

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 10-2951

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Justin F. Sallis,

Plaintiff - Appellant,

v.

Catherine C. Pavlak; John Harrington;  
City of St. Paul,

Defendants - Appellees.

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\* Appeal from the United States  
\* District Court for the  
\* District of Minnesota.  
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Submitted: March 15, 2011

Filed: April 27, 2011

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Before WOLLMAN, MURPHY, and GRUENDER, Circuit Judges.

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MURPHY, Circuit Judge.

Justin F. Sallis appeals the district court's<sup>1</sup> grant of a motion to dismiss to Catherine C. Pavlak, John Harrington, and the City of St. Paul. In his second amended complaint, Sallis set forth claims against the appellees under 42 U.S.C. § 1983, alleging that he was deprived of his rights under the Fourth and Fourteenth Amendments to the United States Constitution. Specifically, Sallis alleges that he was deprived of his right to be free from unreasonable seizure unsupported by

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<sup>1</sup>The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota.

probable cause. In addition, Sallis is pursuing a *Monell*<sup>2</sup> claim along with various state law claims including negligence, intentional infliction of emotional distress, defamation, false arrest, and false imprisonment. We affirm.

## I. Background

Because this appeal comes to us from a grant of a motion to dismiss, we recite the facts in the light most favorable to the nonmoving party, the appellant, Justin F. Sallis. *See Northstar Indus., Inc. v. Merrill Lynch & Co., Inc.*, 576 F.3d 827, 832 (8th Cir. 2009).

On March 15, 2009, a woman in St. Paul, Minnesota reported to the authorities that she had been raped. Officer Catherine C. Pavlak, a St. Paul, Minnesota police officer, investigated the crime. The victim described her assailant as an African-American male, approximately 5’9”, 40 to 50 years of age, “scruffy and possibly homeless,” with salt-and-pepper facial hair, bad teeth, and a scar over his left eyebrow. The victim stated that she would be able to recognize the man if she saw him again.

The following day, Officer Pavlak interviewed the victim. Pavlak asked the victim whether she (1) had recently engaged in consensual sex with her boyfriend and (2) could obtain a DNA sample in order to eliminate him as a suspect. The victim told Officer Pavlak that she had not told her boyfriend about the incident. In addition, she said that it would be unlikely that she would be able to obtain a DNA sample. However, she stated that a sample of her boyfriend’s DNA might already be on file. The victim submitted a “sexual assault evidence kit” in order to provide investigators with DNA evidence as to the perpetrator.

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<sup>2</sup>For an understanding of *Monell* claims, see *Monell v. Dep’t of Soc. Services*, 436 U.S. 658 (1978).

On March 26, 2009, investigators with the St. Paul Police Department showed the victim a photo lineup of potential suspects. The victim, however, was unable to identify the perpetrator. Instead, she pointed to the photograph that most closely resembled her attacker. On April 2, 2009, the victim met with a police sketch artist in order to provide some physical details in order to develop an accurate rendering of her assailant. The victim expressed to officers that the finished sketch strongly represented her attacker.

On April 4, 2009, after receiving a copy of the sketch, Officer Pavlak located a man matching the description of the man depicted in the sketch. As a result, the man became the prime suspect in the case. He was subsequently detained and willingly provided a DNA sample.

On June 25, 2009, the results of the test on the “sexual assault evidence kit” provided by the victim were completed. The test confirmed the presence of only one man’s DNA. The DNA profile did not match that of either the victim’s boyfriend or the prime suspect. However, the DNA sample led forensic investigators to a “cold hit”<sup>3</sup> match. The DNA profile matched a sample that was previously submitted by Sallis as the result of a prior felony conviction.

Officer Pavlak had access to Sallis’s criminal record, which showed that Sallis did not fit the description given by the victim. Nonetheless, Officer Pavlak contacted the victim and told her that they (1) had identified a suspect and (2) were looking for him. Pavlak did not provide the victim with the suspect’s name.

Law enforcement tried to contact Sallis at his last known address in Minneapolis, Minnesota, but discovered that he no longer lived at the address. Officer Pavlak then presented the evidence against Sallis to the Ramsey County

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<sup>3</sup>A “cold hit” occurs when a suspect is identified by matching an unknown DNA profile with a known DNA profile from a DNA database. *State v. Bartylla*, 755 N.W.2d 8, 12 n.1 (Minn. 2008).

Attorney's Office. Subsequently, the Attorney's Office, supported by Officer Pavlak's signed statement of probable cause, charged Sallis with third-degree criminal sexual conduct and requested a warrant for his arrest. On August 6, 2009, the Ramsey County District Judge found probable cause to issue a nationwide warrant for Sallis's arrest.

