

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

RAFAEL ANTONIO MOLINA : CIVIL ACTION
: :
v. : :
: :
CITY OF LANCASTER, et. al. : NO. 00-3508

MEMORANDUM AND ORDER

HUTTON, J.

March 28, 2002

Presently before the Court are the Plaintiff's Motion for Summary Judgment (Docket No. 25) and Defendants McGuire, Walters, Macey, Bonilla, Lescosky, Edmundson and Kulman's Response to Plaintiff's Motion for Summary Judgment (Docket No. 27). For the reasons discussed below, the Plaintiff's Motion for Summary Judgment is **DENIED**, and judgment is entered in favor of Defendants McGuire, Walters, Macey, Bonilla, Lescosky, Edmundson and Kulman.

I. BACKGROUND

On November 3, 1995, Rafael Antonio Molina ("Plaintiff") was arrested and charged with possession of a controlled substance with intent to deliver and tampering with evidence. After a preliminary hearing, Plaintiff was held over for trial and bail was set at \$75,000. Plaintiff remained in the Lancaster County Prison for six months until bail was reduced. While out on bail in May of 1996, Plaintiff was arrested and charged with another drug offense.

Plaintiff was tried and convicted of this second drug offense and sentenced to five to ten years in prison. On May 15, 1998, the charges against Plaintiff based on the November 3, 1995 arrest were nol prossed by the District Attorney's Office of Lancaster County.

On May 11, 2000, Plaintiff filed the instant pro se civil rights action naming as defendants the City of Lancaster, Pennsylvania Attorney General Mike Fisher, the Lancaster County District Attorney's Office, District Attorney Joseph C. Madenspacher, Assistant District Attorney Cheryl A. Ondeccheck, the Lancaster County Drug Enforcement Task Force, Sergeant Joseph McGuire, Detective Jan Walters, Detective Gregory Macey, Detective George Bonilla, Detective Andrew Lescosky, Detective Edmundson, and Detective Kulman. In his Complaint, Plaintiff contends that Defendants lacked probable cause for the November 3, 1995 arrest in violation of the Fourth Amendment to the United States Constitution. He also alleged causes of action based on false arrest, false imprisonment and excessive force. The case was originally filed in the United States District Court for the Middle District of Pennsylvania, and was subsequently transferred to this Court.

On March 30, 2001, the City of Lancaster, Pennsylvania Attorney General Mike Fisher, the Lancaster County District Attorney's Office, District Attorney Joseph C. Madenspacher, Assistant District Attorney Cheryl A. Ondeccheck and the Lancaster

County Drug Enforcement Task Force were dismissed as Defendants to this action under Federal Rule of Civil Procedure 12(b)(6). The Court also dismissed Plaintiff's claims for false arrest, false imprisonment and excessive force against the remaining Defendants. Sergeant McGuire and Detectives Walters, Macey, Bonilla, Edmundson and Kulman then filed a Motion for Summary Judgment on Plaintiff's remaining Fourth Amendment claim on August 9, 2001, but Plaintiff neglected to respond to the Motion. On October 1, 2001, the Court ordered Plaintiff to respond to Defendants' Motion within thirty days. Plaintiff then filed his own Motion for Summary Judgment on October 30, 2001. Defendants responded to Plaintiff's Motion on March 5, 2002 and renewed their original Motion for Summary Judgment. Since the issues have been fully briefed by both parties, summary judgment is now properly before this Court for consideration.

II. LEGAL STANDARD

Summary judgment is appropriate "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). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant

adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which 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, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

III. DISCUSSION

Defendants McGuire, Walters, Macey, Bonilla, Edmundson and Kulman now move for summary judgment on Plaintiff's claim under section 1983 for malicious prosecution. Section 1983 imposes civil liability upon any person who, acting under the color of state law,

deprives another individual of any rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C. § 1983; see also Conn v. Gabbert, 526 U.S. 286, 289, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999); Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000). Thus, to prevail under section 1983, a plaintiff must establish (1) that the defendants were "state actors," and (2) that they deprived the plaintiff of a right protected by the Constitution. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). In the instant case, Defendants do not contest that they, as police officers for the City of Lancaster, are state actors for the purposes of section 1983. Thus, the pertinent inquiry becomes whether the Defendants deprived Plaintiff of his federal rights. According to Plaintiff, Defendants violated his Fourth Amendment right when they arrested him on November 3, 1995 without probable cause.

