

Superior Court of New Jersey

MAR 15 2019

CHAMBERS OF
JAMES DEN UYL, J.S.C.



OCEAN COUNTY COURT HOUSE
P.O. BOX 2191
TOMS RIVER, N.J. 08754-2191

March 12, 2019

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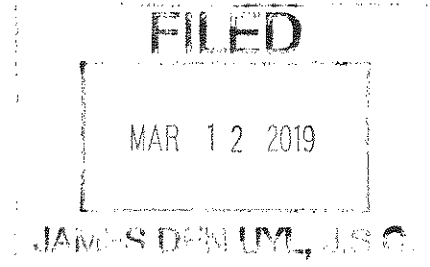
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State of New Jersey Office of the Attorney General
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RE: Evans v. Petracca, et al
Docket No. OCN-L-3092-16

Dear Counsel:

Plaintiff Tora Evans sued Defendant Detectives David Petracca and Timothy Meier asserting claims under the New Jersey Civil Rights Act ("NJCRA") for a violation of his rights under the New Jersey Constitution, for malicious prosecution, and for false arrest/false imprisonment. Plaintiff alleges that he was improperly arrested on April 30, 2015 after a warrant was issued for his arrest based on an affidavit prepared by Defendant Petracca who, in preparing the affidavit, relied in part on surveillance information provided by Defendant Meier. Defendants Petracca and



Meier each move for summary judgment and Plaintiff opposes. The decision of the Court follows.

At issue in this case is the basis for the warrant that was issued for Plaintiff's arrest in April 2015. During this time, an Ocean County Prosecutor's Office ("OCPO") task force was conducting a large-scale narcotics investigation, the target of which was a heroin distributor named Bertrik Artis. At the time of the surveillance that led to Plaintiff's arrest, Defendant Meier had been a member of the task force for approximately five years and had participated in over 100 surveillance operations. Defendant Petracca's sole role in the operation was as the primary affiant and he was responsible for applying for warrants.

On March 18, 2015, Defendant Meier was instructed to conduct surveillance of the Coliseum Barbershop, located at 1201 River Avenue, Lakewood, New Jersey, where he was advised that an imminent narcotics transaction was about to take place between Artis and an unidentified male based upon the OCPO's interception of a telephone call to Artis. On the intercepted telephone call to Artis, an unknown male sought to purchase ten bricks of heroin and Artis directed the unknown male to meet him at the barbershop in approximately fifteen minutes.

Defendant Meier drove to the barbershop in an unmarked vehicle and parked in a parking lot located directly across the street. Defendant Meier took photographs of the barbershop location,

including two photographs of Plaintiff as he was leaving the building. At OCPO headquarters, Defendant Meier was shown two Department of Motor Vehicles ("DMV") photographs with no personal identifiers depicting two different males who he then identified as the persons that he observed at the barbershop. These two individuals were later identified by others as Artis and Plaintiff.

Defendant Petracca then completed the affidavit for Plaintiff's arrest warrant application (the "Affidavit"), which was submitted to the Honorable Wendel E. Daniels. In preparing the Affidavit, Petracca asserts that he relied on the OCPO's telephone interceptions, the surveillance report of Defendant Meier, and Meier's identification of Plaintiff as the unidentified male he observed at the barbershop on March 18, 2015 around 1:00 p.m. to purchase ten bricks of heroin. Specifically, Defendant Petracca asserts that Defendant Meier, while engaged in surveillance of the barbershop, observed Artis speak with an unknown male driver of a white 2008 Lexus ES 350 and that both Artis and the driver of the white Lexus entered the barbershop together. Defendant Petracca asserts that Defendant Meier observed both Artis and the unknown male exit the barbershop moments later and return to their vehicles.

Defendant Meier asserts that he never heard the intercepted telephonic communication between Artis and the unidentified male and that he never saw the Affidavit prepared by Defendant Petracca.

Defendant Petracca testified that he did not play any role in identifying the unknown male as Plaintiff and that he did not know Plaintiff and had never heard the name "Tora Evans" prior to the subject narcotics investigation.

