

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

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SAMUEL A. LITZENBERGER,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 01-5454
	:	
TROOPER KIRK R. VANIM,	:	
CORONEL PAUL J. EVANKO, PA	:	
State Police Commissioner, and	:	
LIEUTENANT JAMES J. LILL,	:	
	:	
Defendants.	:	

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**MEMORANDUM**

ROBERT F. KELLY, Sr. J.

JULY 31, 2002

Presently before this Court is the Motion for Summary Judgment filed by the Defendants, Pennsylvania State Trooper Kirk R. Vanim (“Vanim”), Pennsylvania State Police Commissioner Coronel Paul J. Evanko (“Evanko”), and Lieutenant James J. Lill (“Lill”) and the Motion for Partial Summary Judgment filed by the Plaintiff Samuel A. Litzenberger (“Litzenberger”). Litzenberger filed a Complaint with this Court alleging that the Defendants violated 42 U.S.C. § 1983 (“§ 1983”) and the Fourth and Fourteenth Amendments. Litzenberger also alleges state law violations against Vanim. For the reasons that follow, the Defendants’ Motion for Summary Judgment will be granted and Litzenberger’s Motion for Partial Summary Judgment will be denied.

**I. FACTS**

For the purposes of this Motion for Summary Judgment, the facts are taken in the light most favorable to Litzenberger. On October 29, 1999, while driving in his car on Route 212

in Richland Township, Pennsylvania, Litzenberger attempted to pass a slow moving pick-up truck (Litzenberger later discovered that the driver of the truck was Trooper Vanim, who was off duty and out of uniform at the time). While Litzenberger attempted to pass, Vanim allegedly increased the speed of the truck and drove to the left of the center of the highway in order to hinder Litzenberger's passage. Despite these actions, Litzenberger was eventually able to pass Vanim. However, Vanim then began to follow Litzenberger closely. Litzenberger passed several other vehicles while traveling on Route 212 and eventually lost sight of Vanim. Litzenberger next drove onto his driveway and parked. Several seconds later, Vanim pulled up and parked his truck across the entrance to Litzenberger's driveway, blocking Litzenberger from leaving in his car.

Vanim exited the truck and approached Litzenberger while Litzenberger yelled at Vanim to move his truck. Vanim then showed Litzenberger his badge and asked to see Litzenberger's driver's licence, insurance card, and registration card. Litzenberger, an attorney, asked, "[w]hat right do you have to ask for that when you're out of uniform and stopping me?" (Pl.'s Dep. at 23). Vanim replied, "I didn't stop you. I just pulled over to talk to you." (Id.). Litzenberger responded, "that's a bunch of bologna. Your truck is across the driveway, and I want to get out and you're blocking me." (Id.). Vanim replied, "I'll be moving it when I'm through talking to you or doing what I want to do here." (Id.). Litzenberger then stated, "[w]hat right do you have to ask for these cards or to stop me when you are not in uniform and off duty?" (Id. at 23-24). Vanim did not respond. However Vanim did ask why Litzenberger had jeopardized him and his passenger. (Id. at 24). Litzenberger told Vanim that he thought that was a ridiculous question to ask after Vanim had tried to run him off the road and had tailgated him.

(Id.). Eventually, Vanim relented and said “[a]ll right, I’m moving it and I don’t need your license anyway because I have your plate number and I’ll get your I.D. from that [sic] back at the station.” (Id. at 25). The entire encounter lasted three to five minutes. (Id. at 26).

