

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

ANDRE MEYERS	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THADDEUS WOLKIEWICZ,	:	
FRED BUCK, BERNARD MARTIN,	:	
WILLIAM KELHOWER,	:	
MICHAEL HARVEY,	:	
BRIAN PETERS,	:	
and TIMOTHY BROOKS,	:	
Individually and in their official capacities as	:	
City of Philadelphia Police Officers	:	
	:	
Defendant.	:	NO. 00-5750

Reed, S.J.

December 7, 2001

MEMORANDUM

Now before the Court is the motion of defendants for summary judgment pursuant to Rule 56 (c) of the Federal Rules of Civil Procedure (Doc. No. 16), the plaintiff's response (Doc. No. 18)¹, and the reply thereto (Doc. No. 19). Plaintiff commenced this action pursuant to 42 U.S.C. § 1983, alleging that defendants violated his Fourth, Fifth and Fourteenth Amendment rights to the United States Constitution by arresting him without probable cause. Plaintiff further alleges that the arrest in question constituted violations under Pennsylvania law of false arrest, false imprisonment, malicious prosecution, intentional inflictions of emotional distress, outrageous conduct, invasion of privacy, negligence, gross negligence, libel, slander and defamation. Defendants, all of whom are Philadelphia police officers, have been sued in their

¹ Although plaintiff's response was not timely filed, because defendants have shown no prejudice from its delay, the response will be considered.

individual and official capacities. For the reasons set forth below, the motion of defendants for summary judgment will be granted.

I. Background

Plaintiff Andre Meyers was arrested pursuant to a warrant on November 17, 1999, for robberies in the following establishments: (1) Hammerheads Bar & Grill, 3517 Cottman Avenue, on May 8, 1999; (2) Save A Lot Market, 48th and Snyder Avenue, on February 7, 1999; and (3) Striped Bass Restaurant, 1500 Walnut Avenue, on July 18, 1999.

According to the arrest warrant affidavit signed by defendant Wolkiewicz (“Arrest Warrant Affidavit”), each of these establishments were robbed at gunpoint by two black men. (Def. Mtn. Exh. B, Arrest Warrant Affidavit.) Prior to the issuance of the warrant for plaintiff’s arrest, Andre Wilson was arrested as one of the robbers. Thomasine Jones, the ex-girlfriend of Wilson, implicated plaintiff Meyers as the other perpetrator. Plaintiff was arraigned and charged with eleven counts of armed robbery. After preliminary hearings were scheduled and continued, the Commonwealth of Pennsylvania withdrew the charges against plaintiff. Meyers alleges that defendants did not have probable cause to arrest him because they relied on an unreliable identification by Jones and ignored exculpatory information, including statements by Kenyatta Johnson, who informed defendants that the Hammerheads robbery had been committed by Wilson and another man named Andre Williams.

II. Legal Standard

Federal Rule of Civil Procedure 56 (c) states that summary judgment may be granted “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 judgment as a matter of law." For a dispute to be "genuine," the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party may not rely merely upon bare assertions, conclusory allegations, or suspicions. See Fireman's Ins. Co. v. Du Fresne, 676 F.2d 965, 969 (3d Cir. 1982).

III. Analysis

A. Federal Claims

Plaintiff seeks damages under 42 U.S.C. § 1983. "To recover under 42 U.S.C. § 1983, [plaintiff] must establish that a state actor engaged in conduct that deprived him of rights, privileges, or immunities secured by the constitution or laws of the United States." Wilson v. Russo, 212 F.3d 781, 786 (3d Cir. 2000) (citations omitted). Plaintiff alleges that defendants violated his due process rights and his right to be free from arrest without probable cause, in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Where a particular amendment provides an "explicit textual source of constitutional protection," that amendment should be the guide for analyzing the claims. See Albright v. Oliver, 510 U.S. 266, 273, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994). Because plaintiff's claims arise out of his allegation of a wrongful arrest, they will be analyzed under the Fourth Amendment rather than under a due process approach.

