

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

KENNETH L. BROWN	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN EASTON, et al	:	NO. 99-4294
	:	
O'NEILL, J.	:	JUNE , 2001

MEMORANDUM

Plaintiff Kenneth L. Brown brings this action against John Easton, the County of Delaware, the Delaware County Office Of The District Attorney and the Criminal Investigation Division of the Delaware County District Attorney's Office (CID).¹ Before me is the municipal defendants' motions for summary judgment under Fed. R. Civ. P. 56(c), as well as Easton's motion for bifurcation under Rule 42(b).

BACKGROUND

On August 27, 1998, Brown was tried and acquitted of charges of terroristic threats. Plaintiff alleges that after he exited the courtroom Easton, a CID detective, approached him from behind, pushed him against the wall and arrested him without cause. Once outside of public view, Easton allegedly proceeded to physically and verbally abuse the plaintiff in the presence of three deputy sheriffs. Brown was then handcuffed and brought to CID. After being detained and questioned, plaintiff was released without being charged.

Plaintiff initiated this suit against Easton and the municipal defendants, alleging a violation of his civil rights pursuant to 42 U.S.C. § 1983, and asserting state law claims against

¹ The County of Delaware, the Delaware County Office Of The District Attorney and the Criminal Investigation Division of the Delaware County District Attorney's Office will be collectively referred to in this opinion as "municipal defendants".

Easton of assault and battery, false arrest and illegal imprisonment, and intentional infliction of emotional distress and defamation.

STANDARD OF REVIEW

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, reveal no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party must demonstrate “that there is an absence of evidence to support the nonmoving party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The burden then shifts to the nonmoving party to show that a genuine issue for trial exists. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

The evidence in the record is to be viewed in the light most favorable to the nonmoving party to determine whether there exists any material factual issues to be tried. See id. While all reasonable inferences must be drawn in favor of the nonmoving party, the nonmoving party still needs more than “a mere scintilla of evidence” to successfully oppose a summary judgment motion. See Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989) (citing Anderson, 477 U.S. at 249). The non-moving party will prevail against a summary judgment motion “if the dispute about a material fact is ‘genuine’, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party”. Williams, 891 F.2d at 459 (citing Anderson, 477 U.S. at 248).

DISCUSSION

Brown contends that the allegations contained in his complaint demonstrate municipal defendants’ deliberate indifference to his constitutional rights under the Fourth and Fourteen Amendments in violation of § 1983. His complaint alleges that “it was the custom and/or policy of [municipal defendants] to tolerate, condone and, through inaction, encourage the unconstitutional conduct of . . . defendant, Detective Easton” and it was “the policy or custom of

[municipal defendants] to inadequately supervise and train its criminal investigation division officers.” (Pl. Compl. at ¶¶ 41-55).

§ 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... 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. . . .

The word “person” includes municipalities; however, they are subject to liability only when the “execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” Monell v. Dep’t of Social Services, 436 U.S. 658, 694 (1978). Municipalities are not liable under the theory of respondeat superior for the actions of their employees under § 1983. Id.

Under Monell and its progeny, municipal liability may be based on policy or custom.

The Court of Appeals has defined the two terms as follows:

Policy is made when a ‘decisionmaker possess[ing] final authority to establish municipal policy with respect to the action’ issues an official proclamation, policy, or edict. A course of conduct is considered to be a ‘custom’ when though not authorized by law ‘such practices...[are] so permanent and well settled’ as to virtually constitute law.

Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990) (citations omitted).

Custom “may also be established by evidence of knowledge and acquiescence” by the municipality thereby creating an atmosphere that encourages unconstitutional behavior. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996).

