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United States District Court, S.D. New York.

Stacy KAUFMAN, Plaintiff,

v.

U.C.O. Carlos RIVERA, Jr. and C.O. Sgt. Gloria
Torres, Defendants.

No. 95 Civ. 5667(JFK). | June 12, 1998.

Opinion

MEMORANDUM OPINION and ORDER

KEENAN, J.

*1 Following a five-day trial, on April 21, 1998 the jury announced a verdict in favor of Defendant Court Officer Carlos Rivera on the 42 U.S.C. § 1983 false arrest claim against him. As for the remaining § 1983 unlawful strip search claim against Defendant Sgt. Gloria Torres, the jury determined that Sgt. Torres had strip searched Plaintiff on August 1, 1994, but that Sgt. Torres had an objectively reasonable suspicion that Plaintiff was carrying weapons or other contraband. The jury then went on to determine that Sgt. Torres's strip search proximately caused only nominal damages to Plaintiff, and the jury declined to award punitive damages. Based upon the jury's factual finding that Sgt. Torres had an objectively reasonable suspicion that Plaintiff was carrying a weapon or other contraband, the Court determined as a matter of law that Sgt. Torres was entitled to qualified immunity on the unlawful search claim. Therefore, the Court set aside the jury's verdict with respect to damages stemming from the strip search.

Plaintiff now moves under Fed.R.Civ.P. 50(a)–(b) for judgment as a matter of law on the 42 U.S.C. § 1983 unlawful strip search claim against Defendant Sgt. Gloria Torres, or in the alternative for a new trial under Rule 50(b) on the issue of whether the doctrine of qualified immunity applies to Sgt. Torres. Plaintiff also moves for a new trial on the issue of damages stemming from the strip search pursuant to Rule 50(b).

The Second Circuit has stated: “The district court’s grant of a new trial motion is usually warranted only if it ‘is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice.’” *Sorlucco v. New York City Police Dep’t*, 971 F.2d 864, 875 (2d Cir.1992) (quoting *Smith v. Lightning Bolt*

Productions, Inc., 861 F.2d 363, 370 (2d Cir.1988). A district court’s denial of such a motion is reviewed for abuse of discretion. *See Sorlucco*, 971 F.2d at 875.

A. Whether there was an objectively reasonable suspicion to believe that Plaintiff was concealing a weapon or other contraband so as to justify Sgt. Torres’s Strip Search

Plaintiff argues that the record was devoid of evidence to support the jury’s factual finding on special interrogatory # 7 that Sgt. Torres had an objectively reasonable suspicion to believe that Plaintiff was concealing a weapon or other contraband. Therefore, Plaintiff argues that she is entitled to judgment as a matter of law on the unlawful strip search claim or, in the alternative, a new trial on the issue of whether Sgt. Torres’s actions are protected under the doctrine of qualified immunity. The Court disagrees.

At the outset, the Court observes that the objectively reasonable suspicion test is an objective test, rather than subjective test. Thus, even if Sgt. Torres or the other court officers did not personally believe that Plaintiff was concealing a weapon or other contraband, if the objective circumstances gave rise to an objectively reasonable suspicion that Plaintiff was concealing a weapon or other contraband then Sgt. Torres’s action in conducting a strip search is protected under the doctrine of qualified immunity. *See Simms v. Village of Albion*, 115 F.3d 1098, 1108 (2d Cir.1997) (“Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time and not the officer’s actual state of mind at the time the alleged action was taken.” (quotations omitted)); *Cartier v. Lussier*, 955 F.2d 841, 843 (2d Cir.1992) (“A subjective inquiry into an officer’s personal belief is rejected in favor of an objective analysis of what a reasonable officer in defendant’s position would believe.”); *see also Scott v. United States*, 436 U.S. 128, 138, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978) (“[T]he fact that the officer does not have the state of mind which is hypothesized by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.”).

*2 The Court believes that the record contained ample evidence from which the jury could find that there was an objectively reasonable suspicion that Plaintiff was concealing a weapon or other contraband so as to justify Sgt. Torres’s strip search. First, Court Officer Rivera described the small size of the courtroom at issue, the fact that the courtroom was crowded and that everyday tensions run very high in that courtroom. *See Tr. I at*

