

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

ALI MEHDIPOUR,)
vs.)
Plaintiff,)
CITY OF MIDWEST CITY et al.,)
Defendants.)
No. CIV-17-298-W

ORDER

This matter comes before the Court on the Motion to Dismiss Portions of Plaintiff's First Amended Complaint filed by defendant City of Oklahoma City ("City").¹ Plaintiff Ali Mehdipour has responded,² and the City has filed a reply.

In his first amended complaint, Mehdipour has contended that on October 28, 2015, his home located at 1317 N.W. 1st Street in Oklahoma City, Oklahoma, caught fire, and Michael Parks, an acquaintance, offered to loan him a generator to help secure the home. On November 3, 2015, Mehdipour went to 215 North Douglas Avenue³ in

¹In addressing the parties' arguments, the Court makes no findings with regard to the timeliness of plaintiff Ali Mehdipour's amended pleading.

²Mehdipour has responded by relying in part on Rule 10, F.R.Civ.P., and adopting his response to the Motion to Dismiss Plaintiff's First Amended Complaint filed by defendant City of Midwest City. See Docs. 23, 35. As the Honorable David L. Russell has found, "this reliance [is] . . . inappropriate." Adams v. Garvin County Board of County Commissioners, 2016 WL 5173395 *1 n.2 (W.D. Okla. September 21, 2016)(citing Blueberry v. Comanche County Facilities Authority, 2016 WL 1717229 *1 (W.D. Okla. April 28, 2016)). "Rule 10(c) provides that '[a] statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion.' Motions, however, are not pleadings. Rule 10 does not contemplate briefing by incorporation[.]" Id. The Court does not condone Mehdipour's reliance on Rule 10, supra, and cautions Mehdipour about such practice in the future.

³Mehdipour has alleged in his amended pleading that the property located at 215 North Douglas Avenue is his property. See Doc. 20 at 4, ¶ 15.

Oklahoma City and, together with Parks, placed the generator on the sixteen-foot trailer attached to Mehdipour's vehicle.

Defendant Bruce Glover, a police officer employed by defendant City of Midwest City ("Midwest City"), had received a report of a stolen generator; the report "allegedly implicated [Mehdipour] . . . as having possession of such property." Id. ¶ 6. Glover contacted the City "presumably because the [generator] . . . was located at . . . [Mehdipour's] property in Oklahoma City." Id. ¶ 7.

In response, defendant Jeff Coffey,⁴ a City police officer, went to Mehdipour's property "and then trespassed . . . by allegedly looking through a crack in a door to observe the generator . . ." Id. ¶ 8. Defendants Jeremy Zuniga and Brett Baker, two Midwest City police officers, also surveilled Mehdipour's property, and they observed Mehdipour leave with another person.

As he was driving away from the property on North Douglas Avenue, Mehdipour noticed he was being followed by a white Dodge truck. Because that concerned him, he drove to a neighbor's house and parked his vehicle. The Dodge truck, which was being driven by Midwest City police officers, parked behind Mehdipour's vehicle. Two City police cars then arrived, and the officers exited those vehicles and approached Mehdipour's trailer. Additional police officers arrived, and City officer Bradley Conley⁵ told Mehdipour he was under arrest "for stealing the generator." Id. at 4, ¶ 12.

⁴This defendant is identified as "Jay Coffey" in the Information filed in the District Court for Oklahoma County, Oklahoma, on March 14, 2016. See Doc. 14-1 at 2.

⁵Mehdipour's claims against Conley were dismissed on June 15, 2017. See Doc. 15.

Based on "information provided by Midwest City and . . . gained by the . . . trespass[.]" id. ¶ 15, and surveillance, "City police [had] initiated [a] . . . traffic stop⁶ . . . and detained [Mehdipour] . . . until the Midwest City police arrived." Id. Mehdipour "informed all [officers present] . . . that he, in fact, [had] borrowed the generator because his property recently had [had] a fire and [he] provided the name and address and contact information of the individual [from whom] he [had] borrowed it . . ." Id. According to the first amended complaint, that "individual had lawfully purchased the generator from the son of the alleged victim, who stole it from his mother and sold it to a third party who lawfully loaned it to [Mehdipour] . . ." Id. at 4-5, ¶ 15.

"Even though most of this information was readily ascertainable," id. at 5, ¶ 15, no officer "verif[ied] any of the information that [Mehdipour had] . . . provided[.]" Id. Instead, pursuant to Midwest City's request, see id. ¶ 16, Conley arrested Mehdipour and transported him to Midwest City. Mehdipour was released from custody that evening, and he learned that none of the officers had asked Parks about the generator.

