

carpal tunnel syndrome, for which he has undergone surgery.

The Complaint brings six counts, which include two federal constitutional claims pursuant to 42 U.S.C. § 1983 and four state law claims. Count III, captioned "Cruel and Unusual Punishment," alleges that Defendants violated Young's "right to be free from the excessive use of force, which right is guaranteed by the Eighth and Fourteenth Amendments of the United States Constitution." (Compl. ¶ 33.) Count IV, captioned, "Substantive Due Process," alleges that Defendants violated Young's "rights of substantive due process guaranteed by the Fourteenth Amendment to the United States Constitution." (Compl. ¶ 39.) The state law claims include: negligence under Count I; assault and battery under Count II; "misconduct" pursuant to the Pennsylvania Constitution under Count V; and loss of society, comfort, companionship and consortium under Count VI. Defendants seek summary judgment on all counts.

II. Discussion

A. Defendants' Motion for Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Defendants for the purposes of their Motion for Summary Judgment have accepted the facts as alleged by Plaintiffs in

paragraphs 1 through 18 of the Complaint. (Def. Mem. at 2.) There being no genuine dispute as to material fact, the issue before the Court is whether Defendants are entitled to judgment as a matter of law.

The allegations of Paragraphs 1 through 18 of the Complaint assert that after stopping Plaintiff Young as he was driving his pickup truck, Defendant Officer Steven Itzko ("Itzko") asked Young to exit the truck, then threw him to the back of the truck, punched him in his lower back and slammed him repeatedly into the truck. (Compl. ¶¶ 7-9.) The Complaint further alleges that Itzko immediately handcuffed Young, and that each time Young complained the cuffs were too tight and he could not feel his fingers, Itzko told him to "shut the fuck up, asshole" and slammed him into the truck. (Compl. ¶ 12.) The Complaint alleges that Defendant Sgt. Joseph R. Alullo ("Alullo") arrived at the scene shortly after Young's arrest, and that when Young told him the handcuffs were too tight, Alullo said, "no problem buddy, turn around and I'll see what I can do for you" and then tightened the handcuffs another notch. (Compl. ¶ 14.)

The analysis of an excessive force claim pursuant to § 1983 begins with an identification of the specific constitutional right allegedly infringed by the challenged application of force. Graham v. Connor, 490 U.S. 386, 394 (1989). Defendants argue that the Fourth Amendment is Plaintiffs' exclusive source of constitutional

protection in this case, and they are entitled to summary judgment on Plaintiffs' Eighth and Fourteenth Amendment claims. (Def. Mem. in Support of Def. Mot. at 7-9.) Plaintiffs respond that they "agree that the appropriate analytical framework . . . is that the conduct of the police officers be considered under the Fourth Amendment's 'objective reasonableness' standard," but argue that the substantive due process claim is valid because Plaintiffs have alleged that Defendants imposed punishment upon Plaintiff Young prior to obtaining a conviction of guilt. (Pl. Mem. in Opp. to Def. Mot. at 7.) Plaintiffs do not insist on the validity of the Eighth Amendment claim, nor could they, as the Eighth Amendment provides protection against excessive force only to persons incarcerated after conviction. See Graham, 490 U.S. at 395 n.10.

Where "a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." County of Sacramento v. Lewis, 523 U.S. 833, 842 (1998) (internal quotations omitted). "All claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." Id. at 843 (quoting Graham, 490 U.S. at 395)

(emphasis in original). A "seizure" occurs "when there is a governmental termination of freedom of movement through means intentionally applied." Id. at 844.

The facts alleged by Plaintiffs are analogous to the facts of Graham. In that case, police officers made an investigative stop of the car in which the plaintiff was driving, handcuffed him, ignored his pleas that he was diabetic and needed sugar and instead shoved him face down onto his car and threw him headfirst into the police car. Plaintiffs' allegations in this case describe the excessive use of force by Defendants during the course of his arrest, before and after he was handcuffed, and despite his protests. The facts of this case clearly fall within the holding of Graham.

Without disputing the applicability of the Fourth Amendment, Plaintiffs argue that the Fourteenth Amendment additionally applies. Plaintiffs cite Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979), for the proposition that government imposition of punishment without an adjudication of guilt implicates the Due Process Clause of the Fourteenth Amendment. First, this position ignores the mandate that an explicit source of constitutional protection, where available, governs rather than the more generalized substantive due process guarantee. Second, the jurisprudence of excessive force claims requires the Court to treat Plaintiffs' claim as arising under the Fourth Amendment. While

Plaintiffs are correct in asserting that the Fourteenth Amendment protects pretrial detainees from excessive force that amounts to punishment, Graham, 490 U.S. at 395 n.10, they have not argued that Young was a pretrial detainee, and that the protections of the Fourth Amendment had ceased to apply to him. See United States v. Johnstone, 107 F.3d 200, 207 (3d Cir. 1997) (recognizing that "[w]here the seizure ends and pre-trial detention begins is a difficult question," and that "it does seem problematic for a constitutional standard to change at some particular moment during an encounter between a citizen and a law enforcement official, as such encounters can be highly volatile . . . "). In Johnstone, the defendant argued that his conduct should be analyzed under the substantive due process standard because he allegedly assaulted suspects after they were already handcuffed, and therefore the assaults took place after, not during, the arrests. Id. at 205. Noting that the Graham suspect was handcuffed at the time of his assault, the court held that the conduct at issue occurred during the course of the arrests and that the Fourth Amendment governed. Id. Declining to define where an arrest ends and pretrial detention begins, the court observed that "a 'seizure' can be a process, a kind of continuum, and is not necessarily a discrete moment of initial restraint," and that "pre-trial detention does not necessarily begin the moment that a suspect is not free to leave; rather, the seizure can continue and the Fourth Amendment

protection against unreasonable seizures can apply beyond that point." Id. at 206. The Court stated that Johnstone's conduct "would fall squarely onto the seizure side of any line" the court might draw between seizure and pretrial detention. Id. The facts of the instant case are closely analogous to both Graham and Johnstone, and the Court concludes that the Fourth Amendment governs Plaintiffs' allegations, not the Fourteenth Amendment.

