

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-60179
Summary Calendar

TALMON HEGWOOD, JR.,

Plaintiff-Appellant,

VERSUS

E. D. SEAL, JR.,

Defendant-Appellee.

Appeals from the United States District Court
For the Southern District of Mississippi

(3:93-CV-437)

(December 6, 1994)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge:*

Talmon Hegwood, Jr. appeals the district court's grant of summary judgment in favor of Officer E.D. Seal, Jr. in Hegwood's Section 1983 action. Finding no material factual dispute exists that would hinder a decision on qualified immunity as a matter of law, we conclude that Officer Seal acted in an objectively

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

reasonable manner under the circumstances. We therefore affirm the decision of the district court.

Facts and Prior Proceedings

On May 7, 1993 at approximately 4:15 p.m., Officer E.D. Seal, Jr. received information from the dispatcher that the Rankin County Sheriff's Office had issued a "look out" for a black male wearing a beige and brown shirt and riding a black motorcycle travelling on Highway 471 toward Brandon, Mississippi. The suspect had been involved in an armed robbery at the Lake Harbor Trading Post, which was about 13 miles from where Seal was stationed at the time. Seal proceeded to an intersection at Highway 471 where he parked his patrol car to observe traffic coming to and from Brandon.

Approximately thirty minutes later, Seal spotted a black male exit a truck and then begin walking down Highway 471 in the direction of Seal's patrol car.¹ This black male, later identified as Talmon Hegwood, Jr., was carrying a tote bag. While he was not wearing a beige and brown shirt or riding a motorcycle, the black male was travelling from the direction of the robbery and Seal suspected that the totebag might have been used to carry additional clothing or a weapon. Officer Seal decided to ask the man where he was going. At this point, the versions of the facts espoused by

¹ Hegwood asserts that he did not exit that particular truck, but he does not deny that he was hitch-hiking. The district court noted that Hegwood alleges that he told Seal he was coming from the office of his parole officer in Jackson, Mississippi, but Hegwood did not state how he got from downtown Jackson to the corner of Spillway Road and Highway 471 which was at least 15 or 20 miles from Jackson. The district court concluded that Hegwood must have been riding with someone or recently departed from some vehicle when Seal saw him on the road.

the parties are somewhat different. Seal claims that he asked the man where he was going; the man said he was going to the Bay Point Subdivision; Seal asked the man for identification, and the man pulled out his parole papers from his tote bag. The parole papers identified the man as Talmon Hegwood, Jr., and Hegwood told Seal that he had been paroled the day before from prison where he was serving a sentence for armed bank robbery.² Seal claims he then told Hegwood about the armed robbery at the Lake Harbor Trading Post and the description of the suspect. Hegwood told Seal that he had not seen a black man on a motorcycle while he was on the highway.

Based on the circumstances, Seal instructed Hegwood that he was going to do a pat down search for weapons. After this limited search, Seal found no weapon and asked Hegwood whether he could search his tote bag, and Seal granted his permission.³ No weapons were found in the tote bag.

Seal then went to the radio in his patrol car, with Hegwood still in position with his hands on the hood of the car, and relayed the information he had on Hegwood to the dispatcher. Seal

² Hegwood claims he did not tell Seal he was ever imprisoned for armed bank robbery. Rather, Hegwood claims he told Seal that he was imprisoned for robbing a bank without a weapon.

³ Hegwood alleges that Seal ordered him to stand in front of the car and place his hands on the hood. At this point, Hegwood asserts that Seal did a pat down search, and then Seal retrieved his tote bag and searched it without permission. According to Hegwood, Seal did not know his identity until he conducted the search of the tote bag. In other words, Hegwood claims he did not give Officer Seal his identification either verbally or through the presentation of the parole papers.

was informed that someone from the Rankin County Sheriff's Department was in route to Seal's location to determine whether Hegwood was the suspect from the armed robbery. Rankin County Deputy Stump Bradshaw arrived at the scene and observed Hegwood, reviewed his parole papers and then told Seal that Hegwood was not the man involved in the robbery, and Hegwood was free to go. According to Seal, approximately 30 minutes elapsed from the time Hegwood approached him until he was told he could go. Hegwood asserts that the time frame was at least one hour. After Hegwood was told he could leave, Officer Seal gave Hegwood a ride to his original destination.

