

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5567

CHRISTI L. KUGLE,

Plaintiff-Appellant,

versus

BRUCE SHIELDS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:91 CV 630)

July 7, 1995

Before DAVIS, BARKSDALE and STEWART, Circuit Judges.

CARL E. STEWART, Circuit Judge:*

Plaintiff, Christi Lyn Kugle, appeals the Fed. R. Civ. P. 12(b)(6) dismissals and summary judgments granted in favor of the defendants in her 42 U.S.C. § 1983 action, in which she sought damages for injuries allegedly resulting from her unlawful arrest for delivery of marijuana. Kugle bases her claims upon the Fourth Amendment, the Due Process clause and common law intentional torts, claiming that she was illegally seized because her arrest warrant was facially invalid and was *ipso facto* invalid because it was not

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

supported by probable cause. She also claims that the arresting officers unlawfully seized her because they entered her home to effectuate the arrest. We AFFIRM.

FACTS AND PROCEEDINGS BELOW

This case arises from the arrest of Christi Lyn Kugle pursuant to an arrest warrant bearing her full name, although she was not the real suspect. Kugle's arrest resulted from two related investigations conducted by the Texas Rangers, the Henderson County, Texas Sheriff's Department, the Athens, Texas Police Department, and the Anderson-Henderson Country Drug Investigation Unit ("DIU"). Pursuant to one investigation, Officer Roy Graham of the DIU conducted surveillance of a mobile home near Athens, Texas, in which the occupants were suspected to be engaging in amphetamine and/or methamphetamine laboratory activity. During the surveillance, Graham determined the identities of these occupants. Pursuant to the other investigation, Officer Bruce Shields went undercover to gain the confidence of the mobile home's residents in an effort to uncover the occupants' suspected marijuana trafficking. A very tall woman (5'10" - 6' in height) with long black hair and brown eyes delivered marijuana to Shields. Although the woman's real name was probably Christy Shelton (or Christy Aaron), she somehow was identified as "Christi Kugle."

At some point, Officer Shields obtained a copy of Kugle's driver's license, which contained her photograph and described Kugle as 5'1" tall with blond hair and green eyes, residing at an address across town from the mobile home. Kugle alleges that

Shields initially noted the discrepancies between her and the woman from whom he purchased the marijuana, and yet he never sought to investigate the problem. Kugle therefore alleges that Shields was aware that there was an identification problem but proceeded to take steps to obtain an indictment anyway under the name "Christi Lyn Kugle." The mistaken identity most likely resulted from the fact that the two women previously had the same married surname "Smith."¹

The Henderson County Grand Jury subsequently returned two indictments against Kugle for illegal drug-related activity based upon Shields' testimony that a tall, thin female with shoulder-length black hair named Christi Lyn Kugle had sold him the marijuana. Pursuant to the indictments, the district clerk issued two capias warrants containing only the name "Christi Lyn Kugle" and forwarded them to the Henderson County Sheriff's Office for execution. Officers Tom Underhill, James "Bubba" Martin and Robert Butler arrested Kugle at her home, entering her home but not conducting a search. They transported Kugle to the Athens City Jail and later transferred her to the Henderson County Jail. Among other alleged humiliations, Kugle claims that she was strip-searched and that she underwent a body cavity check while in custody. Upon Kugle's repeated protestations of innocence, Sheriff Alfred summoned Officer Shields to the jail shortly after Kugle's

¹However, this does not explain how the difference in the spelling of the first name went unnoticed, i.e., "Christi" versus "Christy."

arrival. When Shields confirmed that Kugle was not the suspect, Sheriff Alfred immediately released her from custody.

