

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

VICTORIA J. DITTRICH,)
INDIVIDUALLY,) Civil Action
CANDACE DITTRICH, INDIVIDUALLY,) No. 03-CV-6128
SUEANN KLINE, INDIVIDUALLY AND)
AS THE PARENT AND NATURAL)
GUARDIAN OF THE THREE MINOR)
CHILDREN, SHYLA KLINE,)
SERRIA KLINE AND)
MONTEZ JACKSON,)
GREGORY GLASS, INDIVIDUALLY, and)
JEREMIAH M. HARTMAN,)
INDIVIDUALLY,)

Plaintiffs)

vs.)

RICHARD J. SEEDS, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
GREG BALLIET, IN HIS OWN PERSON)
AND IN HIS OFFICIAL CAPACITY)
AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
VINCENT A. STAHL, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)

Defendants)

DAVID JONES,)
Plaintiff) Civil Action
No. 04-CV-1302)

vs.)

RICHARD J. SEEDS;)
GREG BALLIET; and)
VINCENT A. STAHL,)

Defendants)

APPEARANCES:

RICHARD F. STEVENS, ESQUIRE
On behalf of Plaintiffs

LEIGH BECHTLE, ESQUIRE
On behalf of Defendants Richard J. Seeds and
Vincent A. Stahl

CHARLES J. FONZONE, ESQUIRE
On behalf of Defendant Greg Balliet

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on three motions for summary judgment. The motions are titled (1) Statement of Uncontroverted Material Facts and Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl, which document was filed October 29, 2004;¹ (2) The Statement of Uncontroverted Material Facts and Motion for Summary Judgment on Behalf of Defendant Greg Balliet, which document was filed October 27, 2004;² and (3) Statement of Uncontroverted Material Facts and

¹ The Answer of Plaintiffs to the Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl was filed November 12, 2004. The Supplemental Brief in Support of the Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl was filed January 6, 2005. Plaintiffs' Reply to the Supplemental Brief in Support of the Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl was filed January 5, 2005. (The Supplemental Brief in Support of the Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl was circulated to all parties prior to its filing with the Clerk of Court. Plaintiffs filed their reply brief after receiving a copy of defendants' supplemental brief, but prior to the actual filing of the supplemental brief by defendants Seeds and Stahl).

² The Answer of Plaintiffs' to Motion for Summary Judgment on Behalf of Defendant, Greg Balliet, was filed November 10, 2004.

Motion for Summary Judgment of Plaintiffs, Victoria J. Dittrich; Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman, which document was filed October 29, 2004.³

Oral argument was held on March 22, 2005.

For the reasons expressed below, we grant in part, and deny in part, defendants' motions for summary judgment⁴; and we deny plaintiffs' motion for summary judgment.

SUMMARY OF DECISION

Defendants' Summary Judgment Motions

All three defendants move for dismissal of all of plaintiffs' federal claims on the grounds of qualified immunity, and dismissal of all of plaintiffs' federal and state claims on the grounds of derivative immunity.

³ The Statement of Controverted Material Facts and Response of Defendants Richard J. Seeds and Vincent A. Stahl to the Motion for Summary Judgment of Plaintiffs was filed November 10, 2004. The Answer of defendant Greg Balliet to Plaintiffs' Motion for Summary Judgment was filed November 10, 2004.

⁴ The three defendants in this matter filed two separate motions for summary judgment. Defendants Seeds and Stahl filed one combined motion for summary judgment. Defendant Balliet filed his own motion for summary judgment. Some, but not all of the issues contained in these two separate motions are similar. Initially we will address the motions of all defendants that are similar in nature, and then we will address the separate motion of defendant Stahl. Finally, we will address the plaintiffs' motion for summary judgment.

Qualified Immunity

Qualified immunity shields state officials performing discretionary functions from federal suits alleging violation of a constitutional right, provided that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. DeBellis v. Kulp, 166 F.Supp.2d 255 (E.D.Pa. 2001) (Van Antwerpen, J.).

Therefore, each defendant constable would be entitled to qualified immunity unless he violated a clearly established constitutional right of plaintiffs. In other words, there is a two-part test. If the constable did not violate a constitutional right, he will have qualified immunity.

However, even if he did violate a constitutional right, the constable would have qualified immunity if the constitutional right were not clearly established. The dispositive inquiry is whether it would be clear to a reasonable constable that his conduct was unlawful in the situation he confronted.

Debellis, supra.

We deny defendants' motion for summary judgment because plaintiffs' facts, if believed, would establish that defendants violated plaintiffs' constitutional rights by entering a home where Mr. Hartman did not reside without either permission or a reasonable belief that Jeremiah Hartman resided there and without a reasonable belief that he was there at the time.

Steagald v. United States, 451 U.S. 204, 214,
101 S.Ct. 1642, 1648, 68 L.Ed.2d 38, 46 (1981).

It is black letter law that a constable may not enter the premises of a suspect to serve an arrest warrant without a search warrant unless prior to entry the constable has probable cause (a reasonable belief) that the suspect resides there and the suspect is home. See Steagald, supra. Therefore, we conclude that defendants are not entitled to qualified immunity as a matter of law.

Derivative Immunity

Concerning the doctrine of derivative immunity, any public official acting pursuant to a court directive for which the judge has judicial immunity is also immune from suit. Lockhart v. Hoenstine, 411 F.2d 455 (3d Cir. 1969). We conclude that District Justice Michele A. Varricchio has judicial immunity for her official actions in issuing an arrest warrant for plaintiff Jeremiah Hartman. In order for Judge Varricchio to have issued this arrest warrant, she must have determined that there was sufficient probable cause to believe that a crime had been committed, and that Jeremiah Hartman probably committed it.

District Justice Varricchio is immune from being sued for making this determination and for issuing an arrest warrant, even if she were incorrect. The constables in executing the arrest warrant at the direction of Judge Varricchio have the same

immunity (known as derivative immunity) as Judge Varricchio.

However, neither Judge Varricchio, nor the constables (derivatively) have immunity from suit for matters concerning how the warrant is served and executed. Therefore, we conclude there is no immunity for such matters as how many constables participated in serving the warrant, where they were positioned, whether or not they drew their guns, whether or not they fired shots, the amount of force used by them, whether or not they obtained permission to enter the house, and so forth.

Because Judge Varricchio does not have judicial immunity for these matters (which are in the purview of executive branch law enforcement officials), neither do the law enforcement officers have derivative immunity for their actions in carrying out those functions. Accordingly, because defendants are not entitled to derivative immunity, we deny their motion for summary judgment.

Intentional Infliction of Emotional Distress

Defendants seek summary judgment on plaintiffs' claims for intentional infliction of emotional distress. Concerning the claims of the eight plaintiffs in the "Dittrich Complaint" (case number 03-CV-06128), we conclude that all plaintiffs except Victoria Dittrich fail to produce sufficient evidence to establish a cause of action for intentional infliction of emotional distress. Concerning plaintiff Dittrich, we conclude

that there are factual disputes concerning material issues concerning her emotional distress claim, which render inappropriate defendants' motions for summary judgment attacking it. Therefore, we deny defendants' motions for summary judgment concerning Victoria Dittrich's emotional distress claim.

