

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

WILLIAM R. MASON, II,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	NO. 05-1639
CHRISTINE MAHON <u>et al.</u> ,	:	
	:	
Defendants.	:	

**MEMORANDUM**

GILES, J.

March 23, 2006

**Introduction**

William R. Mason, II filed this action on March 10, 2005, in the Philadelphia Court of Common Pleas against Christine Mahon, Christian Wertz, Philadelphia Police Sergeant Joseph McEntee, Philadelphia Police Officer Raymond Mahon, Philadelphia Police Detective John Hughes, and the City of Philadelphia. Defendants removed the action to federal court on April 11, 2005. Plaintiff subsequently withdrew his claims against the City of Philadelphia, Christine Mahon, the complainant, and Christian Wertz, her boyfriend.

Now before the court is Defendants' Motion for Summary Judgment, made pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as Plaintiff's opposition thereto. For the reasons that follow, Defendants' Motion for Summary Judgment is granted.

### **Factual and Procedural Background**

The present action arises out of the alleged wrongful arrest and unlawful prosecution of Plaintiff for two incidents that took place on August 7, 2002 and June 25, 2003, involving the stalking and harassment of complainant, Christine Mahon.

On August 13, 2002, Christine Mahon reported to the police that, on August 7, 2002, while jogging in the vicinity of Pennypack Park in Philadelphia, Pennsylvania, she was stalked by an individual driving a black Ford Focus. She described the perpetrator as a white male in his mid-thirties, and stated that she saw several stuffed animals in the rear window of the black Ford Focus. After following her around the park for approximately ten minutes, she claims that the man stopped his vehicle and began to masturbate. Mahon noted that a female friend told her that a similar incident had happened to her while she was jogging in the same area. Mahon reported the incident to police five days later, after she told her boyfriend, Christian Wertz, what had happened.

The first Affidavit of Probable Cause for Arrest Warrant was filed with the Philadelphia District Attorney's Office by Defendant, Officer Joseph McEntee. In it he recounted Christine Mahon's account of events, as well as her identification of Plaintiff as the man who stalked her on August 7, 2002. Also included were corroborative statements by Christian Wertz and Philadelphia Police Officers James Chabot and Douglas Woods. Wertz told Defendant McEntee that after Mahon told him about the stalking incident, he went looking for the vehicle in the area where the alleged stalking occurred. He said that he saw a four-door, black Ford Focus parked in the vicinity of Pennypack Park. He described the individual sitting in the driver's seat as a heavy-set, white male in his late twenties, wearing a baseball cap and sunglasses with a scruffy

goatee. Wertz reported that he wrote down the vehicle's license plate number and that when he confronted the driver and told him he was calling the police, the man drove away.

Police Officers Chabot and Woods stated that they responded to a radio call about a white male in his thirties operating a late model four-door, black Ford Focus last seen in the area of Pennypack Park. The Officers searched the area and observed a late model Ford Focus backed into a driveway, up against a garage door. Officer Chabot stated that he saw the same tag number reported by Wertz displayed on the vehicle. He also saw a stuffed animal on the front dashboard. The Officer further reported that the hood of the vehicle was extremely hot to the touch, indicating the vehicle had just been driven. The Officers relayed this information to the Special Victims Unit.

On August 18, 2002, Christine Mahon and Christian Wertz were independently shown photo arrays of eight white men, including Plaintiff. In the Affidavit of Probable Cause, Defendant McEntee recited that both Mahon and Wertz identified Plaintiff as the individual they had seen in the black Ford Focus on the different occasions. On August 29, 2002, Plaintiff was arrested by Defendant McEntee pursuant to a warrant approved by the District Attorney's Office. Plaintiff was charged with indecent exposure, open lewdness, harassment, and disorderly conduct. (Pl.'s Compl. ¶11).

