

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2100-21

JAMEL J. LATIMER and
DARIUS E. SINGLETON,

Plaintiffs-Appellant,

v.

WILLIAM PATERSON
UNIVERSITY, KATHLEEN
WALDRON, MICHELLE
MONTERO, ROBERT
FULLEMAN, MICHAEL
ULRICH, ELLEN DESIMONE,
FREDERICK GRUEL, ANNA
MARIE MASCOLO,
DEBORAH ZASTOCKI,
LOURDES CORTEZ,
ROBERT GUARASCI, BRAD
NEILLEY, LINDA NIRO,
WILLIAM PESCE, and
HENRY PRUITT,

Defendants-Respondents.

Argued September 11, 2023 – Decided October 26, 2023

Before Judges Gilson, DeAlmeida and Bishop-
Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0421-20.

Ronald J. Ricci argued the cause for appellants (Ricci & Fava, LLC, attorneys; Ronald J. Ricci, of counsel and on the briefs; Brooke Bagley, on the briefs).

Mauro G. Tucci, Jr., argued the cause for respondents (Chiesa Shahinian & Giantomasi, PC, attorneys; Jeffrey S. Chiesa, Matthew E. Beck, Mauro G. Tucci, Jr., and Mallik Yamusah, on the brief).

PER CURIAM

Plaintiffs Jamel J. Latimer and Darius E. Singleton appeal from the trial court's order granting summary judgment and dismissing their complaint with prejudice. The complaint alleged defendants¹ committed a statutory violation, as well as various torts, arising from the arrest of plaintiffs in connection with an alleged sexual assault. In dismissing the complaint, the motion judge determined defendants were entitled to qualified immunity. We affirm.

¹ Defendants collectively refers to William Paterson University (WPU), WPU Police and Public Safety Detective Sergeant DeSimone, Kathleen Waldron (former WPU president), Robert Fulleman, (former WPU public safety director), WPU Police Lieutenant Michael Ulrich, and individual WPU trustees Frederick Gruel, Anna Marie Mascolo, Deborah Zastocki, Lourdes Cortez, Robert Guarasci, Brad Neilley, Linda Niro, William Pesce, and Henry Pruitt.

I.

We derive the following facts from evidence the parties submitted in support of and in opposition to the summary judgment motion. We also viewed the pertinent facts in the light most favorable to plaintiffs. See *Memudu v. Gonzalez*, 475 N.J. Super. 15, 18-19 (App. Div. 2023).

A. The Alleged Sexual Assault

On November 25, 2014, M.M.² reported to a nurse at the WPU campus counseling and health center that she "might have been raped." WPU Police Detective Sergeant Ellen DeSimone responded to the health center and was advised that the sexual assault allegation involving five males. DeSimone escorted M.M. to her dormitory to gather some belongings and clothing worn on the night of the incident. She transported M.M. to the hospital. During the ride, M.M. replied "no" when asked if she had a "dating relationship" with any of the males that assaulted her. M.M., however, stated that she previously had consensual sex with one of the male students, Garrett Collick.

M.M. reported to DeSimone that the night before, she and Collick were supposed to "hang out." Unable to find him, M.M. went looking for Collick and

² We use initials to protect the identity and privacy of the parties involved. R. 1:38-3(d)(10).

eventually found him, Noah Williams, and Singleton in Termain Scott's dormitory room. She wanted Collick to go back to her room, but he declined. M.M. reported that Collick stated, "[i]f you want to have sex with me, you have to have sex with all of us." M.M. also reported she "believed" Singleton and Williams stated: "Well, let's have sex." She was uncomfortable and attempted to leave; however, one of the males blocked the door and turned off the lights.

The males taunted M.M. for approximately fifteen minutes as she kept trying to make excuses to leave the room. Eventually, she stopped responding to the taunts. Collick demanded M.M. perform oral sex. He grabbed M.M. by the back of her neck and forced his penis into her mouth. Although she attempted several times to get up from the bed, she was unable to do so. While Collick grabbed M.M.'s hair and pushed her head into his lap, the other males told him to "pass the rock."

At this time, Latimer knocked on the door and entered the room. Latimer then grabbed M.M. by the hair and forced her to perform oral sex on him while Collick groped her under her clothing. Collick again grabbed her head, forced her down, and put his penis in her mouth. Latimer then pulled down M.M.'s pants and began having vaginal sex with her. Next, M.M. reported that she was forced to perform oral sex on Singleton, who also digitally penetrated her.