In City of Canton v. Harris, the Supreme Court held that a municipality’s failure to train police officers gives rise to a constitutional violation under § 1983 when that failure “amounts to deliberate indifference to the rights of people with whom the police come into contact.” 489 U.S. 378, 388 (1989). Failure to train, discipline or control can form the basis of liability under § 1983 if the plaintiff can show deliberate indifference on the part of the municipality. Montgomery v. De Simone, 159 F.3d 120, 127 (3d Cir. 1998). Deliberate indifference has been defined as “both contemporaneous knowledge of the offending incident or knowledge of a prior

pattern of similar incidents and circumstances under which the supervisor's action or inaction could be found to have communicated a message of approval." Id.

Where a series of incidents by one officer were known but ignored by a municipality, courts have held those incidents to be proof of the existence of a municipal custom for the purposes of establishing liability under § 1983. See Beck, 89 F.3d 966. In Beck, the plaintiff presented evidence of five prior complaints of excessive use of force against a particular police officer. Id. Reversing the district court's decision to grant the municipal defendant's Rule 50(a) motion, the Beck Court stated that because "the complaints, especially [the three between April and July of 1991], came in a narrow period of time and were of similar nature, a reasonable jury could have inferred that the Chief of Police knew or should have known of the [police officer's] propensity for violence when making arrests." Id. at 973. In addition, while the complaints were investigated, the Beck Court characterized the city's grievance procedures as "superficial" and "structured to curtail disciplinary action," and noted that the investigations resulted in no disciplinary action. Id. at 974.

Proof of an unlawful policy or custom alone will not impose liability under §1983. The municipal practice must also be the proximate cause of the plaintiff's injuries. See Bielevicz v. Dubinon, 915 F.2d 845 (3d Cir. 1990). In other words, there must be a plausible nexus between the custom and the constitutional violation. Id. The causation element does not require a direct relationship but the plaintiff must show that "policymakers were aware of similar unlawful conduct in the past but failed to take precautions against future violations, and that this failure, at least in part, led to [plaintiff's] injury." Bielevicz, 915 F.2d at 851.

Plaintiff claims that CID had a custom of tolerating the use of excessive force by its officers, including Easton, and that CID failed to adequately train or supervise its officers. Plaintiff argues that these practices illustrate a deliberate indifference to his constitutional rights and provided tacit authorization under which Easton acted when he allegedly violated Brown's constitutional rights. The municipal defendants move for summary judgment on the ground that plaintiff has not established a pattern of knowledge and acquiescence or deliberate

indifference sufficient to establish the existence of a custom rendering them liable for Easton's acts under § 1983.² In order to survive summary judgment, plaintiff must produce evidence that CID's officers in general, or Easton in particular, have a pattern of using excessive force, that a responsible policymaker at CID was aware or should have been aware of this use of excessive force and that the policymaker deliberately chose to ignore it.

Plaintiff points to four incidents to show that municipal defendants tolerated excessive force and failed to train or supervise Easton properly. Prior to being hired by CID in 1987, Easton was a police officer for Chester Township. Between 1979 and 1982 Easton was involved in a series of incidents with two attorneys, Clinton Johnson and John Nails. According to Nails, his first contact with Easton was almost twenty years ago when Easton stopped Claudette Coleman, Nail's secretary at the time, for traffic violations and arrested her for disorderly conduct. After receiving a phone call from Coleman's sister, Nails went down to the station and attempted to coordinate Coleman's release. He and Easton engaged in a verbal altercation and Easton arrested him for disorderly conduct. Nails and Coleman were represented by Johnson at a preliminary hearing on their respective charges of disorderly conduct; however, all charges brought against them were subsequently dropped. Some time after this incident but while Easton was still a Chester Township police officer, Easton arrested Johnson in connection with a party Johnson was attending. Johnson alleged that Easton assaulted him leaving him with injuries requiring hospitalization. Nails represented Johnson in connection with the charges arising out of Johnson's arrest at the party. The charges were dropped and Nails claimed that thereafter Easton continually stopped him for traffic violations but never issued him a citation. As a result of these incidents Nails and Johnson filed a joint civil rights lawsuit against Easton. The suit was settled prior to trial. (See Nail's Dep. at Def.'s Mot. for Summ. J. Ex. B).