On June 30, 2003, Mahon lodged a second report against Plaintiff claiming that she was again harassed and stalked by him on June 25, 2003, while the charges in the first incident were pending. The Affidavit of Probable Cause for Arrest Warrant in the second incident was prepared by Defendant, Officer John Hughes, and filed with the District Attorney's Office. He included in the Affidavit of Probable Cause Mahon's statement that on June 25, 2003, while

jogging in the same vicinity of the previous incident, she observed Plaintiff's black Ford Focus parked along the route on which she was running. As she continued to jog, Mahon claimed that she recognized the individual sitting in the driver's seat as Plaintiff. After jogging for a few more blocks, Mahon claimed that Plaintiff drove past her at a speed slower than the rest of the traffic. Mahon recounted that Plaintiff then proceeded to turn the corner and then drove his vehicle back towards her. Upon making eye contact with Plaintiff, Mahon stopped her exercise and went home. She told Hughes that she felt threatened and that she was afraid that Plaintiff would repeat the same conduct that had been exhibited on August 7, 2003.

In the Affidavit of Probable Cause for the second arrest, Defendant Hughes noted that Plaintiff was awaiting trial on the charges against him in the first incident, that the second incident occurred at the same location of the original incident, and that Mahon identified a photo of Plaintiff as the offender in both the original and second incidents. Plaintiff was arrested for the second incident on July 9, 2003, upon approval by the District Attorney's Office that the circumstances related in the Affidavit warranted the arrest. He was charged with harassment, intimidating a witness, retaliation, and obstruction of justice. (Pl.'s Compl. ¶11).

Prior to the second arrest, Plaintiff's father filed a complaint against Christine Mahon's father, Raymond Mahon, a police officer for the Seventh District of the Philadelphia Police Department. Plaintiff alleges that between the first and second incidents of stalking reported by Christine Mahon, Officer Mahon went outside his jurisdiction and drove by Plaintiff's home on five different occasions to confront Plaintiff's father. The complaint prompted a Philadelphia Police Department Internal Affairs investigation of Officer Mahon's conduct. Plaintiff claims that the timing of the second arrest coincided with the ongoing internal investigation of Officer

Mahon's misconduct, and he surmises, was a retaliatory action instigated by Officer Mahon.

On December 23, 2003, Plaintiff stood trial on all charges against him from both incidents. Plaintiff was acquitted on all charges. Following his acquittal, Plaintiff filed suit in the Philadelphia Court of Common Pleas for wrongful use of civil process. Defendants removed the case to federal court. (Notice of Removal). This opinion addresses Plaintiff's claims against the remaining defendants: Sergeant Joseph McEntee, (Count II), Detective John Hughes (Count V), and Officer Raymond Mahon (Count IV).

According to Plaintiff, stalking incidents in the area of Lincoln High School in Philadelphia had been reported to police since June 2002 and up to the time that Christine Mahon was allegedly stalked. He states that he did own a black Ford Focus, but that it frequently stalled because it was in need of repair due to a manufacturing defect. Plaintiff maintains that he just happened to be in the area of the reported stalking incidents when his car stalled and he was confronted by Christian Wertz. (Pl.'s Compl. ¶8).

In summary, Plaintiff claims that Defendant McEntee arrested him falsely and without just cause because the Affidavit of Probable Cause was based on facts that he knew at the time did not justify Plaintiff's arrest. As to Defendant John Hughes, Plaintiff claims that he falsely and maliciously filed the second Affidavit of Probable Cause which resulted in Plaintiff's arrest for the second incident of alleged harassment against Christine Mahon. Lastly, Plaintiff alleges that Defendant Raymond Mahon, a Philadelphia police officer and Christine Mahon's father, unlawfully influenced the investigation of both reported incidents, and that he influenced and provoked the other Defendants into violating his rights willfully by falsely arresting, detaining, and prosecuting him.

### **Legal Standard for Summary Judgment**

Under Fed. R. Civ. P. 56(c), 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 summary judgment as a matter of law.” Celetox Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). In order to defeat a motion for summary judgment, disputes must be: 1) material, meaning concerning facts that will affect the outcome of the issue under substantive law, and 2) genuine, meaning the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment is mandated “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322-23. In reviewing a motion for summary judgment, the court “does not make credibility determinations and must view facts and inferences in the light most favorable to the party opposing the motion.” Seigel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995).