During M.M.'s forensic sexual assault examination at the hospital, DeSimone contacted headquarters and spoke with Detective Sergeant Arp and attempted to identify the males' last names based on the first names provided by M.M. and the dormitory room number. Arp sent DeSimone photographs of four males. DeSimone showed the photographs to M.M. but did not provide names or any other additional information. M.M. positively identified each male by their first name based on the photograph.

Nurse Joann Hatt conducted the forensic sexual assault interview and examination. DeSimone was present as M.M. provided an account of the events to Hatt. M.M. also provided additional details. M.M. repeated that Collick demanded oral sex. She further reported Collick attempted vaginal penetration but was unable to get an erection. M.M. stated that she said, "[o]h. I see you have stage fright." She stated Williams also forced her to perform oral sex on him. Eventually, M.M. left the room and was followed back to her dormitory room by Williams, Scott, and William's cousin, Walt³. Williams and Walt insisted on "finishing" and M.M. eventually "gave up and just laid there." When Scott attempted to have sex with her, M.M. refused and said she "was just forced

³ We refer to Walt only by his first name since the record does not contain his last name.

to do something [she] didn't want to do." M.M. reported she cried in the shower once they left.

After the examination, Hatt reported M.M. had no vaginal injuries but "her throat was red and it appeared to have abnormalities." Hatt described these injuries as "petechiae," meaning "small, ruptured blood vessels that could be caused by rough oral sex."

On November 26, 2014, DeSimone reviewed video surveillance footage of the entrance to the dormitory and student identification swipe card access data. Video footage and swipe card access data showed M.M. and the five males entered the dormitory prior to the time of the alleged sexual assault and left sometime thereafter.

B. Arrest and Charges

Following the review of the video footage and swipe card access data, DeSimone determined there was probable cause to arrest the five males involved in the sexual assault against M.M. DeSimone conferred with defendant Robert Fulleman, the then-public safety director, about the investigation and evidence obtained and reviewed. Fulleman agreed there was probable cause to arrest the five males based on the information gathered as of that date. DeSimone was advised to call the Passaic County Prosecutor's Office (PCPO).

On November 28, 2014, DeSimone contacted assistant prosecutor Gina Pfund concerning potential charges. After a brief conversation with DeSimone, Pfund instructed DeSimone to contact Lisa Squitieri, senior assistant prosecutor in charge of the domestic violence unit. Pfund stated she communicated with Squitieri after she directed DeSimone to do so and "[did not] believe" DeSimone ever contacted Squitieri.

DeSimone subsequently contacted Wayne municipal court administrator Lori Ellicott. Ellicott was told an investigation was conducted and she may have asked a few questions about the thoroughness of the investigation. However, Ellicott could not recall what specific information DeSimone provided because they did not discuss the specific facts of the case. Nor was DeSimone placed under oath. Ellicott determined probable cause existed and granted DeSimone permission to approve arrest warrants in Ellicott's name.

Thereafter, DeSimone obtained arrest warrants for the five males. Latimer was arrested on two charges of aggravated sexual assault in the first degree. Singleton was arrested on charges of conspiracy to commit sexual assault in the second degree, involuntary servitude in the third degree, aggravated sexual assault in the first degree, and aggravated sexual contact in the third degree.

After the arrests, Latimer and Singleton admitted that the alleged sexual incident occurred, but claimed M.M. consented.

C. Subsequent Investigation

After Latimer and Singleton were arrested, the PCPO further investigated the incident, which revealed Collick and Williams had prior sexual relations with M.M. In M.M.'s formal statement to the PCPO, she questioned whether she should have done more to stop the five males and whether the occurrence constituted rape. The PCPO also questioned the reliability of M.M.'s allegations based on inconsistencies in her various statements.

On January 29, 2015, a grand jury declined to indict the five students and the charges were subsequently dropped. Plaintiffs were expelled from WPU.

D. Procedural History

A little over five years later, on February 6, 2020, plaintiffs filed a complaint against defendants. The complaint asserted fifteen causes of action: gross negligence; respondeat superior; negligent hiring; negligent training; negligent supervision; negligent retention; false arrest and respondeat superior; intentional infliction of emotional distress; negligent infliction of emotional distress; tortious interference with prospective economic advantage (with past, present, and future economic opportunities); violations of the New Jersey Civil

Rights Act (NJ CRA), N.J.S.A. 10:6-2; breach of contract; breach of implied covenant of good faith and fair dealing; and breach of fiduciary duties (by trustees individually and collectively). Each of the causes of action was founded on the claim DeSimone lacked probable cause to arrest plaintiffs.

