

482 Fed.Appx. 607

This case was not selected for publication in the Federal Reporter. United States Court of Appeals, Second Circuit.

Derrick Devon GRIFFIN, Plaintiff–Appellant, v.

Michael HANNAFORD, Matthew Carl, Sergeant Poliquin & Officer Stavol, Defendants–Appellees, East Windsor Police Department, Defendant.

No. 10–4236.

| May 4, 2012.

Synopsis

Background: Arrestee brought § 1983 action against police officers. The United States District Court for the District of Connecticut, Mark R. Kravitz, J., 2010 WL 3925134, granted officers' motion for summary judgment, and arrestee appealed.

Holding: The Court of Appeals held that officers were entitled to qualified immunity.

Affirmed.

West Headnotes (1)

[1] Civil Rights

🔑 Sheriffs, police, and other peace officers

Law enforcement officers of reasonable competence could have disagreed about whether police officers' warrantless entry and search of arrestee's hotel room, to independently ensure safety of hotel staff and guests from unspecified "dangerous stuff" in room, was justified by exigent circumstances, and thus officers were entitled to qualified immunity in arrestee's § 1983 action, even if officers knew that hotel staff had not observed anything obviously dangerous in its search of room and no danger had become apparent after hotel had been informed of

"dangerous stuff," since "dangerous stuff" could have included explosives or hazardous materials with which hotel staff had no experience, and there had been no basis to know whether or how quickly reported danger would have dissipated. 42 U.S.C.A. § 1983.

2 Cases that cite this headnote

*608 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

Attorneys and Law Firms

Derrick Devon Griffin, pro se, Lake City, FL, for Plaintiff–Appellant.

Scott M. Karsten, Karsten & Tallberg, LLC, West Hartford, CT, for Defendants–Appellees.

PRESENT: GUIDO CALABRESI, JOSÉ A. CABRANES, and DENNY CHIN, Circuit Judges.

SUMMARY ORDER

**1 Appellant Derrick Devon Griffin, proceeding pro se, appeals from the District Court's grant of summary judgment in favor of Appellees, dismissing his complaint under 42 U.S.C. § 1983. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

This Court reviews orders granting summary judgment de novo and focuses on whether the district court properly concluded that there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. See Miller v. Wolpoff & Abramson, LLP, 321 F.3d 292, 300 (2d Cir.2003). In determining whether there are genuine issues of material fact, the Court is required to resolve all ambiguities and draw all permissible inferences in favor of the nonmoving party. See Nationwide Life Ins. Co. v. Bankers Leasing Ass'n, 182 F.3d 157, 160 (2d Cir.1999) (citing Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 202 (2d Cir.1995)). Summary judgment is appropriate "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." Matsushita Elec. Indus. Co.

v. *Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

After an independent review of the record and relevant case law, we conclude that the District Court properly dismissed Appellant's complaint. See *ACEquip Ltd. v. Am. Eng'g Corp.*, 315 F.3d 151, 155 (2d Cir.2003) ("Our court may ... affirm the district court's judgment on any ground appearing in the record, even if the ground is different from the one relied on by the district court.").

"A qualified immunity defense is established if (a) the defendant's action did not *609 violate clearly established law, or (b) it was objectively reasonable for the defendant to believe that his action did not violate such law." *Salim v. Proulx*, 93 F.3d 86, 89 (2d Cir.1996). Following the Supreme Court's decision in *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009), courts may exercise their discretion in deciding which of these prongs should be addressed first in light of the circumstances of the case at hand. *Id.* at 236, 129 S.Ct. 808. Because Appellees have never challenged Appellant's allegation that the rights identified in his complaint were clearly established, we turn to the question of whether it was objectively reasonable for them to believe that their actions were lawful.

An officer's belief that his action does not violate clearly established law is objectively reasonable "if 'officers of reasonable competence could disagree' on the legality of the defendant's actions." *Lennon v. Miller*, 66 F.3d 416, 420 (2d Cir.1995) (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)). "In this respect, the Supreme Court has observed that qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Walczyk v. Rio*, 496 F.3d 139, 154 (2d

Cir.2007) ((quoting *Malley* 475 U.S. at 341, 106 S.Ct. 1092)). "[I]n the absence of a material factual dispute, the question of whether it was objectively reasonable for the officers to believe that they did not violate the plaintiff's rights is a purely legal determination for the court to make." *Lennon*, 66 F.3d at 422.

****2** In this case, officers of reasonable competence could disagree about whether Appellees' initial entry into and search of Appellant's hotel room was justified by exigent circumstances. Despite knowing that: (1) the hotel staff had not observed anything obviously dangerous in its search of the room; and (2) no danger had become apparent since the hotel had been informed of the "dangerous stuff" the previous evening, Appellees were confronted with unspecified "dangerous stuff" in a hotel room, which could include explosives or hazardous materials with which hotel staff had no experience. As the District Court stated, given that there was no basis to know whether or how quickly the danger would dissipate, a reasonable officer could, under the circumstances, believe that a warrantless entry and search to independently ensure the safety of the hotel staff and guests was justified by exigent circumstances. Accordingly, we affirm the District Court's judgment on the ground that Appellees are entitled to qualified immunity.

We have considered Appellant's other arguments on appeal and have found them to be without merit. For the foregoing reasons, the judgment of the District Court is hereby **AFFIRMED.**

All Citations

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