Punitive Damages

Defendants' motions for summary judgment seek to strike all of plaintiffs' punitive damages claims. We conclude that punitive damages are not available under Section 1983 federal actions against local government officials acting in their official capacity. Therefore, we grant defendants' motion for summary judgment and dismiss plaintiffs' punitive damage claims in their federal causes of action.

Because we find the existence of disputes of fact on material issues concerning entitlement to punitive damages in plaintiffs' remaining pendent state-law causes of action, we deny defendants' motion for summary judgment concerning those punitive damages.

Federal Constitutional Claims

Moreover, defendants seek summary judgment on the grounds that plaintiffs failed to produce sufficient evidence to establish any violation of their Fourth and Fourteenth Amendment constitutional rights. In their lawsuit, plaintiffs seek civil

damages against defendants for conducting an unreasonable search and seizure, unlawfully depriving them of their liberty, and use of excessive force, all in violation of the Fourth Amendment, and for deprivation of their property interests in violation of the Fourteenth Amendment.

We deny defendants' motion for summary judgment concerning plaintiffs' Fourth Amendment claims because we conclude there are factual disputes concerning material issues surrounding these claims, rendering summary judgment inappropriate. In addition, plaintiffs argue they were deprived of their property interests without due process of law in violation of the Fourteenth Amendment.

Under facts similar to the facts in this case, the United States Court of Appeals for the Third Circuit in Brown v. Muhlenberg Township, 269 F.3d. 205 (3d Cir. 2001), found no deprivation of due process. Therefore, we grant defendants' motion for summary judgment and dismiss Count Seven of the Dittrich Complaint and Count Two of the Jones Complaint.

Civil Conspiracy

Defendants also seek summary judgment on the grounds that plaintiffs fail to produce sufficient evidence to establish their causes of action for civil conspiracy. We deny the motion for summary judgment concerning civil conspiracy because we determine that there are factual disputes concerning material

issues related to the civil conspiracy claims.

Defendant Vincent A. Stahl seeks summary judgment dismissing all counts against him on the grounds that because he never entered the Dittrich house he is not liable for anything. If the jury believes plaintiffs' version that defendants met and jointly agreed to violate plaintiffs' constitutional rights by conducting an illegal entry, search, and arrest, defendant Stahl would be liable to plaintiffs for civil conspiracy.

In other words, we find factual disputes on material issues concerning civil conspiracy, rendering summary judgment inappropriate on that count. If, however, defendant Stahl is liable to plaintiffs for civil conspiracy, he may also be liable for all actions of his co-conspirators done or taken within the scope of conspiracy. Therefore, we deny defendant Stahl's motion for summary judgment.

Plaintiffs' Summary Judgment Motions

Plaintiff David Jones did not seek summary judgment.

All other plaintiffs (in the Dittrich Complaint) moved for summary judgment in their favor on Count One of their Complaint (alleging unlawful trespass), Count Two (alleging civil conspiracy), and on all Fourth and Fourteenth Amendment claims.

Concerning plaintiffs' motion for summary judgment concerning unlawful trespass, we deny the motion because plaintiffs rely on a Pennsylvania criminal statute to support

their unlawful trespass claim, and this court has no jurisdiction over state court criminal matters. If, however, plaintiffs' trespass claim can be construed as a civil trespass claim, there are factual disputes on material issues involving this claim, rendering summary judgment inappropriate.

We also deny plaintiffs' motion for summary judgment on their civil conspiracy claims and Fourth and Fourteenth Amendment federal claims. In each case we find factual disputes on material issues involving those claims, rendering summary judgment inappropriate.

JURISDICTION AND VENUE

Jurisdiction is based upon federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b). The court has supplemental jurisdiction over plaintiffs' pendent state law claims. See 28 U.S.C. § 1367. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiffs' claims allegedly occurred in this judicial district, namely, Lehigh County, Pennsylvania.

PROCEDURAL HISTORY

On November 7, 2003 plaintiffs Victoria J. Dittrich, Candace Dittrich, Sueann Kline, Individually and as the Parent and Natural Guardian of Shyla Kline, Serria Kline and Monetz Jackson; Gregory Glass; and Jeremiah M. Hartman filed a Complaint

in the United States District Court for the Eastern District of Pennsylvania.

On February 25, 2004 plaintiff David Jones filed a Complaint in the Court of Common Pleas of Lehigh County, Pennsylvania. On March 25, 2004 defendants filed their Notice of Removal of the Jones Complaint from state to federal court. By Order dated May 21, 2004, the undersigned approved the stipulation of counsel for all parties to consolidate these two actions.

PLAINTIFFS' COMPLAINTS

The Dittrich Complaint

The Complaint of plaintiffs Victoria J. Dittrich; Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman ("Dittrich Complaint") alleges that defendants' activity, under color of state law, violated plaintiffs' rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution. Further, plaintiffs assert that these alleged constitutional violations are actionable under 42 U.S.C. § 1983. Plaintiffs also allege violations of state law.

More specifically, Count One of the Dittrich Complaint avers a state-law cause of action for unlawful trespass in

violation of 18 Pa.C.S.A. § 3503 and the Fourth Amendment to the United States Constitution.⁵ Count Two asserts a state-law cause of action for "intrusion upon seclusion invasion of privacy".⁶ Count Three asserts a cause of action for conspiracy.⁷ Count Four avers a cause of action for "Reckless Endangerment".⁸

Count Five claims a cause of action for "Excessive and Unreasonable Force", presumably in violation of 42 U.S.C. § 1983. Count Six avers a state-law cause of action for Cruelty to animals in violation of 18 Pa.C.S.A. § 5511.⁹ Count Seven states a cause of action for deprivation of property interest pursuant to the Fourteenth Amendment of the United States Constitution, presumably actionable under 42 U.S.C. § 1983.

⁵ Section 3503 of Title 18 of the Pennsylvania Consolidated Statutes Annotated defines the crime of Criminal trespass, not "unlawful trespass". Plaintiffs do not explain how they can attempt to prosecute a state crime in a Federal civil action, nor do they explain how the Fourth Amendment relates to this count.

⁶ Pennsylvania recognizes a tort for invasion of privacy. There are at least four different types of the tort of invasion of privacy. One of them is called "intrusion upon seclusion". Presumably, Count Two is asserting this state-law cause of action. However, because both the subheading and language of Count Two refer to Fourth Amendment Constitutional rights concerning illegal search and seizure, it is unclear whether plaintiffs are averring a state-law or federal claim, or both, in Count Two.

⁷ Presumably, Count Three is alleging a state-law cause of action for Civil Conspiracy, but it is not clear from the Complaint.

⁸ It is not clear from Count Four of the Complaint whether plaintiffs are averring a federal or state, civil or criminal, cause of action, or what is the legal basis of the claim.

