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

ROBERT B. KITZHOFFER	**:**	**CIVIL ACTION**
	:	
Plaintiff,	**:**	
	:	
v.	**:**	
	:	
WENDY BRANTLEY, et al.	**:**	
	:	
Defendants.	**:**	**NO. 99-5771**

Reed, S.J. **July 3, 2001**

M E M O R A N D U M

Plaintiff Robert Kitzhoffer brings this *pro se* civil rights action against four police officers: Wendy Brantley, David Reinhard, John Holenda, Michael Rooney, and Steve Hatfield, an employee of the DUI Processing Center: Robert Lembech, and the City of Allentown, (collectively referred to as "defendants"),[1] pursuant to 42 U.S.C. § 1983, alleging that he sustained injuries as a result of an unconstitutional policy or custom of the City of Allentown and that defendants acted with deliberate indifference to his serious medical needs.

Presently before the Court is the motion of defendants Brantley, Holenda, Rooney, Hatfield, and the City of Allentown (collectively referred to as "Allentown defendants") for summary judgment (Document No. 29), the motion of defendant Robert Lembech for summary

[1] The docket contains certain errors, and I make the following clarifications for the record. First, the docket lists Reinhard Hozenda as a defendant. The parties, however, refer to a David Reinhard and a John Holenda as defendants. As such, despite the fact that no formal papers have been filed with this Court to correct the clear error, I will refer to these *two* defendants separately and with the proper spelling. Second, it appears that plaintiff terminated his action against the City of Allentown and brought suit against the Allentown Police Department, an entity which does not exist. While the docket lists the City of Allentown as a terminated defendant, defendants' brief refers to it as a current defendant. Because it appears that plaintiff, who as explained above is representing himself *pro se*, is confused as to which entity he should sue, and because defendants do not address the issue in their brief, this Court will treat the City of Allentown, as opposed to the non-existent Allentown Police Department as a defendant in this case.

judgment (Document No. 30), both filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, the motion of plaintiff to add additional defendants (Document No. 33), and the responses thereto. For the following reasons, the motion of the Allentown defendants will be granted, the motion of Lembech will be granted, and the motion of plaintiff will be denied.[2]

I. Background[3]

On July 24, 1998, at approximately 11:00 p.m., Kitzhoffer was driving a car in the City of Allentown when Officers Brantley and Hatfield stopped his automobile because they suspected he was driving under the influence. As the officers were attempting to administer a field sobriety test, the car passenger, Joseph Reilly, grew unruly and became involved in a physical altercation with the officers. At this time, Officer Thomas Houck arrived on the scene in his patrol car.

Kitzhoffer attempted to calm Reilly down and was told by the officers to leave. Plaintiff proceeded to get back into the car and drive away. Officer Houck followed Kitzhoffer, and when plaintiff ignored Houck's signals to stop, a chase ensued. Kitzhoffer eventually lost control of his vehicle and struck a parked car. He kept driving, however, until he struck a telephone pole. Soon after, he was taken into custody. Plaintiff claims that during the arrest, Officer Houck slammed his head into the back of the trunk of his patrol car.

After the arrest, Officers Rooney and Holenda, who had also appeared on the scene, placed plaintiff in a paddy wagon, at which point, he requested to be taken to a hospital. Apparently, while in the paddy wagon, he realized his nose was bleeding because he saw blood

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[2] Because this case raises a federal question, jurisdiction is proper pursuant to 28 U.S.C. § 1331.

[3] The facts laid out in this opinion are based on the evidence of record viewed in the light most favorable to the plaintiff, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon University v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

on his pants. (Kitzhoffer Dep. at 23- 24.) It is unclear whether he requested to see a doctor for only his back, neck and shoulder, which he claims were injured from the accident, or if he also requested to see a doctor for his face, in particular his nose, which he claims was injured from the alleged attack by Officer Houck (Id.)

Kitzhoffer was first taken to the Lehigh County DUI processing center where Officer Allen Stiles interviewed plaintiff and Officer Robert Lembech operated the video camera during that interview. During the interview, Kitzhoffer made his second request for medical care. He told Officer Stiles he wanted to see a doctor because his nose and face hurt. (Videotape at 12:30 a.m.) Officer Stiles asked if he could wait until the interview was concluded, and plaintiff responded in the affirmative. (Id.) Officer Stiles told plaintiff he could go to the hospital when the interview ended. (Id.)