Plaintiff points to another incident that occurred prior to Easton's employment with CID. Easton was required to attend remedial courses on deadly force after he discharged his weapon at

² The municipal defendants also argue that plaintiff does not have a claim for improper hiring. As plaintiff makes no such allegation I need not address this issue.

a housing project. According to Easton he had fired his gun once toward the ground in an attempt to ward off approximately thirty civilians who had been attacking him and another officer. As a result, Easton was required to attend remedial classes on the use of deadly force. A lawsuit was subsequently filed by an unknown party but was settled. (See Easton's Dep. at Pl.'s Reply to Mot. for Summ. J. Ex. B).

Both of these incidents occurred prior to Easton's employment with CID,³ the subsequent lawsuits were both settled prior to a judgment on the merits⁴ and the firearms incident involving deadly force resulted in disciplinary action. Even if these incidents were known to CID when they hired Easton, they add little weight to plaintiff's claim of deliberate indifference to his constitutional rights. See Montgomery, 159 F.3d at 127 (holding that plaintiff failed to allege any action or inaction by police department that could be interpreted as encouraging unconstitutional actions).

Detective Easton had a long-term relationship with Terri Chandler from 1985 to 1992. Plaintiff alleges that Easton's relationship with Chandler also provides evidence of a pattern of use of excessive force and CID's tolerance of his behavior. On July 21, 1991 Chandler reported to CID that Easton had physically and verbally abused her. Easton was arrested based on these allegations and on July 22, 1991 he was suspended without pay pending the outcome of an investigation. Shortly thereafter, Chandler dropped the charges against Easton. William Ryan,

³ Evidence of prior misconduct may also be used to show a failure to screen in an improper hiring claim, another method of establishing municipal liability under § 1983. See Board of County Commissioners v. Brown, 520 U.S. 397, 411 (1997) (incidents can show failure to screen in hiring "only where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be a deprivation of a third party's federally protected right can the official's failure to adequately scrutinize the applicant's background constitute deliberate indifference."). Plaintiff has not sought to impose liability under this theory.

⁴ Easton was involved in one civil suit that was adjudicated on the merits, captioned William F. Young v. Jack Azpel et al., E.D.Pa. Docket #92-CV-5033 (1990). This suit against Easton and other CID officers for an alleged false arrest occurred while Easton was employed at CID and resulted in verdicts in favor of all defendants.

the Delaware County district attorney at the time, required Easton to undergo a psychological evaluation before he was reinstated. The psychological evaluation performed by Gerald Cooke, Ph.D., indicated that Easton was fit for duty and Easton was reinstated on September 10, 1991 following seven weeks of suspension. Easton's reinstatement was contingent on ending all contacts with Chandler and he was informed that a violation would result in suspension or dismissal.

However Easton and Chandler began dating again in approximately December of 1991. While the exact date is uncertain, some time during the winter of 1991-1992 Chandler visited Michael Schull, the director of CID, to get advice from him. Chandler stated that she went to the Schull's house "covered in blood" after being physically abused by Easton. (See Chandler's Dep. at Def.'s Mot. for Summ. J. Ex. E). According to both Chandler and Schull, during this conversation Schull encouraged Chandler to file charges against Easton. Chandler pressed charges but later dropped them against the advice of Schull.