⁹ Section 5511 of Title 18 of the Pennsylvania Consolidated Statutes Annotated defines the crime of Cruelty to animals. Plaintiffs do not explain how they can prosecute a state crime in a federal civil action, nor the relationship of the Fourth Amendment to the United States Constitution, which they also include in the heading of Count Six, to this cause of action.

Count Eight avers a cause of action for an unlawful search and seizure and unlawful deprivation of liberty interests in violation of the Fourth Amendment of the United States Constitution, presumably actionable under 42 U.S.C. § 1983. Count Nine avers a state-law cause of action for intentional infliction of emotional distress. Count Ten consists of allegations concerning relief and remedies pursuant to 42 U.S.C. §§ 1981-1988.

Complaint of David Jones

The Complaint of plaintiff David Jones ("Jones Complaint") alleges that defendants' activity, under color of state law, violated plaintiffs' rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution.

Plaintiff Jones presumably asserts that these alleged constitutional violations are actionable under 42 U.S.C. § 1983. Plaintiff also alleges a violation of the state criminal law.

Specifically, Count One of plaintiff Jones' Complaint avers a state-law cause of action for violating 18 Pa.C.S.A. § 5511 alleging cruelty to animals, and an unlawful seizure of Plaintiff Jones' dog in violation of the Fourth Amendment to the United States Constitution.¹⁰ Count Two avers a federal cause of action for deprivation of private property interests in violation

¹⁰ This averment is identical to Count Six in the Dittrich Complaint. See footnote 9, above.

of the Fourteenth Amendment of the United States Constitution.

Count Three alleges that defendants' actions warrant punitive damages. We note that punitive damages are not an independent cause of action. Rather, punitive damages are a remedy. See Waltman v. Fanestock & Co., Inc., 792 F.Supp. 31, 33 (E.D.Pa. 1992).

STANDARD OF REVIEW

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Federal Home Loan Mortgage Corporation v. Scottsdale Insurance Company, 316 F.3d 431, 433 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material". Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See Watson v. Eastman Kodak Company, 235 F.3d 851, 857-858 (3d Cir. 2000). The non-moving

party cannot avert summary judgment with speculation or by resting on the allegations in their pleadings, but rather must present competent evidence from which a jury could reasonably find in their favor. Ridgewood Board of Education v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentsen, 889 F.Supp. 179, 184 (E.D.Pa. 1995).

FACTS

Based upon the record produced by the parties in support of their cross-motions for summary judgment motions, including depositions, affidavits and exhibits, the following facts are undisputed.

There are nine plaintiffs in these two consolidated cases: Victoria J. Dittrich and her adult daughter Candace Dittrich; Sueann Kline and her minor daughter Shyla Kline (age 3), Montez Jackson (20 months old) and Serria Kline (5 months old); Gregory Glass, Jeremiah M. Hartman and David Jones. Victoria Dittrich owned a German Shepherd dog named Teryn. David Jones owned a 50-pound pit bull dog named Topanga. Gregory Glass owned a Boxer dog named Wizard.

Defendants Richard J. Seeds, Greg Balliet and Vincent A. Stahl each serve as Constables in the Commonwealth of Pennsylvania.

On May 8, 2003 at approximately 1:30 p.m., the date and time of the incident which is the subject of this lawsuit,

Victoria Dittrich was in her private home at 312 South Franklin Street, Allentown, Lehigh County, Pennsylvania. Victoria Dittrich was in her room upstairs with the three dogs and with the door closed. Her daughter Candace and Mr. Hartman were upstairs. Sueann Kline lived on the first floor of that residence with her three children. At the time of the incident Ms. Kline was in a room on the first floor with her three children.

Gregory Glass was not present, but his dog was. It is unclear whether David Jones was present, but his dog was.

Plaintiff's Factual Contentions

Plaintiffs allege through pleadings, depositions, answers to interrogatories, and the rest of the record the following facts.

The Constables had an arrest warrant for Mr. Hartman for parking violations but did not have a search warrant for the Dittrich home. In going to 312 South Franklin Street, the Constables were acting on an anonymous tip received by District Justice Michelle Varricchio that Mr. Hartman was present, which the Constables never verified, investigated or corroborated.

Prior to going to the home the Constables met and formulated their plan to execute the warrant, agreeing that Constable Stahl would go to the back of the residence looking for "anyone who came running out", and that Constables Seeds and

Balliet would approach the front entrance. If possible, Constable Seeds or Balliet was to let Stahl in the back door.

Before leaving, defendant Seeds said "I have to get something to eat or I am going to shoot somebody."

Constables Seeds and Balliet knocked on the front door and Sueann Kline opened the door. They identified themselves, said they had a warrant and entered the home. Ms. Kline did not invite them in or agree to a search.

The Constables asked Ms. Kline who was at home and she recited the names of the inhabitants. They told her to bring everyone downstairs to sit on the couch. Defendant Seeds asked Ms. Kline if they had any dogs. She responded that they did. Defendant Seeds told her to secure the dogs. Ms. Kline went upstairs to comply with the directives.

When she was gone defendant Balliet, without request or consent, opened Ms. Kline's first floor bedroom door, looked into her room and noted the presence of three small children. Constable Balliet then walked down a hallway into the kitchen and attempted to open the back door of the house to let defendant Stahl in.

When Sueann Kline knocked on Victoria Dittrich's upstairs door, Ms. Dittrich could not hear her and opened the door to find out what Sueann Kline was trying to tell her.

At this time the dogs, who had no history of dangerous propensity or aggression, ran to greet the visitors at the front door as they usually did in their normal, friendly, happy manner.

As the dogs approached Constable Seeds, he drew his weapon and fired at the three dogs. The dogs tried to escape. Two of them ran to the kitchen where Constable Balliet opened fire on them. The other dog ran up the stairs.

After being fired upon by Constable Balliet, the two dogs fled back down the hallway toward Seeds, trying to escape from Balliet. The dogs were met with more shots from Constable Seeds.

As Wizard lay wounded, Constable Seeds shot the animal at point blank range in front of the "hysterical women". Wizard died at the house.

Allentown police officers arrived at the scene and assisted Mr. Hartman and Ms. Dittrich with the two surviving wounded animals, and transported them and the two dogs to the veterinary clinic for emergency surgery where Teryn died. Topanga survived.

Topanga was pregnant at the time of the shooting. Five of her puppies were lost by miscarriage because of the injuries, and a sixth puppy survived.

Defendants' Factual Contentions

Defendants assert through pleadings, depositions, answers to interrogatories, and the rest of the record the following facts. Jeremiah Hartman owed the City of Allentown \$2,600 in fines for 24 parking tickets in the year 2000 for which he received 120 notices which he ignored. At a summary trial before District Justice Varricchio in 2001, the Judge gave him a break and told him she would drop everything if he gets a job and his GED high school equivalency diploma and keep in telephone contact. Instead, he accumulated 15 more parking tickets in 2001 for which he received 75 notices.