Throughout the interview, plaintiff repeatedly wiped his nose, moved around in his chair, and stood up and down, often in order to fetch more tissues. Having viewed this taped interview, I note that plaintiff's nose was not profusely bleeding. In fact, no blood is visible on the tape. I acknowledge, however, that the tape is not of the highest visual quality. Nor does Kitzhoffer appear so pained that he is unable to move freely. Kitzhoffer testified that he was at the DUI processing center for about an hour and that his nose stopped bleeding after about 45 minutes. (Kitzhoffer Dep. at 26, 36.)

After the interview, it seems that Kitzhoffer was fingerprinted and photographed at the DUI processing center. He claims to have made his third request for hospital care during this process to an unknown officer. (Id.. at 31.) Kitzhoffer was then taken to the Allentown Police Headquarters by Officers Rooney and Holenda. On route, plaintiff asked whether he was being

taken to the hospital. (Id. at 35.) It is unclear whether he affirmatively asked to be taken to a doctor. Upon his arrival, plaintiff was placed in a holding cell. At some point thereafter, Officer Brantley gave him a breathalyser, and Kitzhoffer again asked to see a doctor. (Id. at 38.) He claims to have also requested that Officer David Reinhard, the duty officer at police headquarters, take him for medical treatment. (Id. at 39-40.)

Officers Brantley, Houck, Rooney, Holenda, and Reinhard, each submitted affidavits attesting to the fact that Kitzhoffer did not appear to have any injuries, and that he did not request to be taken to the hospital. (Brantley Aff., Defs.' Ex. B at ¶ 4; Houck Aff., Defs.' Ex. C at ¶ 5; Rooney Aff., Defs.' Ex. D at ¶ ¶ 4, 7; Holenda Aff., Defs.' Ex. E at ¶ ¶ 4, 6; Reinhard Aff., Defs.' Ex. F at ¶ 5.) [4] The Allentown defendants also submit blown-up mug shots which demonstrate no visible injury to Kitzhoffer.[5] (Defs.' Ex. I.) In addition, Officer Reinhard affirmed that he is trained to use his judgment to determine if medical treatment is needed for a detainee; Emergency Medical Services are summoned for minor injuries and a detainee is transported to the hospital if necessary. (Reinhard Aff., Defs.' Ex. F at ¶ 4.)

After his arrival at Lehigh County Prison, and approximately 20 hours after he was arrested, Kitzhoffer was seen by a doctor at the prison. Plaintiff was placed on medical watch for twenty-four hours and given Motrin. (Kitzhoffer Dep. at 49-50.) Kitzhoffer's deposition testimony regarding his specific injuries is somewhat unclear. (Id. at 48-66.) He acknowledges that he had an x-ray following day which was negative for a fracture, although it is unclear on

[4] Officer Reinhard swore to the fact that he did not recall Kitzhoffer asking for treatment.

[5] Defendants concede that there is a possibility that the mug shot show a small bruise under the right eye. This Court sees no such bruise.

what part of his body the x-ray was performed. (Id. at 53.) He stated that about one month later he saw an orthopedic surgeon. (Id. at 53.) He believes he was diagnosed with a compressed disc and told that in order to straighten his nose he would need plastic surgery. (Id. at 56.) It also appears he has limited shoulder movement. (Id. at 59.) At times he testified that the compressed disc was caused by the accident and at other times he appears to attribute the condition in part to back pain he suffered before the accident. (Id. at 56, 60.) He received physical therapy for the disc injury and shoulder injury. (Id.) Plaintiff believes that had he been taken to a doctor sooner, his injuries would have been less severe and the pain could have been relieved. (Id. at 54, 57.) He has no medical proof to support his belief and testified that no one told him that his condition would have been positively affected had he seen a doctor sooner. (Id. at 58, 65.)[6]

Kitzhoffer originally filed a complaint against Officers Brantley and Houck and the City of Allentown on May 20, 1999 in the United States District for the Middle District of Pennsylvania, asserting that his constitutional rights were violated because Officer Houck used excessive force and the defendants failed to provide medical care. The case was transferred to this Court for venue purposes. Kitzhoffer later filed an amended complaint in which he added Officers Holenda, Rooney, Hatfield and Reinhard as defendants and sued the Allentown Police Department rather than the City of Allentown. After the close of discovery, Kitzhoffer brought a motion to dismiss the excessive force claim brought against Officer Houck and to remove the officer as a defendant. This Court granted his motion. The remaining defendants have now filed

[6] Defendants submit medical reports which are not accompanied by sworn affidavits. See 10A Charles Alan Wright, et al., Federal Practice and Procedure §§ 2722, at 382-84 (3d Ed. 1998) (to be admissible, documents must be authenticated and attached to an affidavit that meets the requirements of Federal Rule of Civil Procedure 56(e)). Thus, I will not consider the reports on this motion.

for summary judgment.

