

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

REGINALD STINNETT	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN ROMANO,	:	
ROBERT KUHLEMEIER, and	:	
WILLIAM SUTCH	:	NO. 92-6620

MEMORANDUM ORDER

Presently before the court is defendants' Motion for Summary Judgment in this 42 U.S.C. § 1983 case.

Plaintiff is an inmate at SCI Frackville. He is serving a prison sentence of 16 to 32 years imposed following his conviction after a jury trial for robbery, aggravated assault and related offenses involving the armed robbery and shooting of an armored car courier. Plaintiff was arrested after witnesses identified him from a photo array.

Plaintiff claims that defendants, Philadelphia Detectives John Romano and Robert Kuhlemeier and Sergeant William Sutch, arrested him for these offenses without probable cause, helped secure his conviction with evidence taken from his mother's house without a warrant and by manufacturing unspecified false evidence, and are thus responsible for the false imprisonment and defamation of character of an innocent person.<sup>1</sup>

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<sup>1</sup> He suggests that these actions also constitute harassment, kidnapping and police brutality.

Plaintiff seeks damages of one million dollars from each defendant and to be released from prison.

Plaintiff's motion to suppress the questioned evidence was denied. His conviction and sentence were affirmed by the Superior Court of Pennsylvania after determining that the identifications of plaintiff as a perpetrator by witnesses were "unequivocal, consistent and independently based." The Supreme Court denied plaintiff's appeal. After appointed counsel filed a "no merit" letter, the Common Pleas Court denied plaintiff's PCRA petition. The Superior Court affirmed.

Defendants have denied plaintiff's allegations of wrongdoing and he has presented no evidence of any kind to support them.<sup>2</sup> Also, insofar as plaintiff challenges the validity of his underlying conviction and resulting incarceration with no showing that his conviction has been reversed on appeal, expunged by executive order, declared invalid by an authorized state tribunal or called into question by the grant of a federal writ of habeas corpus, his action is barred. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); Smith v. Holtz, 87 F.3d 108, 112 (3d Cir. 1996); Shelton v. Macy, 883 F. Supp. 1047, 1049

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<sup>2</sup> The non-movant cannot rest on the allegations in his complaint but must present competent evidence from which one could reasonably find each element of his claims on which he bears the burden of proof. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentson, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

(E.D. Pa. 1995). See also Zolicoffer v. F.B.I., 884 F. Supp. 173, 175-76 (M.D. Pa. 1995).

Also, the unequivocal identification of a party as the perpetrator of a crime by a witness provides ample probable cause to arrest that party. See Tangwell v. Studkey, 135 F.3d 510, 516 (7th Cir. 1998); Sharrar v. Felsing, 128 F.3d 810, 818-19 (3d Cir. 1997); Brodnicki v. City of Omaha, 75 F.3d 1261, 1264-65 (8th Cir.), cert. denied, 519 U.S. 867 (1996). A claim that evidence was unlawfully seized would not necessarily imply his conviction was wrongful, although it may be precluded by the adjudication of his suppression motion. In any event, plaintiff has not shown or suggested any compensable injury to him from such seizure other than that of being convicted and imprisoned and for this he has no cognizable claim unless his conviction is overturned. See Heck, 512 U.S. at 487 n.7.

**ACCORDINGLY**, this                    day of December, 2001, upon consideration of defendants' Motion for Summary Judgment (Doc. #18) and in the absence of any response by plaintiff thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and **JUDGMENT** is **ENTERED** in the above action for the defendants.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**