



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN SMITH,	)	
	)	
Plaintiff Below-Appellant,	)	No. 559, 2018
	)	
v.	)	Trial Court Below:
	)	
FIRST STATE ANIMAL CENTER	)	Superior Court
AND SPCA, KATELYN PEPPER,	)	The Hon. E. Scott Bradley
SANDRA GALLOWAY, DAVID	)	C.A. No. S15C-12-025 ESB
HULSE, KEVIN USILTON, MARY	)	
PALACIO, and SHERRI	)	
WARBURTON,	)	
	)	
Defendants Below-Appellees.	)	

**PLAINTIFF/BELOW APPELLANT JOHN SMITH'S  
REPLY BRIEF**

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## ARGUMENT

### I. **DEFENDANT ACOS HAD NEITHER AUTHORITY TO ENFORCE DELAWARE’S LAWS NOR PROBABLE CAUSE TO ARREST MR. SMITH.**

#### A. Defendant ACOs could not lawfully arrest Mr. Smith because they were not certified police officers.

Defendants’ Answering Brief fails to address the fact none of the Defendant ACOs graduated from a COPT-approved academy or the effect that failure has on their arrest of Mr. Smith. Without graduating from a COPT-approved academy, Defendant ACOs were not police officers under 11 *Del. C.* §8401 and therefore did “not have the authority to enforce the laws of the State.”<sup>1</sup> Defendants do not argue either 11 *Del. C.* §8401 or 11 *Del. C.* §8410(a) contain unclear or ambiguous language. The only conclusion the Court can reach is that Mr. Smith’s arrest violated his constitutional rights and the arrest warrant was unlawful.

Instead of addressing their lack of authority under the Code, Defendants cite *Lengle v. Dukes*, which was not a §1983 claim, to argue they could arrest Mr. Smith because a layperson could swear out an arrest warrant without attending a COPT-approved police academy.<sup>2</sup> For purposes of Mr. Smith’s §1983 claim, it is undisputed Defendant Pepper was acting as a state official when she obtained the arrest warrant and arrested Mr. Smith, which provides the necessary hook for Mr.

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<sup>1</sup> 11 *Del. C.* 8410(a).

<sup>2</sup> 1982 Del. Super. LEXIS 757 (Del. Super. Ct. June 9, 1982).

Smith's claim that his constitutional rights were violated.<sup>3</sup> For purposes of his false arrest/false imprisonment claim, the fact Defendant ACOs were banned from enforcing Delaware's laws until they graduated from a COPT-approved police academy means the arrest warrant was invalid and there was no "lawful arrest through proper legal process."<sup>4</sup> As to the malicious prosecution claim, a jury should have decided whether ignoring a statutory requirement shows Defendants acted with conscious indifference to Mr. Smith's rights.<sup>5</sup>

Defendants' reasoning would be concerning if it was limited to certified police officers arresting persons without probable cause, but this case involves an uncertified ACO, which suggests that any State official could arrest someone because that is what any layperson could do. More ominously, Defendants argument would allow a law enforcement agency to hire candidates who flunked out of the police academy and put them on patrol without fearing any consequences if those failed candidates know the laws they are enforcing or not. The Court should hold Defendant ACOs were not certified police officers authorized to enforce Delaware's laws and remand the case to the trial court.

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<sup>3</sup> See 42 U.S.C. §1983; see also *Hunt v. State*, 69 A.3d 360 (Del. 2013).

<sup>4</sup> See *Boulden v. Turner*, 2007 Del. Super. LEXIS 529, \*11-2 (Super. Ct. April 12, 2007) citing 1982 Del. Super. LEXIS at \*5-6 (citing Prosser, Law of Torts § 12 (1971)).

<sup>5</sup> See *Stidham v. Diamond State Brewery, Inc.*, 21 A.2d 283 (Del. Super. Ct. 1941).