After the completion of discovery, defendants moved for summary judgment. The motion court considered the parties submissions and their arguments.

In an order entered on February 25, 2022, the motion court granted summary judgment and dismissed plaintiffs' complaint with prejudice. In an accompanying opinion, the court determined DeSimone had probable cause to apply for the arrest warrants. Citing the probable cause standard set forth in State v. Diaz, 470 N.J. Super. 495, 529 (App. Div. 2022), the court stated, "[p]robable cause is simply based on the totality of the evidence known, not an exhaustive investigation in pursuit of some exculpatory fact." The court further found probable cause is such "a low bar threshold to be met" and DeSimone met the threshold.

The motion court then rejected plaintiffs' contention that certain "exculpatory evidence" obtained by DeSimone should have discredited M.M.'s statements. The court explained the issue was whether M.M. gave consent. The

court noted M.M.'s statements of the alleged sexual assault were consistent and provided sufficient probable cause, which was corroborated by the additional evidence obtained by DeSimone. Thus, the trial court found "DeSimone possessed enough information to have probable cause."

In considering the exculpatory evidence, the court stated M.M.'s prior relationship with Collick was not applicable to Latimer and Singleton. The court found M.M.'s alleged intent to have sex with Collick "cannot be interpreted that she then gave broad consent to every man present in the room with him." The court further explained M.M.'s statement that she was "giving up and laying there" was not consent, but implied coercion, and "more thoroughly support[ed] a finding of probable cause."

The court also reviewed an unsigned investigation memo, allegedly completed by Squitieri, addressing the alleged missteps in DeSimone's investigation. The court noted that memo did not have identifying markers showing it came from the PCPO.

Lastly, the motion court concluded probable cause existed at the time of the arrests; and as such, there was no constitutional violation. Therefore, the court reasoned that defendants were entitled to qualified immunity.

II.

Plaintiffs contend the trial court erred in finding probable cause existed, and that no objective officer could have concluded probable cause existed based on the totality of the circumstances. Plaintiffs further argue the court erred in determining qualified immunity was established. Plaintiffs therefore claim that the determination of these issues should be made by a jury.

We review a grant or denial of a motion for summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). In doing so, we apply the same standard as the trial court, deciding first whether there is a genuine issue of material fact and, second, whether the movant is entitled to judgment as a matter of law. Lee v. Brown, 232 N.J. 114, 126 (2018). We also "draw all reasonable inferences in [plaintiffs] favor that are supported by the summary judgment record." Baskin v. Martinez, 243 N.J. 112, 129 (2020). However, we owe no special deference to the motion judge's legal analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016))

Conclusory statements within the pleadings, without factual support in the record, are insufficient to create a disputed question of fact. Sullivan v. Port

Auth. of NY and NJ, 449 N.J. Super. 276, 279-80 (App. Div. 2017). Likewise, "conclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440-41 (2005) (citations omitted).

A. Probable Cause to Arrest

The New Jersey Constitution guarantees individuals the right to be free from unreasonable seizures. N.J. Const. art. I, ¶ 7. Consequently, "[a]n arrest — the most significant type of seizure by police — requires probable cause and generally is supported by an arrest warrant or by demonstration of grounds that would have justified one." State v. Rosario, 229 N.J. 263, 272 (2017). "Probable cause relies on the facts of the individual case and 'is more than mere suspicion, but less than legal evidence necessary to convict.'" Mesgleski v. Oraboni, 330 N.J. Super. 10, 26 (2000) (quoting State v. Mark, 46 N.J. 262, 271 (1966)).

Plaintiffs' common law claims are all based on theories of negligence. To establish negligence, a plaintiff must prove: "(1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013)). "A 'plaintiff bears the burden of establishing those elements "by some competent proof.'"

Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Davis, 219 N.J. at 406). To establish that any defendant breached a duty owed to plaintiff, plaintiffs must show that there was no probable cause for the arrests.