The next day, Vanim called the other drivers that Litzenberger had passed to see what they recalled of the encounter. According to the Defendants, the other drivers remembered the events taking place on Route 212. Vanim then prepared ten traffic citations including improper passing, following too closely, reckless and careless driving, and failure to display a driver’s licence. After receiving the citations in the mail, Litzenberger requested a hearing to contest the citations. The hearing was held on February 9, 2000, in front of the District Justice. During the hearing, Litzenberger argued that Vanim had no authority to pursue him and issue the citations because he was off duty and out of uniform at the time. Vanim and another witness named Brandon Hayslip (“Hayslip”) testified as to Litzenberger’s driving on October 29, 1999. Hayslip testified that Litzenberger tailgated him and that Litzenberger eventually passed him on an area of the highway where visibility was obscured because of a curve in the road. (Feb. 9, 2000, Hearing Transcript at 20). Hayslip then testified that Litzenberger sped away after passing him. (Id.). At the end of the hearing, the Justice concluded:

Mr. Litzenberger, your actions and careless disregard for others in the testimony that was presented to this Court is appalling for someone of your state and stature. This Court believes that you should be punished for your actions, but I can’t rightfully deny your Rights or anybody else’s Rights in this courtroom. It is clear in the Statute and in case law that the Trooper [Vanim] acted beyond his statutory authority and that has to be enforced because he was required to be in uniform and he was not. Based on counsel’s argument and those facts, the Court is dismissing all the charges.

(Id. at 61).

After the hearing, Vanim contacted the Bucks County District Attorney's office and requested that they file an appeal of the Justice's determination. The District Attorney's office decided to file papers with the Prothonotary asking that the charges be reinstated. The request was denied.

On October 27, 2001, Litzenberger filed his first Complaint and initiated this suit. In Litzenberger's Amended Complaint, filed on December 17, 2001, he alleges that his § 1983, Fourth Amendment claims are based on allegations of malicious prosecution, false arrest and abuse of process. While the Amended Complaint is unclear, it also appears that Litzenberger is seeking to bring these four allegations as state law claims along with intentional infliction of emotional distress.

## **II. STANDARD**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is

material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322;Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

### **III. DISCUSSION**

#### **A. 42 U.S.C. § 1983 Claims Against Vanim**

“A prima facie case under § 1983 requires a plaintiff to demonstrate: (1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law.” Groman v. Twp. of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). Litzenberger may maintain a § 1983, Fourth Amendment claim based upon allegations of malicious prosecution, false arrest, and abuse of process. See e.g. Russoli v. Salisbury Township, 126 F. Supp.2d 821, 852-854 (E.D. Pa. 2000); Palma v. Atlantic County, 53 F. Supp.2d 743, 755 (D.N.J. 1999). However, in order to maintain his § 1983 action based on these allegations, Litzenberger must first meet the requirements of § 1983 and show a constitutional violation. Berg v. County of Allegheny, 219 F.3d 261, 268 (3d Cir. 2000)(stating that “[s]ection

1983 is not a source of substantive rights and does not provide redress for common law torts--the plaintiff must allege a violation of a federal right.”); Taylor v. City of Philadelphia, No. 96-740, 1998 WL 151802, at \*8 n. 7 (E.D. Pa. Apr. 1, 1998)(stating that “a plaintiff must do more than simply prove the common law tort. He must also implicate the Fourth Amendment’s protections against unreasonable searches and seizures.”).

The Defendants concede that Vanim acted under the color of state law and that he was a state actor. Therefore, we will only discuss whether Litzenberger has established a violation of his Constitutional rights. Litzenberger alleges that the Defendants violated his Fourth Amendment rights against unreasonable seizure when Vanim followed him, blocked his driveway, refused to immediately move his truck, and subsequently issued him ten traffic citations. The temporary detention of individuals during an automobile stop by the police, even if only for a brief period, constitutes a seizure within the meaning of the Fourth Amendment. Whren v. U.S., 517 U.S. 806, 809-10 (1996). Therefore, an automobile stop is subject to the Constitutional requirement that the seizure not be “unreasonable” under the circumstances. Id. However, generally, “the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” Id. Here, no reasonable jury could conclude that Vanim did not have probable cause to stop Litzenberger.<sup>1</sup> Therefore, Litzenberger has not established a genuine issue of material fact concerning the issue of probable cause. See Anderson, 477 U.S. at 249 (stating that an issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party).

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<sup>1</sup> The Defendants deny that Vanim stopped Litzenberger. However, viewing the facts in the light most favorable to Litzenberger, we will assume that Vanim stopped and thus seized Litzenberger.

