

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-5740  
Summary Calendar

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KERRY YOUNG, JR.,

Plaintiff-Appellant,

VERSUS

SGT. SAILOR, SAPD, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
91 CV 702

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July 16, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Kerry Young, Jr., filed a § 1983 complaint against "Sergeant Sailor", Detective Rigsby and Detective Kirby<sup>2</sup> of the San Antonio Police Department. Young alleges that "Sailor", and other unidentified San Antonio police officers, questioned him about a robbery. Young asserts that he was stopped, handcuffed, and taken to the police station against his will, photographed, fingerprinted, questioned for about two hours about a robbery that

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>2</sup> Young subsequently dismissed Kirby.

happened while he was in jail on an unrelated charge, then returned to the same location from which he was taken.

Detective George Saidler answered that there was no "Sergeant Sailor" in the San Antonio Police Department. Further, Saidler asserted that he neither arrested nor detained Young on July 21, 1989. The district court sent a questionnaire to Young in an attempt to draw out more facts about the incident. Young responded positively to the question "is the 'Sgt. Sailor' to whom you refer in your complaint the same person as Detective George Sadler (sic) of the San Antonio police?" In his responses to the questionnaire, Young also asserted again that he had been photographed and fingerprinted and that these documents should be in the files of the San Antonio Police Department.

Saidler and Rigsby moved for summary judgment. The Defendants conceded for purposes of summary judgment that Young had been briefly detained on July 21, 1989; however, they denied any involvement. This motion was supported by the affidavit of Yolanda O'Bar, the services administrator of the San Antonio Police Department and Rigsby. O'Bar swore that the payroll records for the department showed that George Saidler was not on duty on the 20th or the 21st of July. Rigsby swore that Young was not formally arrested and that he had no knowledge, but could not deny that, "Young might have been questioned by other officers." In the motion, the Defendants noted that "Plaintiff was not formally arrested on the day in question, the City of San Antonio has no records confirming the events of which Plaintiff complains". Since

he was not arrested, no police reports or other documents are found by searching under the name of plaintiff. This statement is supported by Rigsby's affidavit that "I know he was not formally arrested." Young submitted no affidavits, and did not specifically address the basis of liability against Saidler and Rigsby.

The magistrate judge, in a very thorough report, recommended that the motion be granted with respect to both Defendants in their official capacities and with respect to Rigsby in his individual capacity but that the motion be denied with respect to the claim against Saidler in his individual capacity. The district court granted the motion in its entirety.

#### DISCUSSION

This Court conducts a de novo review of a district court's grant or denial of summary judgment, Reese v. Anderson 926 F.2d 494, 498 (5th Cir. 1991), under the rubric of Fed. R. Civ. P. 56(c). L & B Hospital Ventures, Inc. v. Healthcare Int'l, Inc., 894 F.2d 150, 151 (5th Cir.), cert. denied, 498 U.S. 815 (1990).

On appeal, Young argues that the district court should not have granted the Defendants' motion for summary judgment because there was a genuine issue for trial based on Saidler's and Rigsby's involvement in his alleged arrest.

Young's averments and Saidler's offerings contradict each other as to Saidler's involvement. Young has presented enough to create a genuine issue of fact as to whether Detective Saidler carried out the allegedly illegal arrest. Therefore, the grant of summary judgment in favor of Saidler in his individual capacity

must be reversed and the case remanded for appropriate disposition.

With respect to Detective Rigsby, Young has failed to allege any specific facts showing that the detective was personally involved in the arrest. A defendant cannot be held liable under § 1983 on theory of vicarious liability, including respondeat superior. Baskin v. Parker, 602 F.2d 1205, 1207-08 (5th Cir. 1979). "Personal involvement is an essential element of a civil rights cause of action." Thompson v. Steele, 709 F.2d 381, 382 (5th Cir. ), cert. denied, 464 U.S. 897 (1983). On appeal, young specifically noted that he did not complain that Detective Rigsby questioned him at all, he simply complained that "Detective Rigsby was at the scene of the unlawfully (sic) arrest on July 21, 1989." This is not sufficient to rebut Rigsby's affidavit that he had no involvement in any questioning of Young that may have taken place.

Young also brought suit against both Saidler and Rigsby in their official capacities. As both of these Defendants are police officers for San Antonio, Texas, these claims are no more than claims against the city. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985).

AFFIRMED in part and REVERSED and REMANDED in part.