

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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EMMA J. TYSON, KIM G. TYSON and :
REGGIE G. TYSON, :
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Plaintiffs, :
:
-against- : MEMORANDUM DECISION
:
3:01 CV 1917 (GLG)
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MATTHEW WILLAUER, DWAYNE TAYLOR, :
SHANNON B. POLLICK, RICHARD C. MULHALL, :
KEVIN SEARLES, JEFFREY W. RASEY, :
THOMAS BENNETT, TOWN OF BLOOMFIELD, :
TOWN OF WINDSOR, and UNITED STATES :
OF AMERICA, :
:
Defendants. :
:
:
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Defendant Jeffrey W. Rasey, a special agent of the Federal Bureau of Investigations, moves to dismiss [Doc. #50] the action as against him or for a more definite statement. We note that Rasey filed an earlier motion to dismiss Count One of the Complaint against him, which motion was granted on May 28, 2002. Rasey continues, however, as a defendant in Count Ten of the Complaint, which purports to allege a federal constitutional violation pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

We question the propriety of making a second motion to dismiss. However, since the motion is also coupled with the

motion for more definite statement pursuant to Fed. R. Civ. P. 12(e), we will consider it. Defendant argues that Count Ten of plaintiff's complaint fails to state a claim upon which relief may be granted. Bivens liability rests upon the actions of each individual defendant. Buford v. Runyon, 160 F.3d 1199, 1203 n.7 (8th Cir. 1998). It is alleged that Rasey was among a number of other defendants who participated in an attempted execution of a federal arrest warrant at plaintiff's home in purported violation of plaintiff's constitutional rights. (It appears that the other defendants were state officials so that it is not an unreasonable assumption that Rasey was the one armed with the federal warrant.) Rasey contends that he should be afforded protection from liability under the qualified immunity doctrine. See Harlow v. Fitzgerald, 457 U.S. 800 (1982). The defense of qualified immunity provides an immunity from suit as well as a defense to liability. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). However, qualified immunity does not protect those who knowingly violate the law or are "plainly incompetent[.]" Malley v. Briggs, 475 U.S. 335, 341 (1986).

Plaintiff argues in opposition to the motion that a reasonable inference can be drawn from the allegations of the complaint that the attempted execution of the warrant by defendant Rasey amounted to plain incompetence. The complaint is not so clear in that regard. When executing a warrant, the officer need not have probable cause but must merely have a

reasonable belief that the suspect is present in the premises where he seeks to serve the warrant. United States v. Lovelock, 170 F.3d 339, 343 (2d Cir. 1999); United States v. Lauter, 57 F.3d 212, 214 (2d Cir. 1995). In his reply memorandum in support of his motion, defendant sets forth facts indicating that the subject of the warrant resided at the residence in question. However, this is a motion to dismiss and not a motion for summary judgment. We are, therefore, confined to the allegations of the complaint.

The Supreme Court has held that a mistake in the execution of a valid search warrant on the wrong premises is not a Fourth Amendment violation. Maryland v. Garrison, 480 U.S. 79, 86 (1987). Under the circumstances set forth in the complaint, it may well be that defendant Rasey is entitled to a defense of qualified immunity. However, such a defense cannot be evaluated on a motion to dismiss. Nor do we see how a more definite statement can clarify the matter. Defendant Rasey (and not plaintiffs) knows why he and the others were entering the dwelling in question. Indeed, his reply memorandum sets forth information as to why the defendants had a basis for believing the person they were seeking was at the residence in question. (These included the fact that the registration of a vehicle owned by the person (Dennis Rowe) that they were seeking gave as his address the residence which they entered.)

As noted, it may be that defendant Rasey is entitled to

qualified immunity. However, he is not entitled to a dismissal of the pleadings as they now stand and no purpose would be served by directing a more definite statement. Consequently, the motion [Doc. #50] is in all respects denied.

SO ORDERED.

Dated: August 12, 2002
Waterbury, CT

_____/s/_____
Gerard L. Goettel
United States District Judge