On February 27, 2002 Mr. Hartman appeared before District Justice Varricchio again. He entered into a payment plan and agreed to pay \$40 per month on his unpaid traffic tickets and fines. He made one payment of \$40 and never made another and did not contact the judge for a year. On March 27, 2003 the Allentown Parking Authority learned from the owner of a vehicle which received a parking ticket while Mr. Hartman was driving it, that Mr. Hartman's address is 312 South Franklin Street, Allentown, Pennsylvania.

Prior to that time the parking authority had an Easton, Pennsylvania address for Mr. Hartman. Constable Seeds contacted the Easton address. Mr. Hartman's mother lived there and told Constable Seeds that her son did not live there. Shortly

thereafter, Judge Varricchio's secretary received an anonymous telephone call saying that Mr. Hartman did not live at the Easton address, but he lived at 312 South Franklin Street in Allentown, that Mr. Hartman knows martial arts, that he has a drug problem and that he is using illegal drugs.

As a result, on May 8, 2003 District Justice Varricchio issued a warrant for Mr. Hartman's arrest at 312 South Franklin Street and contacted Constable Seeds to serve the warrant. Judge Varricchio told Constable Seeds about Mr. Hartman's martial arts training and drug usage, provided him with a copy of Mr. Hartman's driver's license, and a note pertaining to Jeremiah Hartman where the judge wrote, "Seeds, 312 South Franklin, Jeremiah Hartman, drugged and dangerous."

Constable Seeds asked Judge Varricchio if he could get backup for the arrest. As a result, she also assigned Constables Balliet and Stahl to the matter.

Prior to going to the premises to make the arrest, the three constables met at a Sunoco gas station in Allentown to discuss which of them would go to the front door and rear of the premises on Franklin Street, and how contact was to be made after they got there. At the gas station Constable Seeds showed Constables Balliet and Stahl the valid arrest warrant for Mr. Hartman, his driver's license photograph, and the handwritten note from Judge Varricchio. They agreed that Constable Stahl

would not go inside the house, but he would wait in the back to watch if defendant left the rear of the home.

Constable Seeds did not verify that Mr. Hartman lived at the Franklin Street address because he relied on the information provided to him by Judge Varricchio. However, other documents establish that Mr. Hartman lived there at the time.

Defendants contend that when Constables Balliet and Seeds knocked on the front door, plaintiff Sueann Kline answered. When defendant Seeds identified himself and Greg Balliet as Constables and indicated that they had an arrest warrant for Jeremiah Hartman, Ms. Kline allowed the Constables to enter the home and identified Jeremiah Hartman as being present there.

Ms. Kline was asked to have the other occupants of the house come downstairs and she was also told to keep the three dogs secure. Sueann Kline fully cooperated and went upstairs. The entire time Constable Seeds was in the house he just stood inside the front door.

Defendant Balliet went toward the kitchen area in order to perform a "protective sweep" of the kitchen and backyard and, thereafter, to advise Constable Stahl that everything was all right.

Ms. Kline advised the Constables that the dogs were secure in a back room and that Mr. Hartman was not in that room.

Upstairs, Victoria Dittrich opened her door to hear Sueann Kline, and the dogs escaped the room and went charging down the steps together as a pack, growling and barking. Seeing the pack of three dogs coming at him, growling and barking, Constable Seeds, still at the front door at the bottom of the steps, screamed in fear, grabbed his gun in self-defense and fired shots in the direction of the dogs coming at him.

As Constable Balliet was approaching the back door, he heard the sounds of growling and barking dogs rushing down the stairs, Constable Seeds screaming, and shots being fired. Defendant Balliet thought that Constable Seeds was being shot at and attacked.

Immediately thereafter a Boxer dog came charging at Constable Balliet. Forced to act in self-defense, Constable Balliet fired three shots at the dog, which then turned around and ran back toward defendant Seeds.

DISCUSSION

Qualified Immunity

Defendants assert that they are entitled to qualified immunity and that government officials are shielded from liability for civil damages from 42 U.S.C. § 1983 claims. Specifically, defendants contend that the facts established above entitle them to qualified immunity. We disagree. Moreover, for

the reasons expressed below, we conclude that defendants are not entitled to qualified immunity.

The defense of qualified immunity is a question of law. Siegert v. Gilley, 500 U.S. 226, 232, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277, 287 (1991); DeBellis v. Kulp, 166 F.Supp.2d 255, 266 (E.D.Pa. 2001) (Van Antwerpen, J.). Additionally, qualified immunity is immunity from suit, not a defense to liability at trial. Saucier v. Katz, 533 U.S. 194, 200-201, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272, 281 (2001). Therefore, it is imperative to determine whether the defense is available before trial.

"Qualified immunity shields state officials performing discretionary functions from suit for damages if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" DeBellis, *supra*, (quoting Wilson v. Layne, 526 U.S. 603, 609, 119 S.Ct. 1692, 1696, 143 L.Ed.2d 818, 827 (1999)).

The United States Supreme Court has articulated a two-part test to determine whether a state official is entitled to the defense of qualified immunity. In Saucier, *supra*, the Supreme Court stated that the initial inquiry is "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" 533 U.S. at 201, 121 S.Ct. at 2156,

150 L.Ed.2d at 282. If no right would have been violated, then there is no need for the second step.

If a right was violated, then the next question to ask is "whether the right was clearly established." Saucier, supra. In order to determine whether the right was clearly established the question is if a reasonable officer would have known that his or her conduct violated the right. DeBellis, supra (citing Harlowe v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d. 396 (1982)). If these requirements are met, then the officer is entitled to qualified immunity.

Two major duties of a constable are to execute arrest warrants and to serve the legal process of the courts. See In re Act 147 of 1990, 528 Pa. 460, 470, 598 A.2d 985, 990 (1991). It is black letter law that a constable may not enter the premises of a suspect to serve an arrest warrant without a search warrant unless prior to entry the constable has probable cause (a reasonable belief) that the suspect resides there and that the suspect is home. See Steagald, 451 U.S. at 214, 101 S.Ct. at 1648, 68 L.Ed.2d at 46 (1981); Payton v. New York, 445 U.S. 573, 603, 63 L.Ed.2d 639, 661, 100 S.Ct. 1371, 1390 (1980). Therefore, we conclude that a reasonable constable would be aware of these requirements.

Plaintiffs' facts, if believed, would establish that defendants violated plaintiffs' constitutional rights by entering

the home where Jeremiah Hartman did not reside, without either permission or a reasonable belief that Mr. Hartman resided there and without a reasonable belief that he was in the home at the time. Because such an entry would violate black letter law, we conclude that it would be clear to a reasonable officer that this conduct would be unlawful in this situation. Therefore, we conclude that defendants are not entitled to qualified immunity. DeBellis, supra. Accordingly, defendants' motions for summary judgment on qualified immunity are denied.

