

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8810
Conference Calendar

DAVID SEDA,

Plaintiff-Appellant,

versus

ELIZABETH PETTERSSON
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-93-CV-314
- - - - -

(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

San Antonio police officer Elizabeth Pettersson Greiner purchased a balloon of heroin from a Latin man who identified himself as "Tony." This man was identified by another officer as David Seda. Subsequently, Seda was arrested on a federal warrant.

Seda alleged that his arrest was based on misidentification and that his brother, Jose Antonio Seda, had sold the heroin to Pettersson. At the detention hearing Pettersson identified Seda

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

as the man who sold her the heroin. She also testified that she had compared photographs of Seda and his brother, and that although there was a family resemblance, she was able to distinguish between them. Seda was detained in custody for several months before the charges were eventually dropped.

This Court conducts a bifurcated analysis to assess whether a defendant is entitled to qualified immunity. Rankin v. Klevenhagen, 5 F.3d 103, 105 (5th Cir. 1993). The first step is to determine whether the plaintiff has alleged a violation of a clearly established constitutional right. Siegert v. Gilley, 500 U.S. 226, 232, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991). This Court uses "currently applicable constitutional standards to make this assessment." Rankin, 5 F.3d at 106. The second step is to determine "whether the defendant's conduct was objectively reasonable." Spann v. Rainey, 987 F.2d 1110, 1114 (5th Cir. 1993). The reasonableness of the conduct is assessed in light of the legal rules clearly established at the time of the incident. Rankin, 5 F.3d at 108.

Seda argues that he was subject to false imprisonment because Pettersson failed to investigate adequately his claim of misidentification and committed perjury during the detention hearing. We recognize a cause of action under § 1983 for false imprisonment. See Sanders v. English, 950 F.2d 1152, 1159 (5th Cir. 1992). Seda has alleged a constitutional violation.

Pettersson's conduct was objectively reasonable. An officer arresting an individual based on a valid arrest warrant is not required to investigate independently every claim of innocence

even if the claim is based on mistaken identity. Baker v. McCollan, 443 U.S. 137, 145-46, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979). The summary judgment evidence established that Pettersson purchased a balloon of heroin from a Latin male who identified himself as Tony; that a fellow officer identified the male as Seda; that Pettersson identified Seda as the man who sold her the heroin from his mug shot and also identified him at the detention hearing; that Seda informed the U.S. Marshal executing the arrest warrant that he was Tony; and that Seda has used his brother's name as an alias on at least one occasion.

Seda argues that Pettersson's testimony concerning the family resemblance between Seda and his brother was deliberately false and misleading because Pettersson stated in her affidavit that Seda's attorney showed her a photograph of Seda's brother after the detention hearing. Pettersson's testimony and affidavit are not inconsistent. Pettersson could have compared the photographs prior to the hearing and also could have viewed a photograph after the hearing. Seda has not produced competent summary judgment evidence to establish that Pettersson's conduct was not objectively reasonable. See Simmons v. McElveen, 846 F.2d 337, 339 (5th Cir. 1988) (actions in not following up on lead more extensively did not rise above the level of negligence).

Seda's state law claim of false imprisonment and unrelated claims of retaliation and denial of access to the courts will not be addressed as they are raised for the first time on appeal. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

The judgment of the district court is AFFIRMED. Seda's motion for appointment of counsel is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).