As law enforcement officers, defendants are entitled to qualified immunity if their

conduct does not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982). Defendants are immune from plaintiff’s claims if they “reasonably but mistakenly” concluded that their conduct comports with the requirements of the Fourth Amendment. See Hunter v. Bryant, 502 U.S. 224, 227, 116 L. Ed. 2d 589, 112 S. Ct. 534 (1991); Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1993). When the arrest was made pursuant to a warrant, the officer will lose the shield of immunity if the warrant application is “so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” Malley v. Briggs, 475 U.S. 335, 341, 89 L. Ed. 2d 271, 106 S. Ct. 1092 (1986); Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995). Probable cause exists if, at the moment the arrest is made, “the facts and circumstances within the arresting officers’ knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.” Orsatti, 71 F.3d at 483. The Arrest Warrant Affidavit involved here includes a description of the three robberies at issue, an identification of the plaintiff as one of the perpetrators by Thomasine Jones, and corroboration by several witnesses to the robberies of details provided by Jones. (Def. Mtn. Exh. B, Arrest Warrant Affidavit.) I conclude that the affidavit thus clearly establishes probable cause on its face.

Nevertheless, plaintiff may succeed on his claims if he can provide evidence to show that defendants recklessly disregarded the truth on the Arrest Warrant Affidavit. Under the standard set by the Third Circuit Court of Appeals,

a plaintiff may succeed in a § 1983 action for false arrest made pursuant to a warrant if the plaintiff shows, by a preponderance of the evidence: (1) that the police officer knowingly and deliberately, or with a reckless disregard for the

truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause.

Wilson, 212 F.3d at 786-87 (citations omitted). Plaintiff alleges that defendants included false statements and omitted exculpatory evidence from the Arrest Warrant Affidavit, and that in light of the exculpatory evidence available at the time, defendants lacked probable cause to arrest him. (Am. Compl. ¶ 21.)

1. Omissions in the Arrest Warrant Affidavit

“[O]missions are made with reckless disregard if an officer withholds a fact in his ken that ‘any reasonable person would have known that this was the kind of thing the judge would wish to know.’” Wilson, 212 F.3d at 788 (citing United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir. 1993)). On October 14, 1999, Kenyatta Johnson informed the police that Andre Williams had told Johnson that Williams and Johnson’s cousin, Andre Wilson, had robbed the Hammerheads Bar & Grill at 3517 Cottman Avenue. (Pl. Exh. B, Oct. 14, 1999 Johnson Interview at 2.) Johnson further stated that Wilson confirmed to him that Wilson and Williams had perpetrated the Hammerheads Bar & Grill robbery. (Id. at 4.) Johnson was shown a picture of plaintiff during the same interview, and he specifically denied that Meyers was the second man involved in the Hammerheads Bar & Grill incident. (Id. at 12.) On October 26, 1999, Johnson further informed the police that on the Sunday prior to the Striped Bass robbery, he had gone with Williams and Wilson to rob the restaurant, but had cancelled the plans when Johnson was asked to leave the premises while looking through the rooms. (Pl. Exh. B, Oct. 26, 1999

Johnson Interview at 9.) These facts were omitted from the Arrest Warrant Affidavit.²

2. Assertions in the Arrest Warrant Affidavit

Assertions can be made with reckless disregard for the truth, even if they involve minor details. “An assertion is made with reckless disregard when ‘viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.’” Wilson, 212 F.3d at 788 (citing United States v. Clapp, 46 F.3d 795, 801 n.6 (8th Cir. 1995)). Other than the inconsistency with Johnson’s statement with regard to the Hammerheads Bar & Grill robbery, plaintiff has provided no reason why the police should have doubted the credibility or motives of Thomasine Jones when she identified Meyers as Wilson’s accomplice in the robberies at issue.³ Because plaintiff has produced no evidence to support the inference that defendants had obvious reason to doubt the accuracy of the statements by Jones, I conclude that defendants did not make a false

² Plaintiff further states in his brief that Andre Williams admitted to participating in the robberies in his interview with the police on October 19, 1999. Nevertheless, a review of the police interview reveals that while Williams did confess to perpetrating a number of robberies, including one involving a Save-A-Lot on Rising Sun Avenue, Williams did not confess to any of the robberies listed in the Arrest Warrant Affidavit; specifically, Williams did not mention the robberies in the Hammerheads Bar & Grill, the Striped Bass, and the Save-A-Lot on Snyder Avenue. (Pl. Exh. C, Oct. 19, 1999 Williams Interview.) Thus, the failure of defendants to include reference to the statements of Williams in the Arrest Warrant Affidavit does not constitute an omission for purposes of this analysis.