Derivative Immunity

Defendants contend that they are entitled to derivative, judicial immunity because they were acting pursuant to a court directive. Specifically, defendants contend that they are entitled to derivative immunity because they were serving District Justice Varricchio's warrant. We disagree, and for the reasons expressed below, we conclude that defendants are not entitled to derivative immunity.

The United States Court of Appeals for the Third Circuit has held that a public official acting pursuant to a "court directive" is immune from suit. Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969) cert. denied, 396 U.S. 941, 90 S.Ct. 378, 24 L.Ed.2d 244 (1969). This immunity is derived from the judicial immunity afforded the court acting in its official capacity. See Lockhart, supra.

We conclude that Judge Varricchio has judicial immunity for her official actions in issuing an arrest warrant for Jeremiah Hartman. In order for Judge Varricchio to have issued this arrest warrant, she must have determined that there was sufficient probable cause to believe that a crime had been committed and that Jeremiah Hartman probably committed it.

Judge Varricchio is immune from being sued for making this determination and issuing an arrest warrant, even if she were incorrect. Because of their derivative immunity, the constables are also immune from any liability arising from a claim that there was not probable cause to arrest Mr. Hartman.

However, neither Judge Varricchio, nor the constables, derivatively, have immunity from suit for matters concerning how the warrant is served and executed. Therefore, there is no immunity for such matters as to how many constables participated in serving the warrant, where they were positioned, whether or not they drew their guns, whether or not they fired shots, the amount of force used by them, whether or not they obtained permission to enter the house, and so forth.

Because Judge Varricchio does not have judicial immunity for these matters (which are in the purview of executive branch law enforcement officials), neither do the law enforcement officers have derivative immunity for their actions in carrying out those functions. Accordingly, because defendants are not

entitled to derivative immunity, we denied their motion for summary judgment.

Indeed, if the defendants' argument were true, then there could never be any Section 1983 cases against a law enforcement officer, provided the officer had a warrant. Accordingly, defendants' motion for summary judgment on derivative immunity is denied.

Defendants' Motions for Summary Judgment on Plaintiffs' Claims for Intentional Infliction of Emotional Distress

Defendants contend that they are entitled to summary judgment on plaintiffs' claim for intentional infliction of emotional distress. For the reasons expressed below, we deny the motions concerning the claim of plaintiff Victoria J. Dittrich for intentional infliction of emotional distress, and grant the motions concerning Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah Hartman.

Plaintiff David Jones did not include in his Complaint a claim for intentional infliction of emotional distress. In Count Nine of the Dittrich Complaint, the other eight plaintiffs each allege a Pennsylvania state-law cause of action for intentional infliction of emotional distress.

To prove a claim for intentional infliction of emotional distress, the following elements must be established:

(1) the conduct must be extreme and outrageous; (2) it must be intentional or reckless; (3) it must cause emotional distress; and (4) that distress must be severe. Hoy v. Angelone, 456 Pa.Super. 596, 609-610, 691 A.2d 476, 482 (1997), affirmed 554 Pa. 134, 720 A.2d 745 (1998), citing Hooter v. Pennsylvania College of Optometry, 601 F.Supp. 1151, 1155 (E.D.Pa. 1984) and Section 46 of the Restatement (Second) of Torts.

In order to state a claim under which relief can be granted for the tort of intentional infliction of emotional distress, the plaintiffs must allege physical injury. Rolla v. Westmoreland Health System, 438 Pa.Super. 33, 38, 651 A.2d 160, 163 (1994). To recover for intentional infliction of emotional distress in Pennsylvania, a plaintiff must support the claim of emotional distress with competent medical evidence, in the form of expert medical evidence. DeBellis, 166 F.Supp.2d at 281.

Given the advanced state of medical science, it is unwise and unnecessary to permit recovery to be predicted on an inference based on the defendant's "outrageousness" without expert medical confirmation that the plaintiff actually suffered the claimed distress. Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 197, 527 A.2d 988, 995 (1987).

At oral argument, counsel for plaintiffs conceded that the claims of plaintiffs Shyla Kline, Serria Kline,

Montez Jackson and Jeremiah M. Hartman for intentional infliction of emotional distress could be dismissed because those plaintiffs introduced no medical evidence to support their claims.¹¹ Accordingly, we grant defendants' motions concerning those claims.

Plaintiffs' counsel stated that plaintiffs would produce medical testimony to support the intentional infliction of emotional distress claims of plaintiffs Sueann Kline, Victoria Dittrich, Candace Dittrich and Gregory Glass.¹² However, plaintiffs have not indicated where in the record there is any medical evidence to support the intentional-infliction-of-emotional-distress claims of plaintiffs Sueann Kline or Candace Dittrich. Accordingly, we grant defendants' motions for summary judgment regarding those two claims.

Plaintiff Gregory Glass produced a written psychological report of Deborah Derrickson-Kossman, Psy.D., dated

¹¹ See the Notes of Testimony of the oral argument on defendants' motions in limine and the cross-motions of plaintiffs and defendants for summary judgment held before the undersigned March 22, 2005, Argument of Plaintiffs' Counsel, Richard F. Stevens, Esquire, at page 30.

¹² At oral argument plaintiffs' counsel stated "Greg Jones". This was a slip of the tongue. One of the plaintiffs is Gregory Glass and one of the plaintiffs is David Jones. Because plaintiff David Jones did not assert a claim for intentional infliction of emotional distress, because plaintiff Gregory Glass did assert such a cause of action, and because plaintiff Glass produced a psychologist's report, we assume that Attorney Stevens was referring to plaintiff Gregory D. Glass.

August 31, 2004.¹³ Mr. Glass has been treated and hospitalized for psychiatric symptoms for more than 20 years.

Dr. Derrickson-Kossman has been seeing Mr. Glass for intensive psychotherapy for 15 of those years, commencing 1989. Prior to the incident involved in this lawsuit, she diagnosed him with Chronic, Complex Post-Traumatic Stress Disorder as the result of his childhood and adolescent history of physical and sexual abuse and neglect, and with Bipolar Disorder.

In her report, Dr. Derrickson-Kossman rendered the opinion that Mr. Glass' traumatic loss of his dog, Wizard, on May 8, 2003 "exacerbated his psychiatric symptoms". These symptoms include suicidal and homicidal ideation, major depression, depressed mood, loss of interest in daily activities, tearfulness and hopelessness. The report contains no medical evidence of any physical injuries, or any physical manifestations of the emotional injuries. Therefore, Mr. Glass cannot sustain his claim for intentional infliction of emotional distress. Accordingly, we grant defendants' motions for summary judgment concerning this claim.

Plaintiff Victoria J. Dittrich also produced a written psychological report. She produced a report dated

¹³ Dr. Derrickson-Kossman's August 31, 2004 psychological report can be found in the record as Exhibit G to the Motion on Behalf of Defendant Greg Balliet to Compel Plaintiffs to Sign Authorizations and to Extend the Deadline for Submission of Defense Expert Reports ("Balliet motion to compel"), filed September 28, 2004.