A. Malicious Prosecution

A civil rights claim for malicious prosecution is actionable under section 1983. See Losch v. Borough of Parkesburg, Pennsylvania, 736 F.2d 903, 907-08 (3d Cir. 1984). In order to maintain a section 1983 claim for malicious prosecution based upon the Fourth Amendment, Plaintiff has to prove: "(1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; and (4) the defendants acted maliciously or for a

purpose other than bringing the plaintiff to justice." Donahue v. Gavin, 280 F.3d 371, 379 (3d Cir. 2002); see also Herr v. Pequea Township, 274 F.3d 109, 118 (3d Cir. 2001); Gallo v. City of Phila., 161 F.3d 217, 222 (3d Cir. 1998). Under the United States Court of Appeals for the Third Circuit's ruling in Gallo, the plaintiff must also establish that he was seized within the meaning of the Fourth Amendment. See Gallo, 161 F.3d at 222; see also Torres v. McLaughlin, 163 F.3d 169, 174 (3d Cir. 1998). Here, Defendants concede that Plaintiff was seized when he was arrested and placed in jail for six months. See Defs.' Resp. at 5. However, Defendants contend that Plaintiff may not maintain a claim for malicious prosecution because the criminal proceedings did not terminate in Plaintiff's favor and because there was probable cause to initiate the arrest and subsequent proceedings. See id. at 6.

1. Favorable Termination

A favorable termination of a criminal proceeding results when (1) a magistrate discharges the case at a preliminary hearing, (2) a grand jury refuses to indict, (3) the prosecutor formally abandons the proceedings ("nolle prosequi" or "nol pros") (4) the indictment or information is quashed, (5) a criminal defendant is acquitted, or (6) the accused receives a final order in his or her favor by a trial or appellate court. See Donahue v. Gavin, 280 F.3d 371, 383 (3d Cir. 2002) (quoting Restatement (Second) of Torts, Section 659 (1976)). Under common law doctrine of "nolle

prosequi," or nol pros, prosecutors have the power to decide whether to proceed with the prosecution of a charged defendant. In re Richards, 213 F.3d 773, 782 (3d Cir. 2000). In Pennsylvania, "[a] nolle prosequi is a voluntary withdrawal by a prosecuting attorney of proceedings on a particular criminal bill or information, which at anytime in the future can be lifted upon appropriate motion in order to permit a revival of the original criminal bill or information." Commonwealth v. Ahearn, 543 Pa. 174, 670 A.2d 133, 135 (Pa. 1996). Accordingly, "nolle prosequi acts neither as an acquittal nor a conviction." Id. at 136.

As noted above, the District Attorney in the instant case nol prosed the charges against Plaintiff in May of 1998. However, the dismissal of the claims does not necessarily indicate that the criminal proceeding terminated in Plaintiff's favor. As the Third Circuit recently noted, "while 'a grant of nolle prosequi can be sufficient to satisfy the favorable termination requirement for malicious prosecution, not all cases where the prosecutor abandons criminal charges are considered to have terminated favorably.'" Donahue v. Gavin, 280 F.3d 371, 383 (3d Cir. 2002) (quoting Hilfirty v. Shipman, 91 F.3d 573, 579-80 (3d Cir. 1996)). Rather, in order for a nol pros to signify a favorable termination in a criminal matter, there must be a "'final disposition . . . such as to indicate the innocence of the accused.'" Id. In other words, "a § 1983 malicious prosecution plaintiff 'must be innocent of the

crime charged in the underlying prosecution.'" Id. (quoting Hector v. Watt, 235 F.3d 154, 156 (3d Cir. 2000)).