Hegwood filed this 42 U.S.C. § 1983 action pro se alleging that Seal acted under color of law to deprive him of his Fourth, Fifth and Sixth Amendment rights by stopping him, searching him and detaining him without probable cause. Defendant Seal filed a Motion to Dismiss or in the alternative, a Motion for Summary Judgment, asserting that Hegwood stated no claim under the Fifth and Sixth Amendments and that he is entitled to qualified immunity on Hegwood's Fourth Amendment claim. The district court granted Seal's motion for summary judgment. Hegwood timely appeals to this Court.

Discussion

Plaintiff contends that the district court erred in granting summary judgment to the defendant on his § 1983 claim. We review a grant of summary judgment **de novo**. **Hanks v. Transcontinental Gas Pipe Line Corp.**, 953 F.2d 996, 997 (5th Cir. 1992). Thus, summary

judgment for Seal is appropriate only if there is no genuine issue as to any material fact, and if Seal is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); **Brewer v. Wilkinson**, 3 F.3d 816, 819 (5th Cir. 1993). As Seal asserted his entitlement to qualified immunity in a properly supported motion for summary judgment, the burden was on Hegwood to come forward with summary judgment evidence sufficient to sustain a determination that Seal's actions violated clearly established federal law. **Salas v. Carpenter**, 980 F.2d 299, 306 (5th Cir. 1992). We consider the evidence in the light most favorable to Hegwood, the nonmovant. **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 255 (1986).

Assuming arguendo that Seal violated Hegwood's Fourth Amendment rights, the threshold issue in this case is whether Officer Seal is entitled to qualified immunity.⁴ The district court found that Seal was entitled to such immunity for his actions. We agree.

The first inquiry in the examination of a defendant's claim of qualified immunity is whether the plaintiff alleged the violation of a clearly established constitutional right. **Siegert v. Gilley**, 500 U.S. 226, 231 (1991). If the plaintiff has alleged a violation of a clearly established constitutional right, we then decide whether the defendant's conduct was objectively reasonable, because "[e]ven if an official's conduct violates a constitutional right,

⁴ Hegwood does not challenge the dismissal of his Fifth and Sixth Amendment claims on appeal, and therefore these claims are considered abandoned. **See Evans v. City of Marlin, Texas**, 986 F.2d 104, 106 n.1 (5th Cir. 1993) (issues not raised or briefed are considered abandoned).

he is entitled to qualified immunity if the conduct was objectively reasonable." **Salas**, 980 F.2d at 305-306. Therefore, even if Seal violated Hegwood's constitutional rights, he is entitled to qualified immunity if his conduct was objectively reasonable. **Id.** "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity." **Pfannstiel v. Marion**, 918 F.2d 1178, 1183 (5th Cir. 1990).

Even assuming that Hegwood's rendition of the facts is true, Seal is entitled to qualified immunity. Seal had a reasonable suspicion that Hegwood might have been involved in the robbery because Hegwood fit the general description of the suspect; Hegwood was carrying a tote bag which could contain a weapon or change of clothing; Hegwood was coming from the general direction of the place that was robbed; Hegwood arrived at the intersection within 40 minutes of the "look out" dispatch. Given these facts, reasonable officials could differ on whether Seal should have stopped and detained Hegwood. Even though Seal was mistaken about his suspicions, the qualified immunity standard allows for such mistakes by law enforcement officials:

The qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law. This accommodation for reasonable error exists because officials should not err always on the side of caution because they fear being sued.

Hunter v. Bryant, 502 U.S. 224, 112 S.Ct. 534, 537 (1991) (internal quotations and citations omitted).

Seal's actions were not plainly incompetent nor is there evidence that Seal knowingly violated the law. **See Hunter**, 116 L.Ed.2d at 596. Because a reasonable officer in Seal's position could have believed that there was reasonable cause to believe Hegwood was the robbery suspect, Seal is entitled to qualified immunity. **Pfannstiel**, 918 F.2d at 1183. Hegwood's remaining arguments have no merit.

Conclusion

For the reasons stated above, the order of the district court granting summary judgment to defendant Seal is affirmed.

AFFIRMED.