

Civil Rights Update

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No Further Duty to Investigate After Establishing Probable Cause

On February 11, 2011, the United States Court of Appeals for the Seventh Circuit, decided *Sow v. Fortville Police Dept.*, 636 F.3d 293 (7th Cir. 2011), affirming the district court's grant of summary judgment on the plaintiff-appellant Mouhamadou Sow's false arrest claim against the defendants-appellees Fortville Police Department and Officer Michael Fuller ("the officer"), and holding that the officer had ample evidence to provide probable cause to arrest the plaintiff and had no further duty to investigate the matter once probable cause to arrest him was established.

Factual Background

The plaintiff was an American citizen originally from West Africa. He was a traveling salesman who sold African items at fairs and festivals throughout the United States. He owned a Toyota Sequoia, which had been wrecked and was in need of repair. The plaintiff drove to a store in Fortsville, Indiana to buy spare parts to fix his car.

At the store, the plaintiff attempted to buy \$775 worth of parts with a \$1,000 money order he had purchased from Eastland Post Office in Columbus, Ohio. He was informed that the store did not have sufficient change and was directed to the Fortville Post Office. At the Fortville Post Office, the clerk refused to accept the money order because the serial numbers were wrong and the watermark did not resemble Benjamin Franklin, whose image is the watermark on all official money orders. The clerk told the plaintiff the money order was a fake, and showed the money order to her supervisor. When she returned, she informed the plaintiff that they did not have enough cash to negotiate the order and gave him directions to the nearby McCordsville Post Office.

During the time that the clerk had been helping the plaintiff, another Fortville Post Office employee had searched the parking lot to determine which vehicle the plaintiff was driving. It was a custom van with tinted windows and a cardboard temporary plate. Once the plaintiff left, the Fortville Post Office employees called the Fortville police to report the plaintiff. In response to that call, the officer went to the Fortville Post Office to investigate. There, the employees explained that the plaintiff had tried to pass a fake \$1,000 money order and was now traveling to the McCordsville Post Office. The officer notified the McCordsville Police Department and provided a description of the plaintiff's van.

Soon after, a McCordsville police officer stopped the plaintiff's van in McCordsville because it did not appear to have a proper registration plate and fit the officer's description of the vehicle. Shortly thereafter, Officer Fuller and a second McCordsville police officer arrived at the scene. The stop lasted over an hour.

Once stopped, police officers from both departments inspected the allegedly fake \$1,000 money order and both determined the watermark resembled Jesus Christ rather than Benjamin Franklin. The plaintiff was unable

to produce a receipt for the \$1,000 money order, but he produced a backpack full of other money order receipts and other documentation. The officer then made two calls, one to the post office headquarters in Baltimore, Maryland, and one to the postal inspector in Indianapolis. Both calls confirmed that the serial numbers were not in a format used or accepted by the U.S. Post Office. The postal inspector also informed the officer that any money order without a watermark resembling Benjamin Franklin would be a fake, but that the local authorities would have to handle this matter because the federal government would not prosecute a case involving such a small amount of money.

While the plaintiff could not produce a receipt from his purchase of the \$1,000 money order, he was able to produce a \$500 money order and accompanying receipt that he had purchased from the Columbus Post Office on the same day he purchased the \$1,000 money order. The receipt included the Columbus Post Office's telephone number, but the officer did not call that office. According to the plaintiff, the police officers refused to continue to allow him to search for the receipt.

At that point, the plaintiff was arrested for forgery and placed in the McCordsville police vehicle. Officers from both police departments then drove their vehicles to the McCordsville Post Office, where they compared an official \$1,000 money order to the one used by Sow. Both officers concluded the watermarks were different. The officers took the plaintiff to the county jail, where he was held for about two days until friends and family posted his bond. Once the plaintiff was released from jail, he found the receipt for the \$1,000 money order at issue and his criminal charge was subsequently dismissed.

Federal Lawsuit

After this experience, the plaintiff filed suit in the Southern District of Indiana against the United States of America, the Fortville post office employees, both of the police departments, and the officer. Among other federal civil rights and state law claims, the complaint included alleged the Fortville Police Department and the officer falsely arrested him.