B. Defendants Lacked Probable Cause to Arrest Mr. Smith.

Defendants next argument that they had probable cause to arrest Mr. Smith is not based on an accurate reading of the record. First, Defendants write Mr. Smith himself could not point out any material misstatements of fact in the affidavit of probable cause, which is correct but not complete.<sup>6</sup> Mr. Smith’s lawsuit argues there are no facts showing probable cause existed – not that Defendant Pepper lied to the Justice of the Peace. Defendants then write Mr. Smith “voluntarily made himself the point of contact for all interactions with the ACOs and his steadfast refusal to speak with them or allow them to speak to Mrs. Smith impeded their ability to pursue their investigation.”<sup>7</sup> This sentence contains material facts that would have a significant effect on Mr. Smith’s claim if they existed. In fact, there was never any deposition testimony or document that shows Mr. Smith “voluntarily made himself the point of contact” for Defendant ACOs. If anyone, Mr. Smith made his then-attorney the point of contact, which he was forced to do repeatedly because Defendant ACOs continued to ignore him. Neither did Mr. Smith ever stop Defendants from speaking to Mrs. Smith. As discussed in the Opening Brief, there is no record evidence that any of the Defendant ever asked to speak with Mrs. Smith;

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<sup>6</sup> *See* Appellees’ Answering Brief at 17.

<sup>7</sup> *Id.* at 19.

Defendant Palacio actually spoke to Mrs. Smith while she and Defendant Hulse were *en route* to the Smith home to seize Millie; Mrs. Smith spoke with Defendants Hulse and Palacio when they arrived at the Smith home; and, Mrs. Smith called Defendants to ask about Millie. Defendants dismiss Mr. Smith’s arguments as “simply a creative litigation theory”<sup>8</sup> but arresting Mr. Smith for hindering prosecution without probable cause violated his Fourth Amendment rights.

Neither have Delaware courts found “an arrest warrant issued by a reviewing magistrate is a complete defense to a false imprisonment or false arrest claim.”<sup>9</sup> In the context of the probable cause prong in malicious prosecution claims, Delaware courts have said arrest warrants provide *prima facie* evidence that probable cause exists, but a plaintiff can turn this into a question of fact if he or she can produce the right evidence.<sup>10</sup> In their Answering Brief, Defendants also write that a warrant will be given great deference – at least in the context of a §1983 claim – but they never explain what distinguishes great deference from a complete defense in terms of false arrest/false imprisonment. Giving a warrant great deference rather than absolute deference better accommodates those plaintiffs who can present evidence to rebut the presumption an arrest warrant creates about the existence of probable cause.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 27.

<sup>10</sup> *See e.g Lingle*, 1982 Del. Super. LEXIS 757; *see also Stidham*, 21 A.2d 283.

Absolute deference to a warrant would have the effect of blocking a Delaware plaintiff from seeking relief when a §1983 claim and tort claim arise from the same facts.

C. Defendants Are Not Entitled to Qualified Immunity.

Defendants' subjective ignorance of the laws of arrest do not entitle them to qualified immunity. Courts have held that a well-established right is judged by what a reasonable official would understand. Here, the fact none of the Defendants ACOs attended a COPT-approved academy where they would have received at least two hours of instruction on the Constitution and Bill of Rights,<sup>11</sup> twenty hours of instruction on the Delaware Criminal Code,<sup>12</sup> and at least forty hours of instruction on the Laws of Arrest, Laws of Evidence, and Search and Seizure<sup>13</sup> before graduating only underscores the argument they are not entitled to qualified immunity. Defendants do not challenge whether the rights underlying Mr. Smith's §1983 claim are well-established but instead claim the arrest was not based only on Defendant ACO Pepper's belief regarding hindering prosecution but included information from other officers. That reasoning is similar to believing the more numbers you multiply by zero will somehow change the product: zero Defendants

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<sup>11</sup> C1-800-801 §16.5

<sup>12</sup> C1-800-801 §16.9

<sup>13</sup> C1-800-801 §16.23



graduated from a COPT-approved academy and their collective ignorance of the law does not entitle Defendant Pepper to qualified immunity.

Finally, Defendants argue Mr. Smith cannot raise the policy issue because it was not raised below, which is correct but not accurate. Defendants moved for summary judgment but did not argue the policy element in their motion for summary judgment or its supporting briefs. The trial court issued a letter, which is attached as Exhibit D to Appellant's Corrected Opening Brief, asking counsel to address six questions, none of which asked about Defendants' policies or lack of policies. Based on how the motion for summary judgment was framed, Mr. Smith had no reason to address Defendants' policies. Defendants' policy was raised *sua sponte* by the trial court for the first time in its letter opinion granting Defendants summary judgment. Mr. Smith addressed this part of the ruling on appeal, but that was only because it was first raised in the trial court's letter opinion.

## **CONCLUSION**

Based on the arguments in John Smith's Opening Brief and his Reply Brief, the Court should remand the matter to the trial court for action consistent with the opinion that Defendants lacked authority to arrest Mr. Smith, or the Court should reverse the trial court's finding that probable cause existed and remand the matter for action consistent with that opinion.

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