Kugle filed her original complaint on November 8, 1991, pursuant to 42 U.S.C. § 1983, alleging false arrest and incarceration against arresting officers Underhill, Martin, and Butler, and the investigating officer Shields, all in their individual capacities; Sheriff H.B. ("Slick") Alfred, in both his official and individual capacities; and Henderson County, Texas. She filed a First Amended Complaint on November 12, 1991, and a Second Amended Complaint on January 2, 1992. The district court dismissed the claims against Underhill, Martin and Butler on February 21, 1992, and against Shields on May 13, 1992. Kugle filed a motion for reconsideration of the claims against Shields. After taking Shields' deposition, Kugle filed a Third Amended Complaint on March 1, 1993, naming Shields, Graham, Underhill, Martin, Butler, Sheriff Alfred, Henderson County, and the DIU. She again sought reconsideration of the claims against Shields, Underhill, Martin, and Butler and was denied.² Kugle then filed a second lawsuit against Officer Graham and the DIU, which was consolidated with the previous lawsuit. The district court

²The district court's denial of Kugle's motion to reconsider the dismissal of Shields, Underhill, Martin and Butler technically does not constitute a dismissal of Kugle's claims reasserted against these defendants in her Third Amended Complaint. However, in denying Kugle's motion to reconsider, the district court implicitly rejected the notion that Kugle's Third Amended Complaint stated a claim against these defendants. Because Kugle has not asserted the continued viability in the lower court of any claim against these defendants raised in the Third Amended Complaint, we will consider the claims stated therein as having been dismissed by the district court as well.

dismissed the claims against Graham on November 3, 1993 and rendered summary judgment in favor of Sheriff Alfred, Henderson County and the DIU on November 19, 1993. The district court also dismissed all of the state law claims against the defendants on the basis that Texas state courts have generally looked to the federal courts in developing the limits of qualified immunity.

ANALYSIS

All injuries outlined in Kugle's complaint stem from her arrest and subsequent incarceration for delivery of marijuana. Kugle has made it clear that she bases her claims upon unlawful arrest in violation of her constitutional rights. The Fourth and Fourteenth Amendments guard against arrest without probable cause. Hand v. Gary, 838 F.2d 1420 (5th Cir. 1988).

The district court dismissed the claims against all the investigating officers and the arresting officers pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, on the basis of the officers' qualified immunity. We review a dismissal pursuant to Rule 12(b)(6) de novo. To survive a motion to dismiss, a plaintiff must state facts in the complaint which, if proven, would overcome the qualified immunity defense. Babb v. Dorman, 33 F.3d 472, 476 (5th Cir. 1994). For purposes of Rule 12(b)(6), allegations and well-pleaded facts contained in a plaintiff's complaint are taken as true. Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806 (1985)

To overcome a qualified immunity defense, a plaintiff must: (1) establish a violation of a clear constitutional right; and (2)

show that the official's conduct was objectively unreasonable in light of clearly established law at the time of the incident at issue and the information the official possessed. Salas v. Carpenter, 980 F.2d 299, 305-06 (5th Cir. 1992). This standard "'gives ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" Hunter v. Bryant, 112 S.Ct. 534, 537 (1991) (internal quotation omitted).

Kugle's primary attack upon her arrest stems from the fact that the arrest warrants did not contain any identifying information about her other than her first, middle, and last name. She argues that the warrants therefore did not conform to the Fourth Amendment's requirement of particularity.³ She also argues that she was arrested without probable cause.

Dismissal of Claims Against Underhill, Martin and Butler

Kugle alleges that Officers Underhill, Martin and Butler violated her Fourth Amendment rights by executing warrants that failed to describe her with particularity and by entering her home without a search warrant to effectuate her arrest. Even if the arrest warrant was constitutionally defective, an officer executing the warrant is entitled to qualified immunity if the warrant is regular on its face and the officer does not act in bad faith or with notice of an infirmity of the warrant. See Hamill v. Wright,

³The Fourth Amendment states, in pertinent part, that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

870 F.2d 1032, 1036 (5th Cir. 1989); Turner v. Raynes, 611 F.2d 92, 93 (5th Cir. 1980). Kugle contends that this warrant, which only identified her by name, was not regular on its face. The authorities do not support her argument. Both Texas and federal law require only that a warrant name the person to be arrested.⁴ Thus, this warrant was regular on its face. Moreover, an arrest warrant that is regular on its face carries with it the limited authority to enter a dwelling in which the arrestee lives when there is reason to believe that the arrestee is within the dwelling. See Payton v. New York, 445 U.S. 573 (1980).

