



Civ. P. 56. For the reasons that follow, the motion is GRANTED.

BACKGROUND

Effective July 1, 1999, Conn. Gen. Stat. §§ 54-252 and 54-102g require convicted sex offenders to submit contact information and a blood sample to the State Police Sex Offender Registry ("Sex Offender Registry"). On July 7, 1999, Defendants Buglione and Heon arrested Shashaty for failing to register pursuant to these statutes. Shashaty contends that section 54-252 entitles him to a three-day grace period before registering and that his arrest before the expiration of this grace period constitutes a legally cognizable claim under 42 U.S.C. § 1983. Defendants counter that because they had probable cause and acted pursuant to a lawfully issued arrest warrant signed by a superior court judge, the doctrine of qualified immunity shields them from liability.

Based on the record submitted by the parties, the court finds that the following facts are undisputed.<sup>1</sup>

I. Shashaty's Terms of Incarceration and Release Therefrom

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<sup>1</sup> In rendering its ruling, the court did not consider Shashaty's affidavit which accompanied his moving papers because the affidavit was neither signed nor notarized. See Fed. R. Civ. P. 56(e) ("Supporting and opposing affidavits . . . shall show affirmatively that the affiant is competent to testify to the matters stated therein.").

Shashaty was convicted of first-degree sexual assault in 1984. On September 9, 1986, he began serving a term of incarceration and was discharged to a consecutive sentence on July 3, 1991. Thereafter, Shashaty was released into the community on February 14, 1992. During the next four years, he was incarcerated for unrelated offenses for three additional terms and then was released. On May 28, 1996, Shashaty began another period of incarceration for, among other things, possession of marijuana, assault, and interfering with a police officer. This sentence lasted until July 6, 1999, when Shashaty posted an appeal bond and was released from confinement.

## II. The Passage of Megan's Law

While Shashaty was serving his last term of confinement, the Connecticut legislature passed Public Acts 98-111 and 99-183, which are codified at Conn. Gen. Stat. § 54-252 and are popularly referred to as Connecticut's version of "Megan's Law." This statute became effective on July 1, 1999, and provides in pertinent part:

(a) Any person who has been convicted . . . of a sexually violent offense, and (1) is released into the community on or after October 1, 1988, and prior to October 1, 1998, and resides in this state, shall, on October 1, 1998, or within three days of residing in this state, whichever is later, or (2) is released into the community on or

after October 1, 1998, shall, within three days following such release, register such person's name . . . and residence address with the Commissioner of Public Safety. . . ."

Conn. Gen. Stat. § 54-252(a) (emphasis added). In other words, the relevant portion of the statute requires a convicted sexual offender who is released after October 1, 1988, but before October 1, 1998, to register with Public Safety. Given the statute's effective date of July 1, 1999, however, it is unclear from its plain language whether an offender released from incarceration during this period (i.e., between October 1, 1988, and October 1, 1998) is still entitled to the three-day window when released from confinement after July 1, 1999.

III. Sergeant Buglione's Arrest of Shashaty

Following Shashaty's release on July 6, 1999, Detective Buglione investigated allegations that Shashaty had not registered with the Sex Offender Registry. Buglione learned that as of July 1, 1999, Shashaty had neither contacted Public Safety nor submitted a blood sample for inclusion in Connecticut's DNA data bank as required by Conn. Gen. Stat. §§ 54-252 and 54-102g, respectively. Moreover, based on a ruling from the Attorney General's office, Buglione believed (1) that February 14, 1992, should be considered the appropriate date

of his release into the community for purposes of Conn. Gen. Stat. § 54-252(a)(1); and (2) that a sexual offender who was previously released between October 1, 1988, and October 1, 1998, was not entitled to the three-day grace period. Consequently, Buglione determined that Shashaty had not complied with Megan's Law.

