

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-30410
Summary Calendar

MICHAEL THIERRY,

Plaintiff-Appellee,

VERSUS

HARRY LEE, ET AL.,

Defendants,

GILBERT BREAU, Detective,
Individually,

Defendant-Appellant,

MICHAEL CARRONNE, Deputy,

Movant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-2468-F)

(February 6, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Jefferson Parish Detectives Gilbert Breau and Michael Carronne appeal the district court's denial of their motion for summary judgment. The detectives are defendants to Michael Thierry's civil rights action alleging unlawful arrest and

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

detention. The detectives sought summary judgment on two bases: (1) that they possessed probable cause to arrest; (2) that they are entitled to qualified immunity. We reverse the district court on the basis of qualified immunity and render judgment for the detectives.

FACTS

Thierry's action under 42 U.S.C. § 1983 stems from his arrest by Detective Breaux. After David Glover's truck was stolen, he received a telephone call from Thierry, who described personal property contained in the truck. Glover offered Thierry a reward, and they agreed to meet to exchange the reward for the property. Glover then called the Sheriff's Department.

Detective Carronne visited Glover and advised him not to meet Thierry. According to Glover, when Thierry telephoned him after he missed the meeting, Thierry told him that it was a shame they could not do business and that Glover would not get his property back.² Glover, at Detective Carronne's suggestion, told Thierry that he would leave \$20 for him in a magazine atop an ice machine at a nearby gas station.³ Thierry checked the ice machine before Detective Carronne could arrange to have the money left and watched. When Thierry again called Glover, Glover told him to

² Thierry's recollection of the conversation was that he felt the two individuals who had stolen Glover's truck had done wrong and he wanted Glover to get his property back.

³ According to Glover, Thierry agreed to \$20 that day and \$180 the next day. Thierry claims that he agreed to accept the \$20 in exchange for the name of one of the persons in possession of the stolen property.

recheck the machine. Detective Carrone then called Detective Breaux and told him to leave the money, wait, and arrest the person who retrieved it. Detective Breaux arrested Thierry when he arrived and attempted to take the money and charged Thierry with burglary and extortion. The charges against Thierry were eventually dropped, and Thierry was released.

In response to Thierry's lawsuit, the two detectives moved for summary judgment.⁴ The district court denied summary judgment because it found the following disputed facts to be material: (1) the terms of payment for the information; (2) the content of the discussion between Thierry and Glover during the second telephone call; (3) whether, in the absence of probable cause, the detectives had an objective good faith belief that probable cause existed to arrest Thierry; (4) what the detectives knew, when they knew it, and what information they acted on; (5) whether reasonable officers would have known that no probable cause for extortion existed; and (6) whether the detectives should have acquired exculpatory information after the arrest that would have prompted Thierry's earlier release from jail.

DISCUSSION

I. Jurisdiction

Under the collateral order doctrine, we have appellate jurisdiction under 28 U.S.C. § 1291 over a district court's denial of a claim of qualified immunity to the extent that the claim turns

⁴ Thierry also named three other defendants, but the district court dismissed the claims against those defendants and Thierry does not appeal. Only Breaux and Carrone remain as defendants.

on an issue of law. Pfannstiel v. City of Marion, 918 F.2d 1178, 1182 (5th Cir. 1990) (citing Mitchell v. Forsyth, 472 U.S. 511, 530 (1985)). In our review of the record, if we find disputed factual issues material to immunity, then we dismiss the appeal for lack of appellate jurisdiction. See id.; Feagley v. Waddill, 868 F.2d 1437, 1439 (5th Cir. 1989). If we do not find any disputed factual issues material to immunity, then we may review the district court's denial of qualified immunity de novo. Mangieri v. Clifton, 29 F.3d 1012, 1015 (5th Cir. 1994).

In determining whether a police officer is entitled to qualified immunity when his warrantless arrest of a person is questioned in a § 1983 suit for lack of probable cause, we consider whether the officer's act was objectively reasonable. See id. at 1016. We inquire whether the officer's knowledge at the time of the arrest would have warranted a prudent person to believe that the arrestee committed or was committing an offense. Id. (citing Duckett v. City of Cedar Park, 950 F.2d 272, 278 (5th Cir. 1992)). In the probable cause context, a fact material to immunity is an underlying fact to the objective reasonableness inquiry; the disputed fact must obscure our ability to view what happened. Id.