A careful review of Kugle's petition reveals that she makes no factual allegation to establish that the arresting officers were not acting in good faith when they executed the warrant or that they had a good reason to believe that the name on the arrest warrant was not the name of the true suspect. That being the case, the law does not require an arresting officer to go behind the warrant and question its validity.⁵ Turner, 611 F.2d at 93.

⁴ Texas Code Crim. Proc. art. 15.02 requires only that a warrant "name the person whose arrest is ordered or, if unknown, describe him." Similarly, Fed. R. Crim. P. 4(c)(1) states that a warrant "shall contain the name of the defendant, or if his name is unknown, any name or description by which he can be identified with reasonable certainty."

⁵Kugle makes much of the fact that requiring only a name on a warrant could result in the arrest of the wrong person when more than one person shares the same name. United States v. Doe, 703 F.2d 745 (3rd Cir. 1983) (the name "John Doe a/k/a Ed" on a warrant was not particular enough to satisfy the Fourth Amendment because there were probably thousands of people with that first name living in the Pittsburgh area). However, as the district court correctly pointed out, that is not what happened here. There is only one person named "Christi Lyn Kugle" living in plaintiff's vicinity. The true suspect is not named Christi Kugle. Thus, plaintiff's

Although the arrest and entry might have been avoided had the officers sought further description, "the court should ask whether agents acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed." Hunter, 112 S.Ct. at 537; Blackwell v. Barton, 34 F.3d 298, 304 (5th Cir. 1994). Because a reasonable officer would have believed that the arrest warrant and the entry into Kugle's home were lawful in light of clearly established law, the district court properly dismissed the claims against Underhill, Martin and Butler.

Dismissal of the Claims against Shields

We likewise conclude that even if the warrant was defective, Officer Shields' behavior was also objectively reasonable in light of clearly established law. Kugle alleges that Shields derived her name through "faulty computer generated searches of government records and/or poor record keeping and/or sloppy police investigative efforts" and then gave her name to the grand jury.

Kugle further alleges that, prior to his testimony before the grand jury, Shields knew that the photograph and description contained on the photocopy of 'Christi Lyn Kugle's' driver's license did not match the person whom he had been investigating. She also alleges that he had communicated this knowledge to an officer with the Texas Rangers, but that no further investigation was conducted. She alleges that he had additional reason to believe that the person being investigated was not named Christi

argument is inapposite.

Lyn Kugle because he had heard her answer to the name of "Smith" while he was operating undercover. Nonetheless, she alleges that Shields failed to "properly use" this information when he testified to the grand jury that the person who had committed the drug offenses was a female 5'10" to 6'-0" tall with long, straight black hair, and that she was named Christi Kugle.

Shields argues that under Rodriguez v. Ritchey, 556 F.2d 1183, 1193 (5th Cir. 1977), cert. denied, 434 U.S. 1047 (1978), he is insulated from liability because the grand jury's indictment broke the causal chain between his investigation and the arrest. However, *to the extent Ritchey* stands for the proposition that an officer in Shields' position is absolutely immune from suit, it was impliedly overruled by Malley v. Briggs, 475 U.S. 335 (1986). In Malley, an officer who requested arrest warrants where probable cause was lacking argued that he was absolutely immune because the magistrate's independent determination of probable cause broke the causal chain. The Supreme Court rejected this argument, holding that the officer was only qualifiedly immune. The Court articulated the standard for qualified immunity as

whether a reasonably well-trained officer . . . would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant. If such was the case, the officer's application for a warrant was not objectively reasonable, because it created the unnecessary danger of an unlawful arrest.

Id. at 344.

