

Terry Dean Rogan
v.
City Of Los Angeles

668 F. Supp. 1384 (C.D. Cal. 1987)

Robert J. Kelleher, Senior Judge:

I. INTRODUCTION

This is an action under 42 U.S.C. section 1983 for money damages, declaratory relief, litigation costs and attorneys' fees against: (a) the City of Los Angeles ("the Defendant City"); and (b) two police officers employed by the city, Defendant Crotsley and Defendant Slack (referred to hereinafter collectively as "the Defendant Officers"). The action arises out of the alleged deprivation of Plaintiff Terry Dean Rogan's constitutional rights resulting from his mistaken arrests for robbery and murder.

Pending before the Court are the parties' cross motions for summary judgment on the issue of liability. The material evidentiary facts are uncontroverted.

II. ANALYSIS

A. 42 U.S.C. 1983 ACTION AGAINST THE CITY OF LOS ANGELES.

In order to state a civil rights claim against a municipality under 42 U.S.C. section 1983, a plaintiff must show that: (1) he has suffered a deprivation of a constitutionally protected interest; and (2) said deprivation was caused by an official policy, custom or usage of the municipality. . . .

1. DEPRIVATION OF A CONSTITUTIONALLY PROTECTED INTEREST.

a. RELEVANT FACTS.

During 1981, Bernard McKandes ("McKandes"), an escapee from an Alabama state prison, started using Plaintiff's name after he obtained Plaintiff's birth certificate. McKandes obtained the birth certificate at Saginaw, Michigan, Plaintiff's birthplace and place of residence.

After obtaining Plaintiff's birth certificate, McKandes proceeded to California. McKandes there used Plaintiff's birth certificate to obtain a California driver's license and various other identification documents in Plaintiff's name.

Sometime during 1982, McKandes was arrested by the Los Angeles Police Department ("LAPD") on suspicion of murder. McKandes was using the false identification in Plaintiff's name at the time of his arrest. The LAPD released McKandes for reasons presently unknown.

Approximately three months later, but still during 1982, McKandes left Los Angeles and stopped using the identification in Plaintiff's name.

On or about April 20, 1982, Defendant Crotsley caused an arrest warrant to issue in the name of Terry Dean Rogan, charging him with two robbery-murders which occurred in Los Angeles that month. Said warrant listed Plaintiff's name and an alias, but did not contain McKandes' known physical characteristics (e.g., scars, tattoos, height, weight, etc.).

On approximately May 10, 1982, Defendant Slack caused the warrant information to be placed into the national computer arrest warrant notification system known as the National Crime Information Center ("NCIC"). Entry of said information into the NCIC system ensured that any police officer in the United States having access to the system would be made aware that a robbery-murder warrant in the name of Terry Dean Rogan was outstanding in California. Like the warrant upon which it was based, said information set forth Plaintiff's name and an alias, but did not contain McKandes' known physical characteristics. . . .

On or about October 31, 1982, Plaintiff came into contact with officers of the Carrollton Township Police Department in Saginaw County, Michigan, during the course of a trespassing dispute. Plaintiff was arrested on a charge of resisting arrest. The police officers made an inquiry of the NCIC system. The resulting computer report reflected the existence of the California robbery-murder warrant in Plaintiff's name.

On or about November 1, 1982, the Carrollton police contacted LAPD about the California arrest warrant. The Carrollton police established four days later through fingerprint comparison and Plaintiff's lack of certain scars and tattoos that were visible on the body of the wanted suspect, McKandes, that Plaintiff was not the man wanted by the LAPD. Plaintiff then pleaded (either guilty or *nolo contendere*, the record does not reveal which) to the charge of resisting arrest and was sentenced to "time served" of five days, and released. Upon Plaintiff's initial arrest, the NCIC record regarding the California warrant was automatically removed from the NCIC system.

Later during November, 1982, Defendant Crotsley caused the arrest warrant information in Plaintiff's name to be re-entered into the NCIC system without modifying same to reflect either the suspect's (i.e., McKandes') known unique physical characteristics (i.e., scars, tattoos) or the duplicate name-misidentification problem. As reflected by the relevant NCIC data entry form, a NCIC computer record contains a miscellaneous field that allows for the entry of up to 121 characters of information regarding identifying physical characteristics or possible mistaken identity-duplicate name situations.

