Circuit Court for Baltimore City
Case No. 24-C-17-006621

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3101

September Term, 2018

RYAN BROWN

v.

MARCUS TAYLOR, ET AL.

Friedman,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 11, 2020

Ryan Brown was arrested in Baltimore City for possession of a handgun and related charges. All criminal charges against Brown were later dismissed. Brown then filed a tort action in the Circuit Court for Baltimore City alleging unlawful arrest, among other related claims. The Baltimore Police officers who arrested Brown filed a motion for summary judgment, which was granted. On appeal, Brown alleges that summary judgment was improper because there is a dispute of material fact. We disagree.

BACKGROUND

Brown and a friend were on the porch of a vacant home when Baltimore Police Officers Marcus Taylor and Evodio Hendrix[1] approached. The police officers observed Brown standing up from a chair, moving towards the right of the porch, and leaning down towards the floor as if he was placing something on the ground. Officer Taylor then observed a handgun on a plastic chair where Brown had bent down. Brown was arrested but the Office of the State's Attorney for Baltimore City later dismissed the charges.

Brown initiated a tort action to recover monetary damages based on his allegations of unlawful arrest and related claims. Officers Taylor and Hendrix filed motions for summary judgment and a hearing was held before the Circuit Court for Baltimore City.

[1] We note that these former police officers were members of the infamous Gun Trace Task Force and are now serving sentences in the federal penitentiary for their part in a "wide-ranging, years-long racketeering conspiracy." *Baltimore City Police Dep't v. Potts*, ----Md. ---- (2020), Misc. No. 6 (Apr. 24, 2020). If this case were to proceed to trial, a trial court would have to determine the admissibility of evidence of Taylor and Hendrix's prior bad acts in their defense of Brown's claims. Md. Rule 5-608; 5-609. At the summary judgment stage, however, their affiliation with the Task Force, their reputation for untruthfulness, and their convictions, have no bearing on this Court's decision as we are not now considering their credibility (or lack thereof).

The circuit court granted summary judgment for the officers, finding that the officers had probable cause to arrest Brown and that there were no material facts in dispute. Brown appealed.

ANALYSIS

We are reviewing the circuit court's grant of summary judgment in favor of Officers Taylor and Hendrix. Thus, the circuit court had to determine whether there was a genuine dispute of a material fact and whether one side (or the other) was entitled to judgment as a matter of law. Md. Rule 2-501. In reviewing that determination, we do not defer to the circuit court's determination, but instead analyze whether it was correct as a matter of law. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006). As we will explain, the material fact at issue in this case is whether Officers Taylor and Hendrix planted the handgun. We hold that there was no genuine dispute about this fact because there was no admissible evidence that they did plant the handgun. As a result, the circuit court found that the police officers were entitled to judgment as a matter of law. For the reasons that follow, we agree.

We begin by explaining the vital importance of possession of the handgun to this case. Each of Brown's tort claims require him to prove that his arrest was unlawful. An arrest is unlawful if it is made "without legal authority or probable cause." *Okwa v. Harper*, 360 Md. 161, 175 (2000). There is no doubt that the police officers had the legal authority to arrest Brown. As a result, Brown must show that the police officers lacked probable cause to arrest him. Whether a "law enforcement officer had probable cause to make a particular arrest is determined on factual and practical considerations of everyday life on which reasonable and prudent people act." *Id*. at 184. Probable cause, therefore, exists if

there are "facts and circumstances sufficient to warrant a prudent person … believing that the suspect had committed or was committing an offense." *Id. See also State v. Johnson*, 458 Md. 519, 535 (2018) ("[P]robable cause is not a high bar."). Thus, whether there was probable cause to arrest Brown turns on whose handgun it was that was found on the porch. There are, it seems to us, at least four possibilities:

1. Brown possessed the handgun. If Brown possessed the handgun last and put it on the chair, then the police had probable cause to arrest Brown. There were obvious facts and circumstances that were sufficient to warrant the police officers' belief that Brown had committed the crime of illegal handgun possession.

2. Brown's friend possessed the handgun. If Brown's friend possessed the handgun last and put it on the chair, then the police still had probable cause to arrest Brown. That is because probable cause exists even if the police officers were wrong, but understandably wrong.

3. An unidentified third party possessed the handgun. If an unidentified third party was the last one to possess the handgun and abandoned it on the chair, then the police still had probable cause to arrest Brown. Again, if the police officers were wrong, but understandably wrong, probable cause still exists.

4. The police officers planted the handgun. If the police officers themselves planted the handgun on the chair, then (and only then) did the police lack probable cause to arrest Brown. If the police officers planted the handgun, they were wrong about Brown having been the last person to possess and they would know that they were wrong.

For Brown to create a genuine dispute about this material fact, he must produce evidence to suggest (or at least to give rise to the reasonable inference) that one of these possibilities is more likely than the others. *See Hamilton v. Kirson*, 439 Md. 501, 523

(2014) ("The mere existence of a scintilla of evidence in support of the plaintiffs' claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.") (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). But Brown's evidence falls short of this requirement. Brown's evidence was that he didn't have the handgun: "Well, I have facts that I know I didn't have a gun;" "I didn't see no gun;" "Nobody seen a gun." Brown's evidence shows there is a dispute about possibility #1, discussed above. But whether #1 is true or untrue does nothing to establish that possibility #4 is true. *See Hurt v. Stillman & Dolan, Inc.*, 35 Md. App. 644, 646 (1977) ("An unsupported conclusion is not the proper way to show an issue of a material fact."). For Brown to defeat summary judgment he must either have provided evidence that creates a genuine dispute about possibilities #1, #2, *and* #3 (something like, "I know it wasn't there when we got there and it wasn't mine or my friend's") or provided evidence that created a genuine dispute about possibility #4 (something like, "I saw the police officers plant the gun"). As he failed to do so, the trial court was correct in granting summary judgment. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.