In contrast to Defendants' contentions, Plaintiff asserts that on March 18, 2015, Plaintiff drove his white 2008 Lexus ES 350 to a check cashing establishment located near the Coliseum Barbershop in Lakewood, New Jersey and that he has never met or spoken with Artis. Further, Plaintiff asserts that Defendant Petracca's sworn statement in the Affidavit submitted to the Court states that: "Through this investigation, this affiant is familiar with the voices of Bertrick Artis . . . [and] Tora Evans." Plaintiff asserts that Defendant Petracca also stated in the Affidavit that "through information provided by the Lakewood Detective Bureau . . . this affiant is able to identify the individual utilizing the cellular telephone facility . . . to be that of Tora Evans." Plaintiff asserts that Defendant only later testified that he relied upon information included in Defendant Meier's report and the subsequent identification of Plaintiff and that he did not in fact have any first-hand knowledge of Plaintiff's voice, despite his sworn statement to the contrary in the Affidavit submitted to Judge Daniels in support of Plaintiff's arrest warrant application.

On November 21, 2016, Plaintiff filed a Complaint against Defendants Petracca and Meier. In his Complaint, Plaintiff alleges that he learned that a warrant had been issued for his arrest and that one week after learning this information, on April 30, 2015, he turned himself in to the OCPO. Plaintiff alleges that he was charged with conspiracy to possess, with the intent to distribute, a quantity of heroin in excess of five ounces in violation of N.J.S.A. 2C:35-5(b)(i) and N.J.S.A. 2C:5- 2, and that he remained in jail for six weeks before being able to make bail. On October 3, 2016, the charges against Plaintiff were dismissed by motion of the OCPO. Plaintiff alleges that as a result of his six-week incarceration, Plaintiff lost his employment as a Certified Nursing Assistant.

In support of his motion for summary judgment, Defendant Petracca asserts that (1) in his official capacity, he is not a "person" amendable to suit under the NJCRA, (2) in his individual capacity, he is entitled to qualified immunity, (3) Plaintiff has failed to state a claim for malicious prosecution, and (4) Plaintiff has failed to state a claim for false arrest. Defendant Petracca also asserts that insofar as Plaintiff's Complaint attempts to allege any common law tort claims against Defendant Petracca, such claims must be dismissed with prejudice under the Tort Claims Act ("TCA").

In support of his motion for summary judgment, Defendant Meier asserts that (1) in his official capacity, he is not a "person" amenable to suit under the NJCRA, and (2) he is entitled to summary judgment on the remaining claims of false arrest and malicious prosecution because Plaintiff cannot establish the elements of these torts and (3) Defendant Meier is entitled to qualified immunity.

In opposing the instant motions, although Plaintiff concedes that any claims against each Defendant in his official capacity must be dismissed as a matter of law, Plaintiff asserts that (1) neither Defendant is entitled to qualified immunity, (2) Plaintiff has set forth facts demonstrating that Plaintiff's malicious prosecution claims should be presented to a jury, and (3) Plaintiff has set forth facts demonstrating that no probable cause existed for Plaintiff's arrest and thus Plaintiff's false arrest/false imprisonment claims are viable.

In reply to Plaintiff's opposition, Defendant Petracca asserts that Plaintiff's counterstatement of material facts is improper as Plaintiff failed to cite to any evidence in the record to support his denial of Defendant Petracca's statement of facts and thus should be disregarded by the Court. Defendant Petracca asserts that Plaintiff's assertions regarding the identification of Plaintiff's voice is not a material fact because Petracca states in the Affidavit that he was able to identify the individual

utilizing cellular phone (xxx-xxx-xxxx) to be that of Tora Evans based on the OCPO's telephone intercepts and Defendant Meier's surveillance and observation of Plaintiff at the barbershop location. Defendant Petracca asserts that the Affidavit goes on to state that the unknown male was later identified by Defendant Meier and members of the OCPO task force as Tora Evans, following surveillance conducted by Defendant Meier of the Coliseum Barbershop on March 18, 2015. Defendant Petracca asserts that he did not make any knowingly false representations in the Affidavit and Plaintiff has not cited to any evidence in the record to support his assertion that Defendant Petracca made knowingly false representations in the Affidavit. Specifically, Defendant Petracca asserts that the Affidavit was based on probable cause, which Petracca submits is a lesser standard than guilt beyond a reasonable doubt, and requires only a reasonable suspicion that a crime has been committed and that Plaintiff was the person who committed it. Defendant Petracca also submits that summary judgment is proper as Plaintiff has waived his claims against Petracca in his official capacity as a result of Plaintiff's concession in his opposition that Petracca cannot be sued in his official capacity.