II. Legal Standard

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, 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." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 176 (1962)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," Matsushita, 475 U.S. at 586, and must produce more than a "mere scintilla" of evidence to demonstrate a genuine issue of material fact and avoid summary judgment. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

This standard is somewhat more relaxed with respect to *pro se* litigants. Where a party is representing himself *pro se*, the complaint must be construed liberally, "and by extension all

reasonable latitude must be afforded in the summary judgment context." Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995)(citing Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed.2d 652 (1972)).

III Analysis

A. Motion for Summary Judgment by Defendant Lembech

The genesis of the motion for summary judgment filed by defendant Lembech, who operated the video recorder at the Lehigh County DUI processing center, is that Kitzhoffer never made a request for hospital care to Lembech and that plaintiff did not display signs of pain or significant injury. Kitzhoffer does not oppose Lembech's motion and contends that Lembech was named as a defendant in error. Therefore, I conclude that the motion of defendant Lembech will be granted.

B. Motion for Summary Judgment by Allentown Defendants

1. Unconstitutional Policy or Custom Claim

Kitzhoffer contends that the City of Allentown is liable for failing to adequately train its officers on using excessive force and on obtaining proper medical care. While plaintiff appears somewhat schooled in Monell v. Department of Soc. Serv., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), and its progeny, he fails to produce *any* evidence that the city lacks such training. Rather, Kitzhoffer argues that, "in the instant case the plaintiff can and will prove that he could not supply any affidavits or other testimony because plaintiff is without the funds to hire a private detective to do these things due to his being incarcerated." (Pl.'s Resp. at 4.) He attempts to seek refuge in the fact that this Court is bound to take a more liberal approach with *pro se* litigants. The law, however, requires more from Kitzhoffer.

Monell teaches that "'when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts and acts may fairly be said to represent official policy, inflicts the injury ... the government as an entity is responsible under § 1983.'" Carter v. City of Philadelphia, 181 F.3d 339, 356-57 (3d Cir.), cert. denied sub. nom., Roe v. Carter, 528 U.S. 1005 (1999) (quoting Monell, 436 U.S. at 694). "'A plaintiff must identify the challenged policy, attribute it to the city itself, and show a causal link between the execution of the policy and the injuries suffered.'" Parker v. Carroll, 6 F. Supp. 2d 427, 429 (E.D. Pa. 1998) (quoting Losch v. Borough of Parkesburg, 736 F.2d 903, 910 (3d Cir.1984)). Where a plaintiff brings forth a claim of failure to train, he must show that such failure amounts to deliberate indifference to the rights of persons with whom the employees come into contact. See Carter, 181 F.3d at 357 (citing City of Canton v. Harris, 489 U.S. 378, 388, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)).

As stated, the record before me contains no evidence tending to show that the city has a policy or custom which resulted in any injury to plaintiff. Defendants submitted the affidavit of Officer Reinhard attesting to the fact that he has been trained in when to secure medical care for a detainee. Kitzhoffer offers only his version of the events which unfolded on July 24, 1998.

Theoretically, it may seem that a single incident could constitute a policy or practice amounting to liability under § 1983. The law, however, holds to the contrary: "'a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.'" Groman v. Township of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995) (quoting in Oklahoma City v. Tuttle, 471 U.S. 808, 823-24, 105 S. Ct. 2427, 2436-37, 85 L. Ed. 2d 791 (1985) (plurality)). See also Fletcher v.

O'Donnell, 867 F.2d 791, 793 (3d Cir. 1989) ("'A single incident violating a constitutional right done by a governmental agency's *highest policymaker* for the activity in question may suffice to establish an official policy.'") (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986)) (emphasis added).

Accordingly, I conclude that even under a more relaxed *pro se* standard, plaintiff has failed to show that there exists a genuine issue of material fact for trial on his unconstitutional custom or practice claim and that the City of Allentown is entitled to judgment in its favor.

2. Deliberate Indifference to Serious Medical Needs Claim

Kitzhoffer also alleges that his Eighth Amendment rights were violated when the Allentown defendants failed to provide him with medical care.[7] "[F]ailure to provide medical care to a person in custody can rise to the level of a constitutional violation under § 1983 only if that failure rises to the level of deliberate indifference to that person's serious medical needs." Groman, 47 F.3d at 637 (citing Walmsley v. City of Phila., 872 F.2d 546, 551-52 (3d Cir. 1989) (citing Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976))).