September 1, 2004 of Licensed Psychologist Simone Gorko, M.S.¹⁴
As a result of the May 8, 2003 shooting of the dogs, Ms. Gorko
diagnosed Victoria Dittrich with Post-Traumatic Stress Disorder -
- Chronic and Major Depressive Disorder, Recurrent, Severe
without Psychotic Features. Her symptoms include panic attacks,
each of which is a "Physiological reactivity" which is present
when Ms. Dittrich is exposed to cues that resemble the event.
This constitutes sufficient medical evidence of a physical
injury, to create at least a factual dispute on a material issue
rendering summary judgment inappropriate on Victoria Dittrich's
claim for intentional infliction of emotional distress.
Therefore, we deny defendants' motions for summary judgment
concerning Ms. Dittrich's claim.

Defendants' Motion for Summary Judgment on Punitive Damages

For the reasons expressed below, we grant defendants'
motion for summary judgment on plaintiffs' claim for punitive
damages in plaintiffs' federal causes of action, and we deny
defendants' motion for summary judgment on plaintiffs' claim for
punitive damages in plaintiffs' remaining pendent state-law
causes of action.

As noted above, plaintiffs' only federal causes of
action are each based upon 42 U.S.C. § 1983. Count Five alleges

¹⁴ See Exhibit F to Balliet motion to compel.

a cause for excessive and unreasonable force pursuant to the Fourth Amendment, actionable under Section 1983. Count Seven alleges a cause of action for deprivation of property interest pursuant to the Fourteenth Amendment of the United States Constitution, actionable under Section 1983. Count Eight avers a cause of action for an unlawful search and seizure and unlawful deprivation of liberty interests in violation of the Fourth Amendment of the United States Constitution, also actionable under Section 1983. (Count Ten concerns federal relief and remedies, not separate federal causes of action.)

Punitive damages are not available under Section 1983 actions against local governmental officials acting in their official capacity. DeBellis v. Kulp, 166 F.Supp.2d 255 (E.D.Pa. 2001); see Leipzig v. Township of Falls, No. Civ.A. 00-1147, 2001 WL 111611 (E.D.Pa. Feb. 1, 2001). Although punitive damages are not available against individual defendants acting in their official capacity, a plaintiff may seek punitive damages against them in their individual capacity. "In order to obtain such damages, a plaintiff must establish facts of record that prove that the individuals knowingly and maliciously deprived plaintiffs of their civil rights." Ruiz v. Philadelphia Housing Authority, No. Civ.A. 98-7653, 1998 WL 159038 (E.D.Pa. March 17, 1998).

The United States Court of Appeals for the Third Circuit has recently stated that for a plaintiff in his Section 1983 claim to qualify for a punitive award, the defendant's conduct must be, at a minimum, reckless or callous. Punitive damages might also be allowed if the conduct is intentional or motivated by evil motive, but the defendant's action need not necessarily meet this higher standard. Savarese v. Agriss, 883 F.2d 1194, 1204 (3d Cir. 1989).

In this case the plaintiffs' Complaint at No. 03-CV-06128 has repeatedly alleged that all of the defendants, at all times material to the within causes of action, acted in their official capacities as constables of the Commonwealth of Pennsylvania. See paragraphs 16, 65, 67, 79, 86, 95 and 117 of plaintiffs' Complaint. Nowhere is it alleged in plaintiffs' Complaint that the defendants were acting other than in their official capacity as to their actions and conduct at the time of the alleged incident on May 8, 2003.

As a result, defendants cannot be liable in their official capacity for any claim for punitive damages to the plaintiffs in this case. Similarly, the Complaint filed by plaintiff David Jones, at No. 04-CV-01302, also alleges in paragraphs 1 and 11 that the defendants at all times relevant to the within claims were acting in their official capacities as constables of the Commonwealth of Pennsylvania.

Despite these averments in plaintiffs' Complaint, plaintiffs now argue¹⁵ that "[a] constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township or the county in which he works." In re Act 147 of 1990, 528 Pa. 460, 463, 598 A.2d 985, 986 (1991). In their summary judgment brief, plaintiffs contend that "Constables are state actors but they cannot be considered an employee of any local jurisdiction, or political subdivision". (Page 21).

Plaintiffs cannot have it both ways. If constables are not state actors, then plaintiffs have no private federal Section 1983 cause of action against them for acting under color of state law. But if constables are state actors, then plaintiffs cannot recover punitive damages against them in their Section 1983 action.

In In re Act of 1990, supra, the Supreme Court of Pennsylvania struck down as unconstitutional an act of the Pennsylvania legislature declaring constables part of the judicial branch of state government and requiring the Supreme Court of Pennsylvania to provide for their training, supervision and certification. The Act was declared unconstitutional because, like police officers, sheriffs and other law enforcement

¹⁵ See Plaintiffs' Brief in Support of the Response to the Defendant Greg Balliet's Motion for Summary Judgment filed November 10, 2004, at pages 21-22.

officers, constables are members of the executive branch of government, and giving the courts powers and duties concerning them is a violation of the constitutional separation of powers doctrine.

The State Supreme Court succinctly expressed its holding and reasoning as follows:

Stated simply, a constable is a peace officer. A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it.... By statute in Pennsylvania, a constable may also serve process in some instances.... As a peace officer, and as a process server, a constable belongs analytically to the executive branch of the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs and the police generally. Act 147 is unconstitutional and violates the separation of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory authority of the judicial branch. It attempts to make constables "personnel of the [judicial] system" and this can no more be done than attempting to make the governor, members of the legislature, district attorneys or sheriffs "personnel of the system." At most, constables are "related staff" under the Rules of Judicial Administration. They cannot, however, be made part of the judicial branch under our Constitution.... To attempt to do so constitutes a gross violation of the separation of powers. Personnel whose central functions and activities partake of exercising executive powers cannot be arbitrarily made part of another branch of government whose functions they do not perform.

528 Pa. at 470-471, 598 A.2d at 990. (Citations and footnotes omitted.)

A constable, as a law enforcement officer or peace officer, who is a member of the executive branch, and who serves legal process, makes arrests and keeps the peace, who is elected (or appointed) pursuant to statutes of the Commonwealth of Pennsylvania, is just as much a state actor, acting under color of law as any other local government official acting in his or her official capacity. Accordingly, they can be sued under Section 1983 for violating the federal constitutional, or federal legal, rights of a private citizen, but punitive damages are not available against them under that cause of action.

Plaintiffs also seek punitive damages in their pendent state claims. In appropriate cases under the law of the Commonwealth of Pennsylvania, a plaintiff is entitled to recover punitive or exemplary damages in addition to compensatory damages. While compensatory damages are those damages which compensate a party for actual damage suffered and proved, punitive damages are awarded for no other purpose than to punish the wrongdoer for his outrageous conduct. Restatement (Second) of Torts §908(1) (1977).

