

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

ANGELINA CIANFAGLIONE,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 10-CV-02170
TERRY ROGERS, DEE BURGIN,)	
ROBERT WILSON, BEVERLY WEGER,)	
and EDGAR COUNTY, ILLINOIS)	
)	
Defendants.)	

ORDER

This case is before the court for ruling on the Motion for Judgment as a Matter of Law (#72) pursuant to Rule 50(a)(2) of the Federal Rules of Civil Procedure made by Defendants Terry Rogers and Dee Burgin. Defendants initially made an oral Rule 50(a)(2) motion after the close of evidence, and before the case was submitted to the jury, arguing that Defendants Rogers and Burgin were entitled to judgment as a matter of law on the basis of qualified immunity. This court took Defendants' Rule 50(a)(2) motion under advisement. The jury returned a verdict against Defendants Rogers and Burgin finding that they ordered the strip search of Plaintiff without reasonable suspicion. The jury awarded Plaintiff compensatory damages of \$15,000 and punitive damages of \$20,000 against Defendant Rogers, and awarded Plaintiff the same damage amounts against Defendant Burgin. After the jury returned a verdict against Defendants Rogers and Burgin, Defendants orally renewed their motion for judgment as a matter of law. This court directed Defendants to submit their

renewed motion in writing by June 15, 2012. On June 15, 2012, Defendants filed a written Motion for Judgment as a Matter of Law (#72). On June 22, 2012, Plaintiff filed a Response (#74).

ANALYSIS

Qualified immunity is a defense available to government officials performing discretionary functions that affords them protection “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Estate of Escobedo v. Bender, 600 F.3d 770, 778 (7th Cir. 2010) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). A two-prong test is used to ascertain whether an officer is entitled to qualified immunity. Id. at 778-79. First, the jury in this case already determined that the order by Defendants Rogers and Burgin to strip search Plaintiff was a violation of her Fourth Amendment rights. Therefore, the application of qualified immunity in this case rests solely on the second prong of the qualified immunity analysis. Specifically, this court must determine if the Plaintiff’s Fourth Amendment rights to be free from a strip search without reasonable suspicion was sufficiently clear that a reasonable official would understand that what he is doing violates that right. See id. at 778. Plaintiff must show on some level, that a violation of this right has been found in factually similar cases, or that the violation was so clear that Defendants would have known that their actions violated the Plaintiff’s rights even in the absence of a factually similar case. See id. at 779.

The law is undisputedly clear in the Seventh Circuit that law enforcement officers

may not strip search an individual for contraband unless the officers have a reasonable basis to believe at the time of the search that the individual is concealing contraband on her body. See, e.g., Campbell v. Miller, 499 F.3d 711, 717 (7th Cir. 2007); Kraushaar v. Flanigan, 45 F.3d 1040, 1045 (7th Cir. 1995); Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1273 (7th Cir. 1983). The Seventh Circuit has explained that “[w]hether a suspicion is reasonable depends upon such factors as the nature of the offense, the arrestee’s appearance and conduct, and the prior arrest record. See, e.g., Kraushaar, 45 F.3d 1045 (internal quotations and citations omitted).

In this case, testimony by Defendants Rogers and Burgin made it clear that the sole basis for ordering the strip search of Plaintiff was the following: (1) a drug detection canine made an alert on Plaintiff’s vehicle¹ after she was pulled over for an unrelated arrest warrant for failure to appear in court; and (2) anonymous tips that Plaintiff’s boyfriend, who she was living with at the time, was potentially dealing drugs out of his home.² Defendants argue that because no drugs were found in the subsequent search of Plaintiff’s vehicle, there was an increased likelihood that she was concealing contraband under her clothing. After hearing this evidence, and finding that the drug detection canine did make an alert on Plaintiff’s vehicle while she was in the car,³ the jury returned a verdict concluding that there was no

¹The alert allegedly was made by the drug detection canine on the driver’s door.