In reply to Plaintiff's opposition, Defendant Meier asserts that it is well established in a civil rights case that each individual defendant is entitled to an impartial and independent

assessment of his own conduct, separate and distinct from the assessment of the conduct of others. Specifically, Defendant Meier asserts that his conduct should not be conflated with that of Defendant Petracca. Defendant Meier asserts that was directed by his supervisor to report to a location to undertake surveillance where he took photographs and made a report of what he observed and that Meier did not know who Plaintiff was, nor had he or has he spoken with Plaintiff. Defendant Meier submits that he was never consulted in any way in the preparation of the Affidavit submitted to the court in support of the application for Plaintiff's arrest warrant. Defendant Meier asserts that based on these facts, it is clear that Plaintiff cannot establish that Meier violated Plaintiff's civil rights, nor would a reasonable police officer in his position have fairly regarded Meier's conduct as constituting false arrest or malicious prosecution.

A summary judgment motion should be granted only when the moving party shows that there is no genuine issue of material fact in the case and the party is entitled to judgment as a matter of law. Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67, 73 (1954); R. 4:46-2. A genuine issue of material fact exists when a disputed fact is of a substantial nature. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523, 529 (1995). Notably, the New Jersey Supreme Court has held that a non-moving party cannot defeat a motion for summary judgment "merely by

pointing to any fact in dispute." Id. at 529. A moving party is entitled to judgment as a matter of law when the evidence presented is so one-sided that it does not require submission to a jury. Id. at 533. Accordingly, the court must consider whether the evidence presented, when viewed in the light most favorable to the non-moving party, would permit a rational fact finder to resolve the dispute in favor of the non-moving party. Id. at 523.

The burden is on Plaintiff to present competent evidence that establishes a genuine issue of material fact as it pertains to whether each Defendant is liable for a violation of his rights under the NJCRA and the New Jersey Constitution, for malicious prosecution, and for false arrest/false imprisonment. The burden is not met. In this case, the moving parties are entitled to judgment as a matter of law because the evidence is so one-sided that it does not require submission to a jury.

Defendants first assert that both Petracca and Meier in their official capacities are not "persons" amenable to suit under the NJCRA. The NJCRA, which is modeled after 42 U.S.C. Section 1983 ("Section 1983"), affords parties asserting a deprivation of a constitutionally protected right the opportunity to bring a civil action for damages and injunctive or other relief. N.J.S.A. § 10:6-2(c). Similar to Section 1983, the plain language of the NJCRA imposes liability on any "person" who violates a plaintiff's civil rights under color of law. See Id. Interpreting the comparable

language of Section 1983, the United States Supreme Court has held that the states, arms of the states, and state officials sued in their official capacities are not "persons" within the meaning of the statute. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989).

In this case, Defendants are public officials being sued in their official capacity. Thus, each individual is a defendant that is the functional equivalent of the state and is thus not a "person" amenable to suit under the NJCRA. See Will, 491 U.S. at 71. Additionally, Plaintiff concedes that any claims against Defendants in their official capacity must be dismissed as a matter of law per the Third Circuit's reasoning stated Estate of Logano v. Bergen Cty. Prosecutor's Office, 769 F.3d 850, 856 (3d Cir. 2014). Accordingly, Plaintiff's claims against Defendants in their official capacities are dismissed as a matter of law.