Shashaty has submitted with his opposition papers an official Public Safety form entitled "Sex Offender Advisement of Registration Requirement, Unconditional Release" ("Sex Offender Advisement"), which states: "I have informed the person identified above of the obligation to register within three days with the Commissioner of Public Safety for a period of ten years following the date of his or her release date . . . ." Handwritten notations on this form indicate that Shashaty refused to acknowledge receipt of this document on July 1, 1999. He also has submitted the typewritten notes of Lynn Milling of the state Department of Corrections in which she expresses uncertainty about whether a judge would sign an arrest warrant before the three-day grace period expired.

On July 7, 1999, Buglione prepared an affidavit regarding Shashaty's non-compliance with Megan's Law and issued an arrest warrant for which Sergeant Heon administered the oath. This affidavit included the relevant portion of Conn. Gen.

Stat. § 54-252(a)(1). After a superior court judge reviewed both documents and signed the warrant, Detective Buglione arrested Shashaty on the evening of July 7, 1999, less than 72 hours since he was released from confinement. On July 21, 1999, Shashaty registered as a sex offender, and the charges against him were nolleed.

#### STANDARD

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. Rule 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), cert. denied, 480 U.S. 937 (1987). The burden of showing that no genuine factual dispute exists rests on the party seeking summary judgment. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970); Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 202 (2d Cir. 1995). After discovery, if the party against whom summary judgment is sought "has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof," then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The substantive law governing a particular case identifies those facts that are material with respect to a motion for summary judgment. See Anderson, 477 U.S. at 258. A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact . . ." Miner v. Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted); see also United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). "A dispute regarding a material fact is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992).

In considering a Rule 56 motion, "the court's responsibility is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party." Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986) (citing Anderson, 477 U.S. at 248; Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 249 (2d Cir. 1985)); see also Ramseur v. Chase Manhattan Bank, 865 F.2d 460, 465 (2d Cir. 1989); Donahue v. Windsor Locks Board

of Fire Comm'rs, 834 F.2d 54, 57 (2d Cir. 1987). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

### DISCUSSION

Shashaty's § 1983 claims for false arrest and malicious prosecution cannot survive summary judgment because both Buglione and Heon are entitled to qualified immunity under the facts of this case. In light of this ruling, the court declines to exercise supplemental jurisdiction over the pendent claims.

#### I. Qualified Immunity

Qualified immunity shields government actors from liability for suits brought under 42 U.S.C. § 1983<sup>2</sup> as long as their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would

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<sup>2</sup> Title 42 U.S.C. § 1983 provides that any person who, acting under color of law, "subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws" of the United States shall be liable to the injured party in actions in law. 42 U.S.C. § 1983.

have known." Lennon v. Miller, 66 F.3d 416, 420 (2d Cir. 1995). When "the plaintiff's federal rights and the scope of the official's permissible conduct are clearly established, the qualified immunity defense protects a government actor if it was objectively reasonable for him to believe that his actions were lawful at the time of the challenged act." Id.

A right is "clearly established" if its contours are sufficiently clear so that a reasonable official would understand his conduct violated that right. See McCullough v. Wyandanch Union Free Sch. Dist., 187 F.3d 272, 278 (2d Cir. 1999). To determine whether a law is "clearly established," courts must consider "(1) whether the right in question was defined with 'reasonable specificity'; (2) whether the decisional law of the Supreme Court and the applicable circuit court support the existence of the right in question; and (3) whether under preexisting law a reasonable defendant official would have understood that his or her acts were unlawful.'" Shattuck v. Town of Stratford, 233 F. Supp. 2d 301, 308 (D. Conn 2002)(quoting Jermosen v. Smith, 945 F.2d 547, 550 (2d Cir. 1991)).