²Although some of the testimony regarding these “anonymous tips” was stricken based on objections by Plaintiff’s counsel, there was some testimony which was introduced that indicated that the home where Plaintiff lived was suspected of drug activity.

³Plaintiff vigorously disputed the allegation that the drug detection canine made a positive alert for contraband on her vehicle. The jury was given a special question during the

reasonable basis to believe Plaintiff was concealing contraband on her body.

Defendants argue that they are entitled to qualified immunity because an officer could reasonably believe that it would not violate the constitution to order a strip search of an individual following a positive alert by a drug detection canine on the individual's vehicle, in combination with a suspicion, based on an anonymous tip, that the individual lives at a home where drug activity might be occurring. Defendants cite, in support of their argument, to cases that also involve positive alerts for contraband by drug detection canines, however this court finds that each case is clearly distinguishable.⁴ Although a drug detection canine alert certainly is a factor that may be considered by law enforcement officers in determining if an individual is concealing contraband, based on the facts in this case, no reasonable officer could have concluded that there was a reasonable basis to believe that Plaintiff was concealing contraband on her body.

Importantly, the suspicion must be particularized to Plaintiff, and more specifically, there must have been suspicion that Plaintiff was concealing contraband on her body at the time of the search. See Kaniff v. United States, 351 F.3d 780, 785 (7th Cir. 2003) (citing United States v. Montoya de Hernandez, 473 U.S. 531, 541-42 (1985)). In this case, there

liability portion of the jury deliberations which required them to find whether the drug detection canine made a positive alert for contraband on Plaintiff's vehicle.

⁴This court has reviewed each case cited by Defendant. In each of the cases, there are numerous supporting factors that the court considering in reaching the conclusion that reasonable suspicion existed to order a strip search of the suspect. For instance, cases refer to previous drug convictions, tips that the individual regularly carries drugs in their body cavities, and suspicious activity that indicates that the individual might have something to hide, among other factors.

was no evidence offered: (1) that Plaintiff had a history of any drug use or convictions; (2) that Plaintiff appeared to be hiding anything under her clothes;⁵ (3) that Plaintiff was fidgety or acting in a manner which would lead a person to believe that she might be hiding contraband; (4) that Plaintiff might commonly hide drugs on her person; or (5) that she was stopped on a matter related to the possession of contraband.

Moreover, the suggestion that there was a continuing drug investigation into the home where Plaintiff resided at the time in question provides no basis to suspect that Plaintiff herself was hiding drugs on her person. At most, the fact that there were anonymous tips that Plaintiff's boyfriend was dealing illegal drugs from the home in which they shared would provide suspicion that contraband might be present at the shared home, in Plaintiff's boyfriend's possession, or in a vehicle owned or driven by Plaintiff's boyfriend. Plaintiff was pulled over in a vehicle that Defendants knew was registered to her. Also, there was no evidence offered that Plaintiff's boyfriend ever used Plaintiff's vehicle. Considering all of these factors, this court rejects Defendants' argument that the drug investigation into the home where Plaintiff was living provided any suspicion particularized to Plaintiff on the day in question.

A finding that qualified immunity would be appropriate in this case would allow officers to order strip searches of any individual on the sole basis that a drug detection canine makes a positive alert on the individual's vehicle. There is no case law that this court is

⁵Plaintiff was wearing shorts and a T-shirt on the summer day in question and the pat down search conducted by Defendants Rogers and Burgin did not yield any results or provide any grounds for further suspicion.

aware of that would provide Defendants with a reasonable belief that a positive alert for contraband by a drug detection canine, in the absence of any other factors that might suggest the possibility that contraband might be on Plaintiff's person, would provide reasonable suspicion sufficient to order a strip search.

IT IS THEREFORE ORDERED THAT: the Motion for Judgment as a Matter of Law (#72) filed by Defendants Rogers and Burgin is DENIED.

Entered this 28th day of June, 2012

s/MICHAEL P. McCUSKEY
U.S. DISTRICT JUDGE