³ In addition to Johnson’s statement regarding William’s role in the Hammerheads robbery, plaintiff further points to the inconsistencies in the statements of Thomasine Jones regarding plaintiff’s possession of a grey Ford Taurus and a security guard uniform. Plaintiff argues that he did not own a Ford Taurus but that the defendants made no efforts to ascertain this fact prior to the arrest. Plaintiff further argues that he had never been a security guard, but that from the October 19, 1999 police interview with Williams, defendants were aware that Williams had been a security guard and had used his uniform in a robbery. These arguments do not persuade this Court that the police should therefore have doubted the truth of the facts set forth in the Arrest Warrant Affidavit. By his argument, plaintiff admits that the police were not aware when they applied for the arrest warrant that plaintiff did not own a Ford Taurus. Nor would the fact that Williams owned and used a security guard uniform render inconsistent a statement by Jones that she had seen Meyers wear a security guard uniform. Moreover, once probable cause is established, a police officer need not investigate further to validate the probable cause. See Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 790 (3d Cir. 2000). Thus, defendants were not under an obligation to confirm the type of car that plaintiff possessed nor his work background prior to applying for the arrest warrant.

statement with reckless disregard for the truth of the facts asserted in the Arrest Warrant Affidavit.

3. Materiality

Because there is evidence of a knowing omission from the Arrest Warrant Affidavit, the next step is to assess whether the omission was material or necessary to the finding of probable cause. See Wilson, 212 F.3d at 789. To do so, this Court must determine whether an affidavit that included the omitted facts would establish probable cause. See id. A probable cause analysis involves “weighing the inculpatory evidence against any exculpatory evidence available to the officer.” Id. at 791. Probable cause to arrest exists when the facts and circumstances within the officer’s knowledge are sufficient to warrant a reasonable person to believe that an offense has been committed by the person to be arrested. See Orsatti, 71 F.3d at 483. “A police officer may be liable for civil damages for an arrest if ‘no reasonable competent officer’ would conclude that probable cause exists.” Wilson, 212 F.3d at 790 (citing Malley v. Briggs, 475 U.S. 335, 341, 89 L. Ed. 2d 271, 106 S. Ct. 1092 (1986)).

The exculpatory evidence omitted from the Arrest Warrant Affidavit comprise the statements by Johnson that he had heard from Williams that Williams and Wilson were the perpetrators of the Hammerheads Bar & Grill robbery, and that Johnson had almost robbed Striped Bass with Williams and Wilson a week before the Striped Bass robbery in February 1999. The inculpatory evidence upon which the defendants relied in the Arrest Warrant Affidavit were the statements provided by Thomasine Jones. Jones had gone to the police to file assault charges against her ex-boyfriend, Andre Wilson, and provided the police with information regarding Wilson’s involvement in various robberies. (Pl. Exh. A, September 27,

1999 Jones Interview at 1.) Jones described another Andre, known as “Dre”, as Wilson’s accomplice in the Hammerheads Bar & Grill robbery. (Id. at 3-4). She also identified both Dre and Wilson from a surveillance tape taken from the robbery of Striped Bass (Id. at 8), and stated that Wilson had told her in February that he and Dre had robbed a Save-A-Lot in South Philly (Pl. Exh. A, Oct. 5, 1999 Jones Interview at 1.) In her interview with the police on October 5, 1999, Jones was shown a picture of someone whom she recognized as Dre; she further identified Dre as Andre Meyers, someone she had known since the third grade. (Id. at 2.) Witnesses from the robberies at issue corroborated various details that Jones gave about the crimes. (Def. Mtn. Exh. B, Wolkiewicz Affidavit ¶13.) In addition, the police asked Jones about Johnson’s statement that Meyers was not the second man involved in the Hammerheads Bar & Grill robbery. (Pl. Exh. A, Oct. 15, 1999 Jones Interview at 2.) Jones explicitly refuted Johnson’s statement, and repeated her earlier statement that she had seen Meyers taking the change from Wilson’s place after the robbery at Hammerheads Bar & Grill. (Id.) Moreover, Johnson specifically acknowledged that he did not know who committed the robbery of the Striped Bass. (Pl. Exh. B, Oct. 26, 1999 Johnson Interview at 9.) Thus, in light of these statements, Johnson’s omitted statements are not strong enough when weighed against the inculpatory evidence to undermine the finding that defendants had probable cause to arrest plaintiff.

