

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5588
Summary Calendar

CHARLES EUGENE MATHEWS,

Plaintiff-Appellant,

versus

RICHARD LUNA, Officer,
Badge No. 594,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(4:92-CV-263)

(June 3, 1994)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:*

Charles Mathews appeals an adverse summary judgment in his 42 U.S.C. § 1983 civil rights suit for false arrest and false imprisonment against Richard Luna, a Carrollton, Texas police officer. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Mathews' daughter Renee had a financial dispute with her roommate Melisa Thomas and she changed the locks on their shared apartment. Attempts by the apartment manager to contact Renee Mathews failed and Charles Mathews and his wife were called to the apartment to meet Melisa Thomas, her mother, and her uncle. The Carrollton police were called and Officer Anderson was dispatched to the scene. Anderson informed Melisa Thomas that she would need a court order to enter the apartment. When Anderson left, Mathews got a shotgun from his truck and carried it, within sight of Melisa Thomas and her relatives, to the patio of the locked apartment. Melisa Thomas again called the police to the scene, claiming that they had been threatened by a "crazy man with a gun." Officer Luna responded and Melisa Thomas and her relatives told him that Mathews had waved a shotgun at them and, using profanity, said: "Let them try to mess with us now." Luna saw Mathews with the shotgun and arrested him for the misdemeanor offense of disturbing the peace. The district attorney declined to prosecute. Mathews filed the instant section 1983 civil rights complaint against Officer Luna, alleging false arrest and false imprisonment as well as several state law claims. The district court granted summary judgment to Luna, dismissing the federal claims with prejudice and the state law claims without prejudice. Mathews timely appealed.

Analysis

We review the grant of summary judgment *de novo*, affirming the order where, considering all facts and inferences in the light most

favorable to the nonmovant, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.¹ Mathews argues that his warrantless arrest was illegal,² Officer Luna did not have probable cause for his arrest, and Officer Luna was not protected by qualified immunity.

Officer Luna's arrest of Mathews did not violate federal law if he had probable cause,³ to wit, information sufficient to justify a prudent person's belief that the person to be arrested has committed an offense.⁴ Probable cause does not require a belief that it was more likely than not that the person to be arrested committed the offense; a "fair probability" in the totality of the circumstances suffices.⁵

Under Texas law, a person commits the misdemeanor of

¹**Newel v. Oxford Management, Inc.**, 912 F.2d 793 (5th Cir. 1990).

²Mathews maintains that warrantless misdemeanor arrests are impermissible unless the officer observed the offense. That Texas rule does not apply in section 1983 actions; a federal constitutional violation, *e.g.*, a warrantless arrest without probable cause, must be shown. **Fields v. City of South Houston, Tex.**, 922 F.2d 1183 (5th Cir. 1991).

Mathews also argues that his arrest was illegal because it took place in the constitutionally protected area of his daughter's patio. Even assuming *arguendo* that probable cause would not justify such an intrusion, Mathews' affidavit reflects that the arrest took place after he stepped off the patio.

³**Fields** (no liability for false arrest in federal civil rights action where officer had probable cause).

⁴**Duckett v. City of Cedar Park, Tex.**, 950 F.2d 272 (5th Cir. 1992).

⁵**United States v. Antone**, 753 F.2d 1301 (5th Cir.), cert. denied, 474 U.S. 818 (1985).

disturbing the peace if he intentionally displays a firearm or other deadly weapon in a public place in a manner calculated to alarm.⁶ Bystander eyewitnesses are presumed reliable for probable cause determinations.⁷ Although an apparent motivation to prevaricate may weaken the basis of probable cause,⁸ this challenge to a person's credibility may be offset by independent corroboration of the statement of the witness.⁹ It is undisputed that Melisa Thomas called the police claiming a "crazy man with a gun" was at the apartment; that she and her relatives told Luna that Charles Mathews had brandished the weapon and made threatening statements; and that Luna thereafter observed Charles Mathews with a shotgun. Considering these facts and applying prevailing standards, no issue of material fact existed to preclude a finding of probable cause as a matter of law. Summary judgment for Luna appropriately was granted.

AFFIRMED.

⁶Tex. Penal Code Ann. § 42.01(a)(10).

⁷**United States v. Jackson**, 818 F.2d 345 (5th Cir. 1987).

⁸**Hale v. Fish**, 899 F.2d 390 (5th Cir. 1990).

⁹**Id.**; **United States v. Phillips**, 727 F.2d 392 (5th Cir. 1984).