Defendants next assert that they are each entitled to qualified immunity in their individual capacities. The qualified immunity doctrine is an affirmative defense that "shields government officials from a suit for civil damages when 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Gormley v. Wood-El, 218 N.J. 72, 113 (2014) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). This defense is generally available when a plaintiff asserts a claim for money

damages under the NJCRA. Lapolla v. Cty. of Union, 449 N.J. Super. 288, 304-05 (App. Div. 2017) (citing Ramos v. Flowers, 429 N.J. Super. 13, 24 (App. Div. 2012)). A government official is entitled to assert qualified immunity and be shielded from "from civil liability for civil damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011); see also Pearson v. Callahan, 555 U.S. 223, 241-42 (2009) (where the court found that courts reviewing qualified immunity claims may address the two prongs in either order).

The Fourth Amendment of the United States Constitution states that a warrant shall not issue without a showing of probable cause before an impartial magistrate. See Amend. IV., U.S. Const.; Art. I, Para. 7, N.J. Const.; see also State v. Coles, 218 N.J. 322, 343 (2014) (where the court held that the Constitutions of both the United States and New Jersey guarantee the right of New Jersey citizens "to walk freely on the streets of a city without fear of an arbitrary arrest"). A court may find that probable cause exists "if at the time of the arrest 'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." Wildoner v. Borough of Ramsey, 162 N.J. 375, 389 (2000)

(quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)). The United States Supreme Court also made clear in Franks v. Delaware, that if it can be shown by a preponderance of the evidence that a false statement was included in an affidavit by an affiant either knowingly, or with reckless disregard for the truth, and that the false statement was necessary to a finding of probable cause, the warrant is to be voided and treated as if no probable cause existed. 438 U.S. 154, 155-56 (1978).

As it relates to the instant motion, a police officer being sued for violating a clearly established constitutional or statutory provision is entitled to qualified immunity if the police officer shows: (1) that he or she acted with probable cause, or (2) even if probable cause did not exist, that a reasonable police officer could have believed in its existence. Schneider v. Simonini, 163 N.J. 336, 363 (2000), cert. denied, 531 U.S. 1146 (2001). The standard for qualified immunity is one of objective reasonableness, which is a lesser standard than required for probable cause. Bayer v. Twp. of Union, 414 N.J. Super. 238, 247 (App. Div. 2010). The only time that standard is not satisfied is when, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue. Id.

The nine page Affidavit prepared by Detective Petracca broken down into nine paragraphs, in pertinent part, states the following:

6. On March 18, 2015, members of the Ocean County Prosecutor's Office Special Operations Group conducted constant mobile surveillance on Bertrick Artis aka "King Rule" in the area of 242 John Street and 1152 Anthony Court in Lakewood, in reference to an ongoing investigation reference the distribution of heroin by Bertrick Artis, Daren Smith, Jason Livingston, and Ashzon Artis.

7. On March 18, 2015, at 12:30pm, (session #97), an outgoing call from telephone facility (xxx-xxx-xxxx) to Artis Facility IV (xxx-xxx-xxxx) was intercepted. From my involvement in this Investigation to date, this Affiant recognized the voice of the male speaking over the Artis Facility IV (xxx-xxx-xxxx) to be that of Bertrick Artis aka "King Rule". Through information provided by the Lakewood Detective Bureau, as well as surveillance and observations made by members of the Ocean County Prosecutors Office Special Operations Group during the course of this investigation, this Affiant is able to identify the individual utilizing cellular telephone facility (xxx-xxx-xxxx) to be that of Tora Evans.....

In pertinent part, the following conversation ensued:

BA= Bertrick Artis

UM= Unknown male

(The conversation is not repeated here)

8.....Detective Meier was contacted by Detective Sergeant Hess from the Ocean County Prosecutor's Office Special Operations Group advising this writer that Bertrick Artis had a telephonic conversation with a male later identified by Detective Meier and members of the Special Operations Group as Tora Evans. During these conversations, arrangements were made for Evans to purchase 10 "Bricks" of heroin from Artis at the "The

Coliseum" barber shop, located at 1201 River Avenue in Lakewood, to conduct the drug transaction.