Specifically, Pennsylvania Courts have adopted the Restatement (Second) of Torts §908 on punitive damages. Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984);

Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963);
Dean Witter Reynolds, Inc. v. Genteel, 346 Pa.Super. 336,
499 A.2d 637 (1985), alloc. denied, 514 Pa. 635, 523 A.2d 346
(1987). Section 908(2) of the Restatement provides:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of the fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

The Court has defined a reckless indifference in Smith v. Brown, 283 Pa.Super. 116, 120, 423 A.2d 743, 745 (1980):

"Reckless indifference to the interests of others", or as it is sometimes referred to, "wanton misconduct", means that "the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." (Citation omitted.)

In other words, there are three elements of reckless indifference: (1) the actor must have intentionally done an act of unreasonable character; (2) he must have disregarded a risk known to him or so obvious that he must have been aware of it; and (3) the risk must have been so great as to make it highly probable that harm would follow.

If the jury accepts the facts as advanced by plaintiffs and draws inferences therefrom in the light most favorable to

plaintiffs, they can conclude that defendants intentionally, maliciously, wantonly or with reckless indifference executed three friendly, non-threatening dogs by shooting them point blank, and by continuing to shoot them after they were wounded and harmless in the presence of their caretaker and other adults who were deeply upset by defendants' actions, and at great danger and risk to three small children who were present in close proximity in a small house at the time, where defendants had no right to be. If the jury reaches these conclusions, they may quite properly award punitive damages in the Pennsylvania state-law causes of action.

Accordingly, we grant defendants' summary judgment motion on liability for punitive damages in the federal causes of action (Counts Five, Seven and Eight) and deny defendants' motion in the state-law causes of actions.

Deprivation of Property Interests

For the reasons expressed below we grant defendants' motions for summary judgment on plaintiffs' claims for deprivation of property interests in violation of the due process clause of the Fourteenth Amendment of the United States Constitution, actionable under 42 U.S.C. § 1983.

The Fourteenth Amendment prevents states from depriving a citizen of his property without affording him due process of law. Brown v. Muhlenberg Township, 269 F.3d 205, 213

(3d Cir. 2001). Property interests, which are created by state law, are protected under the Fourteenth Amendment. Destruction of such property by the states constitutes a "deprivation" of the property. At common law, and under the law of Pennsylvania, an animal, such as a dog, is considered to be personal property.

If the government is going to confiscate someone's property, for example condemning your house to build an airport, due process must ordinarily be afforded to the property owner before the taking, such as a condemnation hearing. This is known as "pre-deprivation" process. In certain circumstances, it is sufficient to afford the property owner due process after the taking. This is known as "post-deprivation" process.

If the conduct alleged to have caused a deprivation is such that state authorities cannot predict when such unsanctioned deprivations will occur, post-deprivation process is sufficient. 269 F.3d at 213-214.

In Brown, a Reading, Pennsylvania, police officer shot and killed a pet Rottweiler, which had wandered onto a parking lot adjacent to its owners' home. The owner brought an action asserting, among other things, that they had been deprived their property in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

The Third Circuit held that the Fourteenth Amendment procedural due process clause was not violated because the post-

deprivation process was sufficient due process to justify depriving the dog owner of his property (the dog). Specifically, post-deprivation due process was available through a state-law judicial remedy in the form of the tort of conversion. Brown, supra.

Therefore, because plaintiffs had a sufficient post-deprivation cause of action under Pennsylvania law, and the Third Circuit has held that such an action is a sufficient remedy for their alleged property deprivation, defendants are entitled to summary judgment on plaintiffs' deprivation of property interest claims.

Accordingly, we grant summary judgment and dismiss Count Seven of the Dittrich Complaint and Count Two of the Jones Complaint.

Fourth Amendment Claims

Defendants seek summary judgment on plaintiffs' Fourth Amendment claims. These claims include assertions that defendants violated the Fourth Amendment through unlawful entry to the house, unlawful search and seizure, unreasonable and excessive use of force, and deprivation of liberty.

A review of the record in this matter, in the light most favorable to plaintiffs as the non-moving parties, as we are required to do, reveals that there are genuine issues of fact, which preclude entry of summary judgment on all of these claims.

These disputes on issues of material fact include, but are not limited to: (1) whether defendants obtained consent to enter plaintiff's home, 312 South Franklin Street; (2) whether defendants had a reasonable belief that Jeremiah Hartman resided there; (3) whether defendants had a reasonable belief that Mr. Hartman was there at the time; (4) whether defendants acted in self-defense in shooting the dogs; and (5) whether defendants acted reasonably in shooting the three dogs. All of these disputed facts are material to plaintiffs' claims for violations of the Fourth Amendment. Accordingly, summary judgment is inappropriate. Thus, we deny defendants' motions for summary judgment.

Defendants' Motions for Summary Judgment on
Plaintiffs' Claim of Conspiracy

Similarly, regarding plaintiffs' conspiracy claim, a review of the record in the light most favorable to plaintiffs as the non-moving parties, as we are required to do, reveals that there are material factual disputes concerning plaintiffs' conspiracy claims, which preclude entry of summary judgment on behalf of defendants. These factual disputes include, but are not limited to: (1) whether defendants' actions were in violation of the Fourth Amendment (as enumerated above); and (2) whether defendants planned to violate plaintiffs' Fourth Amendment rights. Each of these issues are material disputes

regarding plaintiffs' conspiracy claims. Thus, we deny defendants' motions for summary judgment on those claims.

Because Constable Stahl never entered the residence, he can only be liable to plaintiffs if he were part of a conspiracy with the other constables to violate plaintiffs' constitutional rights. The disputes of material fact which preclude granting summary judgment to defendant Stahl include: (1) whether there was a conspiracy; (2) whether defendant Stahl was a member of the conspiracy; (3) whether Constable Stahl conspired with the other defendants to deprive plaintiffs of their constitutional rights; and (4) whether, as discussed above, Constable Stahl acted to deprive plaintiffs of their Fourth Amendment rights.

Accordingly, we deny defendant Stahl's motions for summary judgment.

Plaintiffs' Motion for Summary Judgment
on their Claim for Trespass

For the following reasons we deny plaintiffs' motion for summary judgment on their claim of trespass. Plaintiffs in Count One bring a state-law cause of action for unlawful trespass in violation of 18 Pa.C.S.A. § 3503. This is a section of the Pennsylvania Crimes Code defining the state crime of criminal trespass. Because plaintiffs cannot prosecute a state crime in a federal civil action, we deny plaintiffs' motion for summary judgment.

If plaintiffs' claim can be construed as a civil trespass action, plaintiffs' motion for summary judgment is also denied. A review of the record in this matter, in the light most favorable to defendants as the non-moving parties, as we are required to do, reveals that there are genuine issues of fact that preclude entry of summary judgment on behalf of plaintiffs. These genuine issues of fact include, but are not limited to, whether plaintiff Sueann Kline consented to defendants' entry of the home. This dispute is material to plaintiffs' claim for trespass. Thus, we deny plaintiffs' motions on this claim.