First, Vanim testified that he witnessed Litzenberger pass him and the other vehicles where the highway had two solid yellow lines. (Feb. 9, 2000, Hearing Transcript at 28-32). Vanim also testified that he witnessed Litzenberger traveling at an unsafe distance behind the other vehicles. (Id.). A police officer who personally observes a traffic violation has probable cause to stop the vehicle and offending driver. U.S. v. \$404,905.00 in U.S. Currency, 182 F.3d 643, 646 (8th Cir. 1999)(citing Pa. v. Mimms, 434 U.S. 106, 109 (1977)); Com. v. Lymph, 538 A.2d 1368, 1370 (Pa. Super. 1988)(stating that “[o]bservation of erratic driving has been recognized as providing the basis for probable cause to arrest for reckless driving”).

Second, two witnesses have testified about Litzenberger’s poor driving on the day in question. The pertinent portion of the first witness, Hayslip’s, testimony has been described in Section I, “Facts”, *supra*. The second witness, Juanita Jean Laga (“Laga”) testified at her deposition that Litzenberger’s car “flew by us” and that Litzenberger passed her vehicle at such a high rate of speed that “[a] young boy on the left-hand side of the road fell of his bicycle.” (Laga Dep. at 6). Laga further testified that she and her father-in-law sped up to follow Litzenberger in order to get his licence plate number to give to the police. (Id. at 6-7).

Third, Litzenberger does not deny that he passed the vehicles. In light of the evidence provided in this case, no reasonable jury could find that Vanim lacked probable cause to stop Litzenberger, and thus, the seizure was reasonable and constitutional. Furthermore, it is of no import that Vanim violated state law by being out of uniform when he confronted Litzenberger. The fact that Vanim’s actions may have violated state law does not mean that his actions violated § 1983 or the Fourth Amendment. Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1990) (stating that “[t]he plain language of section 1983, interpreted and underscored by

the Supreme Court in Maine v. Thiboutot, 448 U.S. 1, 100 S. Ct. 2502, 65 L. Ed.2d 555 (1980), solely supports causes of action based upon violations, under the color of state law, of *federal* statutory law or constitutional rights. Section 1983 does not provide a cause of action for violations of state statutes, and, as the district court observed, a state statute cannot, in and of itself, create a constitutional right.”)(emphasis original).

Moreover, even if Litzenberger had been able to establish the necessary Constitutional violation, he cannot meet the specific factors necessary to establish claims of malicious prosecution, false arrest and abuse of process. Litzenberger’s malicious prosecution and false arrest claims stem from his encounter with Vanim in his driveway and from Vanim subsequently issuing the ten citations. However, both malicious prosecution and false arrest require, *inter alia*, that the defendant lack probable cause. Pulice v. Enciso, \_\_\_ F.3d \_\_\_, 2002 WL 1575090, at \*3 (3d Cir. Jul. 17, 2002); Donahue v. Gavin, 280 F.3d 371, 379 (3d Cir. 2002)(detailing the requirements for malicious prosecution); Groman, 47 F.3d at 634 (detailing the requirements of false arrest). As stated above, Vanim had probable cause to stop Litzenberger and to issue him the traffic citations. Therefore, Vanim may not be held liable for malicious prosecution or false arrest. Litzenberger’s abuse of process claim is based upon the allegedly improper appeal of the District Justice’s decision taken by the District Attorney’s office. Although Vanim may have requested that the District Attorney’s office appeal the decision, it was the District Attorney’s office who made the decision and attempted to have the citations reinstated. Even assuming that this course of action was improper, it was not Vanim who allegedly abused the process, but the District Attorney’s office. Therefore, Vanim may not be held liable for abuse of process.