At approximately 13:00 hours, surveillance units observed a white 2008 Lexus 4 door bearing New Jersey Registration T11-DHS (registered to Ashley Amakihe, 1 Orchard Hill Drive, Manalapan, New Jersey), pull up in front of the barber shop and park. Surveillance units observed a black male with facial hair operating the white Lexus. The black male was wearing a gray sweatshirt and a black and yellow baseball hat. Detective Sergeant Hess advised that Artis was currently speaking with the individual he was intending to meet at the "The Coliseum" barber shop, to conduct the drug transaction. Surveillance units also advised that the individual in the Lexus, bearing New Jersey Registration T11-DHS, was utilizing a cellular phone while sitting in the driver's seat of the white Lexus.

Surveillance units in the area of Artis' residence, 242 John Street, Lakewood, observed Bertrick Artis aka "King Rule" exit the residence and enter into 2007 Chevrolet Tahoe bearing New Jersey Registration T31-FCY, and retrieve an item, placing said item in his jacket. Bertrick Artis then headed directly to the driver side of a white 2006 Chevrolet Trailblazer bearing New Jersey registration N17-EPK, enter the driver side of the vehicle and proceed to leave the area. The white 2006 Chevrolet Trailblazer bearing New Jersey registration N17-EPK, traveled directly to "The Coliseum" barber shop located at 1201 River Avenue Lakewood, New Jersey. Once at "The Coliseum" barber shop Bertrick Artis pulled next to the white 2008 Lexus 4 dr bearing New Jersey Registration T11-DHS. This writer observed Bertrick Artis engage the driver of the white Lexus bearing New Jersey Registration T11-DHS in a brief conversation. This writer observed both Bertrick Artis and Tora Evans enter into the barber shop and, moments later, both subjects exited and return to their respective vehicles. Bertrick Artis left the area and headed to 1152 Anthony Court, Lakewood, New Jersey. The white Lexus bearing New Jersey Registration T11-DHS left the area, at which time surveillance was terminated.

In his Supplemental Report of March 23, 2015, Detective Meier states:

Once at the Coliseum Barber shop Bertrick Artis pulled next to a 2008 Lexus 4 dr white bearing New Jersey registration T11DHS. This writer observed Bertrick Artis engage the driver of the white Lexus bearing New Jersey registration T11DHS in a brief conversation. This writer observed both Bertrick Artis and the unknown male enter into the barbershop and moments later both subjects exit and return to their vehicles. Bertrick Artis left the area and headed to 1152 Anthony Court, Lakewood, NJ. The white Lexus bearing New Jersey registration T11DHS left the area.

Upon returning to the OCPO/SOG Headquarters this writer was shown a digital photo of Bertrick Artis and Tora C. Evans which was devoid of any identifiers. This writer positively identified the black males depicted in these photos as the same black males that were observed during the above listed surveillance.

On the whole, the Affidavit was redundant, poorly constructed and written. Although Detective Petracca states he recognizes the voice of Plaintiff at one point in the Affidavit, that statement is belied when read in the context and totality of the Affidavit which makes clear that the other person on the phone with Bertrik Artis, identified in the context of the phone intercept as "UM" (an unidentified male) was not identified until after Meier's surveillance and Meier having been shown a picture of the individual he later learned was Tora Evans. The surveillance was for a targeted transaction, through a particular subject, Bertick Artis, at a particular place and time. Plaintiff acknowledges that on the day of the alleged incident he was cashing

a check at the location where Detective Meiers took his photograph. The check cashing establishment is in the same building as the barber shop. Plaintiff was driving the 2008 Lexus identified as having been in the parking lot next to the Artis vehicle. It is clear that Plaintiff and Betrick Artis were in close proximity to one another at the time and place when the purported drug transaction was to take place. Based on the OCPO's telephone interceptions, the OCPO task forces' surveillance of Artis, Defendant Meier's surveillance report, and Meier's identification of Plaintiff as the individual he observed at the barbershop, probable cause existed for the issuance of the warrant for Plaintiff's arrest. As probable cause existed, Defendants Petracca and Meier are each entitled to qualified immunity in their individual capacities.

