

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-11994

TIMOTHY ALLEN DAVIS, SR.,

Plaintiff-Appellant,

versus

CITY OF APOPKA,

Defendant-Appellee

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:15-cv-01631-RBD-LRH

Before BRANCH, GRANT, and ED CARNES, Circuit Judges.

ED CARNES, Circuit Judge:

During a domestic dispute, Timothy Allen Davis, Sr. shot his unarmed twenty-two-year-old son, killing him. He was arrested and prosecuted for murder but was acquitted after a jury trial. Davis then filed a lawsuit against the City of Apopka, Florida and some of its police officers. He asserted a 42 U.S.C. § 1983 claim that he was arrested without probable cause, a Florida state law claim for false arrest based on the same contention, and a § 1983 claim that the officers' search of his home violated his Fourth Amendment rights.

The search claim was tried to a jury, but before that trial the district court dismissed the federal and state arrest claims under Federal Rule of Civil Procedure 12(b)(6). Davis challenges those rulings, based on his contention that the operative complaint shows that after his wife called 911 to report that her husband shot their son, the three officers who were dispatched to the scene of the shooting should have believed Davis when he said that he had acted in self-defense. The complaint also claims that if the officers didn't believe him, they should have conducted a more thorough investigation before making the arrest.

On the § 1983 claim that the officers had searched his house in violation of the Fourth Amendment, the jury returned a verdict in favor of the City. Davis challenges the denial of his motion for

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a new trial on that claim based on the failure to give a municipal liability jury instruction that he requested.

Before we get to the facts as alleged in the complaint, we need to point out a few more procedural aspects of the case. First, the officers involved in the search and arrest are no longer parties. They were dismissed after Davis settled with them. The City is the only remaining defendant. Davis' position is that the City is liable for the conduct of its Chief of Police because he was the final policymaker, and he personally and directly participated in the arrest and the search of Davis' home. The City does not deny that Chief Manley was the final policymaker, although it vigorously denies that there is any liability, insisting that none of Davis' claims is valid.

This is not the first time this case has been before our Court. *See Davis v. City of Apopka*, 734 F. App'x 616 (11th Cir. 2018) (unpublished). In the first appeal, Davis argued that the district court had erred in dismissing his arrest claims. A panel of this Court remanded the case for the district court to address in the first instance Davis' argument that, in light of Florida's "Stand Your Ground" law, Fla. Stat. §§ 776.012(2), 776.032, the officers lacked actual probable cause to arrest him because his use of deadly force was legally justified. *Davis*, 734 F. App'x at 621–22.

On Davis' § 1983 unlawful search claim, the panel concluded that Chief Manley "was a final policymaker such that his order to search Davis' home without a warrant rendered the City liable

absent any established custom or practice.” *Id.* at 619. The panel determined:

The district court, rather than addressing Davis’s allegation that the warrantless search was conducted upon the direction of the Chief of Police, addressed and rejected Davis’s alternative allegation that the City had a custom of improper training or permitting the Chief of Police to override established protocols and standard operating procedures. But Davis stated a claim for relief against the City based on a single decision by a final policymaker.

Id. at 620.

On remand, the district court followed this Court’s mandate. It determined that there was actual probable cause to support Davis’ arrest and that even in light of Florida’s Stand Your Ground law, the facts as alleged did not “*conclusively establish* the sufficiency of the defense [of self-defense] so as to negate probable cause in the context of a false arrest claim.” (The court did not believe that the absence of self-defense was an element of murder under Florida law.) The district court once again dismissed Davis’ § 1983 and state law claims that the officers arrested him without probable cause.

The case was tried on the § 1983 claim that the search of his home violated Davis’ rights under the Fourth Amendment. The jury returned a verdict in favor of the City, finding that Chief Manley did not knowingly direct, participate in, adopt or ratify the unlawful search of Davis’ home. Davis filed a motion for a new trial,

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contending that, among other things, the district court had erred in refusing to give a jury instruction on a custom and policy theory of municipal liability. The court denied that motion. Among the reasons for the denial was its interpretation of our mandate as casting out of the case Davis' custom and policy theory of municipal liability, leaving only the "final policymaker" basis for potential liability. The district court's decision not to give the requested custom and policy jury instruction is Davis' only basis for challenging the denial of his motion for a new trial.

We will first address Davis' § 1983 and state law claims that he was arrested without probable cause.

I. THE DISMISSAL OF THE FEDERAL AND STATE WRONGFUL ARREST CLAIMS

We review *de novo* the district court's Rule 12(b)(6) dismissal of Davis' federal and state claims involving the arrest. *McGroarty v. Swearingen*, 977 F.3d 1302, 1306 (11th Cir. 2020). In doing so, we "accept[] the factual allegations in the complaint as true and constru[e] them in the light most favorable to" Davis. *Id.* (quotation marks omitted).

A. What the Complaint Does and Does Not Allege

Davis' third amended complaint is the operative one. It alleges that on the night of October 1, 2011, his wife called 911 and reported that her husband "had had a confrontation with their son and that she believed her husband had shot" him. The complaint does not allege that Ms. Davis told the 911 operator then, or told

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