On August 17, 2009, Sallis was arrested in Chicago, Illinois and held in the Cook County Jail for 25 days. He was then extradited to Ramsey County, Minnesota. Protesting his innocence, Sallis, through his public defender, arranged to have his photo shown to the victim. The victim confirmed that Sallis was not the rapist. Consequently, Sallis was cleared of the charges and released after having spent a total of 39 days in jail.

On December 17, 2009 Sallis filed suit against Officer Pavlak, Chief of Police, John Harrington, and the City of St. Paul, claiming the he was entitled to damages resulting from his allegedly unconstitutional arrest and detention. On March 2, 2010, the City of St. Paul moved to dismiss the action on the grounds that Sallis had failed to properly state a claim for relief under 42 U.S.C. § 1983. The district court subsequently dismissed Sallis's complaint on August 25, 2010 for failing to state a claim. The district court, in viewing the facts in the light most favorable to Sallis, held that Sallis's arrest was conducted pursuant to probable cause, and was thus constitutional. As a result, Sallis brings this timely appeal.

## II. Analysis

In this appeal, we consider whether the district court's grant of a motion to dismiss was proper. First, we consider whether Justin F. Sallis was deprived of his Fourth Amendment right to be free from unreasonable seizure unsupported by probable cause. Second, whether Officer Catherine C. Pavlak was entitled to qualified immunity with respect to Sallis's seizure and detention. Finally, we consider Sallis's remaining claims, including his *Monell* claim and various state law claims.

## A. Probable Cause

Sallis's complaint alleges that Officer Pavlak violated his right to be free from unreasonable seizure under the Fourth and Fourteenth Amendments to the United States Constitution. We hold that Sallis's claims are appropriately analyzed under the Fourth Amendment, rather than the Fourteenth Amendment. The central issue, therefore, is whether Officer Pavlak had sufficient probable cause to lawfully initiate Sallis's arrest and detention.

Sallis argues that (1) he was unlawfully seized and detained for a crime he did not commit, and (2) the district court erred in granting the appellees's motion to dismiss without a sufficient showing of probable cause. We review the district court's grant of a motion to dismiss, *de novo*. *Northstar*, 576 F.3d at 831. In order for a complaint to "survive a motion to dismiss, the factual allegations, assumed true, must suffice 'to state a claim to relief that is plausible on its face.'" *Id.* at 332 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Moreover, all factual allegations must be weighed in the light most favorable to the nonmoving party. *See id.*

The Fourth Amendment guarantees the right of the people to be secure in their persons, papers, and effects against unreasonable searches and seizures. *Herring v. United States*, 129 S. Ct. 695, 699 (2009). Seizures made with probable cause are reasonable and do not violate the rights secured under the Fourth Amendment. *See Beck v. State of Ohio*, 379 U.S. 89, 93 (1964). We judge reasonableness in light of the totality of the circumstances. *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 633 (8th Cir. 2010). Thus, the context in which the circumstances are situated is critical to the inquiry. *Id.*

Probable cause to seize exists when both the facts and circumstances, known to the officer at the time of a seizure, would warrant a prudent person to believe that a crime has been committed. *United States v. Rivera*, 370 F.3d 730, 733 (8th

Cir. 2004). In evaluating probable cause, the facts are reviewed from the perspective of a reasonable person in the position of the seizing officer. *Id.*

Law enforcement officers have a duty, absent exigent circumstances, to conduct a reasonably thorough investigation before initiating a seizure. *Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999). Consequently, officers are required to consider all available exculpatory evidence in assessing whether they have probable cause to conduct a seizure, even if the inculpatory evidence alone suggests the existence of probable cause. *Id.* at 650-51 (denying qualified immunity where an officer failed to consider the suspect's exculpatory account of the situation, an account bolstered by an eye-witness's retraction of his initial inculpatory account). "...[P]robable cause does not exist when a 'minimal further investigation' would have exonerated the suspect. *Id.* (denying qualified immunity where an officer neglected to interview an eye-witness who could have exonerated the suspect).

In the present case, Officer Pavlak clearly had probable cause to initiate a seizure of Sallis. Officer Pavlak, after interviewing the victim, had no reason to believe that Sallis could have been one of the victim's consensual sex partners. The victim failed to mention any consensual sex partners, other than her boyfriend. In addition, Officer Pavlak, had a reliable DNA match from the "sexual assault evidence kit" that had not been excluded by the victim. Absent any doubt concerning the victim's credibility, Officer Pavlak was reasonably justified in concluding that probable cause existed.

In addition, Officer Pavlak owed no duty, given the facts and circumstances of the case, to make a minimal further investigation into any further exculpatory evidence before initiating Sallis's seizure. In fact, the seizure occurred at the culmination of a reasonably thorough five month investigation. Of course, in hindsight, the unfortunate situation could probably have been avoided if a further investigation had been conducted. However, the failure to conduct such an

investigation, in this case, does not violate the rights guaranteed under the Fourth Amendment.