Moreover, Defendants are still entitled to qualified immunity because a reasonable police officer in Petracca's or Meier's respective positions could have believed in the existence of probable cause under the circumstances. See Schneider, 163 N.J. at 363. As to Defendant Meier, his superior advised him of an imminent drug transaction, based upon the OCPO's interception of telephone communications, to take place at the barbershop where he observed Artis and an unidentified male enter and exit after a few minutes. From an objective perspective, when combining the imminent drug transaction discussed on the intercepted phone call where Artis

and an unidentified male mentioned quantities, price, and the time and location to meet, and the presence of Artis and an unidentified male at this same location at the very time when the two parties had discussed meeting each other, a reasonable police officer could have believed that a crime had or was about to be committed. See Bayer, 414 N.J. Super. at 247. As a result, Defendant Meier is entitled to qualified immunity in his individual capacity as a government official. Accordingly, the alleged claims against him under the NJCRA and the New Jersey Constitution do not require submission to a jury.

As it pertains to Defendant Petracca, under the objective standard, he would still be entitled to qualified immunity even if he merely relied on information compiled by other detectives involved in the task force investigation in preparation of the warrant. Setting aside his mention of Plaintiff's voice, Defendant Petracca stated in the Affidavit that he was relying on information from other detectives involved in the task force's investigation, including Defendant Meier's surveillance of the Coliseum Barbershop, and Meier's identification of the unknown male as the individual that he observed at the barbershop location, as his basis for probable cause. It is highly likely that a reasonable police officer, when presented with the facts and circumstances within Defendant Petracca's knowledge, would have had a reasonable

suspicion that a crime had been committed and that Plaintiff was the individual who committed it. See Brunson, 199 N.J. at 385.

Consequently, under the objective standard outlined in Bayer, 414 N.J. Super. at 247, notwithstanding any statements made in the Affidavit regarding knowledge of Plaintiff's voice, a reasonable officer in Defendant Petrcca's position would have still been able to maintain a basis for probable cause. As a result, Defendant Petracca is entitled to qualified immunity in his individual capacity as a government official. Accordingly, the alleged claims for a violation of Plaintiff's rights under the NJCRA and the New Jersey Constitution do not require submission to a jury.

Defendants next assert that Plaintiff has failed to state a claim against both Petracca and Meier for malicious prosecution. To sustain a claim for malicious prosecution, the plaintiff must prove that: (1) "the criminal action was instituted by the defendant against the plaintiff," (2) "it was actuated by malice," (3) "there was an absence of probable cause for the proceeding," and (4) "it was terminated favorably to the plaintiff." Helmy v. City of Jersey City, 178 N.J. 183, 190 (2003); see also Brunson v. Affinity Fed. Credit Union, 199 N.J. 381, 385 (2009) (where the court found that the plaintiff must establish each of the four elements). Actual malice is defined as the intentional doing of a wrongful act without just cause or excuse. LoBiondo v. Schwartz, 199 N.J. 62, 71 (2009). Although malice may be inferred from want

of probable cause, a plaintiff cannot simply point to the absence of probable cause as sufficient proof of the required element of malice. Brunson, 199 N.J. at 395-96.

Here, prongs one and four are met by Plaintiff, as a criminal action was instituted against him and it was terminated in favor of Plaintiff. Plaintiff cannot demonstrate, however, that Defendants' actions were motivated by actual malice or that there was a lack of probable cause in seeking to obtain the warrant for Plaintiff's arrest. With regard to whether Defendant Meier acted with malice, at the time of the surveillance conducted on March 18, 2015, Defendant Meier asserts that he did not know who Plaintiff was, nor had he met Plaintiff or heard his voice, nor has he ever met Plaintiff or spoken with him. When Defendant Meier was shown the two DMV photographs at OCPO headquarters, he still did not know the identity of the male later identified as Plaintiff, but instead only confirmed that the unidentified male was the same individual he had observed and photographed outside the barbershop. With regard to whether Defendant Petracca acted with malice, Defendant Petracca testified at his deposition that he did not know Plaintiff and had never heard the name "Tora Evans" prior to the subject narcotics investigation. Additionally, Defendant Petracca testified that he did not play any role in identifying the unknown male as Plaintiff.

