NO. 18-5106

In The
Supreme Court of the United States

SHIRLEY A. STEWART,
***Petitioner*,**

v.

ERIC H. HOLDER, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FOR RESPONDENT B.A. PITTS (FAIRFAX SHERIFF)

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LIST OF PARTIES

Respondent B.A. Pitts (Fairfax Sheriff), in his personal capacity, states that Stewart's List of Parties is not fully accurate, as several of the parties on her list were dismissed without prejudice, as the defendants were sued in their official capacities, from Stewart's Amended Complaint including, *inter alia*, Stacey Kincaid (Fairfax County Sheriff Department) who was also represented by undersigned counsel's firm in the proceedings below. There were only three defendants to the Second Amended Complaint which is at issue here, including:

B.A. Pitts (Fairfax Sheriff), in his personal capacity

Jason S. Manyx (U.S. Homeland Security), in his personal capacity

Doug Comfort (Fairfax Police), in his personal capacity

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent "B.A. Pitts (Fairfax Sheriff), in his personal capacity" (hereinafter "Deputy Pitts" or "Pitts"), by counsel, respectfully submits that Shirley A. Stewart's ("Stewart") Petition for Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Stewart has appealed the dismissal of her Second Amended Complaint. With respect to the procedural background of this matter, Stewart initially filed her claims in the United States District Court for the District of Columbia in what she called an "Amended Complaint" (Dkt. 1). This initial "Amended Complaint" identified thirteen defendants including, *inter alia*, several judges, the President of the United States, "DOE Entities And others as of yet unknown," and "DOE Entities 1-100, Jane Does 1-100, DOE Corporations 1-100, Doe Governmental" (Dkt. 1). The Amended Complaint, apparently filed March 4, 2015, purported to be brought pursuant to Title 42 U.S.C. § 1983 for violations of Stewart's constitutional rights. Factually, this Amended Complaint alleged that Stewart was stopped and arrested on or about September 19, 2013, and further alleged that on October 8, 2013 she was arrested at her home in Herndon, Virginia while it was being searched by a U.S. Homeland Security SWAT team. Deputy Pitts was not named as a defendant in this "Amended Complaint" that was filed in the District of Columbia, and Fairfax County Sheriff Stacey Kincaid was not named as a defendant, either (Dkt. 1). However, included in the allegations of the "Amended Complaint", Stewart discussed "Deputy Pitts" (Dkt. 1, pp. 4-5).

Stewart's case was transferred to the Eastern District of Virginia on June 20, 2016. On September 15, 2016, Stewart filed another "Amended Complaint" in the Eastern District of Virginia and, for the first time, she identified Stacey Kincaid (Fairfax County Sheriff Dept.) as a

defendant (Dkt. 14). Again, Deputy Pitts was not named as a defendant in this "Amended Complaint" (Dkt. 14).

All of the defendants served with the Amended Complaint that Stewart filed in the Eastern District of Virginia filed dispositive motions (Dkt. 22, 31, 37, 65). The Court dismissed the Amended Complaint without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i), (ii), and (iii), by an Order dated January 23, 2017 (Dkt. 80). Thereafter, Stewart filed a Motion to Amend, which was denied with leave for her re-file her motion. Stewart filed another Motion to Amend on February 27, 2017, along with a proposed Second Amended Complaint, which was granted on March 10, 2017 (Dkt. 84 & 85). Stewart's Second Amended Complaint named Deputy Pitts, Detective Doug Comfort, and Special Agent Jason S. Manyx, all in their individual capacities.

Deputy Pitts was not a party to this lawsuit at any point before Stewart's Second Amended Complaint was filed on March 10, 2017. Deputy Pitts first learned about Stewart's claims after his superiors in his chain of command advised that Stewart had filed and served a complaint against Sheriff Stacey Kincaid on or about October 12, 2016 (Dkt. 96-3). [1]

The three defendants to Stewart's Second Amended Complaint each filed dispositive motions in the District Court (Dkt. 92, 95, 108), which were granted by Order dated July 19, 2017 (Dkt 116). Stewart filed a Notice of Appeal to the Fourth Circuit on July 24, 2017 as to the July 19, 2017 Order (Dkt. 117), and filed her Informal Brief on August 18, 2017 (App. Dkt. 6). Several respondents filed Informal Briefs in Opposition. The Fourth Circuit Court of Appeals affirmed the District Court's dismissal in an unpublished opinion dated January 30, 2018 (App. Dkt. 23).