During February or March, 1983, Plaintiff was a passenger in an automobile which was stopped by Bay County sheriff's deputies outside of Saginaw, Michigan, for failure to use a turn signal. The officers ran a computer check on Plaintiff after he showed the officers his identification. The California robbery-murder warrant was reported back to the officers in response to their computer check. As a result, Plaintiff was ordered out of the car at gunpoint, searched, handcuffed, and transported to the jail in Bay City, Michigan. Plaintiff was there handcuffed to metal bars while the sheriff's deputies made telephone calls to the Saginaw police and the LAPD

in order to determine Plaintiff's status. Plaintiff was released after being held in jail for approximately two hours.

[Plaintiff was arrested three more times, twice at gunpoint, by police in Michigan and Texas. Each time, he was released after his true identity was confirmed. He sought the assistance of the FBI, which confirmed that the NCIC contained a murder warrant in his name, but “informed Plaintiff that only the originating state agency (i.e., the LAPD) could delete, amend, or correct the computer warrant entry.”]

During January, 1984, a reporter for the Saginaw News informed Defendant Crotsley that McKandes, who was by then again incarcerated in an Alabama prison, was the person actually wanted for the robbery-murders in Los Angeles. A FBI agent verified that the fingerprints of the suspect wanted in Los Angeles were those of McKandes.

On January 23, 1984, Defendant Crotsley forwarded the suspect's fingerprints to the Alabama Department of Corrections, and removed the NCIC record in Plaintiff's name.

McKandes was later convicted of the California robbery and murder charges.

During the period of their investigation, the Defendant Officers tried to check the NCIC system at least once per month, and more often if possible, to make sure that the warrant information was still in the system.

b. APPLICATION OF THE LAW TO THE RELEVANT FACTS.

The leading case in this area of the law is *Baker v. McCollan*, 443 U.S. 137 (1979). In *Baker* the plaintiff's brother procured a duplicate of the plaintiff's driver's license. The plaintiff's brother, masquerading as the plaintiff, was arrested on narcotics charges and signed various documents in the plaintiff's name during the booking and bail procedures. The plaintiff's brother then absconded and an arrest warrant was issued in the plaintiff's name. The plaintiff was subsequently arrested pursuant to said warrant. The plaintiff was held in custody for a three day period over a New Year's weekend before the police recognized their error and released him. The Supreme Court rejected the plaintiff's Fourth and Fourteenth Amendment claims, holding:

Absent an attack on the validity of the warrant under which he was arrested, respondent's complaint is simply that despite his protests of mistaken identity, he was detained in . . . jail from December 30 . . . until January 2, when the validity of his protests was ascertained. Whatever claims this situation might give rise to under state tort law, we think it gives rise to no claim under the United States Constitution. (Emphasis added). . . .

Plaintiff contends that: (1) the NCIC record and the arrest warrant upon which it was based violated the particular description requirement of the Fourth Amendment; and (2) the maintenance and reentry of the warrant information in the NCIC system without modification after his November, 1982, Michigan arrest deprived him of his rights under the Fourth and Fourteenth Amendments. Plaintiff's contentions are correct. . . .

On appeal, the [Court in *Powe v. City of Chicago*, 664 F.2d 639 (7th Cir. 1981)] held that where an arrest is made pursuant to an invalid warrant, *Barker, supra*, cannot be applied to preclude the arrestee's claim of an unconstitutional deprivation of liberty. The Court recognized that an arrest warrant that correctly names the person to be apprehended generally satisfies the Fourth Amendment's particularity requirement. Conversely, an arrest warrant that incorrectly names the person to be arrested will usually be deemed insufficient to satisfy the Fourth Amendment's particularity requirement unless it includes some other description of the intended arrestee that is sufficient to identify him. . . . The [*Powe*] Court stated:

In this case our holding is simply that where . . . the authorities had reason to suspect that the name placed on the warrant was not the real name of the intended arrestee, then some other description of the intended arrestee, sufficient to identify him must be included in the warrant.