This court has held that although officers are qualifiedly immune if they present the facts supporting the warrant to an

intermediary whose independent decision breaks the causal chain, officers who maliciously or reckless misrepresent or omit material information in presenting such information are not shielded from liability. See e.g., Hale v. Fish, 899 F.2d 390 (5th Cir. 1990) (denying qualified immunity where affidavit submitted to magistrate contained material misstatements and omission of exculpatory evidence of such character that no reasonable officer would have submitted it); Hand, 838 F.2d at 1428 ("Any misdirection of the magistrate or grand jury by omission or commission perpetuates the taint on the original official behavior.") But we have held that negligent conduct leading up to the issuance of a warrant or grand jury indictment is not actionable. See, Campbell v. San Antonio, 43 F.3d 973 (5th Cir. 1995) (plaintiff's arrest resulting from negligent identification procedures versus intentional misidentification was not actionable; Herrera v. Millsap, 862 F.2d 1157 (5th Cir. 1989) (plaintiff's arrest resulting from police negligence in misspelling suspect's name on materials submitted for indictment and warrant was not actionable).

Kugle's complaint does not allege that Officer Shields acted intentionally, maliciously or recklessly. Rather, Kugle's description of Officer Shields' conduct amounts to no more than negligence. Because negligence is insufficient to defeat qualified immunity in this context, the district court properly dismissed Kugle's claims against Officer Shields.

Claims Against Officer Graham

Kugle alleges that Officer Graham identified the suspect as Christi Kugle early in the investigation, told Shields that Kugle previously had been "handled" by the Athens Police Department, and gave Shields a report containing conflicting information as to the suspect's identity. Kugle alleges that Graham's failure to verify the suspect's identity caused the false arrest.

At most, Kugle's allegations support negligent investigative work, which for the reasons stated above fails to overcome a qualified immunity defense. Thus, the district court properly dismissed the claim against Graham.

Did the District Court Properly Grant Summary Judgment for Sheriff Alfred, Henderson County, and the DIU?

Sheriff Alfred did not participate in the investigation until after Kugle's arrest. Upon Kugle's protestations of innocence, Alfred summoned Officer Shields to the jail. Kugle was released from custody shortly after Shields confirmed that she was not the true suspect. Kugle was arrested and released within the same day. Even had we held that the warrant was invalid, Kugle failed to establish that Sheriff Alfred violated her Fourth Amendment rights. A claim exists against an officer maintaining custody of a person arrested pursuant to a facially valid warrant only if the officer fails to release the arrestee after receiving information "upon which to conclude beyond a reasonable doubt" that she is not the real suspect. Duckett v. City of Cedar Park, 950 F.2d 272, 279 (5th Cir. 1992). Any conduct prior to obtaining this knowledge is

objectively reasonable. Id. See also, Baker v. McCollan, *supra*. In Baker, the Supreme Court explained that detaining a person pursuant to a valid arrest warrant does not usually give rise to a constitutional claim; however, continued detention in the face of repeated protests of innocence will, after the lapse of a certain amount of time, deprive the accused of "liberty . . . without due process of law." Ibid, 99 S.Ct. at 2694. In Baker, the detention of the wrong person for three days despite repeated protestations of innocence was found not to constitute a due process violation. Thus, Kugle's release within the same day of arrest does not constitute a constitutional deprivation in light of the valid arrest warrant.

To establish the liability of Sheriff Alfred in his official capacity, the County, and the DIU, Kugle would have to show (1) a violation of a constitutional right and (2) that the violation was caused by an official custom or policy.⁶ A single incident of alleged constitutional violation suffices if it was caused by an existing policy. Pembaur v. City of Cincinnati, 475 U.S. 469 (1986). Kugle alleges that Alfred maintained policies of serving warrants without particularization of the parties named therein;

