

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

GERALD WATSON,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILADELPHIA DISTRICT	:	No. 01-3886
ATTORNEY’S OFFICE, et al.,	:	
Defendants.	:	

SCHILLER, J.

November , 2002

MEMORANDUM AND ORDER

Plaintiff Gerald Watson brings suit against the Philadelphia District Attorney’s Office, District Attorney Lynne Abraham in her official capacity, and Assistant District Attorney Carol Weiner in her official and individual capacities, alleging a claim of malicious prosecution under 42 U.S.C. § 1983 for a violation of his Fourth Amendment rights and state law claims of false arrest and false imprisonment. Defendants move for summary judgment on all of Plaintiff’s claims. For the reasons stated below, I grant Defendants’ motion for summary judgment on the § 1983 malicious prosecution claim and remand the remaining state law claims to the Court of Common Pleas for Philadelphia County.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 10, 1998, Plaintiff was arrested and processed as an adult for alleged narcotics violations. After his arrest, his mother produced Plaintiff’s birth certificate, showing that Plaintiff was seventeen, to Assistant District Attorney Weiner and was told that Plaintiff would be processed as a juvenile. Plaintiff alleges that although he was told that the adult charge would be dismissed, the Defendants never withdrew the adult charge. On September 21, 1998,

when Plaintiff's adult case was scheduled for preliminary hearing, he failed to appear, allegedly, because he assumed that the adult charges had been dropped. Subsequently, a bench warrant was issued for Plaintiff's arrest for failure to appear at the adult hearing. On January 5, 1999, Plaintiff's juvenile case was dismissed. On July 31, 1999, Plaintiff was arrested on the outstanding bench warrant. After his arrest, Plaintiff allegedly spent five days in an adult jail. On September 24, 1999, Plaintiff's adult charges were dismissed.

Plaintiff initially brought this action against the City of Philadelphia and three unknown police officers claiming malicious prosecution, false arrest, and false imprisonment under 42 U.S.C. § 1983. The Court granted Plaintiff's motion to amend the Complaint to add the District Attorney's Office for the City of Philadelphia, District Attorney Lynne Abraham, and Assistant District Attorney Carol Weiner as Defendants. Thereafter, by stipulation, the City of Philadelphia and the unknown police officers were dismissed from the action. The remaining Defendants now move for summary judgment on all claims against them.

II. DISCUSSION

Defendants seek summary judgment on claims in Plaintiff's Complaint.¹ In his Amended Complaint, Plaintiff asserted claims for "violations of his Fourth, and Fourteenth Amendment rights protected under 42 U.S.C. § 1983, false arrest, false imprisonment, and malicious prosecution." At oral argument on Defendant's summary judgment motion, however, counsel

¹ The Court will not address Defendants' arguments that Plaintiffs' claims are barred by the statute of limitations and do not "relate back" to Plaintiff's original complaint under Federal Rule of Civil Procedure 15(c)(3) for two reasons. First, Plaintiff asserts that he has not been able to conduct discovery on this matter. Second, the analysis is unnecessary because the Court grants summary judgment on the merits of his federal claims and remands the remaining state law claims.

for Plaintiff clarified that Plaintiff's only federal claim is the § 1983 malicious prosecution claim; the false arrest and false imprisonment claims are based on state law.

A. Summary Judgment 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). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of identifying those portions of the record that it believes show the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party has the burden of proof on a particular issue at trial, the moving party meets its burden by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” *Id.* at 325. Once the moving party meets this burden, the non-moving party must demonstrate that there are disputes of material fact that should proceed to trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In order to meet this burden, the opposing party must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *See Celotex*, 477 U.S. at 324. A court may grant summary judgment if the non-moving party fails to make a factual showing “sufficient to establish an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 322. In making this determination, the non-moving party is entitled to all reasonable inferences, and the evidence is viewed in the light most favorable to that party. *See Pollock v. Am. Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3d

Cir. 1986).