Plaintiff alleges that CID did "nothing" after Chandler's visit to Schull's house and that this inaction illustrates CID's "tacit approval" of his behavior. (Pl.'s Reply to Mot. for Summ. J. at 10.) Easton was, in fact, suspended on April 24, 1992. Since the earliest the incident could have occurred was in December 1991, the largest gap possible between the time of the incident and the disciplinary action is approximately four months. Plaintiff claims that the Chandler incident was ignored until April 9, 1992 when Easton was accused of assaulting three males in the Toby Farms section of Chester Township.⁵ The police were called; however, neither Easton nor any of the three men were arrested. In a letter dated April 24, 1992 from Schull to Easton, Schull wrote that Easton was suspended because of the unauthorized contacts with Chandler and the allegations of assault at Toby Farms. See Id. at Ex. D. Easton was suspended from April 24, 1992 until May 29, 1992, the last three weeks of which were served without pay. No criminal charges related to the Toby Farms incident were filed against Easton.

⁵ Defendants maintain that Easton was off duty his incident; however, it is undisputed that CID was made aware of the incident.

While plaintiff correctly points to a significant time lag between Easton's suspension and Chandler's visit to Schull's home, CID's response with respect to Chandler's allegations demonstrates considerably more than deliberate indifference. First, after Chandler's report to CID on July 21, 1991, Easton was suspended for almost two months without pay. This suspension was promptly given the day after the alleged incident and CID expressly stated that his reinstatement was contingent on ending all contacts with Chandler and that a violation would result in suspension or dismissal. Second, Easton was suspended again for five weeks after he admitted to being in contact with Chandler on April 10, 1992 and for the Toby Farms allegations.

In Beck, all five filed complaints were related to the police officer's use of excessive force while arresting civilians, all five complaints occurred during a period of three years and three months and none of the complaints resulted in disciplinary action. 89 F.3d 966. Aside from the incident that gave rise to this suit the only incident alleged by plaintiff that might have occurred while Easton was on duty was the alleged assault at Toby farms for which he was promptly disciplined. The two off-duty incidents involving Chandler did not result in formal complaints against Easton and they occurred over six years prior to plaintiff's encounter with Easton in the Delaware County Courthouse in 1998. Further, unlike the police officer in Beck, even though the allegations were never proven he was disciplined for each of these events. See also Rogers v. City of Little Rock, 152 F.3d 790 (8th Cir. 1998).⁶

In light of the lack of formal written complaints, the low number of allegations, the long time period involved, the fact that the precipitating events occurred while Easton was off duty and the fact disciplinary action was taken against Easton, it is clear that plaintiff's evidence is insufficient to impose liability under § 1983. Plaintiff cannot establish that municipal defendants were deliberately indifferent to unconstitutional activity. Plaintiff has not demonstrated that

⁶ In Rogers, two complaints of violent behavior were investigated and resulted in the suspension of the police officer. Denying municipal liability under § 1983, the Rogers court held that the plaintiff had made no showing that the police chief was deliberately indifferent to the officer's actions and said the response of the police department which consisted of investigations of each complaint and suspensions "was sufficient as a matter of law to defeat a claim that the city responded inadequately to . . . prior misconduct." Rogers, 963 F.3d at 799.

Easton violated his constitutional rights through a custom of tolerance of use of excessive force or because CID failed to properly train or supervise its officers. Therefore the municipal defendants' motion for summary judgment will be granted.

Easton filed a motion to bifurcate the trial under Rule 42(b) seeking to separate plaintiff's claims against the municipal defendants from those asserted only against him. As I am granting the municipal defendants' motion for summary judgment, Easton's motion to bifurcate will be denied as moot.

An appropriate Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH L. BROWN

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CIVIL ACTION

v.

JOHN EASTON, et al

NO. 99-4294

ORDER

AND NOW, this day of June, 2001, in consideration of the municipal defendants' motion for summary judgment, plaintiff's responses thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED:

1. The municipal defendants' motion for summary judgment is GRANTED and judgment is entered in favor of defendants County of Delaware, Delaware County Office Of The District Attorney, and Criminal Investigation Division of the Delaware County District Attorney's Office and against plaintiff.
2. Defendant John Easton's motion to bifurcate plaintiff's claims under Rule 42(b) is DENIED as moot.

THOMAS N. O'NEILL, JR., J.