### **Discussion**

Plaintiff alleges that he was falsely, maliciously, and without probable cause, arrested, detained, and prosecuted by Defendants. These allegations are reviewed pursuant to 42 U.S.C. § 1983. Section 1983 provides for civil liability for any person who, under the color of state law, subjects another “to deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” This statutory provision does not create a cause of action, but provides a

vehicle for federal review of alleged violations of federal constitutional or statutory law.

For Plaintiff to establish a claim under § 1983, he must show that: 1) a deprivation of a constitutionally or federally secured right occurred, and 2) the alleged deprivation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Hicks v. Feeney, 770 F.2d 375, 377 (3d Cir. 1985). Defendants were acting in their capacities as public employees during the incidents at issue; thus, their actions are considered as having been taken under color of state law. Atkins, 487 U.S. at 49-50. The issue becomes whether Plaintiff has produced any evidence that he was deprived of constitutional rights by the Philadelphia Police Department Defendants.

#### A. False Arrest and Malicious Prosecution Claims

Plaintiff alleges that Defendants McEntee, Hughes, and Mahon arrested him falsely, maliciously, and without probable cause in violation of his Fourth Amendment right to be free from unreasonable seizure. Although Plaintiff was arrested pursuant to a warrant, he claims that the warrant was not supported by probable cause.

According to the Third Circuit, in a § 1983 claim based on false arrest or misuse of the criminal process by initiation of criminal charges against Plaintiff without probable cause, the proper inquiry is not whether the person arrested in fact committed the offense, but whether the arresting officers had probable cause to believe the person arrested had committed the offense. See Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988) (citing Losch v. Borough of Parkesburg, 736 F.2d 903, 907-08 (3d Cir. 1984); Patzig v. O'Neil, 577 F.2d 841, 848 (3d Cir. 1978)).

Plaintiff challenges the validity of the arrest warrants under which he was arrested on

August 29, 2002, and July 9, 2003, arguing that the arresting officers made material omissions in the supporting Affidavits of Probable Cause, and that they failed to investigate adequately the events surrounding both incidents. Thus, his claim must be evaluated according to the standard set out by the Supreme Court in Franks v. Delaware, 438 US 154 (1974). Under Franks, a plaintiff may succeed in a § 1983 action for a false arrest made pursuant to a warrant only if he or she can establish, by a preponderance of the evidence: (1) that the police officer “knowingly and deliberately, or with reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant;” and (2) that “such statements or omissions are material, or necessary, to the finding of probable cause.” Wilson v. Russo, 212 F.3d 781, 786-87 (3d Cir. 2000); Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997).

Plaintiff claims that Defendants McEntee and Hughes arrested him and filed Affidavits of Probable Cause that omitted material facts concerning both incidents. The court must determine whether a jury could reasonably find that Defendant McEntee or Defendant Hughes knowingly and deliberately, or with reckless disregard for the truth, omitted material information in the Affidavits of Probable Cause. Wilson, 212 F.3d at 787.

Plaintiff alleges that Defendant McEntee’s investigation into the events surrounding the first incident and arrest was inadequate and that he made serious and material omissions in his Affidavit of Probable Cause For Arrest Warrant. Specifically, Plaintiff claims that McEntee knowingly omitted information regarding previous reports of stalking incidents in the vicinity and that Plaintiff did not fit the descriptions of the individuals previously reported as stalkers, and that Plaintiff told McEntee that he was working at the time of the first alleged incident. Moreover, Plaintiff maintains that McEntee failed to investigate who identified him and his

vehicle's tag number, and failed to consider his claim that his car stalled out before subjecting him to arrest.

The Third Circuit has adopted the approach of the Court of Appeals for the Eighth Circuit regarding when omissions in an application for an arrest warrant constitute a reckless disregard for the truth. It has held that "omissions are made with reckless disregard if an officer withholds a fact in his ken that 'any reasonable person would have known that this was the kind of thing the judge would wish to know.'" Wilson v. Russo, 212 F.3d 781 (3d Cir. 2000) (quoting United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir. 1993)).