Sallis disagrees, urging that a minimal further investigation would have yielded exculpatory evidence nullifying Officer Pavlak's probable cause. He may be correct. However, Officer Pavlak had already conducted the minimal further investigation required by *Kuehl*. By initially interviewing the victim, Officer Pavlak had absolutely no reason to believe the victim had any other consensual sex partners around the time of her alleged rape. To investigate the thread for a second time would have been redundant in the eyes of a prudent person, unless the victim's credibility was called into question. Given the particular facts and circumstances of this case, Officer Pavlak had probable cause, as a matter of law, to initiate Sallis's seizure. Thus, the ruling of the district court on the issue of probable cause is affirmed.

#### B. Qualified Immunity

Officer Pavlak asserts qualified immunity against Sallis's Fourth Amendment claim. We review the district court's decision to extend qualified immunity to Officer Pavlak, along with the decision to grant the appellee's motion to dismiss, *de novo*. *Northstar*, 576 F.3d at 831. It is proper to dismiss a complaint, on qualified immunity grounds, so long as "the immunity is established on the face of the complaint." *Hafley v. Lohman*, 90 F.3d 264, 266 (8th Cir. 1996).

Law enforcement officers are afforded qualified immunity, shielding them from personal liability, in situations where they reasonably believe their official actions conform to the law. *See Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009). Specifically, officers are generally afforded qualified immunity when they are executing a proper warrant supported by probable cause. *See Malley v. Briggs*, 475 U.S. 335, 344 (1986). "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable, will the shield of immunity be lost." *Id.* at 345.

We recognize that officers may make mistakes in fulfilling their official duties. *See Pearson*, 129 S. Ct. at 815. However, officers do not lose the shield of immunity simply because they make a mistake. *See Hunter v. Bryant*, 502 U.S. 224, 227 (1996); *Amrine v. Brooks*, 522 F.3d 823, 832 (8th Cir. 2008). As long as an officer's mistake as to probable cause is objectively reasonable, he or she is entitled to qualified immunity. *Amrine*, 522 F.3d at 832 (???)

In the present case, qualified immunity is established on the face of the complaint. For the reasons given in the previous section, Officer Pavlak had probable cause to initiate Sallis's arrest at the culmination of her five month investigation. First, Officer Pavlak had no reason to believe that the victim, in this case, had any consensual sex partners, other than her boyfriend, around the time of the alleged rape. Second, Officer Pavlak had an unknown DNA profile from the victim's "sexual assault evidence kit" which matched Sallis's DNA profile. Because probable cause, in fact, existed, it was objectively reasonable for Officer Pavlak to believe that she could lawfully initiate Sallis's arrest.

Furthermore, even supposing that she lacked *actual* probable cause, Officer Pavlak was justified in believing that Sallis was the victim's attacker. It is true that Sallis did not fit the description of the victim's attacker. However, in light of all the facts and circumstances known to Officer Pavlak at the time of the arrest, along with the accuracy of DNA testing, a reasonable person would conclude that Sallis was, in fact, the victim's attacker. Thus, because Officer Pavlak had an objectively reasonable belief that Sallis was the victim's attacker, whether a mistaken belief or not, the ruling of the district court on the issue of qualified immunity is affirmed.

### C. *Monell* Claim and State Claims

Sallis maintains that the City of St. Paul and its Chief of Police, John Harrington, are liable for constitutional violations pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Specifically, Sallis argues



that the district court erred in dismissing his *Monell* claim against the City of St. Paul and its officers. We review the district court's decision to grant the appellees's motion to dismiss, *de novo*. *Northstar*, 576 F.3d at 831. Granting a motion to dismiss is proper when the plaintiff fails to state a claim upon which relief can be granted. *Id.* at 131-32.

A local governing body, along with its officials, acting in their official capacity, can be sued for violating an individual's constitutional rights. *See Monell*, 436 U.S. at 690 & n.55. However, in order to recover on a *Monell* claim, the claimant must show that the actions taken by the governing body, or its agents, stemmed from an unconstitutional policy or custom. *Id.* at 690-91.

In the present case, neither the City of St. Paul nor Chief Harrington violated Sallis's constitutional rights. First, as noted above, we find that Sallis's seizure was conducted pursuant to probable cause, and was thus constitutional. Second, we find that Sallis's complaint failed to establish the existence of an unconstitutional policy or custom with respect to the City of St. Paul and its officers. Thus, the ruling of the district court on Sallis's *Monell* claim is affirmed.

Sallis further alleges various state law claims including negligence, intentional infliction of emotional distress, defamation, false arrest, and false imprisonment. However, because the district court declined to exercise supplemental jurisdiction over Sallis's state law claims, we have no jurisdiction to consider these claims on appeal.

### III. Conclusion

For the forgoing reasons, the ruling of the district court is affirmed.

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