

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE A. BENSINGER	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 99-1771
OFFICER MICHAEL P. MULLEN, JR.	:	
and SGT RONALD D. FISHER	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

August 4, 2000

Presently before the Court is the Defendants' Motion for Summary Judgment. For the reasons stated below, the Motion is Granted.

**I. BACKGROUND**

This civil rights action arises out of Plaintiff Bruce A. Bensinger's arrest on April 19, 1997. Plaintiff and his then girlfriend began to violently argue after having consumed alcohol and drugs. City of Reading Police Officers, including Defendants Sergeant Ronald D. Fisher, Jr. and Officer Michael P. Mullen, Jr., responded to reports that Plaintiff was assaulting his girlfriend. Plaintiff was arrested by the police, who used necessary force to subdue Bensinger. The Plaintiff was then brought to St. Joseph Hospital for what he described to be a "brush burn", but he refused the offered treatment. The Plaintiff eventually plead guilty to harassment and simple assault charges that were filed against him due to this incident. Since his

arrest, Defendant has been incarcerated at the Berks County Correctional Facility and SCI-Graterford where medical services are available. Plaintiff has not sought treatment for any of the alleged injuries he suffered as a result of the arrests, even though such treatment is available at the facilities to which he has been assigned.

## **II. LEGAL STANDARD**

Under Federal Rule of Civil Procedure 56(c), the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir.1992). In evaluating a summary judgment motion, the court may examine the pleadings and other material offered by the parties to determine if there is a genuine issue of material fact to be tried. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). When considering a motion for summary judgment, a court must view all evidence in favor of the non-moving party. See Bixler v. Central Pa. Teamsters Health and Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993).

A movant “bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any which it believes demonstrate the absence of a genuine issue of material fact”. Celotex, 477 U.S. at 323. A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). For the dispute over the material fact to be genuine, “the evidence must be such that a reasonable jury could return a verdict in favor of the non-moving party.” Id. To successfully challenge a motion for summary judgment, the non-moving party must offer

specific facts contradicting the movant's assertion that no genuine issue is in dispute. Kline v. First West Government Securities, 24 F.3d 480, 485 (3d Cir. 1994).

### III. DISCUSSION

The Plaintiff brings this excessive force claim under 42 U.S.C. § 1983. To establish a cause of action under § 1983, a plaintiff must show that (1) the defendants acted under color of law; and (2) their actions deprived him of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir.1993). The Defendants, as employees of the City of Reading, were acting under color of law. Therefore, the issue is whether their actions deprived Plaintiff of a federally protected right.

The Fourth Amendment governs claims of excessive force during the course of an arrest, investigatory stop, or other "seizure" of a person. Graham v. Connor, 490 U.S. 386, 388 (1989). The "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See Scott v. United States, 436 U.S. 128, 137-139 (1978). As the Supreme Court has directed "With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment". Graham, 490 U.S. at 396. Generally, an alleged injury must rise above the *de minimis* level in order for a constitutional claim to arise. See Ingraham v. Wright, 430 U.S. 651, 674 (1977); Nolin v. Isbell, 207 F.3d 1253, 1258 (11th Cir. 2000). At the very least, the level of injury is highly indicative of the objective reasonableness of a search. See Foster v. Metropolitan Airports Commission, 914 F.2d 1076, 1082 (8th Cir. 1990). It is undisputed that

Plaintiff was wielding a large knife and arguing with his girl friend at the time Defendants arrived at the scene. The Defendants admit that they handcuffed the Plaintiff, but dispute that they abused him. It is also undisputed that Plaintiff refused medical treatment on the night of his arrest, and has not subsequently been treated for injuries arising out of the arrest. Therefore, it seems clear that his injuries are *de minimis*.

The Court finds as a matter of law that the Plaintiff was not subjected to excessive force in violation of the Fourth Amendment at the time of his arrest. Considering the seriousness of the crime he was involved in, his intoxicated condition, and the obvious probable cause police had to arrest him, the Defendants were justified in the level of force they exerted. The fact that Plaintiff admits that his injuries were not even minor scratches adds credence to the reasonableness of the seizure. Plaintiff has not produced one shred of evidence that he was severely beaten or that he suffered injury, despite having over a year to gather such information. Therefore, summary judgment will be granted in favor of the Defendants.<sup>1</sup>

An appropriate Order follows.

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1. Plaintiff is a frequent litigator of frivolous claims in this court. During his deposition, he stated that he did not care about receiving money damages, but merely wanted Defendants to be disciplined. Assuming the statement is true, Plaintiff should lodge a complaint with the City of Reading, and not waste the federal court's time.

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	:	
Defendants.	:	

**ORDER**

AND NOW, this 4<sup>th</sup> day of August, 2000, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 32), and the Plaintiff's Response thereto (Docket No. 33); it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED** in favor of the Defendants and against the Plaintiff.

This case may be marked as Closed.

BY THE COURT:

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RONALD L. BUCKWALTER, J.