

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

MELVIN ANTHONY	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA ET AL.	:	
Defendants.	:	NO. 00-5905

**M E M O R A N D U M**

Newcomer, S.J. February , 2001

Currently pending before the Court are the Philadelphia District Attorney's Office Motions to Intervene and For a Stay in the above captioned case.

**I. BACKGROUND**

The Philadelphia District Attorney's Office is currently prosecuting plaintiff in Pennsylvania state court for his alleged actions on September 17, 1998. On that day, plaintiff Melvin Anthony allegedly fired several shots at Philadelphia police officers while they investigated drug offenses pursuant to a search warrant at 2012 W. Master St., Philadelphia, Pennsylvania. Plaintiff was arrested and charged with aggravated assault, attempted murder, possessing an instrument of crime, simple assault, manufacture, delivery and possession with intent to manufacture and deliver a controlled substance, possession of drug paraphernalia and criminal conspiracy.

The criminal proceeding commenced against plaintiff in state court on September 22, 1998. A year later, on September 21, 1999, the Honorable Gregory E. Smith issued an Order granting plaintiff's pretrial motion to suppress certain drug and ballistic evidence. The Philadelphia District Attorney's Office has appealed that Order and, along with the underlying criminal case, the Commonwealth's appeal is currently pending.<sup>1</sup>

On or about November 6, 2000, plaintiff initiated this action in the Court of Common Pleas of Philadelphia County against the City of Philadelphia and several Philadelphia police officers. On or about November 20, 2000, defendants removed this case to this Court. In his Complaint, plaintiff alleges that the defendant police officers violated his constitutional rights by arresting him without probable cause, with excessive force and by maliciously prosecuting him. Plaintiff's Complaint arises out of the same set of facts which are the subject of his criminal prosecution.

Because the criminal proceeding is pending against plaintiff in state court, the Philadelphia District Attorney's Office has filed the instant motions to intervene in, and to stay the civil case pending before this Court.

## **II. DISCUSSION**

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<sup>1</sup>The Commonwealth's appellate brief is due on February 9, 2000.

### **A. Motion to Intervene**

The Philadelphia District Attorney's Office argues that this Court should permit it to intervene in the present case pursuant to Federal Rule of Civil Procedure 24. Rule 24(b) provides for permissive intervention when "an applicant's claim or defense and the main action have a question of law or fact in common." FED.R.CIV.P. 24(b). Thus, intervention pursuant to Rule 24(b) is a matter within the trial court's sound discretion. See Securities and Exchange Commission v. Mersky, NO. CIV. A. 93-5200, 1994 WL 22305, at \*1 (E.D.Pa., Jan 25, 1994). When exercising its discretion, the Court should "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Id.

Courts have determined that a state is permitted to intervene in a federal civil action when there is a pending state criminal action involving common questions of law or fact. See, e.g., Board of Governors of Federal Reserve System v. Pharoan, 140 F.R.D. 634, 638 (S.D.N.Y. 1991); see also Mersky, 1994 WL 22305, at \*2 (allowing United States Attorney to intervene in pending civil action in federal court).

Here, there is no question that the criminal prosecution and the civil action contain similar questions of fact and law. For example, both cases arise out of the same incident, will require a determination of whether the police

acted with probable cause, and turn upon whether the police acted lawfully under the circumstances. Additionally, the Court does not find that permitting the District Attorney's Office to intervene will cause undue delay or prejudice. Accordingly, the District Attorney's Office shall be permitted to intervene, and the Court will therefore turn to its Motion for a Stay.

**B. Motion to Stay Civil Proceedings**

The decision to stay civil proceedings pending disposition of a criminal case lies within the discretion of the trial court. See Landis v. North Am. Co., 299 U.S. 248, 255-56, (1936). Nonetheless, a stay is an extraordinary measure, see DeVita v. Sills, 422 F.2d 1172, 1181 (3rd Cir. 1970), and the party seeking the stay "must make out a clear case of hardship or inequity" in being compelled to proceed. Landis, 299 U.S. at 255. Additionally, when deciding whether to stay a civil case pending the resolution of a related criminal case, courts in this Circuit generally weigh the five factors Judge Pollak enunciated in Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, 87 F.R.D. 53, 56 (E.D.Pa. 1980): (1) the plaintiff's interest in proceeding expeditiously with the civil action as balanced against the prejudice to the plaintiff from delay; (2) the burden on the defendants; (3) the burden and convenience of the Court; (4) the burden on, and interests of, non-parties; and (5) the burden on the public interest. See, e.g., In re Residential

Doors Antitrust Litigation, 900 F. Supp. 749, 756 (E.D.Pa. 1995);

The Court is unconvinced that allowing this action to proceed would cause hardship or prejudice to the District Attorney's Office. The District Attorney's Office is primarily concerned with the plaintiff obtaining discovery through this civil action that he would not otherwise be entitled to in the state criminal proceeding. However, defendant has failed to specifically detail the type of discovery it is concerned about. Moreover, a stay is unnecessary to protect the District Attorney's Office alleged interests here. Indeed, because the Court has granted the District Attorney's Office Motion to Intervene, it could instead file an appropriate motion for a protective order should they oppose the production of certain discovery.

Certainly, plaintiff has a strong interest in a timely disposition of his claims. Likewise, the public has an equally strong interest in deterring abuses of civil rights through civil litigation. See Owen v. City of Independence, Mo., 445 U.S. 622, 651 (1980). The Court is also mindful that the state criminal proceeding has been pending for over two years, and even now, the parties are still in the pre trial stages of that case. Thus, the criminal trial may not be resolved for some uncertain time, a fact that further strengthens plaintiff's interest in avoiding a stay.

Defendant next argues that both the plaintiff and this Court will benefit from a stay because resolution of the criminal case may reduce or simplify the issues here. Such an argument is too speculative, and the Court finds it unpersuasive here.

Consequently, and for the foregoing reasons, the Court will not stay these proceedings pending resolution of the criminal matter involving plaintiff.

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Clarence C. Newcomer, S.J.