IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20268
(Summary Calendar)

NORRIS HARRELL,

Plaintiff-Appellant,

versus

UNIVERSITY OF HOUSTON
POLICE DEPARTMENT, ET AL.,

Defendants,

UNIVERSITY OF HOUSTON
POLICE DEPARTMENT and DENNIS BOOK,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-3087)

(January 3, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:[*]

Plaintiff, Norris Harrell, appeals the trial court's entry of summary judgment against him and in favor of defendants, the University of Houston Police Department and Officer Dennis Book, on his 42 U.S.C. § 1983 claim, as well as a pendant state law tort claim, that Officer Book unlawfully stopped, detained, and harassed him on campus. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

FACTS

On October 4, 1991, Norris Harrell, a college textbook sales representative, was leaving business cards on professors' doors in Farish Hall on the campus of the University of Houston when he was approached by a university employee, Joy Hindmon, who asked if he needed assistance; Harrell said he did not. After seeing that Harrell was still looking around in the building a short time later, Hindmon again asked Harrell if he needed assistance. Harrell responded that he did not need help. Hindmon attempted, unsuccessfully, to notify the college manager and the assistant dean that there was someone in Farish Hall who had not identified himself. She then called the university's police department which sent Officer Dennis Book to investigate. Both Hindmon and Officer Book knew that several professors' offices in that building had been burglarized recently. When Officer Book asked Harrell for identification, Harrell gave him a business card and an out-of-state driver's license. Harrell refused Book's request for his social security number, and was detained for approximately 20 to 30 minutes while campus police officers attempted to verify his identification.

Harrell subsequently filed suit against the University of Houston Police Department (UHPD) and Officer Book, alleging a § 1983 claim and a pendent state claim for intentional infliction of emotional distress. Harrell alleged that Officer Book unlawfully stopped, detained, and harassed him. The parties consented to entry of final judgment by a magistrate judge. The

defendants filed a motion for summary judgment contending that Harrell's § 1983 claim against the UHPD and his state claim against the UHPD, and Officer Book in his official capacity, were barred by the doctrine of sovereign immunity. They also contended that Harrell's § 1983 claim against Officer Book, in his individual capacity, was barred by the doctrine of qualified immunity. In its ruling on the motion, the trial court mistakenly stated that Harrell had failed to respond to the defendants' motion. Although Harrell's response was not timely filed under the local rules, he did oppose the motion, albeit only by filing his own affidavit of the facts. The trial court granted the motion for summary judgment, and Harrell timely noticed his appeal.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. Abbott v. Equity Group, Inc., 2 F.3d 613, 618 (5th Cir. 1993). Summary judgment is proper if the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1119 (5th Cir. 1992). The party opposing a motion for summary judgment must set forth specific facts showing the existence of a genuine issue for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). On appeal from summary judgment, this Court examines the evidence in the light

most favorable to the nonmoving party. Salas v. Carpenter, 980 F.2d 299, 304 (5th Cir. 1992).

DISCUSSION

Harrell opposed the defendants' motion with only his own affidavit of the facts and failed to set forth facts that would call into question the asserted defenses of sovereign and qualified immunities. The magistrate judge's Memorandum and Order Granting Defendants' Motion for Summary Judgment details the instant facts and thoroughly outlines the law on Harrell's claims. The magistrate judge concluded that the § 1983 claims are barred by the doctrines of sovereign and qualified immunities, and that there was no evidence of at least one element required for the state tort claim.

THE § 1983 CLAIMS

On appeal, Harrell only cursorily addresses the issues of sovereign and qualified immunities -- the primary bases for the trial court's order granting summary judgment on his § 1983 claims. He focuses on the factual circumstances surrounding his detention and on the reasonableness of the department's procedures and of Officer Book's actions. In focusing throughout his brief primarily on what he calls the court's "improper fact findings," Harrell fails to address the defenses asserted in the defendants' motion and the bases of the trial court's ruling. On this issue of immunities as defenses to his claims, Harrell argues only the following:

> There is no Summary Judgment proof however, regarding the legal status of the University of Houston Police

> Department. Therefore, the summary judgment against the [University of] Houston Police Department is improper because there is no summary judgment proof regarding their legal status.

The University of Houston is a state agency. Bache Halsey Stuart Shields, Inc. v. University of Houston, 638 S.W.2d 920, 923 (Tx.Ct.App. 1982); Tex.Educ.Code § 111.20, et seq. Texas' Education Code and Code of Criminal Procedure support the trial court's determination that the UHPD is a department of a state agency, and that therefore Officer Book was employed by a state agency. See Tex.Educ.Code § 51.203; Tex.C.Crim.Proc. art. 2.12 art. (8). Harrell provided no indication to the trial court that the status of either the UHPD or Officer Book was at issue.

Given the recent burglaries in Farish Hall, Officer Book acted reasonably in detaining Harrell long enough to verify his identification. Viewed in the light most favorable to Harrell, we do not find this twenty to thirty minute detention to be unreasonable or violative of Harrell's rights. Accordingly, we find no error in the magistrate judge's finding that the University of Houston is a university within Texas' university system, and that UHPD, as a department within the University of Houston, is an agent of the state of Texas which is entitled to sovereign immunity. The summary judgment evidence supports the magistrate judge's finding that, because Officer Book acted reasonably in the exercise of his discretion within the scope of his authority as a public employee and officer, he is entitled to qualified immunity. See Pennhurst State Sch. & Hosp. v.

Halderman, 465 U.S. 89, 100-02, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

THE PENDENT STATE TORT CLAIM

Harrell's only claim that is not barred by either sovereign or qualified immunity is his state tort claim against Officer Book in his individual capacity for intentional infliction of emotional distress. Under Texas law, the elements of this cause of action are: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the plaintiff's emotional distress was severe. Gillum v. City of Kerrville, 3 F.3d 117, 122 (5th Cir. 1993) (citations omitted), cert. denied, 114 S.Ct. 881 (1994).

Whether there were facts in the record that could support a finding that Book's conduct met the standard under the law of being "extreme and outrageous" is a determination for the court to make. See McKethan v. Texas Farm Bureau, 996 F.2d 734, 742 (5th Cir. 1993), cert. denied, 114 S.Ct. 694 (1994). In order to qualify as "extreme and outrageous" under the law, a defendant's conduct must have been

> so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. . . . Generally, the case is one in which a recitation of the facts to an average member of the community would lead him to exclaim, "Outrageous."

Dean, 885 F.2d at 306 (quoting Restatement (Second) of Torts § 46 Comment (d) (1965)). The trial court determined that the record

did not support a finding that Book's conduct satisfied the legal standard of being extreme and outrageous as defined in Dean v. Ford Motor Credit Co., 885 F.2d 300, 306 (5th Cir. 1993), and concluded as a matter of law that Harrell had not made out a claim for Intentional Infliction of Emotional Distress.

Harrell did not provide the trial court with any evidence which indicated that Book's conduct was extreme and outrageous, and the record does not otherwise support such a finding. Thus, we find no error in the magistrate judge's findings of fact and conclusions of law regarding this claim.

For the foregoing reasons, the trial court's order granting the defendants' motion for summary judgment is AFFIRMED.