With respect to a lack of probable cause, as discussed above, Defendants had a reasonable suspicion that a crime had been committed and that Plaintiff was the individual who had committed it based on the telephone interceptions, Defendant Meier's surveillance report, and Defendant Meier's identification of Plaintiff at the scene as well as the registration of Plaintiff's white Lexus vehicle. As Plaintiff has not shown that either Defendant acted with malice in their respective roles of initiating a criminal prosecution against Plaintiff, or that Defendant Petracca submitted the Affidavit to Judge Daniels without a sufficient basis for probable cause, Plaintiff cannot meet two required elements to state a claim for malicious prosecution.

Therefore, Plaintiff has not demonstrated that there is a genuine issue of material fact as to whether Defendants are liable for malicious prosecution. Accordingly, the alleged claims of malicious prosecution do not require submission to a jury.

Finally, Defendant asserts that Plaintiff cannot state a claim for false arrest and false imprisonment. The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee protection from arbitrary arrest. See State v. Gibson, 218 N.J. 277, 281, 292 (2014). False arrest, or false imprisonment, is the constraint of a person without legal justification. Pine v. Okzewski, 112 N.J.L. 429, 431 (E. & A. 1934). To state a claim for false arrest under the Fourth

Amendment, a plaintiff must establish that: (1) there was an arrest; and (2) the arrest was made without probable cause. See Mesgleski v. Oraboni, 330 N.J. Super. 10, 24 (App. Div. 2000) (where the court explains that the "basis for a suit for false arrest arises where the aggrieved party is arrested without legal authority, as where he is arrested pursuant to process that is void"). Additionally, the existence of probable cause generally defeats a plaintiff's action for false arrest. Id. at 24-25.

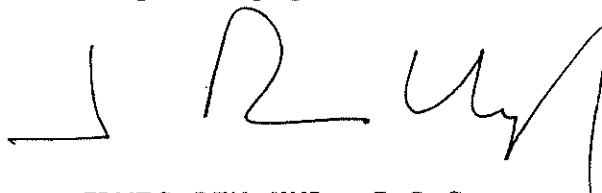
Here, Defendant Meier asserts that probable cause is an absolute defense to a claim for prosecution. Defendant Meier asserts that his role in Plaintiff's arrest was minor and that he did not personally arrest Plaintiff or submit the application for the arrest warrant. Notwithstanding these contentions, it is important to note that Defendant Meier did have a role in the investigation that led to Plaintiff's arrest, which would be sufficient to state a claim for false arrest if there was a lack of probable cause.

As discussed above, however, probable cause existed for Plaintiff's arrest based on the OCPO's telephone interceptions, the task forces' surveillance of Artis, Defendant Meier's surveillance report of Plaintiff at the location where an imminent drug transaction was to take place, Meier's identification of Plaintiff's likeness as the individual who he photographed outside the barbershop, and the registration of the 2008 white Lexus ES350

that Plaintiff drove to the barbershop's location. As Plaintiff is unable to demonstrate that there is a genuine issue of material fact that probable cause did not exist for Defendant Petracca's application for the warrant for his arrest, Plaintiff fails to state a claim for false arrest and false imprisonment. Accordingly, the alleged false arrest and false imprisonment claims do not require submission to a jury.

For the aforementioned reasons, Defendant Detectives David Petracca and Timothy Meier's motions for summary judgment are granted.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J Den Uyl', with a stylized, elongated final stroke.

JAMES DEN UYL, J.S.C.

ORDER ENCLOSED

HIERING, GANNON, and McKENNA
Attorney ID #000781991
29 Hadley Avenue
Toms River, New Jersey 08753
(732) 349-1800
Attorneys for Defendant, Timothy Meier

FILED

MAR 12 2019

JAMES DEN UYL, J.S.C.