B. Liability Under 42 U.S.C. § 1983

To establish a prima facie case under § 1983, a plaintiff must show that the alleged action is a deprivation of a constitutional right or federal statutory right that occurred “under color of state law.” *See Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3d Cir. 1996). In this case, there is no question that Defendants are acting under color of state law. Thus, at issue is whether there has been a deprivation of a constitutional right.

Plaintiff asserts § 1983 claims of malicious prosecution under the Fourth Amendment.² Defendant Weiner argues that absolute and qualified immunities entitle her to summary judgment on the claims against her in her individual capacity. The Court, however, must first address “whether plaintiff has alleged a deprivation of a constitutional right at all” when a government official raises immunity as a defense to an action under § 1983. *Donahue v. Gavin*, 280 F.3d 371, 378 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 842 n.5 (1998)).

1. Malicious Prosecution

To make out a claim of malicious prosecution under the Fourth Amendment, a plaintiff must show that he suffered a deprivation of liberty as a consequence of a legal proceeding that is consistent with the concept of seizure, and he must meet the common law elements of malicious prosecution. *See Gallo v. City of Phila.*, 161 F.3d 217, 222, 225 (3d Cir. 1998) (requiring showing of some deprivation consistent with seizure); *see also Luthe v. City of Cape May*, 49 F.

² In his opposition to summary judgment, Plaintiff concedes that a malicious prosecution claims are not properly brought under the Eighth and Fourteenth Amendments. In addition at oral argument, counsel for Plaintiff stated that Plaintiff brings a § 1983 claim of malicious prosecution under the Fourth Amendment and state law claims of false arrest and false imprisonment.

Supp. 2d 380, 393 (D.N.J. 1999) (holding that common law elements in addition to seizure must be demonstrated by plaintiff); *Petaccio v. Davis*, Civ. A. No. 02-2098, 2002 U.S. Dist. LEXIS 20289, at *12 (E.D. Pa. October 9, 2002); *Estate of Smith v. Marasco*, Civ. A. No. 00-5485, 2002 WL 54507, 2002 U.S. Dist. LEXIS 372, at *50-51 (E.D. Pa. Jan. 14, 2002). Under Pennsylvania law, there are four common law elements of malicious prosecution that a plaintiff must 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 plaintiff to justice. *See Hilferty v. Shipman*, 91 F.3d 573, 579 (3d Cir. 1996).

Plaintiff fails to meet the fourth element required. Although “[l]egal malice is not limited to the motives of hatred or ill will,” Plaintiff must at least show that Defendants’ conduct was reckless and oppressive in disregard of Plaintiff’s rights. *See Lippay v. Christos*, 996 F.2d 1490, 1503 (3d Cir. 1993). The Third Circuit has defined recklessness “as conduct that ‘evinces] disregard of, or indifference to, consequences, under circumstances involving danger to life or safety to others, although no harm was intended, or a state of mind that’ either pays no regard to its probable or possible injurious consequences, or which though foreseeing such consequences, persists in spite of such knowledge.” *Simmons v. Philadelphia*, 947 F.2d 1042, 1091 (3d Cir. 1991) (citing BLACK’S LAW DICTIONARY 1142-43 (5th ed. 1979)).

In this case, Plaintiff’s mother approached Defendant Carol Weiner, Assistant District Attorney for the Juvenile Unit of the District Attorney’s Office, after his adult arrest for narcotic charges. (Weiner Dep. at 20-21.) Plaintiff’s mother showed Defendant Weiner a birth certificate to prove that Plaintiff was under eighteen years old when he was arrested. (*Id.*) Although normally Plaintiff’s mother would have had to wait until Plaintiff’s adult hearing of

September 21, 1999 to begin the process of reslating Plaintiff as a juvenile, Ms. Weiner, at the request of Plaintiff's mother, expedited the reslating process by obtaining a court order. (*Id.*) Ms. Weiner also sent a memorandum notifying the Records Room Sergeant at the Correction Facility where Plaintiff was being held that he was a juvenile and he was thereafter released from adult custody. (Defs'. Mot. for Summ. J., Exs. 9 and 10.) Pursuant to her procedure in the rare instance where a juvenile is reslated before the adult hearing, Ms. Weiner would have normally advised either the Unit Chief supervising the adult case or the assistance district attorney assigned to the adult case to withdraw the charges. (Weiner Dep. at 26, 36-38; Delaney Dep. at 28.) In Mr. Watson's case, however, Ms. Weiner does not recall performing this step and there is no record of it being completed. (Weiner Dep. at 37, 39, 41-42.) Thus, Ms. Weiner may have failed to take steps to have the adult charge withdrawn resulting in the bench warrant for Plaintiff's arrest that was issued when he failed to appear at the September 21, 1999 adult hearing.

