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APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE EIGHT
CIRCUIT, FILED SEPTEMBER 9, 2019

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 18-2878

MARK TARGOWSKI,

Plaintiff-Appellant,

v.

SUPER 8 WORLDWIDE, INC., ORIGINALLY
NAMED AS SUPER 8 BATESVILLE, DOING
BUSINESS AS SUPER 8 BATESVILLE; LARRY
WOODS; INDEPENDENCE COUNTY, ARKANSAS,

Defendants,

ZACHARY LEE RAWLINS,

Defendant-Appellee,

JOHN DOES, 1-4, IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITY; S&S HOSPITALITY 2, LLC,

Defendants.

September 3, 2019, Submitted
September 9, 2019, Filed

**APPENDIX B — OPINION OF THE UNITED
STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF ARKANSAS, BATESVILLE
DIVISION, FILED AUGUST 1, 2018**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION**

1:16-CV-00148-BRW

MARK TARGOWSKI,

Plaintiff,

vs.

ZACHARY LEE RAWLINS,

Defendant.

VERDICT FORM

1. On Plaintiff Mark Targowski's excessive force claim against Defendant Zachary Lee Rawlins, we, the Jury, find in favor of Defendant
(write Plaintiff or Defendant above)
2. On Plaintiff Mark Targowski's claim that Defendant Zachary Lee Rawlins lacked arguable probable cause to enter the room and arrest him, we, the Jury find in favor of Defendant
(write Plaintiff or Defendant above)

Appendix B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION

1:16CV00148-BRW

MARK TARGOWSKI,

Plaintiff,

vs.

ZACHARY LEE RAWLINS,

Defendant.

JUDGMENT ON JURY VERDICT

This action came on for trial July 31, 2018, before the Court and a jury, the Honorable Billy Roy Wilson, United States District Judge, presiding. At the conclusion of the evidence, the issues having been duly tried, and after deliberating thereon, the jury returned a verdict on August 1, 2018 in favor of the Defendant, Zachary Lee Rawlins.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the plaintiff, Mark Targowski take nothing on his complaint against the Defendant, Zachary Lee Rawlins and this case is DISMISSED with prejudice.

**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF ARKANSAS, NORTHERN
DIVISION, FILED JUNE 21, 2018**

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

1:16-cv-00148-BRW

MARK TARGOWSKI,

Plaintiff,

vs.

INDEPENDENCE COUNTY, *et al.*,

Defendants.

ORDER

Pending are Defendants' (Independence County and Deputy Rawlins) Motion for Summary Judgment (Doc. No. 67). Plaintiff has responded and both sides filed replies.¹ Based on the findings of fact and conclusions of law below, the Motion is GRANTED IN PART and DENIED IN PART.

1. Doc. Nos. 74, 80, 81.

Appendix C

Defendants Super 8 and Larry Woods were dismissed on May 8, 2017.

II. DISCUSSION**A. Malicious Prosecution**

Plaintiff asserts that the state-court criminal charges for disorderly conduct and communicating a false alarm were resolved in his favor because the charges were dismissed. However, according to the certified docket sheet, the judge took the case under advisement for six months, with the condition that if Plaintiff had no other run-ins with the law, the charges would be dismissed. Plaintiff was also ordered to pay \$280, which he did. While it's true that the charges were dismissed, it was only after Plaintiff paid a fine and had no more arrests for six months. Accordingly, Plaintiff cannot establish that the criminal proceeding was terminated in his favor,³ and the malicious prosecution claim is DISMISSED.

B. Independence County, Arkansas

Plaintiff asserts that "Independence County, as an employer of the individual Defendants, is responsible

3. *Sundeen v. Kroger*, 355 Ark. 138, 142, 133 S.W.3d 393, 395 (2003) ("In order to establish a claim for malicious prosecution, a plaintiff must prove the following five elements: (1) a proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of the plaintiff; (3) absence of probable cause for the proceeding; (4) malice on the part of the defendant; and (5) damages.").

Appendix C

C. Official Capacity Claims

It is well-settled that “a suit against a government officer in his official capacity is functionally equivalent to a suit against the employing governmental entity.”⁸ For the same reasons set forth above, the official capacity claim is DISMISSED.

D. John Doe Defendants

Defendant’s Amended Complaint lists “John Does 1-4 in their individual and official capacity.” However, none of these John Does was ever served or even named. Additionally the discovery cut-off has passed and trial is set to commence on Tuesday, July 31, 2018. Accordingly, the John Doe Defendants are DISMISSED.

E. First Amendment Claim

The Amended Complaint is not specific regarding Plaintiff’s First Amendment claim. It appears to me that he is arguing that if he “direct[ed] verbal criticism and profanity” at the officers, that is his right, and it would not permit the deputies to enter the room. This argument – and this case – is really based on the Fourth Amendment. Accordingly, this claim is DISMISSED.

8. *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010).

Appendix C

Deputy Rawlins asserts that he neither tackled nor cuffed Plaintiff. Plaintiff claims that he did. However, Plaintiff also testified that he "could not see [the officers'] faces." A jury has to weight the credibility of these statements. Additionally, the jury must consider the extent of the force used in light of the surrounding circumstances. If the jury believes Plaintiff, "a reasonable officer would know that the amount of force used in the incident was not reasonable under the circumstances."¹¹

CONCLUSION

Based on the findings of fact and conclusions of law above, Defendant's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART. Defendant Independence County and the official capacity claims against Deputy Rawlins are DISMISSED with prejudice. The John Doe Defendants are DISMISSED without prejudice.

Plaintiff may proceed with his individual capacity claims against Deputy Rawlins.

IT IS SO ORDERED this 21st day of June, 2018.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

11. See *Prosser v. Ross*, 70 F.3d 1005, 1007 (8th Cir.1995) (discussing qualified immunity).