Plaintiffs' Motion for Summary Judgment
on Their Claim of Conspiracy

In denying defendants' motion for summary judgment in reference to plaintiffs' claim for conspiracy, we found disputes on material issues of fact which precluded defendants from obtaining summary judgment on plaintiffs' claim for conspiracy. The same factual disputes preclude plaintiffs from obtaining summary judgment in their favor on their civil conspiracy claims. Therefore, we deny plaintiffs' motion.

Plaintiffs' Motion for Summary Judgment on Their Claims
of Fourth and Fourteenth Amendment Violations

Regarding plaintiffs' motion for summary judgment on their claim for violations of the Fourth Amendment of the United States Constitution, we deny plaintiffs' motion. As articulated

above, we found genuine issues of material fact in defendants' motions for summary judgment on plaintiffs' claims for violations of the Fourth Amendment. Because such genuine issues of material fact exist, we deny plaintiffs' motion for summary judgment on their claim of violations of the Fourth Amendment.

Regarding plaintiffs' motion for summary judgment for their claim that defendants deprived plaintiffs of a property interest without due process in violation of the Fourteenth Amendment of the United States Constitution, as noted above we granted defendants' motion for summary judgment on this claim. Therefore, we deny plaintiffs' motion as moot. As articulated above in defendants' motion for summary judgment, we found that there was no deprivation of a property interest in violation of the due process clause of the Fourteenth Amendment.

CONCLUSION

For all the foregoing reasons, we grant in part and deny in part defendants' motions for summary judgment, and we deny plaintiffs' motions for summary judgment, consistent with the within Opinion.

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

VICTORIA J. DITTRICH,)	
INDIVIDUALLY,)	Civil Action
CANDACE DITTRICH, INDIVIDUALLY,)	No. 03-CV-6128
SUEANN KLINE, INDIVIDUALLY AND)	
AS THE PARENT AND NATURAL)	
GUARDIAN OF THE THREE MINOR)	
CHILDREN, SHYLA KLINE,)	
SERRIA KLINE AND)	
MONTEZ JACKSON,)	
GREGORY GLASS, INDIVIDUALLY, and)	
JEREMIAH M. HARTMAN,)	
INDIVIDUALLY,)	
)	
Plaintiffs)	
)	
vs.)	
)	
RICHARD J. SEEDS, IN HIS OWN)	
PERSON AND IN HIS OFFICIAL)	
CAPACITY AS CONSTABLE OF THE)	
COMMONWEALTH OF PENNSYLVANIA,)	
GREG BALLIET, IN HIS OWN PERSON)	

AND IN HIS OFFICIAL CAPACITY)
AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
VINCENT A. STAHL, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)

Defendants)

DAVID JONES,)

Civil Action)
Plaintiff) No. 04-CV-1302

vs.)

RICHARD J. SEEDS;)

GREG BALLIET; and)

VINCENT A. STAHL,)

Defendants)

O R D E R

NOW, this 28th day of September, 2005, upon consideration of the Statement of Uncontroverted Material Facts and Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl, which motion was filed October 29, 2004; upon consideration of the Answer of Plaintiffs to the Motion for Summary Judgment of Defendants Richard J. Seeds and Vincent A. Stahl, which answer was filed November 12, 2004; upon consideration of the Statement of Uncontroverted Material Facts and Motion for Summary Judgment on Behalf of Defendant Greg Balliet, which motion was filed October 27, 2004; upon consideration of the Answer of Plaintiffs' to Motion for Summary Judgment on Behalf of Defendant, Greg Balliet, which answer was filed November 10, 2004; upon consideration of the Statement of Uncontroverted Material Facts and Motion for Summary Judgment of Plaintiffs, Victoria J. Dittrich; Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman, which motion was filed October 29, 2004; upon consideration of the Statement of Controverted Material Facts and Response of Defendants Richard J. Seeds and Vincent A. Stahl to the Motion for Summary Judgment of Plaintiffs, which response was filed

November 10, 2004; upon consideration of the Answer of Defendant Greg Balliet to Plaintiffs' Motion for Summary Judgment, which answer was filed November 10, 2004; upon consideration of the pleadings, record papers, exhibits and depositions submitted by the parties; upon consideration of the briefs of the parties; after oral argument conducted before the undersigned March 22, 2005; and for the reasons articulated in the accompanying Opinion,¹⁶

IT IS ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet are granted in part and denied in part.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet based upon qualified immunity are denied.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet based upon derivative immunity are denied.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet for dismissal of plaintiffs' claims for intentional infliction of emotional distress is granted in part and denied in part.

IT IS FURTHER ORDERED that defendants' motion for

¹⁶ By Order of the undersigned dated May 20, 2004, we approved the Stipulation of all parties to consolidate these two actions for all purposes.

summary judgment on the claims of Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman for intentional infliction of emotional distress is granted.

IT IS FURTHER ORDERED that Count Nine of the Complaint is dismissed as it relates to Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman

IT IS FURTHER ORDERED that defendants' motions for summary judgment on the claim of plaintiff Victoria Dittrich for intentional infliction of emotional distress are denied.

IT IS FURTHER ORDERED that the motions of defendants Seeds, Stahl and Balliet for summary judgment on the claims of plaintiffs for punitive damages are granted in part and denied in part.

IT IS FURTHER ORDERED that plaintiffs' claims for punitive damages in their federal causes of action (Counts Five, Seven and Eight in case number 03-CV-06128 (the "Dittrich Complaint") and that portion of Count One alleging unlawful seizure of a dog in violation of the Fourth Amendment of the United States Constitution, and Count Two, in case number 04-CV-01302 (the "Jones Complaint")) are dismissed.

IT IS FURTHER ORDERED that, in all other regards, concerning plaintiffs' claims for punitive damages (in plaintiffs' remaining pendent state-law causes of action), defendants' motions for summary judgment are denied.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet for dismissal of plaintiffs' claims of deprivation of property interests in violation of the Fourteenth Amendment are granted.

IT IS FURTHER ORDERED that Count Seven of the Complaint of Victoria J. Dittrich; Candace Dittrich; Sueann Kline, Individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman is dismissed.

IT IS FURTHER ORDERED that Count Two of the Complaint of David Jones is dismissed.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet for dismissal of plaintiffs' claim of violations of the Fourth Amendment through unlawful entry, unlawful search and seizure, and unreasonable and excessive use of force are denied.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet for dismissal of plaintiffs' claims of conspiracy are denied.

IT IS FURTHER ORDERED that the motions for summary judgment of defendants Seeds, Stahl and Balliet for dismissal of all of plaintiffs' claims against defendant Stahl are denied.

IT IS FURTHER ORDERED that plaintiffs' motion for summary judgment is denied in its entirety (including on plaintiffs' claims for trespass, conspiracy, and plaintiffs' Fourth and Fourteenth Amendment claims).

BY THE COURT:

/s/ James Knoll Gardner

James Knoll Gardner

United States District Judge