False Arrest Claim

The plaintiff alleged a claim for false and unlawful arrest under §1983. He claimed that that the officer did not have probable cause and ignored readily available avenues of investigation that would have established the plaintiff's innocence. Probable cause, which is established when a reasonable person would believe, based on the facts and circumstances known at the time, that a crime had been committed is an absolute bar to a §1983 claim for false arrest. *McBride v. Grice*, 576 F.3d 703, 707 (7th Cir. 2009).

The Plaintiff's Argument

The crux of the plaintiff's argument that he had been unlawfully and falsely arrested was that the officer did not call the Columbus Post Office where the plaintiff had purchased the \$1,000 money order. The plaintiff also argued the officer ignored his request to call the Columbus Post Office once the plaintiff presented the receipt for the \$500 money order purchased on the same day as the \$1,000 money order. He further argued that the officer intentionally disregarded information regarding the origin of the money order, which was readily available, easily obtainable, and pertinent to the central issue of the arrest.

To support his position that he had been falsely and unlawfully arrested, the plaintiff relied on the Seventh Circuit case, *BeVier v. Hucal*, 806 F.2d 123 (7th Cir. 1986). In *BeVier*, parents who had been arrested and charged with child neglect later sued for unlawful arrest, arguing that the police officer who arrested them did not have probable cause. The police officer had made a rather hasty decision to arrest the parents for neglect without questioning the parents or the babysitter who was watching the children at the time. The Seventh Circuit affirmed the magistrate's judgment for the parents, explaining that the police officer defendant had failed to obtain information necessary for the arrest before he concluded that the parents had intentionally

neglected their children. It explained that “reasonable avenues of investigation must be pursued especially when, as here, it is unclear whether a crime had even taken place.” *BeVier*, 806 F.2d at 128.

Seventh Circuit’s Decision

The Seventh Circuit rejected the plaintiff’s arguments that he was unlawfully arrested, holding that the officer had probable cause to arrest the plaintiff and had no further duty to investigate after establishing probable cause. First, the court determined that the officer had ample reason to conclude that the \$1,000 money order was fake and that the plaintiff had committed forgery. The court explained that an officer has probable cause to arrest when he or she receives information from a third party with reason to believe that the information is truthful. *Id.* Here, the officer had spoken with several postal employees from various offices in the area and country who all believed the \$1,000 money order was potentially fake and provided reasonable justification for their opinion. As the court explained, probable cause does not turn on what is actually true, but what the police officer knows. In this case, the officer had no reason to doubt the various post office employees were being truthful. Additionally, the officer had based his decision to arrest the plaintiff on his own observations and the fact that the plaintiff could not produce a receipt for the money order at issue. Therefore, the officer had established probable cause.

Next, the court held that the officer was not required to call the Columbus Post Office once he established probable cause to arrest the plaintiff. The court restated its previous holdings that an officer may terminate his investigation once probable cause has been established and that the Fourth Amendment does not impose a duty to investigate the truth of a defense. *Id.*, citing *McBride*, 576 F.3d at 707.

Finally, the court distinguished its holding in *BeVier*, which had been cited by the plaintiff. It explained that, unlike the police officer in *BeVier*, the officer had established probable cause in this case through his observations and information received from postal employees. Unlike *BeVier*, there was no uncertainty that a crime had been committed based on the information reasonably believed to be true. Therefore, the officer had probable cause to arrest and was not required to pursue further investigation. In *BeVier*, there was no probable cause so the police officer in that case was under a duty to further investigate.

No Further Duty to Investigate Once Probable Cause is Established

This case makes it clear that a police officer who has established probable cause to arrest an individual is under no further duty to investigate. A police officer who has probable cause to arrest can terminate his or her investigation and will not be liable for false arrest, even if a readily available avenue of investigation could have proven the absence of probable cause. Therefore, if a defense practitioner charged with defending a police officer or department is able to establish that the police officer had probable cause to arrest, he will likely be successful in defeating a false arrest claim. The defense attorney should focus on establishing that the officer received information from a third party with reason to believe the accuracy of that information. Even if the information is later shown to be untruthful, it will be sufficient to establish probable cause and defeat a false arrest claim if the officer had reason to believe the information was truthful at the time of the arrest.

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