrong person does not violate the Fourth Amendment where officers reasonably believe in good faith that the individual arrested is the one sought. *Hill v. California*, 401 U.S. 797, 802-806, 91 S. Ct. 1106, 1110-1111, 28 L.Ed.2d 484 (1971). Because there is no clear constitutional right not to be arrested, detained or prosecuted while innocent, qualified immunity protects police officers who have exculpatory evidence, yet fail to investigate further or have the suspect released. *Brady v. Dill*, 187 F.3d 104, 115-116 (1st Cir.

1999); *Sanchez v. Swyden*, 139 F.3d 464, 466-469 (5th Cir. 1998); *Kugle v. Shields*, 62 F. 3d 395, 3-5 (5th Cir. 1995) (unpublished).

A party's conclusory allegations and subjective beliefs do not create a genuine issue of material fact sufficient to defeat a properly supported motion for summary judgment. *Harstad v. Whiteman*, 338 S.W.3d 804, 812 (Ky. App. 2011); *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007). There were no material issues of fact to preclude summary judgment.

On remand, the circuit court heard testimony from Cline and McCormick, but not from Williams. The arrest warrant, which was issued a year after a videotaped controlled buy was conducted by an informant, was properly supported by probable cause. Cline's affidavit was sufficient to establish a crime had been committed by Trisha Wallace based upon the confidential informant's identification of the suspect by that name. Williams was arrested pursuant to a facially valid warrant for Trisha Ann Wallace (Williams' maiden name). She was only detained for a matter of hours before she was released on her own recognizance.

Pursuant to the unrefuted testimony of Cline and McCormick, the circuit court found they had no suspicion the wrong person was arrested until Cline reviewed the videotape of the controlled buy just prior to and in preparation for the preliminary hearing. Once he saw the videotape, Cline became concerned the wrong person was arrested and immediately informed McCormick of his concerns.

Because Cline and McCormick did not know they had possibly arrested the wrong person until this time, they acted in good faith in their prior investigation. While Cline identified the incorrect Trisha Wallace when he had information that could have led to the correct one, Williams cannot establish he acted in bad faith while investigating because his actions did not violate any clearly established constitutional rights. The evidence produced from the evidentiary hearing conclusively established Cline and McCormick were unaware Williams was not the suspect during the investigation. Therefore, it is irrelevant whether the circuit court erred in failing to apply the *Coughlen* factors because Williams is precluded from recovering pursuant to qualified immunity whether or not the release-dismissal agreement was enforceable. Accordingly, I would affirm.

BRIEFS FOR APPELLANT:

J. Dale Golden
Joshua D. Hicks
Langdon Stites Ryan
Lexington, Kentucky

ORAL ARGUMENT FOR
APPELLANT:

J. Dale Golden
Lexington, Kentucky

BRIEF and ORAL ARGUMENT FOR
APPELLEE RANDY CLINE:

James H. Moore, III
Ashland, Kentucky

BRIEF FOR APPELLEE KEITH
MCCORMICK:

William A. Hoback
Mark S. Fenzel
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLEE KEITH MCCORMICK:

William A. Hoback
Louisville, Kentucky