

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

LEE ANN HARRIS and : CIVIL ACTION
RANDALL WINSLOW, :
Plaintiffs, :
 :
v. :
 :
OFFICER FRANK PITTS, :
OFFICER PAUL FERGUSON, :
OFFICER MICHELLE MAJORS, :
TREDYFFRIN TOWNSHIP POLICE :
DEPARTMENT, and the TOWNSHIP :
OF TREDYFFRIN, :
Defendants. : No. 98-CV-5479

MEMORANDUM AND ORDER

J. M. KELLY, J.

AUGUST , 1999

Presently before the Court is Defendants' Motion for Summary Judgment. On January 28, 1999, the Court granted Defendants' Motion to Dismiss in part, but allowed Plaintiffs, Lee Ann Harris ("Harris") and Randall Winslow ("Winslow"), to proceed on their excessive use of force, failure to train, discipline or supervise and state law assault and battery claims.

LEGAL STANDARD

Under Fed. R. Civ. P. 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine

whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Evidence submitted in opposition to a motion for summary judgment must be attached to an affidavit showing that the affiant is competent to testify to the matter presented and the evidence must be admissible. Fed. R. Civ. P. 56(e).

FACTS

The incident underlying this action occurred on October 16, 1996, at the home of Walter Byrne in Malvern, Pennsylvania. That evening, Mr. Byrne hosted a party that Harris and Winslow attended. At approximately 10:45 P.M., Mr. Byrne decided to demonstrate his newly acquired .22 caliber handgun, and, surrounded by his friends, he fired four shots outside his home. A neighbor became alarmed at the sound of gunfire and called the police. Officers Frank Pitts ("Pitts"), Paul Ferguson ("Ferguson") and Michelle Major ("Major"), of the Tredyffrin Township ("Tredyffrin") Police Department arrived at Mr. Byrne's home at about 11:30 P.M.

Mr. Byrne responded to the officers' questions about gunfire by asking them to leave his property unless they had a warrant. During this exchange, Major found shell casings outside of the Byrne home and the officers smelled gunpowder. Mr. Byrne then allowed the officers into the house to talk to the other guests. Pitts asked the guests what had happened and none of the guests responded. Mr. Byrne then attempted to leave the room and walked toward Pitts. Major noticed a bulge in Mr. Byrne's pants pocket. Major and Pitts patted down Mr. Byrne and discovered the gun. Mr. Byrne immediately tried to resist the search and was turned with his face towards the wall and handcuffed. Pitts then escorted Mr. Byrne out of the house and did not return.

Major then searched for weapons on the bodies and in the purses of the women in Mr. Byrne's home. Ferguson pulled his night stick and slapped it against his hand. He told everyone at the party that they were under arrest. He made statements such as "we are going to have a round-up tonight." Ferguson turned towards Winslow and the night stick came into contact with Harris' hair. Winslow asked Ferguson if he could call a lawyer and Ferguson poked him in the chest with his hand. Winslow did not lose his balance or suffer a bruise because of the poke. In fact, he testified he suffered no injury.

DISCUSSION

A. Excessive Force Claim Against Pitts & Major

All of Plaintiffs' claims in the instant action relate to the alleged use of excessive force by Ferguson in arresting Winslow and the contact with Harris. It is undisputed in this Motion that Ferguson poked Winslow and his night stick came into contact with Harris' hair. For Plaintiffs to prevail on their claim against Pitts and Major for their injuries, evidence is needed that Pitts and Major failed to intervene, and thereby acquiesced, in the alleged unconstitutional use of force. See Schwab v. Wood, 767 F. Supp. 574, 591-92 (D. Del. 1991). In order to hold Pitts or Major personally liable under 42 U.S.C. §

1983 (1994),¹ Plaintiffs must show that these officers participated in violating Plaintiff's rights, that they directed others to violate Plaintiffs' rights, or that they had knowledge of and acquiesced in the violation of Plaintiffs' rights. See Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995).