Assuming the facts in a light most favorable to Plaintiff, it seems that, at most, Ms. Weiner failed to either contact the appropriate people or to confirm that the adult charges had been withdrawn. Although Plaintiff states that this inaction demonstrates the requisite reckless state of mind, conclusory statements cannot alone meet the burden of a non-moving party with the burden of proof at trial. Without more evidence, it seems that Ms. Weiner's conduct was mere negligence that does not rise to the level of maliciousness or even recklessness as required. Plaintiff has not shown that Ms. Weiner had a state of mind that disregarded possible injury to Plaintiff. Rather, as exhibited by her immediate aid to Plaintiff's mother for the release of Plaintiff when he was first in adult jail, Ms. Weiner's state of mind demonstrates no malice or reckless disregard of Plaintiff's rights. Thus, I grant summary judgment on Plaintiff's § 1983

claim of malicious prosecution.³

2. Municipal Liability⁴

Plaintiff also asserts a claim of municipal liability against the Defendant Philadelphia District Attorney's Office. Under § 1983, "municipal liability arises only when a constitutional deprivation results from official custom or policy." *See Merkle*, 211 F.3d at 791 (citing *Monell v. N.Y. City Dep't of Social Servs.*, 436 U.S. 658, 690-91 (1978)). A policy is shown when "a 'decisionmaker possessing final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict." *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (quoting *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990) (citations omitted)). Alternatively, "custom" is defined as "such practices of state officials so permanent and well-settled as to virtually constitute law" and can be established by showing a policy maker's knowledge and acquiescence to the custom. *Id.* Similarly, a municipality may be liable for failure to train its employees when the failure to provide specific training has a causal connection to the injuries that occurred and the absence of the specific training reflects deliberate indifference to whether there has been constitutional deprivations. *See City of Canton v. Harris*,

³ The Court will not address the arguments of qualified and absolute immunity that Defendants' raised in support of their motion for summary judgment on the § 1983 claim because it is unnecessary in light of Plaintiff's failure to demonstrate that a constitutional right has been violated. *See Donahue v. Gavin*, 280 F.3d 371, 380 (3d Cir. 2002) (holding it is not appropriate to inquire into qualified or absolute immunity when Plaintiff has failed to allege constitutional violation).

⁴ Plaintiff asserts claims against the District Attorney's Office and Lynne Abraham in her official capacity. Because "official-capacity suits 'generally represent only another way of pleading an action against an entity of which an officer is an agent,'" these claims will be addressed together. *See Hafer v. Melo*, 502 U.S. 21, 24 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690, n.55(1978))).

489 U.S. 378, 387 (1989); *see also Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir. 1997). “Failure to adequately . . . train municipal employees can ordinarily be considered deliberate indifference only where the failure has caused a pattern of violations.” *See Berg v. County of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000) (citing *Board of County Comm’rs of Bryan County v. Brown*, 520 U.S. 397, 408-09 (1997)). Although it is possible to maintain a failure to train claim without demonstrating a pattern, a violation for federal rights must be “highly predicable” to be able to say that a failure to train amounts to deliberate indifference. *See id.*