B. Plaintiffs' Motion to Amend Complaint

Plaintiffs have moved to amend their Complaint to add a Fourth Amendment claim. (Pl. Mot. ¶ 3.) A party wishing to amend a complaint after a responsive pleading has been served may amend the complaint only by leave of court or written consent of the adverse party, and "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). A motion for leave to amend is left to the sound discretion of the district court. Cureton v. Nat'l Collegiate Athletic Assoc., 154 F.3d 267, 272 (3d Cir. 2001). A district court may deny leave to amend a complaint on the grounds of undue delay, bad faith or prejudice to the opposing party. Id. at 273 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

In this case, Defense counsel, speaking ex parte during a pretrial conference conducted on May 24, 2001, raised the argument that Plaintiffs' Complaint failed to plead a Fourth Amendment violation and that the statute of limitations barred such a claim. The Court thereafter apprised Plaintiffs' counsel of defense

counsel's argument. At the conclusion of the conference, the Court issued an Order pursuant to Federal Rule of Civil Procedure 16 setting a deadline of July 23, 2001, for the close of discovery and August 6, 2001, for filing of dispositive motions. Following the pretrial conference, Plaintiffs did not seek to amend the Complaint. Defendants moved for summary judgment on August 1, 2001. On August 13, 2001, Plaintiffs filed a response to the Motion for Summary Judgment and their Motion to amend the Complaint.

Defendants oppose Plaintiffs' Motion on the grounds that they conducted discovery with respect to Eighth and Fourteenth Amendment claims, and furthermore the statute of limitations period on the Fourth Amendment claim has expired. (Def. Mem. in Support of Resp. to Pl. Mot. to Amend Compl. at 4.)

Permitting Plaintiffs to amend the Complaint at this point in the litigation would sanction undue delay by Plaintiffs and prejudice Defendants. Plaintiffs have offered no reason justifying their delay in moving to amend the Complaint until more than two months after the Court apprised Plaintiffs' counsel that Defendants challenged their pleading, and after the deadlines had passed for the close of discovery and filing of dispositive motions. The standard of proof required to establish a constitutional violation under the Fourth Amendment is distinct from those required for the

Eighth and Fourteenth Amendments.¹ Now that the period for discovery has closed, Defendants, who have prepared evidence for trial on the Eighth and Fourteenth Amendments' standards of proof, would be prejudiced by the addition of a cause of action carrying a different standard of proof. Accordingly, the Court denies Plaintiffs leave to amend the Complaint on the grounds that Plaintiffs have unduly delayed in seeking to amend the Complaint, and amendment would unfairly prejudice Defendants.²

C. Remand of State Law Claims

A district court may decline to exercise supplemental jurisdiction over a state law claim if (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in

¹The standard for liability under the Fourth Amendment 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." Graham, 490 U.S. at 397. The Eighth Amendment standard is whether the officers "acted in 'good faith' or 'maliciously and sadistically for the very purpose of causing harm,'" and is "incompatible with a proper Fourth Amendment analysis," as it inquires into the defendants' subjective motivation. Id. The standard for executive abuse of power under the Fourteenth Amendment's substantive due process guarantee is conduct that shocks the conscience. County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

²Plaintiff's Motion to amend the Complaint also appears to pose a statute of limitations problem. As this issue was not developed by the parties, the Court does not address it here.

exceptional circumstances, there are other compelling reasons for declining jurisdiction. 28 U.S.C.A. § 1367(c) (West 1993). Having concluded that Plaintiffs' federal claims fail, the Court declines to exercise supplemental jurisdiction over the four state law claims that remain in this matter. Plaintiffs state that Count I appears to present an issue of first impression under the Pennsylvania Political Subdivision Tort Claims Act as to whether a person in the custody of police may avail himself of the "care, custody and control of animals" exception to the general immunity of a local agency to negligence claims. (Pl. Mem. at 3.) Moreover, the state causes of action more than predominate in this matter; they are the only remaining claims. Accordingly, the Court declines to exercise supplemental jurisdiction over the state law claims and remands this action to the Court of Common Pleas of Philadelphia County.³

III. Conclusion

Although the allegations of the Complaint are governed by the Fourth Amendment, Plaintiffs failed to plead violation of Young's Fourth Amendment rights and have unduly delayed in seeking to amend the Complaint. Therefore, Defendants are entitled to summary judgment on Plaintiffs' claims pursuant to the Eighth and Fourteenth Amendments as a matter of law, and Plaintiffs are denied

³Discovery produced in this action can be used in the state court action.

leave to amend the Complaint. As the remaining Counts of the Complaint allege state law causes of action, and one claim appears to present a novel issue of Pennsylvania law, the Court declines to exercise supplemental jurisdiction over the state claims and remands them to the Court of Common Pleas of Philadelphia County. An appropriate Order follows.

4. This action is **REMANDED** to the Court of Common Pleas of Philadelphia County for hearing of the state law causes of action.

BY THE COURT:

John R. Padova, J.