**B. State Law Claims Against Vanim**

The Defendants contend that Litzenberger's state law claims against Vanim must be dismissed because Vanim has sovereign immunity under 1 Pa. C.S.A. § 2310. This statute bars state law actions against the Commonwealth except for negligence actions involving nine narrow exceptions, none of which apply to this case. 1 Pa. C.S.A. § 2310; 42 Pa. C.S.A. § 8522; see also Moore v. Com., Dept. of Justice, 538 A.2d 111, 113 (Pa. Commw. Ct. 1988)(stating that the exceptions to sovereign immunity are to be narrowly interpreted). Furthermore, Commonwealth officials acting within the scope of their duties enjoy the same immunity as the Commonwealth itself. LaFankie v. Miklich, 618 A.2d 1145, 1148-49 (Pa. Commw. Ct. 1992). Here, all of Litzenberger's state law claims are intentional torts which are not excluded from the immunity statute. See Miller v. Hogeland, No. 00-516, 2000 WL 987864, at \*3 (E.D. Pa. July 18, 2000). Furthermore, Litzenberger does not dispute that Vanim was acting within the scope of his duty. Litzenberger only argues that "[t]he Pennsylvania immunity statute cited by Defendants cannot overrule § 1983 and impose immunities thereon." (Resp. to Summ. J., 11). However, because this immunity argument addresses Litzenberger's state law claims and not his parallel § 1983 claims, his argument is erroneous. Therefore, because the intentional torts of malicious prosecution, false arrest, abuse of process and intentional infliction of emotional distress are not excluded by 1 Pa. C.S.A. § 2310 and 42 Pa. C.S.A. § 8522, and because it is undisputed that Vanim was acting within the scope of his duty, Vanim is immune from Litzenberger's state law claims.

**C. 42 U.S.C. § 1983 Supervisor Liability Claims Against Lill and Evanko**

In Litzenberger's Amended Complaint, Litzenberger alleges that Lill and Evanko

are liable for Vanim's actions. Specifically, Litzenberger claims that Lill and Evanko did not properly train and supervise Vanim. A supervisor may be liable under § 1983 for his or her subordinate's unlawful conduct if he or she directed, encouraged, tolerated, or acquiesced in that conduct. Brown v. Muhenberg Twp., 269 F.3d 205, 216 (3d Cir. 2001). Moreover, the supervisor's acts must be the "moving force behind the constitutional violation" and must rise to the level of "deliberate indifference" to plaintiff's rights. City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989)(internal quotations omitted).

In their Motion for Summary Judgment, the Defendants argue that Lill and Evanko did not direct, encourage, tolerate, or acquiesce in Vanim's conduct nor were they the moving force behind Vanim's actions. The Defendants further argue that Litzenberger has not provided any evidence to the contrary. In his response to the Motion for Summary Judgment, Litzenberger does not address the Defendants' arguments regarding this issue. As stated above, Litzenberger must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Litzenberger cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive this Motion for Summary Judgment. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989). Because Litzenberger has failed to present specific facts showing there is a genuine issue for trial and has failed to address the Defendants' arguments, summary judgment must be granted in favor of the Defendants on this issue.

#### **IV. CONCLUSION**

Litzenberger has failed to establish that Vanim violated § 1983 and the Fourth Amendment; failed to show that Vanim is liable under state tort law; and has failed to establish

supervisor liability for Lill and Evanko. Therefore, the Defendants' Motion for Summary Judgment must be granted and Litzenberger's Motion for Partial Summary Judgment must be denied.

An appropriate Order follows.

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SAMUEL A. LITZENBERGER,	:	CIVIL ACTION
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TROOPER KIRK R. VANIM,	:	
CORONEL PAUL J. EVANKO, PA	:	
State Police Commissioner, and	:	
LIEUTENANT JAMES J. LILL,	:	
	:	
Defendants.	:	

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**ORDER**

AND NOW, this 31st day of July, 2002, upon consideration of the Defendants' Motion to For Summary Judgment (Dkt. No. 11), the Plaintiff's Motion for Partial Summary Judgment (Dkt. No. 12), and any Responses and Replies thereto, it is hereby ORDERED that the Defendants' Motion for Summary Judgment is GRANTED and the Plaintiff's case is dismissed with prejudice. It is hereby further ORDERED that the Plaintiff's Motion Partial for Summary Judgment is DENIED. The Clerk of Courts is hereby directed to mark this case as closed.

BY THE COURT:

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Robert F. Kelly,	Sr. J.
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