"Probable cause exists if at the time of arrest 'the facts and circumstances within [the officer's] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [woman] in believing that the [suspects] had committed or was committing an offense.'" Wildoner v. Bor. of Ramsey, 162 N.J. 375, 389 (2000) (first and fourth alteration in original) (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)). The motion judge found DeSimone's investigation revealed objective facts showing M.M.'s lack of consent. The exculpatory evidence offered by plaintiffs did not show that DeSimone lack probable cause at the time of the arrests. Based on the record, we are satisfied the motion court appropriately concluded DeSimone possessed "enough" information to have probable cause to effectuate plaintiffs' arrests.

B. Qualified Immunity

We next address plaintiffs' NJCRA claim. The plaintiffs' complaint sought relief pursuant to the NJCRA, asserting violations of their constitutional rights. Plaintiffs contend the motion court erred in its legal conclusion entitling

defendants to qualified immunity against these claims. Plaintiffs' contention is not support by the facts and the law.

The NJCRA authorizes civil suits against individuals "acting under color of law" who deprive a person of "any substantive rights, privileges or immunities secured by the Constitution or laws of this State." N.J.S.A. 10:6-2(c). To establish a claim under the NJCRA, a plaintiff must show the defendant, typically a public official, "acted under color of state law" and violated his "substantive rights guaranteed by New Jersey's Constitution and laws." Gormley v. Wood-El, 218 N.J. 72, 97 (2014).

The doctrine of qualified immunity shields law enforcement officers and other government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Morillo v. Torres, 222 N.J. 104, 116 (2015) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). The doctrine is applied "to civil rights claims brought against law enforcement officials engaged in their discretionary functions, including arresting or charging an individual based on probable cause to believe that a criminal offense has occurred." Morillo, 222 N.J. at 117 (citations omitted).

The doctrine of qualified immunity "interposes a significant hurdle for plaintiffs seeking to recover for asserted violations of civil rights at the hands of law-enforcement officials." Morillo, 222 N.J. at 116. Thus, we are required to engage in an analysis of a two-prong test to determine if a law enforcement officer is entitled to qualified immunity: "(1) whether the evidence, viewed in the light most favorable to the plaintiffs, establishes that the official violated the plaintiffs' constitutional or statutory rights, and (2) whether the right allegedly violated was 'clearly established' at the time of the officer's actions." Baskin, 243 N.J. at 128 (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001), modified, Pearson v. Callahan, 555 U.S. 223 (2009)).

A right is clearly established if a "reasonable officer in the same situation clearly would understand that his actions were unlawful." Morillo, 222 N.J. at 118. "In other words, 'existing precedent must have placed the statutory or constitutional question' confronted by the official 'beyond debate.'" Plumhoff v. Rickard, 572 U.S. 765, 779 (2014) (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)). Put differently, "[i]f the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent official should know the law governing his conduct." Harlow, 457 U.S. at 818-19. Thus, "the doctrine 'protects all officers but the plainly incompetent or those who

knowingly violate the law.'" Morillo, 222 N.J. at 118 (quoting Connor v. Powell, 162 N.J. 397, 409 (2000)).

As to the second prong, the court assesses the officer's actions under an objectively reasonable test, considering all relevant facts and circumstances from an "on-scene perspective." Saucier, 533 U.S. at 205. The court should not apply "20/20 vision hindsight," but rather, should give "deference to the judgment of reasonable officers on the scene." Ibid. (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)). "[O]nly the facts that were [known] to the defendant officers" are relevant to the inquiry. The officer bears the burden that his or her actions were reasonable by a preponderance of the evidence. Morillo, 222 N.J. at 119.

Having reviewed the record in light of these precedents, we are satisfied that defendants were entitled to qualified immunity and summary judgment. We agree with the motion court that DeSimone reasonable believed that probable cause existed based on M.M.'s statements, the video surveillance footage, and the swipe card access data and a reasonably competent officer could have concluded that arrest warrants should be sought. Plaintiffs, therefore, failed to establish DeSimone violated plaintiffs' "clearly established" constitutional or statutory rights under the circumstances. Despite the subsequent investigation

by the PCPO, DeSimone acted with probable cause at that time of the arrests, as validated by the municipal court administrator and a judge's issuance of the arrest warrants, that defeats plaintiffs' tort claims and does not deprive defendants of qualified immunity. See Morillo, 222 N.J. at 124 ("The officers' right to the benefit of qualified immunity does not hinge on the soundness of the prosecutor's advice."). Accordingly, we discern no grounds to disturb the motion court's determination that defendants were entitled to qualified immunity.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION