

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

CARLOS TAYLOR	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-6419
	:	
POLICE OFFICER BROCKENBROUGH,	:	
et. al.	:	
Defendants.	:	

MEMORANDUM AND ORDER

YOHN, J. DECEMBER ____, 2001

Plaintiff, Carlos Taylor (“Taylor”), brings this action against six named Philadelphia police officers (“defendants”), alleging that one of the six officers violated his civil rights by using excessive force against him and by unlawfully detaining him.¹ Neither Taylor nor any witness has been able to identify which of the six police officers allegedly committed these civil rights violations.

Presently before the court is defendants’ motion for summary judgment. Because I find that Taylor has not carried his burden of identifying the police officer responsible for the alleged violations of his civil rights, I will grant defendants’ motion.

¹ Taylor named six police officers in his complaint: Brockenbrough (#9514), Martin (#9741), Beckett (#2018), Mapp (#1415), Williams (#2016) and Golphin (#7035). However, in his response to defendants’ motion for summary judgment, Taylor agreed to dismiss Officer Beckett from the action. This action now proceeds against the five remaining police officer defendants.

BACKGROUND

On May 28, 1998, at or around 9:20 p.m., plaintiff, Carlos Taylor, was walking home from his place of employment. When Taylor reached the corner of 52nd and Larchwood Avenue, two police officers pulled up to Taylor. Taylor was told to stand facing a wall while one of the police officers proceeded to search him. Following the search, the same police officer suddenly and forcefully struck Taylor in the back and side of his torso. Taylor fell to the ground. While on the ground, this police officer kned Taylor in the lower back and side of his torso, causing Taylor to strike his head against the wall.² (This set of facts is hereinafter referred to as “the incident.”) Because Taylor was facing the wall during most of the incident, he was unable to “get a good look” at the officers’ faces. Doc. 27, Ex. A, p. 48. Taylor was only able to identify the two officers as African American males wearing City of Philadelphia Police Department uniforms. However, Taylor was able to get the license number of the police vehicle being driven by the two police officers. This tag number was traced to vehicle 18T1.

On November 18, 1998, Taylor brought this action in the Court of Common Pleas of Philadelphia County against the City of Philadelphia and Police Officers Jon Doe I and Jon Doe II, alleging violations of his civil rights and various state law claims. Defendants removed this action to the United States District Court for the Eastern District of Pennsylvania on April 6, 2001. On June 22, 2001, Taylor was granted permission to file an amended complaint. In his amended complaint, Taylor dropped the state law claims and the city from the action and named six Philadelphia police officers as defendants. On this date, the court also granted an extension of

² This description of the incident is based on the facts as set forth in Taylor’s amended complaint. (Doc. 15).

the discovery deadline in order to allow Taylor time to obtain a witness identification of the police officer involved in this incident. As the discovery deadline has now passed and no witness identification has been obtained, defendants' seek summary judgment on Taylor's amended complaint.

STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and it will 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 a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “Facts that could alter the outcome are “material”, and disputes are “genuine” if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct.” *Ideal Dairy Farms, Inc. v. John Lebatt, LTD.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). When a court evaluates a motion for summary judgment, “[t]he evidence of the non-movant is to be believed.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Additionally, “all justifiable inferences are to be drawn in [the non-movant’s] favor.” *Id.* At the same time, “an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment.” *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). In order to avoid summary judgment the non-movant must show more than “[t]he mere existence of a scintilla of evidence” for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. The non-movant cannot survive “by relying on unsupported assertions, conclusory allegations, or mere

suspicious.” *Modugno v. Pennsylvania State Police*, CIV.A. 00-3312, 2001 WL 1382279 (E.D.Pa Nov. 6, 2001) (quoting *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir. 1989)) . Moreover, the non-movant cannot rely only on allegations in the complaint to defeat summary judgment; rather, he "must rely on affidavits, depositions, answers to interrogatories, or admissions on file." *GFL Advantage Fund, LTD. v. Colkitt*, 272 F.3d 189,199 (3d Cir. 2001) (citing *Bhatla v. U.S. Capital Corp.*, 990 F.2d 780, 787 (3d Cir.1993)). Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

DISCUSSION

It is undisputed that Taylor has failed to specifically identify the police officer who engaged in the conduct that he alleges violated his civil rights.³ Defendants assert that Taylor’s failure to identify the offending police officer entitles them to summary judgment.

Courts in this circuit have held that in order to establish a civil rights violation, those responsible for the alleged violating conduct must be specifically identified.⁴ *Boykins v.*

³ In this case the alleged civil rights violations are for use of excessive force and for unlawful detention.

⁴ Taylor relies on the recent Ninth Circuit case of *Dubner v. City and County of S.F.*, 266 F.3d 959 (9th Cir. 2001), to support his proposition that it is unnecessary to specifically identify the officer responsible for his beating and unlawful detention in order to avoid summary judgment. In *Dubner*, the Ninth Circuit found that the plaintiff had made out a valid unlawful arrest claim even though the arresting officers had not been identified. In reaching this decision, the Ninth Circuit utilized a burden shifting schemata. The Ninth Circuit found that once the plaintiff demonstrated that she was arrested without a valid warrant, the burden shifted to the defendants to prove that there was probable cause for plaintiff’s arrest. 266 F.3d at 965. Because

Ambrisse Area Sch. Dist., 621 F.2d 75, 80. (3d Cir. 1980) (racial discrimination); *Perry v. Phila. Fraternal Order of Police*, CIV.A. 87-4983, 1988 WL 5093 (E.D.Pa. Jan. 20, 1988) (excessive force actionable under 42 U.S.C. § 1983). In *Sharrar v. Felsing*, the Third Circuit held that summary judgment on an excessive force claim was appropriate because the plaintiff was unable to identify which police officers were responsible for his alleged abuse, and as such, there was no evidentiary basis upon which the named defendants could be held liable for the alleged violations of plaintiff's rights. 128 F.3d 810, 821 (3d Cir. 1997). Similarly, because neither Taylor nor any witness has been able to identify the exact police officer responsible for Taylor's alleged beating, there is no evidence upon which to hold any of the defendants liable for the alleged violation of Taylor's rights. Thus, *Sharrar* instructs this court to grant the defendants' motion for summary

the defendants were unable to provide evidence as to who arrested the plaintiff or why plaintiff was arrested, the court found that the defendants had not met their burden of demonstrating probable cause. *Id.* at 966.

The Ninth Circuit's decision in *Dubner* was influenced by the fact that it was the police department's procedure to name the first officer on the scene as the arresting officer, even if that officer did not in fact make the arrest. *Id.* at 964. The Ninth Circuit found this failure to correctly identify the arresting officers to be a deliberate attempt to thwart false arrest claims by allowing police officers to "hide behind a shield of anonymity and force plaintiffs to provide evidence that they cannot possibly acquire." *Id.* at 965. In order to prevent this injustice, the Ninth Circuit shifted the burden of producing evidence of probable cause to the defendants, allowing the plaintiff's case to proceed even though she had not identified the officers responsible for her allegedly unlawful arrest. *Id.* Unlike *Dubner*, the present case does not involve a police department policy or procedure that would allow police officers who unlawfully beat or detain civilians to remain anonymous. As a result, the Ninth Circuit's opinion in *Dubner* does not inform this court's decision.

Moreover, *Dubner* is not analogous to the present situation. Unlike *Dubner*, this action does not involve a claim for unlawful arrest, but rather a claim for excessive force, which does not involve a showing of probable cause. As such, the burden shifting schemata employed by the Ninth Circuit in *Dubner* is not applicable to the present case. In addition, unlike the plaintiff in *Dubner*, who was unaware that the defendants she named in her suit were not the arresting officers, Taylor is aware that at least four of the five officers he names as defendants are not responsible for his allegedly unlawful beating and detainment.

judgment on the excessive force claim.⁵

Taylor attempts to avoid summary judgment by pointing to circumstantial evidence that links the named defendants to the incident. Defendant police officers Mapp, Williams and Golphin are only linked to the incident because according to the patrol logs, at the time of the incident, these officers were in the vicinity of 52nd and Larchwood Avenue. Clearly this evidence is not enough to allow a reasonable jury to find that any of these police officers engaged in the conduct that Taylor alleges violated his civil rights.

Defendant police officers Brockenbrough and Martin are linked to the incident because the District Assignment Records (“DARs”) indicate that they were assigned to the vehicle identified by Taylor as the one being driven by the two officers at the scene of the incident.⁶ Additionally, as uniformed African American men, Brockenbrough and Martin both fit Taylor’s description of the police officer that allegedly violated his civil rights. Viewing this evidence in

⁵ This court is unaware of any case that provides that an unlawful detention claim cannot proceed if the plaintiff has not identified the police officers responsible for the alleged wrongful detainment. However, the Third Circuit’s logic in *Sharrar* with regard to excessive force claims is equally applicable to Taylor’s unlawful detention claim. As Taylor has not identified which of the named police officers is responsible for his allegedly wrongful detention, there is no evidentiary basis upon which to hold any of these defendants liable. Therefore, as with Taylor’s excessive force claim, it is appropriate to grant defendants’ motion for summary judgment on the unlawful detention claim.

⁶ The identity of the police officers driving the car linked to the incident is not as clear as Taylor would like this court to believe. Based on the tag number provided by Taylor, the vehicle was identified as 18T1. The Internal Affairs Department (“IAD”) did not trace this vehicle to Brockenbrough and Martin, but instead to two white officers who were working in plain clothes on the night of the incident. Additionally, the incident report issued by the IAD found that the police record was inconclusive as to which police officers were actually using 18T1 at the precise time of the incident. However, for purposes of this motion the evidence must be viewed in the light most favorable to Taylor and this court will accept Taylor’s assertion that, as indicated by the DARs, Brockenbrough and Martin were assigned to 18T1 on the night in question.

the light most favorable to Taylor, it is reasonable for a jury to infer that Brockenbrough and Martin were the two police officers at the scene of the incident. This inference, however, does not allow Taylor to survive summary judgment. In his deposition, Taylor testified that although there were two officers at the scene of the incident, only one of the two officers searched and abused him.⁷ Doc. 27, Ex. A. As no discovery was conducted nor were depositions of these police officers taken, Taylor has not provided any evidence from which a reasonable jury could determine whether it was Brockenbrough or Martin who was responsible for unlawfully beating and detaining Taylor. Asking a jury to make this determination would be tantamount to asking it to perform guesswork. Defendants have the right not to be tried under such circumstances.

CONCLUSION

It has been three years since this case began and Taylor still cannot identify the specific police officer responsible for his beating and unlawful detention. Although this court finds that by viewing the evidence in the light most favorable to Taylor, there are two named police officer defendants who are more probably responsible for the incident than the other three named defendants, Taylor has not produced any evidence that would allow a rational jury to determine

⁷ In his complaint, Taylor alleges that the “Defendant Police Officers” violated his civil rights. Doc 15 ¶¶ 38, 44. Thus, based on the plurality of the allegations, Brockenbrough and Martin could both be the officers who violated Taylor’s civil rights. However, to defeat summary judgment, Taylor cannot rely solely on the allegations of his complaint but “must rely on affidavits, depositions, answers to interrogatories, or admissions on file.” *GFL Advantage Fund, LTD. v. Colkitt*, 272 F.3d 189,199 (3d Cir. 2001) (citing *Bhatla v. U.S. Capital Corp.*, 990 F.2d 780, 787 (3d Cir.1993)). Because Taylor’s deposition testimony establishes that only one police officer engaged in the allegedly violating conduct, and the evidence provides that there are two officers equally as likely to have engaged in the offending conduct, this court finds this evidence insufficient for Taylor to avoid summary judgment.

which of these two possible officers was the one who actually engaged in the violating conduct. Because there is no basis for a reasonable jury to choose which of the alternative defendants named by Taylor is the police officer responsible for the alleged civil rights violations, I will grant summary judgment for the defendants.

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Defendants.	:	

ORDER

And now, this day of December, 2001, upon consideration of the plaintiff's amended complaint (Doc. 15); defendants' motion for summary judgment (Doc. 25); plaintiff's response (Doc. 27); and defendants' reply (Doc. 28); it is hereby ORDERED that defendants' motion for summary judgment on plaintiff's amended complaint is GRANTED and judgment in is entered in favor of all defendants and against the plaintiff.

William H. Yohn, Jr., Judge