245–46, 284.¹ Second, Court Officer Rivera testified that he observed a “shouting match” in the courtroom between Plaintiff and Judge Dolores Thomas during Plaintiff’s second appearance in court that day, prior to her first arrest. Tr. I at 248. Judge Thomas testified that she told Plaintiff that she would not be issuing a decision in the case that day and repeatedly asked Plaintiff to leave the courtroom. *See* Tr. I at 315–16. Plaintiff refused Judge Thomas’s repeated orders to leave the courtroom as well as Court Officer Rivera’s order to leave the courtroom. *See* Tr. I at 249–50; 315–16. Plaintiff was then handcuffed and removed from the courtroom by Court Officer Rivera. Third, during her time at the housing court that day, Plaintiff did not have any identification on her and the court officers did not know her because she was not an attorney who appeared with any regularity in that court. Indeed, following her second arrest, the court officers were unable to reach anyone who could verify Plaintiff’s identity and therefore Court Officer Rivera had to take Plaintiff to Central Booking. *See* Tr. I at 261–62. Fourth, after Plaintiff was handcuffed for the first time and taken to a room outside the captain’s office where she sat handcuffed in a chair near a table, one of the female officers went to use the ladies room and left her gunbelt on the table nearby Plaintiff. Plaintiff told Sgt. Torres that the officer should not have left the gunbelt there because “I can get up and grab that gun and pull the gun out.” Tr. I at 205. Fifth, after Plaintiff’s first arrest and while she was handcuffed and sitting in a chair, Judge Thomas came out of the courtroom to speak to Plaintiff at the urging of Sgt. Torres and Judge Thomas reiterated to Plaintiff that she would not be issuing a decision in the case on that day. *See* Tr. I at 88–89, 204, 316–17. Sixth, just prior to being released with only a warning after the first arrest, and in Sgt. Torres’s presence, Plaintiff was told by court officers that if she returned to Judge Thomas’s courtroom she would be arrested. *See* Tr. I at 89–90, 138, 165, 207. Plaintiff asked the court officers, including Sgt. Torres, why they were releasing her because “she was going to go back anyhow, and [they] should just rearrest her then and there.” Tr. I at 254; *see also* Tr. I at 207 (Sgt. Torres’s testimony stating that Plaintiff “kept saying she’s going to go back”). Seventh, about half an hour after Plaintiff’s release from her first arrest, and despite the warning that she would be arrested if she returned, Plaintiff returned to Judge Thomas’s courtroom. Eighth, once Plaintiff arrived in Judge Thomas’s courtroom for the third time the judge asked her to leave several times and Plaintiff did not comply, Court Officer Rivera asked Plaintiff to leave and she did not comply, and then Court Officer Rivera handcuffed and arrested Plaintiff a second time. *See* Tr. I at 254–55, 284–85, 287, 317–18. Ninth, while individuals without attorney identification cards must walk through the metal detectors prior to entering the courthouse, Court Officer Rivera testified that the metal detectors do not pick up all types of contraband, such as pens that open up to knives, handcuff keys, and plastic knives. *See* Tr. I at 298–99. He also testified that some officers “are lax on

the [metal] detectors.” Tr. I at 299.

*3 In light of all of the above, an inference could reasonably be drawn that after Plaintiff’s second arrest Sgt. Torres had an objectively reasonable suspicion that Plaintiff possessed weapons or other contraband so as to justify a strip search, despite the fact that Plaintiff was charged only with a violation and misdemeanor—disorderly conduct and obstruction of governmental administration in the second degree. The evidence supports the conclusion that Plaintiff’s behavior at the courthouse that day was so bizarre, irrational and belligerent, that a court officer could draw a reasonable inference that she posed a danger to others. Plaintiff, who was not known to the court officers and did not have any identification, exhibited a complete willingness to disregard a judge’s and a court officer’s repeated orders, showing no fear as to the consequences of her actions. Plaintiff’s bizarre comment to Sgt. Torres that she could grab a gun on a nearby table while she was handcuffed raised the possibility that this unknown Plaintiff had escape or violence on her mind, and that she was a potentially dangerous arrestee. Plaintiff’s decision to return to the courtroom without reservation about half an hour after her first arrest, and despite having been told that she would be arrested if she returned, supports the inference that Plaintiff left and then returned to the courthouse with a weapon, means of escape or other contraband. This inference is buttressed by Plaintiff’s earlier comment that she could grab a nearby gun, as well as the fact that Judge Thomas spoke to Plaintiff personally when Plaintiff was first in custody and made it clear to Plaintiff that she would not be issuing a decision that day, thereby begging the question as to what Plaintiff intended to do when she entered the courtroom that third and final time on August 1, 1994. Indeed, Judge Thomas testified that Plaintiff had no other business before the court when Plaintiff reentered the courtroom for the second and third time. *See* Tr. I at 315–18. Assessing these circumstances confronting the court officers in their totality, the evidence supports the conclusion that there was an objectively reasonable basis for Sgt. Torres to believe that this Plaintiff was concealing a weapon or other contraband so as to justify a strip search after her second arrest that day.

Finally, Plaintiff makes the argument that the jury could not have found that there was an objectively reasonable suspicion that Plaintiff was concealing a weapon or other contraband because Defendants did not make this argument at trial, but instead focused solely on arguing that Sgt. Torres did not conduct a strip search. The Court disagrees with Plaintiff that Defendants disavowed or abandoned the objectively reasonable suspicion argument at trial. If this were the case, defense counsel would not have questioned Sgt. Torres about Plaintiff’s statement that she could grab a nearby gun, or argued at summation that Plaintiff acted “bizarre” in not having identification

on her, in suggesting to Sgt. Torres that she could reach a nearby gun while handcuffed, and in returning to the courtroom for the third time despite being told that she would be rearrested upon her return. Indeed, at the end of defense counsel's summation, he did briefly argue that a reasonable suspicion existed. *See* Tr. I at 481. As the Court discussed above, the record contained ample evidence to support the jury's finding as to reasonable suspicion and Defendants were responsible for bringing out that evidence at trial.