That same date, November 3, 2015, Baker prepared an Affidavit of Probable Cause, see id. ¶ 17; id. at 11, ¶ 43; Doc. 9-2, wherein he swore that probable cause existed for Mehdipour's arrest for receiving and concealing stolen property in violation of state law. See Doc. 20 at 5, ¶ 17; Doc. 9-2. In describing the events on November 3, 2015, Baker first wrote:

⁶According to the Complaint/Information, No. 16-6654295, filed in the Municipal Court of The City of Oklahoma City, Mehdipour was stopped and ticketed for failure to stop at a stop sign, in violation of Oklahoma City Municipal Code § 32-281. See Doc. 9-1.

(1) "[o]n Tuesday November 3, 2015 Sgt. Glover of the Midwest City Police Department Patrol Division took a report of a stolen black and gray Briggs and Stratton generator from the resident of 613 Askew Dr[ive] in Midwest City[.]" id.;

(2) "[t]he victim informed Sgt. Glover that she suspected her son, Michael Flanagan, of stealing the generator[.]" id., and told him "that Michael [had] informed her he had seen the stolen generator the previous week at 215 N[.] Douglas Ave[nue] in Oklahoma City[.]" id.;

(3) "[t]he victim stated that Michael informed her this was a location that stolen property was often stored[.]" id.; and

(4) "Sgt. Glover contacted [the Oklahoma City Police Department] . . . and Officer Coffey was dispatched to 215 N[.] Douglas Ave[nue]," id., to investigate, after which he "informed Sgt. Glover that he could see a generator matching the description of the one reported stolen through a crack in the door." Id.

Baker further reported that

[a]t approximately 1427 hours . . . Zuniga and I began surveillance at 215 N[.] Douglas Ave[nue],

id., during which,

I observed . . . [Mehdipour] along with an unidentified white male exit the south side of the building located at 215 N[.] Douglas Ave[nue] carrying a black and gray generator. They loaded the generator onto a trailer that was attached to a white Nissan truck. . . . [Mehdipour] got into the driver's side of the Nissan truck and drove away from the building traveling westbound. I followed the vehicle to NW 1st St[reet] and Indiana Ave[nue] where Sgt. Conley . . . stopped the vehicle. Sgt. Conley ma[d]e contact with . . . [Mehdipour] and detained him. I observed the black and gr[a]y generator on the back of the trailer to be a Briggs and Stratton. I was able to confirm with the serial number provided by the victim that it was the generator that had been stolen . . .

Id.

Two days later, on November 5, 2015, Mehdipour delivered to Midwest City the handwritten "affidavit of the [individual] . . . who purchased the generator from the victim's son." Doc. 20 at 5, ¶ 18. See Doc. 13-2. The "affidavit . . . attested that the generator [had been] . . . lawfully loaned to [Mehdipour]" Doc. 20 at 5, ¶ 18. "[A] bill of sale from the victim's son to the purchaser was also presented[.]" Id.

On March 14, 2016, Mehdipour was charged in the District Court for Oklahoma County, Oklahoma, with one count of concealing stolen property in violation of 21 O.S. § 1713. State v. Mehdipour, No. CF-2016-2036. See Doc. 14-1. Mehdipour has contended that he was charged as a result of information supplied by Baker, Conley, Zuniga and Glover to the District Attorney for Oklahoma County, Oklahoma ("District Attorney"). See Doc. 20 at 5, ¶ 18. In September 2016, the District Attorney filed a Motion to Dismiss and Recall Warrant. See Doc. 13-3. The state court granted the motion and dismissed the case. See id. The reason stated for the dismissal: "Pending Further Investigation[.]" Id.; e.g., Doc. 20 at 5, ¶ 18. Mehdipour has alleged that "the underlying reason for [the] . . . dismissal was . . . his actual innocence." Id. at 6, ¶ 18.

While Mehdipour has sought relief under federal and state law against other defendants, he has asserted only state law claims against the City.⁷ In Count I, Mehdipour has alleged that he was falsely arrested without probable cause after he was improperly detained by individuals acting within the course and scope of their employment with the City. In Count III, he has contended that the City is liable for trespass because

⁷A political subdivision, such as the City, can be held "liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment[.]" 51 O.S. § 153(A). As defined by Oklahoma Governmental Tort Claims Act, id. § 151 et seq., "[s]cope of employment" means performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority" Id. § 152(12).

one its officers—Coffey, having received information about the generator from Midwest City, entered his (Mehdipour's) property; in Count IV, Mehdipour has asserted that the City violated his rights under article 2, section 30 of the Oklahoma Constitution. The City has challenged only Counts I and IV.

Oklahoma courts define "false arrest" as the "unlawful restraint of an individual's personal liberty or freedom of locomotion" or 'an arrest without proper legal authority.' Shaw v. City of Oklahoma City, 380 P.3d 894, 899 (Okla. App. 2016)(quoting Overall v. State ex rel. Department of Public Safety, 910 P.2d 1087, 1091 (Okla. App. 1995)) (footnote omitted). In addressing the tort of false arrest, these courts have held:

[A] good faith, warrantless arrest by an officer without due and legal process, i.e., probable cause, is a false arrest. As such the arrest is tortious. The mental intent of the officer in making the arrest is irrelevant. There is no inference of bad faith, ill will, or malice to be drawn from the actions of the officer making the arrest. The simple fact the arrest was made without due and legal process, i.e., probable cause, constitute the tort of false arrest.