In this case, Plaintiff has failed to demonstrate that Ms. Weiner caused an underlying constitutional injury. Although the Supreme Court had held that if there is no underlying constitutional violation, there can be no liability, either on the part of the individual officer of the government body, *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Collins v. City of Harker Heights*, 503 U.S. 115, 120 (1992), there seems to be some inconsistency within the Third Circuit regarding “whether a plaintiff can establish a constitutional violation predicate to a claim of municipal liability simply by demonstrating that the policymakers, acting with deliberate indifference, enacted an inadequate policy that caused an injury.” *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1153 n.13 (3d Cir. 1995) (citing *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994) (“A finding of municipal liability does not depend automatically or necessarily on the liability of any police officer.”); *see also Kneipp v. Tedder*, 95 F.3d 1199, 1212 & n.26-27 (3d Cir. 1996) (“Although *City of Canton* predated our opinions in *Fagan I & II* and the Supreme Court’s decision in *Collins*, we continue to recognize the application of the deliberate indifference standard to ascertain municipality liability as the constitutional standard in failure to train police officers cases.”); *but see Williams v. Borough of W. Chester*, 891 F.2d 458, 467 (3d Cir. 1999) (finding that as all individually sued officers were not liable for civil

rights violation, municipality was not liable); *Doman v. City of Phila.*, 2000 U.S. Dist. LEXIS 12348, No. CIV.A.99-6543, 2000 WL 1224906, at *4 (E.D. Pa. Aug. 28, 2000). Nevertheless, Plaintiff has failed make out a claim of municipal liability.

Plaintiff has failed to produce material facts of an unconstitutional policy or custom, rather Plaintiff simply asserts that “Defendant Weiner had made at least one decision not to notify the proper parties in the District Attorney’s office to withdraw the adult charges against the Plaintiff after he was reslated.” (Pl. Opp. to Summ. J. at 22.) There is nothing in the record that suggests, however, that Ms. Weiner affirmatively made this decision not to inform the adult division of Mr. Watson’s reslating. Plaintiff does not show any pattern of similar violations or even that this type of situation ever occurred prior to Plaintiff’s incident. At most, Plaintiff demonstrates that “occasionally” juveniles are placed in adult jail and the District Attorney’s office may expedite the reslating process before their first adult hearing, and that there may be “some instances” where a bench warrant by the adult court was later issued. (Delaney Dep. at 13; Weiner Dep. at 57.) Plaintiff does not present any evidence that anyone other than Plaintiff was arrested after the expedited reslating process as a result of failure to withdraw the adult charges. Thus, Plaintiff cannot establish the existence of an unconstitutional policy or custom.

Plaintiff also contends that Defendants failed to train its district attorneys to ensure that adult charges are withdrawn and bench warrants are not issued where they are not warranted in the instance where a juvenile is reslated before his or her adult hearing. Plaintiff cannot, however, demonstrate that any absence of training reflects deliberate indifference to any alleged constitutional deprivations because, as discussed above, Plaintiff does not demonstrate that there was a pattern of conduct that gave rise to the need for such training. Similarly, Plaintiff fails to demonstrate that the risk of a constitutional violation was so highly predicable that any failure to

train demonstrates deliberate indifference on the part of Defendant. Thus, I find that Plaintiff has not shown the facts necessary to impose municipal liability on Defendant District Attorney's Office of Philadelphia and thus, grant summary judgment on this claim.

III. CONCLUSION

After granting summary judgment on Plaintiff's federal claims, I decline to exercise jurisdiction over Plaintiff's remaining supplemental state law claims for false arrest and false imprisonment. *See* 28 U.S.C. § 1367(c)(3). As a result, I remand those remaining claims to the Court of Common Pleas for Philadelphia County. The Court is understandably moved by Plaintiff's plight. However, Mr. Watson's odyssey does not create, on this record, the right to legal redress under federal law. An appropriate order follows.

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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 01-3886
	:	
PHILADELPHIA DISTRICT	:	
ATTORNEY'S OFFICE, et al,	:	
Defendants.	:	

ORDER

AND NOW, this day of **November, 2002**, upon consideration of Defendants' motion for summary judgment, Plaintiff's response thereto, and following oral argument thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

- (1) Defendant's Motion for Summary Judgment (document no. 34) is **GRANTED** with respect to Plaintiff's 42 U.S.C. § 1983 malicious prosecution claim.
- (2) Plaintiff's state law claims of false arrest and false imprisonment are **REMANDED** to the Court of Common Pleas for Philadelphia County.

BY THE COURT:

Berle M. Schiller, J.