

173 F.3d 844
Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. See Federal Rule of Appellate Procedure 32.1 and this court's local Rule 32.1.1. for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Second Circuit.

Stacy KAUFMAN, Plaintiff-Appellant,
v.
Carlos RIVERA, Jr., U.C.O. (Shield No. 3075); Gloria Torres, C.O. Sgt., Defendants-Appellees,
and
U.C.O. John DOES; U.C.O. Jane Does, Defendants.

No. 98-7888. | April 1, 1999.

Appeal from the United States District Court for the Southern District of New York (Keenan, J.).

Attorneys and Law Firms

Daniel R. Williams, Esq., Moore & Williams, LLP, New York, New York, for Appellant.

Lyssa M. Sampson, Assistant Attorney General of the State of New York, New York, New York, for Appellee.

Present WALKER, Jr., McLAUGHLIN, and KEITH,* Circuit Judges.

Opinion

*1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is AFFIRMED.

Stacy Kaufman brought this action under 42 U.S.C. § 1983, alleging, *inter alia*, violations of her rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. The complaint was premised upon claims of false arrest against Officer Rivera and an alleged unlawful strip search incident to the arrest against Sgt. Torres. Only claims arising from the allegedly illegal strip-search are before us on appeal.

A jury found that the strip search took place but that it was objectively reasonable, and awarded nominal damages in the amount of \$1. Relying on the jury's finding that the search was objectively reasonable, judge Keenan granted Sgt. Torres qualified immunity and set aside the nominal damage award. Subsequent to the jury verdict, Kaufman moved for judgment as a matter of law pursuant to Fed.R.Civ.P. 50. The district court found that there was sufficient evidence in the record to support the verdict and denied the motion. Kaufman now appeals.

We review the denial of a motion for judgment as a matter of law *de novo*. See *Doctor's Assocs., Inc. v. Weible*, 92 F.3d 108, 111 (2d Cir.1996). We will not reverse the denial of a motion for judgment as a matter of law under Fed.R.Civ.P. 50 unless "the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable [people] could have reached." *Samuels v. Air Transport Local 504*, 992 F.2d 12, 14 (2d Cir.1993) (quotations and citation omitted). We will only reverse where

(1) there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded [people] could not arrive at a verdict against [Kaufman].

Ahern v. County of Nassau, 118 F.3d 118, 120 (2d Cir.1997)(quotations and citation omitted). It is well established that an arresting officer cannot perform a strip search of an arrestee charged with a misdemeanor offense "unless the [official has] a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular

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characteristics of the arrestee, and/or the circumstances of the arrest.” *Weber v. Dell*, 804 F.2d 796, 802 (2d Cir.1986). The reasonable suspicion test is objective, not subjective. *See Cartier v. Lussier*, 955 F.2d 841, 843 (2d Cir.1992). For the reasons stated by the district court, the evidence sufficed to establish reasonable suspicion. Sgt. Torres therefore enjoyed qualified immunity.

*2 We have considered appellant’s remaining claims and find them to be without merit. The judgment of the district court is AFFIRMED.

Parallel Citations

1999 WL 197199 (Table)

Footnotes

* Honorable Damon J. Keith, Senior Circuit Judge of the United States Court of Appeals for the Sixth Circuit, sitting by designation.