APPENDIX A

United States Court of Appeals
Fifth Circuit
FILED
February 14, 2024
Lyle W. Cayce
Clerk

United States Court of Appeals
for the Fifth Circuit

No. 22-11099

YOEL WEISSHAUS,

Plaintiff—Appellant,

versus

STEVE COY TEICHELMAN; 100TH JUDICIAL DISTRICT,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:22-CV-35

Before Smith, Graves, and Wilson, Circuit Judges.
James E. Graves Jr., *Circuit Judge:* **

Appellant Yoel Weisshaus brought a § 1983 Fourth Amendment Claim against police officer Steve Teichelman and the 100th Judicial District ("the District") alleging illegal search and seizure incident to a prolonged traffic stop. The district court granted the District's motion to dismiss for failure to state a claim

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

and granted summary judgment based on qualified immunity to Teichelman. We AFFIRM.

BACKGROUND

On March 2, 2020, Appellant was traveling with a passenger, Ms. Lee, from Oklahoma to Scottsdale, Arizona when he was pulled over in Texas by Officer Teichelman for speeding and displaying an obscured license plate and registration insignia. Teichelman requested to see Appellant's driver's license and registration and asked Appellant to accompany him to his patrol car. Ms. Lee stayed in the vehicle. While running Appellant's license and registration, Teichelman asked Appellant questions regarding his travel plans. Appellant was unable to provide details as to the length of his stay and hotel accommodations, and stated only that he was helping Ms. Lee move her belongings to New Jersey. Given that Appellant had a driver's license from New Jersey, was unable to give specific answers as to length of stay and hotel accommodations, and was traveling on I-40, a highway that was a known "drug and human trafficking corridor" with a woman "who appeared to be considerably younger with no familial connection," Officer Teichelman developed a suspicion of criminal activity. To dispel this suspicion, Teichelman decided to ask Ms. Lee the same questions he asked Appellant. Lee was unable to provide details and appeared "nervous, timid, and scared" and was avoiding eye contact and looking at the floorboard. Teichelman's suspicion of criminal activity elevated, and he asked Appellant if he would consent to a search of his vehicle. Appellant declined. Teichelman then walked his canine partner, Kobra, around the vehicle to do an open-air sniff.

Teichelman asserts that Kobra passively alerted to the scent of narcotics in the vehicle. Appellant argues that the dog did not alert because it did not sit, bark, or stop. Teichelman searched Appellant's vehicle. Finding nothing, Teichelman permitted Appellant to leave.

PROCEDURAL HISTORY

On March 2, 2022, Appellant filed suit naming Teichelman and the District as Defendants. The District filed a motion to dismiss for failure to state a claim, which the district court granted. Teichelman filed a motion for summary judgment asserting qualified immunity, which the district court granted, holding Plaintiff could not establish that Teichelman violated clearly established law. Weisshaus appealed the grant of summary judgment.

STANDARD OF REVIEW

"A grant of summary judgment is reviewed de novo, applying the same standard on appeal that is applied by the district court." *Cass v. City of Abilene*, 814 F.3d 721, 728 (5th Cir. 2016). "Typically, the movant bears the initial burden of demonstrating the absence of a material fact issue." *Orr v. Copeland*, 844 F.3d 484, 490 (5th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986)). But "[a] good-faith assertion of qualified immunity alters the usual summary judgment burden of proof, shifting it to the plaintiff to show that the defense is not available." Id. (quoting *Cass v. City of Abilene*, 814 F.3d at 728 (internal quotation marks omitted)). To do so, a plaintiff must "identify specific evidence in the summary judgment record demonstrating that there is a

material fact issue concerning the essential elements of its case for which it will bear the burden of proof at trial." Id. (quoting *Forsyth v. Barr*, 19 F.3d 1527, 1533 (5th Cir. 1994)).

DISCUSSION

I. OFFICER TEICHELMAN

Appellant argues that Teichelman violated his Fourth Amendment right to be free from unconstitutional searches and seizures. The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. "The stopping of a vehicle and detention of its occupants constitutes a 'seizure' under the Fourth Amendment." *United States v. Brigham*, 382 F.3d 500, 506 (5th Cir. 2004). "We analyze the legality of traffic stops for Fourth Amendment purposes under the standard articulated by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968)." *United States v. Smith*, 952 F.3d 642, 647 (5th Cir. 2020) (citation omitted). Under *Terry*, "the legality of police investigatory stops is tested in two parts." *Brigham*, 382 F.3d at 506. "Courts first examine whether the officer's action was justified at its inception, and then inquire whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop." Id.

Appellant does not argue that the stop was not justified at its inception. As to the second inquiry, we may assume that Appellant is correct that the initial justification for the stop ended when Teichelman issued the citation and returned his driver's license while Appellant was still in the patrol vehicle. Thus, there must have been some additional justification permitting Teichelman to prolong the stop.