The court's review shows that Plaintiff has not identified any material omissions from McEntee's Affidavit of Probable Cause that converts it into a false document. Plaintiff merely questions the adequacy and quality of his investigation. A finding of probable cause to arrest does not require a thorough investigation. Probable cause "exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995). Further the Third Circuit has stated:

[F]or Fourth Amendment purposes, the issue is not whether the information on which police officers base their request for an arrest warrant resulted from a professionally executed investigation; rather, the issue is whether that information would warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.

Id. at 484.

The Affidavit of Probable Cause submitted by Defendant McEntee included the statement of Christine Mahon regarding her first encounter with Plaintiff and of Christian Wertz regarding

his subsequent encounter with Plaintiff, as well as the statements of Officers Chabot and Woods regarding their investigation in response to a radio call and their finding Plaintiff's vehicle—with the hood still hot to the touch—shortly after Wertz's report. The Affidavit of Probable Cause also included the fact that a positive photo identification of Plaintiff was made by both Mahon and Wertz.

Inclusion of information that the victim of the stalking incident investigated by Defendant McEntee positively identified Plaintiff was sufficient for a finding of probable cause. Exclusion of information that Plaintiff did not match descriptions of stalkers in previously reported incidents was not a material omission under these circumstances, nor was Plaintiff's claim that he was working at the time the incident took place. In addition, Mahon, Wertz, and Officers Chabot and Woods provided statements from which it could be reasonably inferred that the black Ford Focus seen in the vicinity of Pennypack Park was driven by Plaintiff on both encounters covered by the Affidavit of Probable Cause. The Affidavit included Mahon's statement that she saw several stuffed animals in the rear window of the car, and the statement of Officer Chabot that the car he and Officer Woods observed had one stuffed animal on the front dashboard. The District Attorney's Office decided whether this difference in description of the car was material.

The Affidavit did not include information regarding Plaintiff's claim that his car was subject to stalling. However, inclusion of such information was not material since Plaintiff was able to drive away without hesitation when he was confronted by Wertz in the park. From the information provided by Officers Chabot and Woods, that the hood of the car was hot to the touch, it is reasonable to infer that Plaintiff's car had recently been driven. The facts and circumstances, together with the positive identification, were sufficient for a finding of probable

cause for arrest as a matter of law, even if Plaintiff had an alibi that was subject to determination by a judge or jury as to truthfulness.

Regarding the second incident and arrest, the Affidavit of Probable Cause filed by Defendant Hughes included Christine's Mahon's story regarding her encounter with Plaintiff on June 25, 2003. The Affidavit stated that Plaintiff was awaiting trial on the charges against him from the first stalking claim, that the second incident occurred in the same general location as the original incident, and that the victim had positively identified Plaintiff as the offender. Again, the fact of identification of Plaintiff by the alleged victim, standing alone, was sufficient for probable cause and arrest.

Moreover, Plaintiff has not identified any material omission by Defendant Hughes in the Affidavit of Probable Cause. He claims that Defendant Hughes failed to inquire whether the second arrest was made in retaliation for the police investigation of Defendant Mahon's conduct. There has not been alleged in the complaint that there existed any personal relationship between Defendant Hughes and the Mahons. According to Defendant Hughes's testimony, he only became aware that the father of the victim was a police officer at some point after he initiated the investigation into the second incident. (Hughes Depo. at 13). Moreover, Hughes testified that at the time he initiated his investigation, he was not aware that Plaintiff's father had lodged a complaint against Defendant Mahon, nor was he aware that there was an ongoing Internal Affairs investigation into Defendant Mahon's conduct. (Hughes Depo. at 29-30). Defendant Hughes stated that he was aware that Internal Affairs was interested in the case file, but Plaintiff has produced no evidence showing that the Internal Affairs investigation of Mahon was conducted publicly such that Defendant Hughes would have been aware of it.

Defendants McEntee and Hughes cannot be said to have acted with reckless disregard for the truth, nor did the Affidavits of Probable Cause submitted by Defendants omit facts that would have been relevant to a judicial officer's determination of probable cause. The information recited by the Defendants in their Affidavits was premised upon statements and positive identifications by an alleged victim, along with statements of other witnesses who provided corroborative information. These were sufficient to establish probable cause for both the first and second arrest.

