

June 2, 2004

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-20877
Summary Calendar

ADRIAN WALLER,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA; ET AL.

Defendants,

UNITED STATES OF AMERICA,

Defendant-Appellee.

ADRIAN WALLER,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-1014
USDC No. H-02-CV-3235

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Adrian Waller appeals the dismissal after a bench trial of his Federal Tort Claims Act (FTCA) suit against the Government for malicious prosecution stemming from his arrest after a series of bank robberies were committed. Waller argues that the district court erred in concluding that probable cause existed to arrest him because there was no "real" identification of him as the man who robbed the Citizens National Bank (CNB). Because he addresses only his malicious prosecution claim, he waives any claims for false arrest or false imprisonment. See Cinel v. Connick, 15 F.3d 1338, 1345 (5th Cir. 1994).

To establish a malicious criminal prosecution claim under Texas law, Waller was required to establish, among other things, the absence of probable cause for the proceedings. See Brown v. United States, 653 F.2d 196, 198 (5th Cir. 1981); Richey v. Brookshire Grocery Co., 952 S.W.2d 515, 517 (Tex. 1997). The district court's determination that probable cause existed for Waller's arrest was not error. See Brown v. Nationsbank Corp., 188 F.3d 579, 586 (5th Cir. 1999). Robin Robb, Waller's ex-wife, identified Waller to Federal Bureau of Investigation Agent Edward D. Galloway as the robber in an attempted Wells Fargo Bank robbery from surveillance photographs. A victim teller

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

identified Waller to Galloway as the robber in the attempted Wells Fargo Bank robbery from clear photographs of six men including Waller. Galloway received information from a detective at the Sugar Land Police Department that victim tellers at the CNB robbery positively identified the Wells Fargo Bank robber as the CNB robber based on surveillance photographs taken during the Wells Fargo Bank attempted robbery. Consequently, Galloway reasonably could have believed that a crime had been committed given the facts as the complainant, i.e., Galloway, honestly and reasonably believed them to be before the criminal proceedings were instituted. See Richey, 952 S.W.2d at 517. Because probable cause existed for the proceedings against Waller, Waller failed to prove his malicious prosecution claim. See id. The district court's judgment is AFFIRMED.