Overall, 901 P.2d at 1091. As the United States Court of Appeals for the Tenth Circuit has recognized: "The common-law tort of false arrest has a single element in Oklahoma: that the defendant-officer arrested the plaintiff without probable cause." Gouskos v. Griffith, 122 Fed. Appx. 965, 970 (10th Cir. 2005)(citation omitted)(cited pursuant to Tenth Cir. R. 32.1).

The Court has already determined that Conley had probable cause to detain Mehdipour based on the traffic offense that Mehdipour committed in Conley's presence. See Doc. 15. The Court has also found that the Midwest City officers, acting within the scope of their employment, had probable cause to arrest Mehdipour and/or to cause his arrest for receiving and concealing stolen property; based upon information

communicated by these officers, Conley had reasonable cause to believe that Mehdipour had committed a felony. Based on these findings, the Court concludes that the first amended complaint fails to contain sufficient well-pleaded facts that plausibly suggest that the City, through its officers, falsely arrested Mehdipour or caused his false arrest. The City is therefore entitled to dismissal of Count I.

The Court has next considered Mehdipour's claim for relief against the City in Count IV. Mehdipour has argued in the alternative in that count that the City violated his rights under article 2, section 30 of the Oklahoma Constitution. This section provides that

[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.

Oklahoma Const. art. 2, § 30.

In Bosh v. Cherokee County Building Authority, 305 P.3d 994, 1001 (Oklahoma 2013), the Oklahoma Supreme Court recognized a private right of action against a governmental entity for excessive force based on section 30, notwithstanding the limitations of the Oklahoma Governmental Tort Claims Act ("OGTCA"), 51 O.S. § 151 et seq.⁸ The Honorable Joe Heaton "has concluded that Bosh should be narrowly interpreted and applied only to excessive force claims." Mothershed Bey v. City of Oklahoma City, 2017 WL 2455160 *3 (W.D. Oklahoma June 6, 2017)(citing Hedger v. Kramer, 2013 WL 5873348

⁸See n.7, supra. The Oklahoma Supreme Court subsequently clarified its decision in Bosh and held that "a claim for excessive force against a municipality, as applied to police officers and other law enforcement personnel, may not be brought against a municipality when a cause of action under the OGTCA is available." Perry v. City of Norman, 341 P.3d 689, 689 (Oklahoma 2014). In Perry, the state supreme court affirmed the dismissal of a Bosh claim against the City of Norman because the plaintiff had a remedy under the OGTCA.

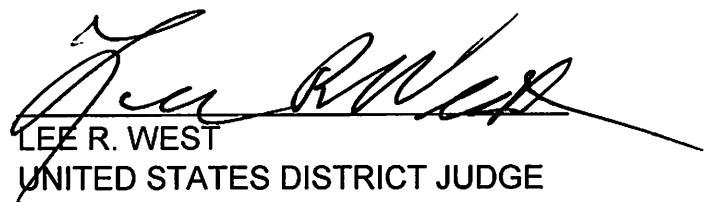
*3 (W.D. Okla. October 30, 2013), appeal filed (10th Cir. September 14, 2016)). According to Judge Heaton, "Bosh does not serve to create a private right of action for all claims arguably arising under the Oklahoma Constitution." Id.⁹ The Court agrees. Moreover, if the City's officers were acting within the scope of their employment, as Mehdipour has alleged, then Mehdipour's exclusive state remedy against the City is under the OGTCA.

Based on the foregoing, the Court

(1) GRANTS the City's Motion to Dismiss Portions of Plaintiff's First Amended Complaint [Doc. 27] filed on August 18, 2017; and

(2) DISMISSES Mehdipour's claims set forth in Counts I and IV against the City.¹⁰

ENTERED this 29th day of November, 2017.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

⁹Federal and state judges have differed on whether a private cause of action exists under section 30 for constitutional violations other than excessive force. Compare Mothershed Bey *3; Howard v. Grady County Criminal Justice Authority, 394 P.3d 299, 305 (Okla. App. 2016)(Goree, J., concurring in result)(“unwilling to join the majority in its assumption that the Oklahoma Constitution provides a private cause of action for violations of due process) with Halley v. Oklahoma ex rel. Oklahoma State Department of Human Services, 176 F. Supp.3d 1268 (E.D. Okla. 2016)(Bosh extends to due process claims under article II, § 7 of Oklahoma Constitution); White v. City of Tulsa, 979 F.Supp.2d 1246 (N.D. Okla. 2013)(Bosh extends to all search and seizure violations under section 30); GJA v. Oklahoma Department of Human Services, 347 P.3d 310 (Okla. App. 2015)(Bosh extends to due process claims under state Constitution).

¹⁰Count III, a state law trespass claim, remains pending against the City.