

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1617

RAYMOND VAZQUEZ,

Appellant

v.

FRANK A. ROSSNAGLE

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 00-cv-00283)
District Judge: Honorable Mary A. McLaughlin

Submitted Under Third Circuit LAR 34.1(a)
January 18, 2002

Before: ALITO and ROTH, Circuit Judges
SCHWARZER*, District Judge

(Opinion filed March 29, 2002)

* Honorable William W Schwarzer, Senior District Judge for the Northern District of California, sitting by designation.

OPINION

ROTH, Circuit Judge:

Appellant Raymond Vasquez appeals from a final order of the United States District Court for the Eastern District of Pennsylvania granting appellee Frank A. Rossnagle's motion for summary judgment. The District Court had subject matter jurisdiction pursuant to 42 U.S.C. 1983. We have appellate jurisdiction pursuant to 28 U.S.C. 1291. We exercise plenary review over a grant of a motion for summary judgment. See *Metro Transp. Co. v. North Star Reinsurance Co.*, 912 F.2d 672, 678 (3d Cir. 1990). In our review of the grant of summary judgment, we view all reasonable inferences from the evidence in a light most favorable to the nonmoving party. *Hamilton v. Leavy*, 117 F. 3d 742, 746 (3d Cir. 1997). Summary judgment may be granted where there exists no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. F.R.Civ.P. 56(c).

Vasquez argues on appeal (1) that the District Court erred in granting summary

judgment in favor of Rossnagle on his claim that Rossnagle arrested him without probable cause, and (2) that Rossnagle is not entitled to qualified immunity. For the reasons discussed below, we will affirm the judgment of the District Court.

The first issue before us is whether the District Court erred in its determination that Rossnagle had sufficient probable cause to arrest Vasquez. "[P]robable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Orsatti v. New Jersey State Police*, 71 F. 3d 480, 483 (3d Cir. 1995). A district court may conclude "that probable cause exists as a matter of law if the evidence, viewed most favorably to Plaintiff, reasonably would not support a contrary factual finding," and may enter summary judgment accordingly. *Sherwood v. Mulvihill*, 113 F. 3d 396, 401 (3d Cir. 1997).

The District Court found that Rossnagle did have probable cause to arrest Vasquez based on the description given to Rossnagle by one of the 911 callers, Robert Irby. When Rossnagle arrived at the scene of the crime, Irby informed him that all four of the shooters were Hispanic, that one of the shooters was in his twenties and was wearing a yellow shirt. When found within minutes, Vasquez matched the description. Irby was able to immediately identify Vasquez, without hesitation, at a show-up. Irby testified that he was able to observe Vasquez clearly and that he had provided Rossnagle with an accurate and relatively detailed description. Based on the totality of the circumstances available to Rossnagle at that time, the District Court found that Irby's identification of Vasquez was reliable and gave Rossnagle sufficient probable cause to believe that Vasquez had committed the crime. See *Illinois v. Gates*, 462 U.S. 213 (1983), and *Sharrar v. Felsing*, 128 F. 2d 810, 817-818 (3d Cir. 1997).

Vasquez also contends that Rossnagle disregarded potentially exculpatory evidence. Vasquez argues that Rossnagle did not allow him to take a gunpowder residue test. The District Court found that once Rossnagle had established that there was sufficient probable cause to arrest Vasquez, there was no need for additional investigations. We agree. See *Merkle v. Upper Dublin School District*, 211 F. 3d 782, 790 (3d Cir. 2000).

Because we have determined that Rossnagle had probable cause to arrest Vasquez, we do not need to go on to consider the second issue of qualified immunity.

For the foregoing reasons, we will affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/ Jane R. Roth
Circuit Judge