

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

Jeffrey A. Trueman	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 04-5085
	:	
	:	
City of Chichester et al,	:	
	:	
	:	
Defendants.	:	

**MEMORANDUM - ORDER**

Presently pending is Defendants’ District Attorneys Jackson M. Stewart Jr. and G. Michael Green Motion to Dismiss and Plaintiff’s response thereto. Defendants’ Motion to Dismiss Plaintiff’s Complaint is based on several theories which bar Plaintiff’s suit including: the Eleventh Amendment, absolute immunity, high public official immunity, and failure to state a claim. For the reasons articulated below District Attorney Defendants’ Motion to Dismiss will be Granted and the Plaintiff’s Complaint against them will be dismissed.

**Background**

This complaint arises from a traffic stop and subsequent prosecution of the Plaintiff Jeffrey A. Trueman. Plaintiff Trueman was pulled over by Co - Defendant Michael Fanelli (“Fanelli”) on January 31, 2003. As a result of the stop, Plaintiff was charged with driving under the influence, terroristic threats, and a stop sign violation. Co-Defendant Judge David J. Murphy held Plaintiff over for trial. Plaintiff thereafter filed a motion to suppress in the Delaware County Court of Common Pleas, which was granted by Judge Robert C. Wright. Subsequent to Judge Wright’s ruling the Delaware County District Attorney’s Office applied for and was granted a

*nolle prosequi* for all criminal charges. Plaintiff has filed suit against the arresting officer Michael Fanelli, Judge David J. Murphy Delaware County Regional Court Judge and the moving Defendants G. Michael Green and Jackson M. Stewart. Plaintiff has filed suit against Defendant G. Michael Green (“Green”) and Jackson M. Stewart (“Stewart”) in both their individual and official capacities for malicious prosecution, failure to investigate and prosecute Defendant Fanelli, and conspiracy to violate Plaintiff’s constitutional rights. Green is the Delaware County District Attorney and Stewart is the Delaware County Deputy District Attorney. Moving Defendants Green and Stewart filed the present Motion to Dismiss.

### **Legal Standard**

A court should grant a motion to dismiss for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In doing so, a court must accept as true all well pleaded allegations of the complaint in evaluating a motion to dismiss. See Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

Furthermore, because granting a motion to dismiss results in a determination on the merits at an early stage of the plaintiff’s case, the district court must “construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief.” Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989) (citations omitted). While the court will accept all the Plaintiff’s well-pleaded allegations as true for the purpose of the motion, the Plaintiff must do more than make mere bald assertions or legal conclusions. Morse v. Lower Merion School District, 132 F.3d 902, 906 (3<sup>rd</sup> Cir 1997). Further, a complaint may be dismissed pursuant to Rule 12(b)(6) where the defendant is entitled to immunity, even though

immunity is generally characterized as an affirmative defense. Moser v. Bascelli, 865 F.Supp. 249, 252 (E.D.Pa.,1994).

Taking all factual allegations in the light most favorable to Plaintiff the Complaint against these two Defendants must be dismissed. All of the factual allegations against the District Attorney Defendants arise from Plaintiff's criminal prosecution. Plaintiff's first cause of action alleges violations of Plaintiff's First, Fourth, and Fourteenth Amendment rights. The court takes note that Plaintiff brings suit against these Defendant in both their individual and official capacities. Although Plaintiff's allegations arise from the Defendants' prosecutorial functions, the District Attorney Defendants are not state actors entitled to immunity under the Eleventh Amendment. Carter v. City of Philadelphia, 181 F.3d 339, 351 (3<sup>rd</sup> Cir. 1999).

I move to Defendant's second argument. Insofar as Plaintiff's claims are against Defendants in their individual and official capacities, the Defendants are entitled to absolute immunity as Plaintiff's claims are a result of Defendants' prosecutorial actions. Imbler v. Pachtman, 424 U.S. 409, 430 (1976). "We have not retreated, however, from the principle that acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. Those acts must include the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to seek an indictment has been made." Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993).

The Court has considered Plaintiff's assertion that Defendants did not take remedial or disciplinary action against Defendant Fanelli, however, decisions by prosecutors not to investigate

or prosecute are also covered by the absolute immunity recognized in Imber.

Plaintiff's second cause of action alleges state law claims of malicious prosecution and conspiracy. Pennsylvania law provides these District Attorney Defendants with a high public official immunity similar to the absolute immunity protection articulated in Imbler. Durham v. McElynn, 722 A.2d 68 (Pa. 2001). Plaintiff's complaint as to these District Attorney Defendants must be dismissed. There remain causes of action against Defendants City of Chichester, Officer Fanelli and Judge David J. Murphy to which an appearance or answers have been filed and said causes of action continue. An appropriate order follows.

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

Jeffrey A. Trueman	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 04-5085
	:	
	:	
City of Chichester et al,	:	
	:	
	:	
Defendants.	:	

**ORDER**

Upon consideration of Defendants' Motion to Dismiss and Plaintiff's response thereto **IT IS HEREBY ORDERED** this 3<sup>rd</sup> day of June, 2005 that Defendants' Motion to Dismiss is **GRANTED** and Plaintiff's Complaint as to Defendants Jackson M. Stewart Jr. and G. Michael Green is **DISMISSED**.

**BY THE COURT:**

S/Clifford Scott Green  
**CLIFFORD SCOTT GREEN, S.J.**