Plaintiff argues that the failure of defendants to produce Jones for a deposition prevents defendants from relying upon her previous statements, and that their failure to produce the surveillance videotape from which Jones identified plaintiff creates the presumption that the tape would exonerate plaintiff. Plaintiff provides no case law to support these propositions. A sworn affidavit by Defendant Wolkiewicz establishes that Jones made the inculpatory statements and

identified plaintiff from the videotape. (Def. Mtn. Exh. C, Wolkiewicz Affidavit ¶¶ 7-11.) The failure for Jones to cooperate with defendants at this point is not sufficient to outweigh the probable cause that was established at the time of her previous identification. Moreover, defendants have produced a cover letter indicating that a copy of the surveillance videotape was provided to plaintiff's counsel on June 25, 2001. (Def. Reply Exh. A.) I conclude that no reasonable jury could find that the defendants lacked probable cause to arrest plaintiff, that defendants made a false statement in the Arrest Warrant Affidavit, or that any material fact was omitted from that affidavit. I therefore conclude that plaintiff has not shown that a genuine factual issue remains to prove that defendants violated plaintiff's constitutional rights by arresting him on November 17, 1999.

B. State Law Claims

Plaintiff further asserts state law claims of false arrest, false imprisonment, malicious prosecution, intentional inflictions of emotional distress, outrageous conduct, invasion of privacy, negligence, gross negligence, libel, slander and defamation. As law enforcement officers acting within the scope of their duties, defendants have immunity from tort liability except in eight specifically enumerated situations, none of which apply here. See 42 Pa.C.S.A. § 8541 et seq.⁴ While an individual may not claim immunity for torts judicially determined to

⁴ 42 Pa.C.S.A. § 8541 states, in pertinent part, “[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.”

Claims for negligence alleging the following are exceptions to this general grant of immunity: (1) vehicle liability; (2) care, custody or control of personal property (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of animals. See 42 Pa.C.S.A. § 8542. It is quite apparent that the actions of defendants here are not exceptions to the general immunity from tort liability.

constitute a crime, actual fraud, actual malice, or willful misconduct, see 42 Pa.C.S.A. § 8550, plaintiff has failed to show that defendants' actions rise to this level of misconduct. "Willful misconduct" in the context of police misconduct is "misconduct which the perpetrator recognized as misconduct and was carried out with the intention of achieving exactly that wrongful purpose." In re City of Philadelphia Litig., 938 F. Supp. 1264 (E.D. Pa. 1996); see Renk v. City of Pittsburgh, 537 Pa. 68, 641 A.2d 289, 293-94 (Pa. 1994) (immunity unavailable in wrongful arrest charge only if no probable cause found and officer knew there was no probable cause). As explained above, defendants had probable cause to arrest plaintiff at the time in question. Plaintiff fails to put forth any evidence of intent by defendants to perpetrate wrongful misconduct. I conclude that plaintiff has thus failed to create a genuine issue of material fact to support an assertion that the actions by defendants constitute criminal, willful or malicious acts.⁵ Consequently, defendants are immune from liability for the state law claims.

IV. Conclusion

For the foregoing reasons, I conclude there is no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law on both counts of the amended complaint. Accordingly, the motion of defendants for summary judgment will be granted.

An appropriate Order follows.

⁵ I conclude thus that no reasonable jury could find facts to support an allegation of criminal, malicious or willful misconduct from the record here.

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

ANDRE MEYERS

Plaintiff,

v.

**THADDEUS WOLKIEWICZ,
FRED BUCK,
BERNARD MARTIN,
WILLIAM KELHOWER,
MICHAEL HARVEY,
BRIAN PETERS,
and TIMOTHY BROOKS,
Individually and in their official capacities as
City of Philadelphia Police Officers**

Defendant.

CIVIL ACTION

NO. 00-5750

ORDER

AND NOW, this 7th day of December, 2001, upon consideration of the motion of defendants (Doc. No. 16) for summary judgment pursuant to Federal Rule of Civil Procedure 56 (c), the plaintiff's response (Doc. No. 18), the reply thereto (Doc. No. 19), and the pleadings, depositions, answers to interrogatories, admissions on file and affidavits of record, and having concluded that defendants are entitled to judgment as a matter of law for the reasons set forth in the foregoing memorandum, **IT IS HEREBY ORDERED** that the motion of defendants for summary judgment is **GRANTED**.

Accordingly, judgment is hereby entered in favor of Thaddeus Wolkiewicz, Fred Buck, Bernard Martin, William Kelhower, Michael Harvey, Brian Peters, and Timothy Brooks and against Andre Meyers.

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