[1] This date was approximately 3 years and 1 month after the alleged September 19, 2013 events. In fact, in her Informal Brief before the Fourth Circuit, Stewart alleged that the events at issue started even earlier stating, "Appellant's grievance, contrary to the insistence of the lower court, did not commence with the traffic stop of September 19, 2013. It started when Appellant was told she was being investigated [by some unidentified person], back in 2012…" As such, her claims should also be time-barred as argued below by Pitts.

On April 3, 2018, Stewart's Petition for Rehearing and Rehearing *en Banc* was denied and no judge requested a poll (App. Dkt. 28).

As to the factual background, Stewart has alleged in her Second Amended Complaint that she was arrested by Deputy Pitts on September 19, 2013 (Dkt. 85, p. 4, ¶ 2). Stewart alleged "Count I" against "Deputy B.A. Pitts of Fairfax Sheriff Department, in his personal capacity" for "Violation of 1964 Civil Rights Act, As Amended (Sections 1981, 1983), Gross negligence, False Arrest, False Imprisonment, Damages" (Dkt. 8, p. 4). Count I contained only paragraphs 1 through 14, and Stewart claimed $50,000,000.00 plus punitives against Deputy Pitts (Dkt. 85, pp. 4-6).

Plaintiff Stewart alleged that Deputy Pitts pulled her over in a traffic stop on September 19, 2013 (Dkt. 85, p. 4, ¶ 2). When Pitts asked for her identification, Stewart did not provide a driver's license and stated that she had "surrendered" her driver's license (Dkt. 85, p. 5, ¶ 9). Contrary to what Stewart now claims in her Petition before this Court, Stewart admitted in the allegations of her Second Amended Complaint that *she gave* to Deputy Pitts "an identification card which identifies her as a member of the World Service Authority" (Dkt. 85, p. 4, ¶ 5). After receiving this information, Deputy Pitts searched the car and arrested Stewart. He arrested Stewart for driving on a suspended license, as well as other charges related to the false identification documents (Dkt. 96-4 to 96-8).[2]

SUMMARY OF THE ARGUMENT

The Second Amended Complaint was properly dismissed by the District Court and such dismissal was properly affirmed in an unpublished opinion by the Fourth Circuit. Stewart failed to state any claim under 42 U.S.C. §§ 1981, 1983, and 1985, failed to state a claim for false arrest,

[2] Stewart was convicted in the Fairfax County General District Court of driving on suspended license, which she appealed to the Fairfax Circuit Court, and she was again convicted on February 3, 2014. She appealed (belatedly) years later to the Virginia Court of Appeals, which transferred the case to the Virginia Supreme Court, which refused Stewart's petition.

false imprisonment, and gross negligence, and failed to state a claim under the Fourth Amendment against Deputy Pitts. Additionally, Deputy Pitts was entitled to immunity. Stewart was arrested for driving without a proper license. Her own Second Amended Complaint admitted that she did not have a proper driver's license and that she presented to Deputy Pitts a "World Service Authority" identification card, which was improper identification.[3] As such, Stewart failed to state any viable claims.

Furthermore, transfer of the case by the U.S. District Court for the District of Columbia to the U.S. District Court for the Eastern District of Virginia was proper under 28 U.S.C. § 1406. Additionally, Stewart never contested venue or filed any objection to venue in the Eastern District of Virginia while the case was pending there. She raised this issue for the first time in her informal brief to the Fourth Circuit.

Lastly, Stewart's argument that attorney Dana Boente (who did not sign any pleadings) held various positions in the U.S. government over several years, including as U.S. Attorney and acting Attorney General, was never raised previously by Stewart and cannot be raised at this stage.

ARGUMENT

The decision of the Fourth Circuit Court of Appeals was correct. Review by this Court is therefore not warranted, and the Petition for Writ of Certiorari should be denied.