Plaintiff also alleges that he was subjected to malicious prosecution by Defendants. To prove malicious prosecution under § 1983, a plaintiff must show that: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Dibella v. Borough of Beachwood, 407 F.3d 599, 601 (3d Cir. 2005) (citing Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir. 2003)).

Plaintiff can establish the first, second, and fifth elements of a malicious prosecution claim. Defendants McEntee and Hughes can be said to have initiated criminal proceedings. Plaintiff was arrested on August 29, 2002, and July 9, 2003, and was subsequently acquitted of all charges; thus, he also meets the second and fifth elements of the claim. However, as discussed above, both Defendants McEntee and Hughes acted on probable cause. There is no competent evidence reasonably suggesting that either Defendant acted with malice or for any purpose other than bringing the Plaintiff into a forum where his guilt or innocence could be

adjudicated.

Regarding Defendant Mahon, Plaintiff alleges that he “initiated, encouraged, and cooperated with others to see that the plaintiff was maliciously arrested, prosecuted, and detained on [the] two separate occasions.” (Pl.’s Compl. ¶40). Plaintiff cannot establish a claim of malicious prosecution against Defendant Mahon because Mahon did not initiate a criminal proceeding against him. While prosecutors are generally responsible for initiating criminal proceedings, “a police officer may be considered to have initiated a criminal proceeding if he or she knowingly provided false information to the prosecutor [which was used to initiate the criminal proceeding] or otherwise interfered with the prosecutor’s informed discretion.” See Brockington v. City of Philadelphia, 354 F.Supp.2d 563, 569 (E.D. Pa. 2005) (quoting Gatter v. Zappile, 67 F. Supp.2d 515, 521 (E.D. Pa. 1999)).

Plaintiff claims Defendant Mahon used his influence as a police officer to interfere with the investigations of the stalking incidents involving his daughter, and that Plaintiff’s second arrest was an act of retaliation by Defendant Mahon because the arrest was carried out not long after Plaintiff’s father filed a complaint against Defendant, prompting an Internal Affairs investigation of his conduct. However, Plaintiff has not provided any evidence that Defendant Mahon initiated criminal proceedings against Plaintiff. Defendant Mahon did not provide any information included in the Affidavit of Probable Cause by Defendants McEntee or Hughes, nor did he participate in the Plaintiff’s arrest or prosecution. As a matter of law, Plaintiff cannot establish a malicious prosecution claim against Defendant Mahon.

#### B. Qualified Immunity

Defendants McEntee, Hughes, and Mahon argue that, in any event, they are shielded from

liability by qualified immunity on all claims asserted against them.

In suits brought against government officials under § 1983, based on their discretionary functions, they are entitled to qualified immunity as long as their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The test for qualified immunity is whether, taken in the light most favorable to the party alleging the injury: 1) the facts show the government official’s conduct violated a constitutional right, and 2) the constitutional right was clearly established, based on the specific context of the case. Saucier v. Katz, 533 U.S. 194, 201 (2001). If a plaintiff fails to establish a constitutional violation, “the qualified immunity inquiry is at an end; the officer is entitled to immunity.” Bennett v. Murphy, 274 F. 3d 133 (3d Cir. 2001).

The court has determined that none of Plaintiff’s claims is sufficient to establish a constitutional deprivation. Moreover, it has found that it was objectively reasonable for Defendants McEntee and Hughes to believe they had probable cause to arrest Plaintiff, and that Defendant Mahon did not participate in the arrest or prosecution of Plaintiff. Accordingly, Defendants are immune from the claims asserted against them.

### **Conclusion**

Summary judgment must be granted in favor of each Defendant on each count of the complaint.

An appropriate order follows.

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WILLIAM R. MASON, II, : CIVIL ACTION  
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NO. 05-1639  
CHRISTINE MAHON et al., :  
:  
Defendant. :

**FINAL ORDER**

AND NOW, this 23<sup>rd</sup> day of March, 2006, it hereby ORDERED that having issued an opinion in the above-captioned matter as referenced in the order of February 7, 2006 (Docket No. 19), judgment is entered in favor of defendants, Joseph McEntee, John Hughes, and Raymond Mahon, and against plaintiff, William R. Mason, II.

BY THE COURT:

S/ James T. Giles

J.