The Court further noted that:

The inclusion of names that might be incorrect, combined with the omission of a specific description of the person sought, create a substantial risk . . . that a person to whom not the least suspicion has attached will be arrested. The risk cannot be tolerated under the Fourth Amendment. *It is all the more intolerable because it was avoidable: in Powe's case . . . the authorities clearly had sufficient contact with the man who violated probation to be able to describe him in the warrant. The failure to describe him, although the authorities knew there was some uncertainty about his true name, renders the warrant invalid.*

Powe, 664 F.2d at 648 (Emphasis added). . . .

With one exception discussed below, *Powe* is identical to the present case in all *material* respects. In *Powe* the arrest warrant contained neither the suspect's correct, legal name, nor his description. Likewise, in the present case neither the arrest warrant nor the NCIC record created pursuant thereto contained the suspect's correct, legal name or his description. In both cases the police had sufficient contact with the suspect to be able to describe him in the warrant. In both cases the police were put on notice that the suspect's true name was uncertain by the fact that the suspect used aliases. Moreover, in both cases, unlike *Barker, supra*, the plaintiff's initial misidentification due to the inadequately descriptive, incomplete and mistaken information was followed by subsequent arrests. In *Powe* the police failed to amend the arrest warrant and the "stop order" after the plaintiff's initial erroneous arrest. More compellingly, the Defendant Officers not only failed to amend the NCIC record after Plaintiff's initial misidentification, but also caused the information to be reactivated without amendment.

There is one obvious factual distinction between *Powe* and the present case. The *Powe* plaintiff was mistakenly arrested pursuant to an insufficiently particular, incomplete, and mistaken warrant. Plaintiff herein was arrested pursuant to insufficiently particular, incomplete and mistaken NCIC record. The Court finds that this factual distinction is immaterial. The Court is guided by the reasoning set forth in *United States v. Mackey*, 387 F. Supp. 1121 (D. Nev. 1975). . . .

The decision in *Mackey* reflects the fact that information produced by the NCIC system is used as the functional equivalent and extension of arrest warrants. *See: Mackey*, 387 F. Supp. at 1122. Most importantly, the reasoning in *Mackey* persuasively supports the proposition that such information must be judged, at minimum, by the same standards as those applicable to arrest warrants. To rule otherwise in this highly computerized age would largely obviate the protection afforded by the Fourth Amendment's particularity requirement.

In the present case, like *Mackey*, probable cause for all but Plaintiff's initial arrest (as opposed to the reason for the traffic stops) was based solely on the NCIC information. Moreover, as previously noted, each NCIC computer record provides a 121 character field for additional information regarding, *inter alia*, the suspect's description and misidentification-duplicate name problems. Significantly, Defendants have neither contended nor produced evidence indicating that it was not possible, or even merely impractical, to insert information regarding McKandes' tattoos and scars and Plaintiff's misidentification in said field because, for example, it contained more important information. . . .

2. CAUSATION OF THE DEVIATION BY OFFICIAL POLICY, CUSTOM OR USAGE. . . .

The Court finds that the Defendant City's failure to (i) adopt any policy, (ii) train, and (iii) supervise its police officers regarding: (a) the Fourth Amendment requirement that the arrest warrant and the NCIC record created pursuant thereto describe the suspect with particularity; and (b) the procedures for and the necessity of amending the NCIC record when additional or more accurate descriptive information became available were both grossly negligent and systemic in nature.

C. CONCLUSION

For the reasons stated, the Court holds that there is no material question of fact and that Plaintiff is entitled to judgment against the City of Los Angeles on the 42 U.S.C. section 1983 liability issue as a matter of law. The Court, however, believes it is appropriate to emphasize the limited scope of said holding.

The Court recognizes that: (i) the Defendant Officers were diligently seeking to apprehend a dangerous murder suspect; (ii) the suspect, McKandes, had used Plaintiff's name; and (iii) said officers had probable cause to place Plaintiff's name on the arrest warrant and the NCIC record created pursuant thereto. However, Defendants mistakenly contend that the officers were faced with the choice of either proceeding as they did or not acting at all. Defendants fail to recognize the third option which would allow the officers to discharge their duties to apprehend McKandes and to respect Plaintiff's constitutional rights. This option was to: (1) insert the additional descriptive information concerning McKandes (re: scars, tattoos, etc.) into the arrest warrant and NCIC record; and (2) amend same to reflect the misidentification-duplicate name problem after Plaintiff's initial misidentification.