This standard proves challenging to meet. Broadly speaking, deliberate indifference lies "somewhere between the poles of negligence at one end and purpose or knowledge at the other." Farmer v. Brennan, 511 U.S. 825, 836, 114 S. Ct. 1970, 1978, 128 L. Ed. 2d 811 (1994). An action cannot lie under the Cruel and Unusual Punishment Clause, "unless the [officer] knows of and disregards an excessive risk to [a detainee's] health or safety; the [officer] must both be

[7] Plaintiff also argues that his constitutional rights were violated because defendants gave him no food or beverage for 12-13 hours. Plaintiff did not make such argument until his response to the motion for summary judgment. The complaint and amended complaint never reference such an allegation. As a result, during discovery, defendants were not given the opportunity to investigate this claim. Thus, I conclude that plaintiff may not proceed with this claim at this late date.

aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837.

Whether a defendant had the requisite knowledge is a question of fact which can be demonstrated by inference from circumstantial evidence. See id. at 842. A factfinder may infer such knowledge from the fact that the risk was so obvious. See id. (citing Wayne R. LaFave & Austin W. Scott, Substantive Criminal Law §§ 3.7, p. 335 (1986) ("'[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of'"). Such knowledge may also be inferred when a police officer knows that an arrestee requires medical treatment but purposely fails to provide it, delays necessary medical treatment for a non-medical reason, or prevents an arrestee from receiving needed or recommended medical care. See Petrichko v. Kurtz, 117 F. Supp. 2d 467, 471 (E.D. Pa. 2000) (citing Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir.1999)).

It must be remembered, however, that even where injury occurs, officers can still avoid liability by demonstrating that "they did not know of the underlying facts indicating a sufficiently substantial danger and that they were therefore unaware of a danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent." Id. at 845. If a defendant is found to have acted reasonably, he cannot not be held liable under the Eighth Amendment. See id. At the summary judgment stage, Kitzhoffer must bring forth evidence from which it can be inferred that the officers who failed to provide medical assistance were "knowingly and unreasonably disregarding an objectively intolerable risk of harm." Id. at 847.

Assuming *arguendo* that Kitzhoffer suffered from a serious injury and requested medical care on the evening in question, the record before me fails to indicate that the Allentown defendants were deliberately indifferent to that need. The Allentown defendants each submitted a sworn affidavit attesting to the fact that plaintiff did not appear in need of medical care. I conclude, for the following reasons, that from the uncontradicted circumstantial evidence upon which plaintiff relies, including his request for medical care, a reasonable jury that defendants knew or should have known that in failing to provide plaintiff with immediate medical care, plaintiff faced a substantial or excessive risk to his health.

Viewed in the light most favorable to plaintiff, the defendants had notice that Kitzhoffer had been in a car accident and may have had notice that Officer Houck pushed his head into the back part of his patrol car. However, there is no evidence in the record from which a reasonable police officer could infer that Kitzhoffer was actually in pain and in need of medical treatment sooner than he actually saw a doctor. The mug shots taken that evening show no visible sign of injury. While the interview tape from the DUI processing center demonstrates that he requested medical care, it also shows Kitzhoffer moving without limitation. While his nose appears to be bothering him, there was no blood on his face, nor did his nose appear to be bleeding with any force. Kitzhoffer also testified that he had suffered from back pain before crashing his car on July 24-25, 1998. Specifically, he stated that he sometimes experienced a sharp pain when he bent over, and his back would sometimes go out for about a day. (Kitzhoffer Dep. at 57.) Despite this condition, plaintiff himself apparently saw no need to go to a doctor in the past. (Id.)

When plaintiff ultimately saw a physician, approximately twenty hours after his arrest, he was prescribed only an over-the-counter pain medication. The evidence indicates that upon seeing the prison doctor, there was apparently no need for a referral for immediate care; Kitzhoffer saw an orthopedic surgeon about one month after his arrest. The x-ray of the next day was negative for a fracture. Thus, I conclude that even under a relaxed *pro se* standard, plaintiff has failed to produce more than a "mere scintilla" of evidence to demonstrate that there is genuine issue of material fact as to whether defendants knowingly and unreasonably disregarded an objectively intolerable risk of harm.

C. Motion to Add Additional Defendants

Kitzhoffer brings forth a motion to add Allen Stiles and R.A. Mirarchi as defendants. Both putative defendants are employees of the Lehigh County DUI processing center and interviewed plaintiff. Plaintiff alleges that he made requests for medical care to both Stiles and Miraichi. He claims that the original complaint erroneously listed Robert Lembech as a defendant because "plaintiff was given false information by defendants as to the identity of the interviewers at the DUI center." (Pl.'s Mot. at 2.) Kitzhoffer does not attach any evidence to support this factual contention. Plaintiff filed this motion on January 5, 2001, which is approximately one and half years after he filed the complaint and approximately two and half years after he was arrested.