A. Elements of § 1983 Claims for False Arrest and Malicious Prosecution

A false arrest claim has the following elements: "(1) the defendant intentionally arrested him or had him arrested; (2)

the plaintiff was aware of the arrest; (3) there was no consent to the arrest; and (4) the arrest was not supported by probable cause." See Arum v. Miller, 193 F. Supp. 2d 572, 585 (E.D.N.Y. 2002)(citing Singer v. Fulton County Sheriff, 63 F.3d 110, 118 (2d Cir. 1995)). An individual has a constitutional right not to be arrested without probable cause. See Ricciuti v. New York City Transit Auth., 124 F.3d 123, 128 (2d Cir. 1997)

Similarly, for a malicious prosecution claim under § 1983, the plaintiff must "show a violation of his rights under the Fourth Amendment . . . and establish the elements of a malicious prosecution under state law." Fulton v. Robinson, 289 F.3d 188, 195 (2d Cir. 2002)(internal citations omitted). To establish malicious prosecution under Connecticut state law, the plaintiff must demonstrate the "initiation . . . of criminal prosecution with malice for a purpose other than bringing an offender to justice; that the defendant acted without probable cause, and the criminal proceedings terminated in favor of the plaintiff." Clark v. Town of Greenwich, No. CV00177986, 2002 WL 237854, at \*3 (Conn. Super. Jan. 24, 2002) (emphasis added); see also QSP, Inc. v. Aetna Cas. & Sur. Co., 773 A.2d 906, 918-19 (Conn. 2001).

In sum, to bring viable § 1983 claims for false arrest and malicious prosecution, a plaintiff must show that the law enforcement officers in question acted without probable cause. See Garcia v. Gasparri, 193 F. Supp. 2d 445, 449 (D. Conn. 2002) (citing Curley v. Village of Suffern, 268 F.3d 65, 69-70 (2d Cir. 2001))(holding that "the existence of probable cause is a complete defense to a civil rights claim alleging false arrest or malicious prosecution").

B. Probable Cause

Probable cause "exists when the authorities have knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." Golino v. City of New Haven, 950 F.2d 864, 870 (2d Cir. 1991), cert. denied, 505 U.S. 1221 (1992). Police officers may be entitled to qualified immunity for arrests based on warrants issued by a judge or magistrate. Malley v. Briggs, 475 U.S. 335, 345 (1986)(explaining that the issue is "whether a reasonably well-trained officer in [the defendant's] position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant.").

The Second Circuit has held that an arresting officer may assert the defense of qualified immunity if "either (a) it was

objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met." Golino, 950 F.2d at 870 (citation omitted). The court's inquiry is limited to determining whether a reasonably well-trained officer would have known that the warrants were illegal despite the judge's authorization. United States v. Leon, 468 U.S. 897, 922 n.23 (1984); Simms v. Village of Albion, New York, 115 F.3d 1098, 1106 (2d Cir. 1997). "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." Malley, 475 U.S. at 344-45.

## II. Analysis

Shashaty contends that he had a clearly established right under Conn. Gen. Stat. § 54-252(a) to have three days to register as a convicted sexual offender upon his release from confinement on July 6, 1999. He further asserts that Defendants lacked probable cause to arrest him, and that they knowingly and intentionally omitted material information in the affidavit accompanying his arrest warrant application. The court disagrees and rejects these contentions. More specifically, the court finds based on the summary judgment

record that Shashaty had no such clearly established right, that there was probable cause for the arrest, and that Defendants did not mislead the superior court judge in applying for the arrest warrant.

A. Absence of a Clearly Established Right

First, the court finds that Shashaty, as a convicted sex offender who was previously released from serving a sentence for sexual assault in 1992, did not have a clearly established right at that time to a three-day grace period before registering with Public Safety. When Shashaty was arrested on July 7, 1999, Connecticut's version of Megan's Law had been in effect for less than one week. Given the statute's then-recent enactment and its effective date of July 1, 1999, it was unclear how long Shashaty had to comply with the registration requirements of Conn. Gen. Stat. § 54-252(a) before he would be in violation of that statute. On the one hand, the Public Safety document entitled "Sex Offender Advisement" indicated that released offenders had three days to register. On the other hand, the Attorney General's office advised Detective Buglione that Shashaty had to register immediately upon his release on July 6, 1999, because he had been previously released into the community on February 14, 1992. Under this interpretation, Conn. Gen. Stat. § 54-252(a)(1) would mandate immediate registration for all

convicted sexual offenders who were released after July 1, 1999, and who also had been previously released from incarceration between October 1, 1988, and October 1, 1998.