A. Stewart's Second Amended Complaint was Properly Dismissed.

Stewart's Second Amended Complaint was properly dismissed, and the Fourth Circuit's unpublished opinion affirming the dismissal was proper. Stewart was given ample opportunity to plead and re-plead her claims, and her third attempt at her complaint still did not meet the *Iqbal-Twombly* standard. A plaintiff must state "more than labels and conclusions, and a formulaic

[3] Various other invalid forms of identification were also in Stewart's possession.

recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929, 940 (2007). The court did not have to accept legal conclusions in the form of factual allegations. *Id.*

1. Stewart failed to state §§ 1981, 1983, & 1985 claims.

Stewart failed to state a claim under 42 U.S.C. §§ 1981 & 1983. To the extent Stewart referenced her race and alleged some sort of unspecified discrimination, her conclusory statements that she believed she was wrongfully arrested, deprived of her freedom, and was racially profiled, without more, was insufficient to state a claim for recovery. Stewart alleged that she was subject to a traffic stop, and she admitted that she did not produce a valid driver's license when requested. As noted above, instead of providing a driver's license she produced an identification card from the "World Service Authority." Upon a traffic stop, an officer may "perform the traditional incidents of a routine traffic stop," which can include a request for driver's license, performance of a computer check, and issuance of a citation. *United States v. Branch*, 537 F.3d 328, 335 (4th Cir. 2008). Here, Stewart alleged she was stopped because of expired tags. She alleged that Deputy Pitts later determined after the stop that the tags were not expired. Deputy Pitts was still allowed to check Stewart's driver's license to make sure she was permitted to drive. *Id.*; *Rodriguez v. United States*. 135 S. Ct 1609, 1615, 191 L. Ed. 2d 492 (2015) (permitting "ordinary inquiries incident" to the stop, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"). Upon Stewart's failure to produce a valid driver's license and her providing only a "World Service Authority" identification card, it was determined that she was driving without a proper license. There was no violation of Stewart's civil rights, as Deputy Pitts actions were in compliance with the law.

To the extent Stewart's Second Amended Complaint might have attempted to claim conspiracy as to Deputy Pitts, which she did not state in the Count 1 heading, Stewart otherwise failed to state a claim. To prove a § 1985 conspiracy, a plaintiff must show the defendants had an agreement, or a meeting of the minds, to violate plaintiff's constitutional rights. A plaintiff must also show the defendants were "motivated by specific class-based, invidiously discriminatory animus." *Simmons v. Poe*, 47 F.3d 1370, 1376-1377 (4th Cir. 1995) (citations omitted). A plaintiff is required to plead a conspiracy under 42 U.S.C. § 1985 with specificity and particularity. *See Davis v. Hudgins*, 896 F. Supp. 561, 571 (E.D. Va. 1995). The Second Amended Complaint failed to provide any facts that Deputy Pitts acted with discriminatory animus. *Gooden v. Howard County*, 954 F.2d 960, 969-970 (4th Cir. 1992) (§ 1985 conspiracy claims must be pled with "specific facts in a nonconclusory fashion to survive a motion to dismiss").

The Second Amended Complaint did not allege elements sufficient to state a claim against Deputy Pitts for interference with Stewart's civil rights, and certainly did not allege conduct which would not be protected by immunity. Stewart alleged that while she was being arrested, the arresting officer spoke over his radio to a party named "Comfort" who said they would be at her house soon. She then concluded that since she later learned that Mr. Comfort served as a liaison with federal law enforcement agencies, the conversation must therefore have been a conspiracy. These conclusory statements cannot support any claim for conspiracy. The conclusory statements failed to state any class-based discriminatory animus whatsoever, or any agreement or meeting of the minds. Stewart's allegations that she is African American and must have been racially profiled were not sufficient to support a conspiracy claim. Even when taken as true, co-respondent Detective Comfort's alleged statement to Deputy Pitts to the effect that "they would be at her house soon" would not satisfy the high threshold needed to state a conspiracy claim. Communication

between law enforcement agencies is normal and necessary, and Stewart's complaint failed to allege sufficient facts to show any conspiracy.