Even accepting Plaintiffs' recitation of the involvement of Pitts and Major in the incident as true, the Court is satisfied that no reasonable juror would hold Pitts or Major liable for any injuries that Plaintiffs may have received. Plaintiffs' excessive force claims are based on Ferguson's actions. The uncontradicted evidence shows that Pitts was outside of the house with Mr. Byrne when the acts leading to the complaints of Winslow and Harris took place. Likewise, the uncontradicted evidence indicates that the night stick hitting Harris' hair and Ferguson poking Winslow took place in a split second. That Pitts was at

¹ Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

the scene prior to these events and Major was at the scene during these events, do not, alone, justify holding Pitts or Major liable.

B. Excessive Force Claim Against Ferguson

In Graham v. Conner, 490 U.S. 386 (1989), the Court held that "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." Id. at 395 (emphasis in original). Because Plaintiffs' excessive force claim arises in the context of an arrest, the actions of Ferguson shall be analyzed under the "objective reasonableness" standard applicable to Fourth Amendment searches and seizures. The reasonableness of Ferguson's conduct "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 396. Proper application of this standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. Because the test is one of "objective" reasonableness, the inquiry will focus on the facts and

circumstances that confronted Ferguson, and not his underlying intent or motivation for his actions. Id. at 397.

While there are differences in the evidence as to some peripheral facts, the parties are in agreement concerning the material facts that are the basis of the excessive use of force claims. The officers responded to a report of gunfire. When they arrived at Mr. Byrne's house, late at night, they were able to smell gunpowder and found spent shell casings. Upon entering the house, they found they were outnumbered and those present were uncooperative. The owner of the house was found to be armed and resisted arrest. The only force alleged by Harris was an inadvertent contact with her hair by a night stick. The only force alleged by Winslow was a poke in the chest.

Based upon the evidence present in this case, no reasonable juror could find that Ferguson acted unreasonably under the circumstances. At the time the alleged excessive use of force took place, there were four suspects and two police officers present in the house. One suspect had already been taken away, after he was found to have carried a pistol and resisted arrest. No reasonable juror could find that a reasonable officer in Ferguson's position would not take some defensive position, in this instance, taking out his night stick. The alleged force used against Harris was, by her testimony, inadvertent. The poke in Winslow's chest may well have been malicious, however,

Ferguson's state of mind is of no consequence in this analysis of objective reasonableness. Id. The poke was, even according to Winslow, a fleeting physical intrusion. Ferguson was in a suspect's house, where the owner already had resisted arrest and had been found to have a gun. Four additional suspects were refusing to cooperate, and in fact, Winslow was addressing Ferguson in a non-responsive manner at the time that Ferguson poked him. No reasonable juror could find that the minimal use of force exhibited by Ferguson in the heat of the moment was not objectively reasonable.

C. Failure to Train, Supervise & Discipline Claim

Plaintiffs allege in their § 1983 claim against Tredyffrin that constitutional violations resulted from the municipality's failure to adequately train, supervise and discipline its police officers. Such a claim may not rely upon a theory of respondeat superior; a municipality can only be liable for a constitutional deprivation that arises from an official custom or policy.

Monell v. Department of Social Servs., 436 U.S. 658, 691-94 (1978).

An individual employee of the municipality need not be liable to a plaintiff as a prerequisite to municipal liability. Fagan v. City of Vineland, 22 F.3d 1283, 1292 (3d Cir. 1994). There must, however, be a showing of a constitutional violation suffered by the plaintiff. Williams v. Borough of West Chester,

891 F.2d 458, 467 (3d Cir. 1989). As Harris and Winslow have suffered no constitutional injury at the hands of Tredyffrin's police officers, their claims against the Township also fail.

D. State Law Claims

The only source for jurisdiction over Plaintiff's state law claims is the supplemental jurisdiction statute. 28 U.S.C. § 1367. Because the federal claims have been dismissed, the Court will not exercise jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3).