In particular, the court notes that no court, state or federal, had rendered at that time an opinion about Conn. Gen. Stat. § 54-252 generally, let alone the operation of the grace period referenced in Conn. Gen. Stat. § 54-252(a)(1) as applied to previously released sexual offenders. Furthermore, a superior court judge had reviewed Detective Buglione's affidavit - which included the relevant language of Conn. Gen. Stat. § 54-252(a)(1) and the date of Shashaty's previous release date of February 14, 1992 - in conjunction with the arrest warrant's issuance. Consequently, both Buglione and Heon had a reasonable basis to conclude that arresting Shashaty pursuant to this warrant on July 7, 1999, would be consistent with Conn. Gen. Stat. § 54-252(a)(1). Thus, the court finds that Defendants did not violate any "clearly established" law at the time of Shashaty's arrest.

B. Existence of Probable Cause

Furthermore, even assuming that Shashaty did have a clearly established right to the three-day grace period, the summary judgment record demonstrates that Defendants had probable cause for his arrest. It is undisputed that Shashaty was a sexual offender who had been previously released after a

conviction for sexual assault during the time period specified in Conn. Gen. Stat. § 54-252(a)(1) (i.e., between October 1, 1988, and October 1, 1998). Nor has Shashaty submitted any substantial evidence showing that Buglione and Heon knew or should have known that the warrant was illegal in spite of the superior court judge's authorization. Although the document entitled "Sex Offender Advisement" states that a sexual offender has three days to register after release, this document does not specify whether the appropriate release date in Shashaty's case was the first release in 1992 or the second release in 1999. Moreover, as discussed supra, he has submitted no legal authority indicating that he was legally entitled to a three-day grace period after his release on July 6, 1999. Thus, the court finds that it was objectively reasonable for Defendants to believe they had probable cause for Shashaty's arrest on July 7, 1999.

Finally, the record indicates that the Attorney General's office and the State Police had different but reasonable interpretations of Conn. Gen. Stat. § 54-252(a)(1). Shashaty does not dispute that the Attorney General's office advised Detective Buglione that arresting him on July 7, 1999, would be proper. The State Police apparently believed that a released sexual offender was entitled to a three-day grace period, regardless of whether the offender had been previously

released between October 1, 1988, and October 1, 1998. If the Attorney General's Office and the State Police could disagree on how Conn. Gen. Stat. § 54-252(a)(1) should properly be interpreted and whether Defendants had sufficient probable cause for a warrant, officers of reasonable competence could likewise have that same disagreement. Malley, 475 U.S. at 341; Golino, 950 F.2d at 870. Accordingly, the court finds that under the unique circumstances of this case, Defendants are entitled to qualified immunity.

### III. Remaining State Law Claims

In light of its ruling on the claims for which it has original jurisdiction, the court declines to exercise supplemental jurisdiction over Shashaty's pendent state law claims. See 28 U.S.C. § 1367(c)(3); Spear v. Town of West Hartford, 771 F. Supp. 521, 530 (D. Conn 1991)("[A]bsent unusual circumstances, the court would abuse its discretion were it to retain jurisdiction of the pendent state law claims on the basis of a federal question claim already disposed of. . . ."), aff'd 954 F.2d 63 (2d Cir.), cert. denied, 506 U.S. 819 (1992)). Accordingly, the court dismisses the pendent state law claims in their entirety.

CONCLUSION

For the reasons discussed above, Defendants' Motion for Summary Judgment [Doc. #13] is GRANTED. The Clerk is instructed to enter judgment in favor of Defendants and close the file.

SO ORDERED this \_\_\_\_ day of June, 2003, at Bridgeport, Connecticut.

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Alan H. Nevas  
United States District Judge