*4 For the reasons discussed above, the Court denies Plaintiff's Rule 50 motion on the issue of Sgt. Torres's qualified immunity. Sgt. Torres is entitled to qualified immunity because the record contained sufficient evidence to support the jury's finding on special interrogatory # 7. Thus, the Court reaffirms its ruling at trial that the damages portion of the verdict must be set aside. For purposes of the instant motion, however, the Court will assume *arguendo* that the evidence did not support the jury's finding on special interrogatory # 7 and the Court will address Plaintiff's Rule 50 motion as to the jury's finding on damages.

B. Whether Plaintiff is entitled to a new trial on damages

Plaintiff argues that she is entitled to a new trial on damages because the jury's "misguided belief [on special interrogatory # 7] that an objectively reasonable basis existed for the strip search" improperly spilled over into the damages analysis, resulting in the jury's finding only nominal damages for Plaintiff. Pl.'s Reply Mem. at 6. The Court rejects this argument.

Plaintiff's argument that the jury's finding on special interrogatory # 7 derailed them into awarding only nominal damages is speculative; Plaintiff offers nothing of substance to support this "spill over" argument. There was no evidence in the record of any actual damages to Plaintiff. Plaintiff did not claim physical damages and Plaintiff offered no evidence as to lost wages or any injury to her professional reputation from this incident. As for mental or psychological damages, while Plaintiff testified that she was humiliated by the experience and had post-traumatic stress disorder, nightmares, loss of ability to concentrate and loss of sleep, during cross-examination Plaintiff admitted that she did not see a psychiatrist or any type of mental health professional. *See* Tr. I at 126. The fact that Plaintiff offered no expert whatsoever on the issue of damages is quite compelling here. Plaintiff offered only her own testimony in support of her damages claim and defense counsel impeached her testimony on two occasions. On cross-examination defense counsel brought out the fact that Plaintiff had stated on an interrogatory response during discovery that she "does not claim psychiatric or psychological

damage." Tr. I at 128. Defense counsel impeached Plaintiff again on the damages issue when he got Plaintiff to admit that she "[r]ecently ... represented a tenant in the Housing Court in Manhattan," despite her having testified on direct that she had not been able to handle any court cases since the search. Tr. I at 120, 125–26. Defendants cast doubt on Plaintiff's credibility with regard to the alleged actual damages she suffered. Finally, at oral argument on this motion, Plaintiff's counsel conceded that the only evidence of actual damages in this case was Plaintiff's testimony as to the humiliation she felt as a result of the strip search. *See* Tr. II at 11–12. The jury could very well have discounted Plaintiff's claim of humiliation in light of Court Officer's Rivera's testimony that following the strip search, as he walked Plaintiff across the street to central booking, Plaintiff engaged him conversation about shopping at the store "TJ Maxx." Tr. I at 295. In light of the lack of evidence as to damages, the jury could very well have concluded that despite Plaintiff's having been strip searched, Plaintiff's humiliation was minimal and she failed to prove any measurable actual damages for which she should be compensated. The verdict as to nominal damages was not a seriously erroneous result or a miscarriage of justice.

*5 As for punitive damages, there was little evidence in the record from the which the jury could conclude that Sgt. Torres acted maliciously or in wanton disregard of Plaintiff's constitutional rights when she conducted the search. Plaintiff did not testify that Sgt. Torres or Court Officer Regina Asselin taunted her or made any derogatory comments towards her during this entire episode. Moreover, there was testimony that Sgt. Torres tried to alleviate the situation and clear up any misunderstanding by the Plaintiff after her first arrest by urging Judge Thomas to speak with Plaintiff—which Judge Thomas did in fact do. *See* Tr. I at 204. The Court concludes that the jury's determination not to award punitive damages was consistent with the evidence and not a miscarriage of justice.

Finally, despite Plaintiff's counsel's assertion at oral argument that the Court's charge on damages was unclear and erroneous because "the Court told the jury that if they cannot come to an agreement about compensatory damages, then they are to find nominal damage", *see* Tr. II at 8, the Court has reviewed the record and found that no such instruction was given to the jury. The Court believes that the jury considered the damages issue quite carefully given the fact that during deliberations the jury sent out a note requesting "the legal definitions for the terms compensatory, nominal [and] punitive damages," and the Court reread those portions of the charge back to the jury. Tr. I at 572. The evidence supported the jury's finding on the issue of damages.

Accordingly, for the reasons set forth above, the Court denies Plaintiff's motions for a new trial in their entirety.

Kaufman v. Rivera, Not Reported in F.Supp. (1998)

The Court directs that this case be closed and removed from the Court's docket.

SO ORDERED.

Footnotes

¹ "Tr. I" refers to the trial transcript. "Tr. II" refers to the June 4, 1998 oral argument transcript.