In § 1983 cases, federal courts are to apply the personal injury statute of limitation laws of the state in which it sits. See Smith v. Holtz, 87 F.3d 108, 111 n.2 (3d Cir. 1996); Gordon v. Lowell, 95 F. Supp. 2d 264, 271 (E.D. Pa. 2000). In Pennsylvania that statute of limitations is two years. See 42 Pa.C.S.A. 5524(2); Smith, 87 F.3d at 111 n.2; Gordon, 95 F. Supp. 2d at 272.

Generally, the statute of limitations begins to run as soon as a right to institute and maintain a suit arises. See Crouse v. Cyclops Indus., 560 Pa. 394, 745 A.2d 606 (2000). Pennsylvania's "discovery rule ... tolls the running of the applicable statute of limitations until the point where the complaining party knows or reasonably should know that he has been injured and that his injury has been caused by another party's conduct." Id. *Pro se* litigants are not afforded leniency under these rules. See Cito v. Bridgewater Township Police Dep't., 892 F.2d 23, 25 (3d Cir. 1989), aff'd, 914 F.2d 243 (1990); James v. Dropsie, Civ. A. No. 89-4429, 1989 WL 143171, at *2 (E.D Pa. Nov. 22, 1989).

Clearly, the motion was filed more than two years after Kitzhoffer was arrested. To be precise, the events which caused this lawsuit occurred on July 24-25, 1998 and the motion was filed on January 5, 2001. Moreover, even taking into consideration plaintiff's *pro se* status, I find it unreasonable to believe that it would take more than two years to discover the names of the defendants he wished to sue. While plaintiff claims that the defendants gave him false information, he produces no documents which contain such falsity.

I further note that plaintiff cannot invoke Federal Rule of Civil Procedure 15 (c), which is "intimately connected with the policy of the statute of limitations" and specifically addresses the issue of a misnamed defendant. See Fed. R. Civ. P. 15 (c) advisory committee notes. Under the Rule, in certain situations where a claim arises out of the same "conduct, transaction, or occurrence" and the party to be brought in by amendment is served within 120 days of the original complaint, plaintiffs are afforded more time.[8] Here, however, Kitzhoffer filed the

[8] The Rule provides in relevant part:

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the

motion to add additional defendants well after 120 days of filing his original complaint. Specifically, his complaint was filed on May 20, 1999 and his motion on January 5, 2001.

Therefore, I conclude that Kitzhoffer's request is time-barred.

IV. Conclusion

For the foregoing reasons, I conclude that Lembech is entitled to judgment as a matter of law because his motion was unopposed, the Allentown defendants have proved that they are entitled to judgment as a matter of law, and plaintiff's motion to add additional defendants is barred by statute of limitations. An appropriate order follows.

> original pleading when
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> ....
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> (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
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> (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Fed. R. Civ. P. 15 (c).

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

ROBERT B. KITZHOFFER	**:**	**CIVIL ACTION**
	:	
Plaintiff,	**:**	
	:	
v.	**:**	
	:	
WENDY BRANTLEY, et al.	**:**	
	:	
Defendants.	**:**	**NO. 99-5771**

ORDER

AND NOW this 3rd day of July, 2001, it is hereby **ORDERED** that:

1. Upon consideration of the motion of defendants Wendy Brantley, David Reinhard, John Holenda, Michael Rooney, Steve Hatfield and the City of Allentown, (collectively referred to as "Allentown defendants") for summary judgment (Document No. 29), filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the response thereto, and having concluded for the reasons set forth in the foregoing memorandum that there is no genuine issue as to any material fact and that the Allentown defendants are entitled to judgment as a matter of law, the motion is **GRANTED**.

2. Upon consideration of the motion of defendant Robert Lembech for summary judgment (Document No. 30), filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the response thereto, and having considered that plaintiff does not oppose the motion, the motion is **GRANTED**.

3. Upon consideration of the motion of plaintiff to add additional defendants (Document No. 33), and having concluded for the reasons set forth in the foregoing memorandum that the proposed action is time-barred, the motion is **DENIED**.

JUDGEMENT is hereby **ENTERED** in favor of all defendants and against plaintiff.

This is a final order.

LOWELL A. REED, JR., S.J.