

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

TINA JACKMAN, Administratrix : CIVIL ACTION
of the Estate of DAMON WROTEN, :
Plaintiff, :
 :
v. :
 :
CITY OF PHILADELPHIA, et al. :
Defendants. : No. 01-686

MEMORANDUM AND ORDER

J. M. KELLY, J. APRIL ,2002

Presently before the Court is a Motion For Summary Judgment filed by the Defendant, City of Philadelphia. Plaintiff, Administratrix of the Estate of the Deceased, Damon Wroten ("Wroten"), filed a pro se Complaint¹ against several unnamed individual officers² and the City of Philadelphia alleging violations of the Fourth and Fourteenth Amendments of the U.S. Constitution under 42 U.S.C. § 1983 (1994) and claiming wrongful death and negligence, seeking compensatory and punitive damages as well as fees and costs. Discovery in this matter concluded November 1, 2001 and this case was placed in the trial pool on December 10, 2001. Apart from the Plaintiff's initial Complaint,

¹ Plaintiff was assisted in the drafting of her Complaint by a law firm.

² On May 9, 2001 this Court notified Plaintiff of the service requirements under Federal Rule of Civil Procedure 4(m). On June 8, 2001 Plaintiff served only the City of Philadelphia. Accordingly, the complaint against the individual police officers is dismissed without prejudice for failure to serve.

Defendant City of Philadelphia's Answer and subsequent Motion for Summary Judgment, filed November 6, 2001, no other pleadings have been filed with this Court. For the following reasons, Defendant's Motion is granted.

I. BACKGROUND

This suit arises out of the fatal shooting of Damon Wroten ("Wroten"). On February 9, 1999, at approximately 8:00 p.m., after Wroten shot and killed one Jimmy Hamilton, he fled the crime scene. The investigating police officers supplied the police radio with a description of Wroten and his gray Mazda MPV minivan. At 8:12 p.m., Vincent Arburg, Wroten's step-father, called the police radio and advised that the male they were looking for was his step-son, that Wroten was high on drugs and that Wroten told him that if the police came after him, he would "shoot it out with them."

At 9:50 p.m., the 12th District police officers saw a gray Mazda minivan parked and unattended at 52nd and Greenway Avenue. At 9:53 p.m., Mr. Arburg was brought to that location where he identified the van as the one Wroten was driving. At 10:08 p.m., the 12th District police officers saw Wroten enter the van and drive south on 53rd Street. The officers followed the van to 52nd Street and Warrington Avenue where it struck another car and came to a stop.

Officer Bickel, who was in a marked patrol car, pulled up

behind the van. Wroten backed up the van and struck the front of Officer Bickel's patrol car. Officer Bickel then exited his patrol car and drew his Glock pistol as he approached the driver's side of the van. As he did so, Wroten pointed the gun at an officer who was at the front of the van. Officer Bickel told Wroten to drop the gun. Wroten turned around and fired one time at Officer Bickel who responded by firing his gun several times. Police officer Alfonse Johnson, who was standing next to Officer Bickel, fired his gun five times. Wroten momentarily fell across the van's front seat but then rose again and pointed his gun at the officers a second time. Officer Bickel fired the remaining rounds in his gun at Wroten as he and Officer Johnson backed up to take cover.

At the same time, Police Officers Blocker and Sanschious who were on the passenger's side of the van also fired their guns when they saw Wroten point his gun at Officer Bickel and Johnson. When Wroten fell across the front seat of the van again, Officer Kirkland approached and removed Wroten's firearm. Fire Rescue arrived and transported Wroten to the Hospital at University of Pennsylvania where at 10:45 p.m., Dr. Shapiro pronounced him dead.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56(c), summary judgment "shall be rendered forthwith 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). This Court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "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 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

III. DISCUSSION

A. Section 1983 Claims (Counts II and III)

In Count II, Plaintiff alleges that Defendant City of

Philadelphia conspired with unnamed individual police officers to deprive the decedent of his constitutional rights. In Count III, Plaintiff alleges that the City of Philadelphia, through its custom and policy, violated the Decedent's constitutional rights. To bring a section 1983 claim, Plaintiff must allege that a person, while acting under the color of law, deprived him of some constitutional right. See 42 U.S.C. § 1983. Although a city as an entity can not be held vicariously liable for the acts of its employees under section 1983, it may be held directly liable if the constitutional violation occurred through the city's custom or policy. See Monell v. New York City of Dep't of Social Serv., 436 U.S. 658, 694 (1978); see also City of Canton v. Ohio, 489 U.S. 378, 388 (1989); Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996).

The conspiracy charge against the City fails, as Defendant suggests, for two reasons. First, Plaintiff fails to state a cause of action under section 1983 in alleging that the City entered into a conspiracy with unnamed police officers to deprive the Decedents his Constitutional rights. Second, Plaintiff has presented no evidence to support a claim of conspiracy, even in the fact assertions contained in her own Complaint. As for Count III, Plaintiff has presented no evidence, other than the

conclusory allegations contained in her initial Complaint³, to support a section 1983 claim against the Defendant City of Philadelphia. Therefore, summary judgment is granted in favor of the Defendant City of Philadelphia as to the § 1983 claims.

B. State Law Claims

As all federal claims against the City of Philadelphia have been dismissed, all state law claims against the City of Philadelphia must be dismissed for lack of subject matter jurisdiction.

³ In the Complaint, Plaintiff's only factual assertion which differs from the factual description of the events supplied by the City is that Plaintiff claims she arrived on the scene to find her son "on the ground shot and the defendants, Police Officers John Doe #1-4, repeatedly kicking him."

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

TINA JACKMAN, Administratrix : CIVIL ACTION
of the Estate of DAMON WROTEN, :
Plaintiff, :
 :
v. :
 :
CITY OF PHILADELPHIA, :
Defendant. : No. 01-686

O R D E R

AND NOW, this day of April, 2002, in consideration
of the Motion For Summary Judgment filed by the Defendant, City
of Philadelphia (Doc. No. 8), it is **ORDERED**:

1. Count I and all state law claims against the individual
police officers are **DISMISSED** without prejudice for failure
to serve.
2. Defendant City of Philadelphia's Motion For Summary Judgment
as to Counts II and III is **GRANTED**. Judgment is entered in
favor of Defendant, City of Philadelphia, and against, Tina
Jackman, Administratrix of the Estate of Damon Wroten, on
Counts II and III of the Complaint.
3. All remaining state law claims, Counts IV, V and VI are
DISMISSED for lack of subject matter jurisdiction.

BY THE COURT:

JAMES MCGIRR KELLY, J.