The first two factual disputes identified by the district court concern differences in testimony between Glover and Thierry. Nevertheless, the relevant inquiry is the officer's knowledge. See id. These discrepancies in testimony did not affect Detective Carronne's knowledge because he spoke only with Glover prior to the arrest. The factual dispute is not material to immunity because we

consider only what Glover told Detective Carrone in determining objective reasonableness.

In contrast, although the fourth dispute of what the officers knew and when would be material, we determine that no dispute exists. Detective Carrone authorized the arrest after the third telephone call. Glover had told him what had transpired during that call, during the other calls, and beforehand. Because Detective Breaux arrested Thierry at Detective Carrone's direction, we impute his knowledge to Detective Breaux. We determine that no factual dispute exists as to the detectives' knowledge at the time of the arrest.

The remaining factual disputes do not affect the objective reasonableness inquiry. An officer's subjective belief is irrelevant to objective reasonableness. Mangieri, 29 F.3d at 1017. Whether reasonable officers would have known that no probable cause existed is a question of law for the court to determine in its objective reasonableness inquiry. Id. at 1015-16. Finally, whether the detectives acquired information after the arrest is irrelevant to whether they had probable cause to make the arrest. We conclude that no disputed facts material to immunity exist; therefore, we may review the district court's denial of qualified immunity.

II. Qualified Immunity

Detective Breaux arrested Thierry and charged him with burglary and extortion. Qualified immunity attaches if a reasonable person would have found probable cause for just one of

the charges. Cf. Pfannstiel, 918 F.2d at 1183 (stating that proof of probable cause for a related offense entitles an officer to qualified immunity even if no probable cause exists for the offense charged). "The qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." Mangieri, 29 F.3d at 1017 (quoting Hunter v. Bryant, 112 S. Ct. 534, 537 (1991)).

"Extortion is the communication of threats to another with the intention thereby to obtain anything of value" **La. Rev. Stat. Ann.** § 14:66 (West 1986). A sufficient threat includes "unlawful injury to . . . property of the individual." Id. § 14:66(1). Thus, extortion requires (1) a specific intent (2) to communicate a threat (3) to obtain anything of value. State v. Daniels, 628 So. 2d 63, 67 (La. Ct. App. 1st Cir. 1993). Specific intent may be inferred from the circumstances. Id. at 66.

The content of the first two telephone calls as reported to Detective Carronne satisfies probable cause to communicate a threat. Thierry's description of Glover's property suggested that Thierry had the ability to convert it. Then Thierry allegedly told Glover that he would not get his property back. A reasonable person would have construed Thierry's conduct to be a threat.

The district court noted that it was Glover who first offered Thierry a reward. Nevertheless, a reasonable person would have inferred from Thierry's conduct a specific intent to obtain the reward by means of the threat. He initiated contact with Glover and described Glover's property in detail. When Glover offered

Thierry a \$100 reward for return of his property, Thierry responded that he wanted \$200. Furthermore, when Glover did not meet Thierry after the first call, Thierry issued his threat undoubtedly to encourage performance by Glover. A reasonable person would have interpreted Thierry's conduct, as reported to Detective Carrone by Glover, as an attempt to obtain value by means of a threat.

We conclude that the detectives' knowledge at the time of the arrest was sufficient to warrant a reasonable person to believe that he had probable cause to arrest Thierry for extortion.

III. Continuing Duty

Thierry contends that the detectives failed to act reasonably after the arrest because they failed to search Thierry's residence or investigate the name that Thierry had given Glover in connection with the burglary. If an officer determines beyond a reasonable doubt that the reasons underlying an arrest are no longer valid, he must release the arrestee. McConney v. City of Houston, 863 F.2d 1180, 1185 (5th Cir. 1989). Although Thierry demonstrates how further investigation would have shown that the burglary charge was not valid, he does not show how further investigation would have established beyond a reasonable doubt the lack of probable cause for extortion. We conclude that the detectives acted reasonably by not releasing Thierry from detention.

CONCLUSION

For the foregoing reasons, we REVERSE the district court's denial of qualified immunity and render judgment for Detectives Carronne and Breaux.

REVERSED and RENDERED.