TORA EVANS,

Plaintiff,

vs

DAVID PETRACCA, individually and in his :
Capacity as a law enforcement officer with :
the Ocean County Prosecutor's Office :
TIMOTHY MEIER, individually and in his :
Capacity as a law enforcement officer with :
the Ocean County Prosecutor's Office; :
JOHN DOES (1-10), individually and in :
their respective capacities as law :
enforcement officers with the Ocean :
County Prosecutor's Office, or other as of :
yet unknown law enforcement officers, :
Defendant(s).

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: OCEAN COUNTY

: DOCKET NO: OCN-L-3092-16

CIVIL ACTION

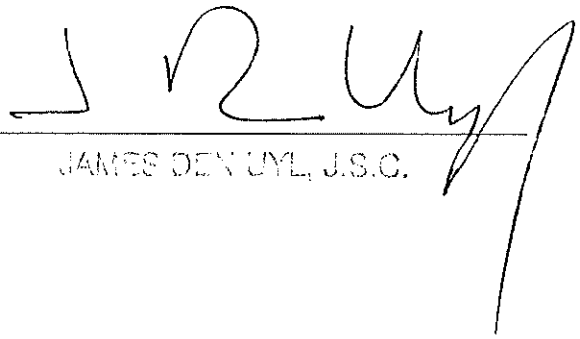
ORDER
GRANTING SUMMARY JUDGMENT

THIS MATTER having been brought before the Court upon motion of Hiering, Gannon, and McKenna, Esqs., attorneys for defendant, Timothy Meier, and the Court having considered the within matter and arguments of counsel, and for good cause having been shown;

IT IS ON this 12th day of March 2019;

ORDERED that summary judgment is hereby granted in favor of defendant, Timothy Meier; and

ORDERED that a copy of the within Order shall be served upon all counsel within seven (7) days of the date of this Order.


JAMES DEN UYL, J.S.C.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
PO Box 116
Trenton, New Jersey 08625
Attorney for Defendant,
Det. David Petracca

FILED

MAR 12 2018

CLERK OF SUPERIOR COURT

By: Ashley L. Costello (107192015)
Deputy Attorney General
609-984-4898
ashley.costello@law.njoag.gov
DOL# 17-64255

TORA EVANS,

Plaintiff,

v.

DAVID PETRACCA, individually and
in his capacity as a law
enforcement officer with the
Ocean County Prosecutor's
Office; TIMOTHY MEIER,
individually and in his capacity
as a law enforcement officer
with the Ocean County
Prosecutor's Office; et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION OCEAN COUNTY

Docket No. OCN-L-3092-16

CIVIL ACTION

ORDER GRANTING SUMMARY JUDGMENT
IN FAVOR OF DEFENDANT
DET. DAVID PETRACCA

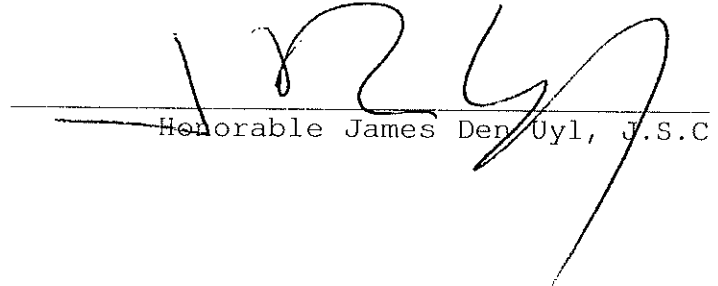
This matter having been opened to the Court on application of
Gurbir S. Grewal, Attorney General of New Jersey, Ashley L.
Costello, Deputy Attorney General, appearing on behalf of
Defendant Det. David Petracca for an Order Granting Summary
Judgment, and the Court having considered the moving papers and
for good cause shown,

It is on this 12th day of March, 2018

ORDERED that Summary Judgment is hereby granted in favor of
Defendant Det. David Petracca, dismissing Plaintiff's Complaint

and any and all crossclaims against Det. Petracca with prejudice;
and it is further

ORDERED that a copy of this Order shall be served upon all
counsel of record within 10 days of receipt hereof.



Honorable James Den Oyl, J.S.C

☒ Opposed

☐ Unopposed