

## Fourth Circuit Court of Appeals Rules That an Officer Was Not Entitled to Summary Judgment in a Civil Lawsuit for an Arrest Allegedly Made Without Probable Cause

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The Fourth Circuit Court of Appeals recently ruled (2-1) in [Smith v. Munday](#), 848 F.3d 248 (4th Cir. Feb. 3, 2017), that a North Carolina officer was not entitled to summary judgment in a civil lawsuit for arresting the plaintiff allegedly without probable cause. This case is the subject of this post.

**Facts.** In 2009 North Carolina local law enforcement officers used a confidential informant who was wired with audio and video recorders to make a purchase of crack cocaine. After the transaction, the informant told the officers that he purchased drugs from April Smith, a black female. An officer's notes identified her as "B/F April Smith" and "April B/F Smith skinny \$20 1 rock in plastic, Smith 40s." For technical and other reasons neither the audio nor video captured the drug sale, although there was video of an unidentified black female sitting on the front porch. During the next nine months, an officer scanned police databases for residents of his county named April Smith who had criminal records. He then discovered April Yvette Smith, a black female and the plaintiff in this case who lived in the county and had been convicted of selling crack cocaine in 1993, 1997, and 2005. His search revealed at least two other April Smiths with criminal records. He had no indication that the female who sold crack cocaine to the informant in 2009 had a criminal record or was even a county resident. The record reflects no further attempt by the officer to connect her to the crime. The officer obtained an arrest warrant for the plaintiff nine months after the drug transaction and arrested her in her home, which was eleven miles away from the transaction. She was held in custody for about 80 days, when the local district attorney's office dismissed the charges. She filed a lawsuit in a North Carolina federal district court under 42 U.S.C. § 1983 for Fourth Amendment and related tort claims based on her arrest allegedly made without probable cause.

**Federal district court ruling.** The federal district court granted the motion for summary judgment filed by the arresting officer and others based on their qualified immunity from the lawsuit. The district court reasoned that the officers were looking for a black woman named April Smith who sold drugs, and they found a black woman named April Smith who had previously sold drugs, and who was arrested for the offense involved in this case only eleven miles from the drug transaction. The one factor the district court believed counseled against probable cause was Smith's weight. The seller had been described as a skinny female, but the plaintiff was 160 pounds when arrested, and she alleged that she weighed more than 200 pounds on the date of the transaction. But the court noted that the officers were unaware of the plaintiff's weight at the time of the transaction and reasoned that 160 pounds was not so different from "skinny," especially with an intervening nine months, so as to discredit a finding of probable cause even if the officers ultimately were mistaken in arresting her.

**Fourth circuit ruling.** The fourth circuit reversed the district court's grant of summary judgment. The court reasoned that when applying for the arrest warrant, the officer simply did not have enough information for any reasonable or prudent person to believe there was probable cause. He lacked any information connecting the plaintiff's conduct to the contours of the offense, and certainly lacked enough evidence to create any inference more than mere suspicion. Of the offense, the officer knew only that the confidential informant used by other officers--but new to him--said "April Smith," a skinny, black female, sold him crack cocaine. He did not know if she had been previously convicted of selling

crack cocaine or if she lived in the county. He chose one of the black females named April Smith for no immediate apparent reason.

The court stated that an investigating officer need not exhaust every potential avenue of investigation, but an officer must still conduct some sort of investigation and assemble individualized facts that link the suspect to a crime. It said that in this case there was: (1) no evidence that the officer attempted to identify the plaintiff as the black female in the video footage of the front porch; (2) no evidence that the officers showed the informant a photo of the plaintiff for identification; and (3) no evidence that the officers investigated the plaintiff herself.

The court noted case law accords great deference to a magistrate's determination of probable cause, but that deference is not boundless. The court concluded that in this case the evidence placing the plaintiff at the crime scene was so scant (indeed, nonexistent) that deferring to the magistrate was inappropriate. And qualified immunity does not apply under *Malley v. Briggs*, 475 U.S. 335 (1986), when an arrest warrant is so lacking in indicia of probable cause to render official belief in its existence unreasonable.

There was a dissenting opinion in this case that said the officer was entitled to qualified immunity because the evidence reflected that reasonable minds could disagree about the existence of probable cause to arrest.

Whether there will be further legal proceedings in this case remains to be seen.

**Comments.** Although courts often give significant weight to a judicial official's issuance of an arrest warrant in deciding whether an officer is entitled to summary judgment on the issuance of probable cause, this case is a reminder that summary judgment will not be granted in all cases. Officers need to be aware of their obligation to conduct a sufficient investigation to avoid the ruling that was issued in this case.