In the instant case, as in Donahue, "the resulting dismissal can hardly be described as 'indicating the innocence of the accused.'" Id. at 384. Rather, the evidence of record indicates that the prosecutor nol prosed the November 3, 1995 charges against Plaintiff because Plaintiff, while out on bail, was re-arrested on drug charges and was subsequently tried and convicted of these second charges, resulting in a sentence of five to ten years. See Defs.' Resp., Ex. 2. There record is devoid of any evidence to support Plaintiff's allegation that the November 3, 1995 charges against him were dismissed for lack of evidence. Accordingly, Plaintiff is not entitled to summary judgment on this ground.

2. Probable Cause

Defendants next argue that, even if the criminal proceedings are deemed to have terminated in Plaintiff's favor, Plaintiff fails to maintain a claim for malicious prosecution because the officers had probable cause to place Plaintiff under arrest on November 3, 1995. See Defs.' Resp. at 7. While the existence of probable cause is generally a jury question, a probable cause determination is appropriate for summary judgment where there are no genuine issues of material fact and no credibility issues. See Deary v. Three Un-Named Police Officers, 746 F.2d 185, 192 (3d Cir. 1984); Telepo v. Palmer Township, 40 F.Supp.2d 596, 611 (E.D. Pa. 1999);

Gatter v. Zappile, 67 F.Supp.2d 515, 519 (E.D. Pa. 1999). A showing of probable cause requires "proof of facts and circumstances that would convince a reasonable, honest individual that the suspected person is guilty of a criminal offense." Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993).

In the instant case, the evidence of record could not lead a reasonable juror to conclude that the arrest of Plaintiff lacked probable cause. On November 3, 1995, officers executed a search warrant at 332 South Pine Street, Lancaster, Pennsylvania. See Defs.' Resp., Ex. A, Supplemental Offense Report. Upon entry, the officers saw Shawn Williams running from the bathroom. See id. As Defendant Macey secured Williams, he noticed Plaintiff in the bathroom. See id. The uncontested facts show that Plaintiff was found in the bathroom, near the toilet with empty zip lock bags on the floor and drugs in the toilet. Moreover, according to the Offense Report, "[t]hree razor blades, two plastic bags of empty zip lock packet, a Tanita electronic scale, a wallet with ID in the name of Julio Rojas and a letter addressed to Rafael Molina were seized from a black leather coat that Molina admitted was his property." See Defs.' Resp., Ex. A.

Probable cause does not require the officers to have evidence beyond a reasonable doubt. Rather, "[p]robable cause to arrest is said to exist where the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to

warrant a reasonable, prudent person in believing that an offense has been or is being committed by the person to be arrested." Walker v. West Caln Township, 170 F.Supp.2d 522, 527 (E.D. Pa. 2001) (citing Gerstein v. Pugh, 420 U.S. 103, 111-12, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975)). Defendants in the instant case have clearly met this standard. The uncontested facts show that Plaintiff was found in the bathroom, near the toilet, with empty zip lock bags on the floor and drugs in the toilet. In the bedroom closest to the bathroom, the officers retrieve crack cocaine. Plaintiff's jacket contained razor blades, two more empty zip lock bags and an electronic scale. Drawing all reasonable inferences in the light most favorable to the Plaintiff, the Court finds that there is no genuine issue of material fact as to whether probable cause existed to arrest Plaintiff on November 3, 1995. Accordingly, Plaintiff may not maintain a claim under section 1983 for malicious prosecution under the Fourth Amendment. Summary judgment is entered in favor of Defendants and against Plaintiff.

Because the Court has found that Plaintiff, as a matter of law, cannot maintain a cause of action under section 1983 for malicious prosecution, the Court need not address Defendants' arguments concerning qualified immunity.

An appropriate Order follows.

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O R D E R

AND NOW, this 28th day of March, 2002, upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 25) and Defendants McGuire, Walters, Macey, Bonilla, Lescosky, Edmundson and Kulman's Response to Plaintiff's Motion for Summary Judgment (Docket No. 27), IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 25) is **DENIED**.

IT IS FURTHER ORDERED that Defendants Response and renewed Motion for Summary Judgment (Docket No. 27) is **GRANTED**.

Summary Judgment is hereby entered in favor of the Defendants and against Plaintiff.

The Clerk of the Court shall mark the case **CLOSED**.

BY THE COURT:

HERBERT J. HUTTON, J.