2. Stewart failed to state common law claims for false arrest, false imprisonment and gross negligence.

Stewart's Second Amended Complaint on its face failed to state viable claims for false arrest, false imprisonment, and gross negligence against Deputy Pitts. False arrest or imprisonment is restraint of liberty without sufficient legal excuse. *Montgomery Ward & Co. v. Wickline*, 188 Va. 485, 489, 50 S.E.2d 387, 388 (1948). An officer who makes a misdemeanor arrest without a warrant, and based on mistake of fact or law, will not be subjected to civil liability for false arrest or imprisonment so long as the officer acted in good faith and had a reasonable belief in the validity of the arrest. *Yeatts v. Minton*, 211 Va. 402, 405, 177 S.Ed.2d 646 (1970). Further, where an arrest was lawful, a plaintiff "cannot prevail on a claim of false imprisonment." *Lewis v. Kei*, 281 Va. 715, 724, 708 S.E.2d 884, 891 (2011). Moreover, where a warrant is regular and valid on its face, there cannot be a claim for false imprisonment. *Id.* There was no allegation that the warrant was not regular or valid. Stewart acknowledged in her complaint that she was arrested and imprisoned after she failed to produce a valid driver's license.[4] She admitted, therefore, that she did not provide a valid license and that she was driving without a valid license, which was against the law. There can be no claim for false arrest or false imprisonment based on these facts.

Stewart's state law claim for gross negligence against Deputy Pitts also failed, since Stewart was admittedly driving while suspended or without a valid license. Gross negligence is the "absence of slight diligence, or the want of even scant care." *Frazier v. City of Norfolk*, 234

[4] She also acknowledged in her earlier Complaint that the identification she produced when asked for her license was not recognized by the U.S. State Department.

Va. 388, 393, 362 S.E.2d 688, 691 (1987). Probable cause was found for the arrest of Stewart, and Stewart admitted through her allegations that she was driving without a valid license. As such, there was at least some degree of care exercised; therefore, Stewart's claim for gross negligence fails and her complaint was properly dismissed.

3. Deputy Pitts was entitled to immunity.

With respect to claims against Deputy Pitts, in his personal capacity, qualified immunity was properly applied by the lower court. Law enforcement officers have qualified immunity in their individual capacity, and in analyzing qualified immunity, "[t]he contours of the right [allegedly violated] must be sufficiently clear that a reasonable official would understand what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 3039, 97 L. Ed. 2d 523, 531 (1987). As discussed above, Deputy Pitts was still allowed to check Stewart's driver's license to make sure she was permitted to drive. *Rodriguez*, *supra*. Qualified immunity is intended to protect government officials "from undue interference with their duties and from the potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, 806, 102 S. Ct. 2727, 2732, 73 L. Ed. 2d 396 (1982); see also *Johnson v. Holmes*, 204 F. Supp. 3d 880, 885 (W.D. Va. 2016). "The doctrine 'gives ample room for mistaken judgments', by protecting 'all but the plainly incompetent or those who knowingly violate the law.'" *Johnson*, at 885, *quoting Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986). Further, "[t]he entitlement is an *immunity from suit* rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial." *Torchinsky v. Siwinski*, 942 F.2d 257, 261 (4th Cir. 1991), citing *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815, 86 L. Ed. 2d 411 (1985) (stating that unless plaintiff states a "violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal").

Stewart generally alleged that she was detained and arrested, but she did not provide sufficient facts as to why she claims she was supposedly wrongfully detained or arrested. To the contrary, she actually conceded in her Second Amended Complaint that she did not have a driver's license and provided improper identification to Deputy Pitts. Deputy Pitts' actions in seeking Stewart's driver's license was in compliance with the law, as discussed above; therefore, the District Court properly granted Deputy Pitts' Motion to Dismiss on the additional basis of qualified immunity.

B. Stewart's other arguments were not raised in the District Court.

The transfer of this case by the U.S. District Court for the District of Columbia to the U.S. District Court for the Eastern District of Virginia was proper under 28 U.S.C. § 1406. *Id.* ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."). The alleged events arose and took place in Fairfax County, Virginia, which is within the Eastern District of Virginia. Further, Stewart never contested venue or filed any objection to venue in the Eastern District of Virginia while the case was pending there; in fact, she filed an Amended Complaint once it was transferred to the Eastern District of Virginia. Stewart raised this issue for the first time in her informal brief to the Fourth Circuit. Her argument cannot be raised on appeal when it was not addressed in the trial court.

Stewart's unclear argument about some type of "potential prejudice" to her case because Dana Boente (who did not sign any pleadings) held various positions in the U.S. government, including as U.S. Attorney in the Eastern District of Virginia and as acting Attorney General, over several years while this case has been pending was never raised previously by Stewart and cannot be raised at this stage.

CONCLUSION

WHEREFORE, for the above stated reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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