⁶The claims against the Sheriff in his official capacity and against the County and the DIU constitute suits against the state. However, these defendants have not alleged whether Eleventh Amendment sovereign immunity would apply in this § 1983 action; thus, we consider the claims against them on their merits. *Cf. Adams v. Myers*, 721 S.W.2d 447, 449 (Tex. Ct. App. -- Tyler 1986)(No waiver of sovereign immunity by State of Texas for § 1983 actions in federal court.) *Accord, Astley v. Bekins Van Lines Co.*, 673 F.Supp. 876, 877 (E.D. Tex. 1987); Taylor v. Seamans, 640 F.Supp. 831 (E.D. Tex. 1987).

authorizing entry into homes pursuant to such arrest warrants; and serving warrants without judicial determination as to the proper identity of the parties named therein.

Even had we held today that a warrant bearing only a name was constitutionally deficient only to the extent that there is a reasonable suspicion that the name is incorrect, Kugle would have to show that Alfred maintained an affirmative policy of executing warrants bearing only a name despite such suspicion. See Wanger, *supra*, 621 F.2d at 683. (evidence was sufficient to show that sheriff maintained a policy of conducting full searches of homes for suspect, based solely on an arrest warrant bearing a name and address, and of serving arrest warrants on midnight shift without first attempting to serve them by day). Kugle merely alleges that Alfred's supervisory control of the DIU makes him liable for the mishaps that led to her arrest. She does not allege facts showing an affirmative policy violating the Fourth Amendment attributable to the County, the DIU, or Sheriff Alfred, nor does she allege that a failure to maintain a more protective policy was "deliberately indifferent" to her rights. See City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989) (requiring deliberate indifference in failure to train cases). Thus, the district court properly granted summary judgment for Sheriff Alfred, Henderson County and the DIU.

Whether the District Court properly rejected Kugle's state law claims

The district court rejected all of Kugle's state law claims on the basis that the defendants are protected from liability on those

claims on the same basis that provides immunity from her federal claims. Moreover, to the extent that Kugle has sued Sheriff Alfred in his official capacity, the County, and the DIU, those claims constitute actions against the State. Kugle's state claims are based upon intentional tort. None of her claims fall within the statutory waiver of immunity under the Texas Tort Claims Act. Tex. Civ. Prac. & Rem. Code Ann. § 101.057(2) of the Act proscribes liability for claims arising out of "false imprisonment, or any other intentional tort." The district court correctly rejected Kugle's state law claims.

Whether the District Court abused its discretion in denying Kugle's Motion for Continuance

Kugle argues that the district court abused its discretion by denying her Rule 34 discovery request and her Rule 56(f) motion for continuance. In her motion for continuance, Kugle requested that the court not consider Alfred, Henderson County, and the DIU's motion for summary judgment until she acquired the DIU file on the drug investigation, the criminal files of Christy Shelton, and the depositions of the DIU Commander, Christy Shelton and Thomas Underhill.

Kugle argues that the Civil Justice Expense and Delay Reduction Plan (the "Plan"), adopted by the Eastern District of Texas pursuant to the Civil Justice Reform Act of 1990, 28 U.S.C. § 471 et seq., somehow caused the district court to deny both motions. She claims that the Plan prevented her from obtaining discovery to which she was otherwise entitled under the Federal

Rules, and that the district court's denial of her motions failed to remedy the problem.

However, as the defendants argue, the Plan--which requires voluntary disclosure of tangible evidence "likely to bear significantly on any claim or defense"--supplements the Rules and does not prevent discovery. Kugle has not explained how the Plan prevented her from obtaining discovery to which she normally would be entitled, nor does she indicate that the district court otherwise abused its discretion. A district court has wide discretion in determining the scope of discovery, especially given the policy of resolving qualified immunity questions "on the face of the pleadings and with limited resort to pre-trial discovery." James v. Sadler, 909 F.2d 834, 838 (5th Cir. 1990). Kugle's argument that the district court abused that discretion is unpersuasive. We reject Kugle's argument.

CONCLUSION

For the foregoing reasons, the summary judgments and 12(b)(6) motions granted in favor of the defendants are AFFIRMED.