

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

GUY DOUGLAS JACKSON,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-3854
	:	
v.	:	
	:	
TINICUM TOWNSHIP, et al.,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S. J.

March 15, 2007

Presently before the Court are Defendants' Motions for Summary Judgment (Docket Nos. 20, 21, and 28) and Plaintiff's respective responses (Docket Nos. 25, 24, and 32). For the reasons stated below, Defendants' Motions for Summary Judgment are **DENIED** except as to the claim of Civil Conspiracy (Count VIII) to which Defendants' Motions for Summary Judgment are **GRANTED**.

I. INTRODUCTION

As the parties are well aware, this cause of action stems from claims of excessive force, unreasonable seizure and detention, and an illegal arrest, amongst other claims, alleged to have occurred when numerous police officers responded to a call requesting assistance at a local motel. On January 25, 2005, Plaintiff Guy Douglas Jackson checked into the Comfort Inn in Essington, Pennsylvania as he was staying in the Philadelphia area while working on a construction project. (Plaintiff's Complaint ¶ 14.) At approximately 6:30 PM that evening, a guest in a neighboring room reported to the front desk that someone was in need of help as he

could hear loud moaning coming from Plaintiff's room. The employee at the front desk, Sabri Majid, telephoned Plaintiff's room and received no answer. Mr. Majid then proceeded to Plaintiff's room with another motel employee where they acknowledged the loud moaning, knocked on Plaintiff's door, and then attempted to open the door with the master key when they received no answer. (Compl. ¶ 16-17.) As a result of the door being security bolted from inside, the motel employees were unable to gain entrance. This prompted Mr. Majid to report the situation to the Tincum Township Police Department.

Tincum Police Officers Slatten, Zurinsky, Dean, and Marino arrived on the scene first at approximately 8:20 PM. (Slatten Dep. 13:22-14:3, January 13, 2006.) The officers announced themselves and knocked loudly on the door but continued to hear only loud moaning and grunting noises coming from the room. (Id. at 11:24-12:25.) Mr. Zizza, the motel maintenance man and only independent witness to the event, arrived shortly thereafter and began to pry the door partially open using a crowbar. (Id. 27:4-27:14.) It was at this time that Mr. Zizza recalls one of the officers remarking that it sounded as if Plaintiff was on "dust," referring to the drug PCP. (Zizza Dep. 55:23-56:6, January 27, 2006.) After prying the door slightly open, an officer kicked the door completely open and five or six officers rushed into the room while additional officers remained in the hallway.¹ (Zizza Dep. 30:24-32:16.)

Finding Plaintiff sitting cross-legged on the floor moaning and naked from the waist down, Officers Slatten and Dean touched Plaintiff in an effort to see if he was okay. (Slatten Dep. 35:8-40:10.) This contact caused Plaintiff to tense and rear up, which prompted the

1. At this point, Mr. Zizza recalls there being seven or eight total officers present from Prospect Park, Tincum, Ridley Park, and Essington. (Zizza Dep. 9:19-10:9.)

officers to utilize pepper spray on Plaintiff, wrestle him to the ground, punch him repeatedly, and push his head into the floor while they handcuffed his wrists and ankles behind his back. (Zizza Dep. 13:13-14:16.) Once Plaintiff was subdued, medical personnel were summoned and Plaintiff was transported to Crozer Chester Medical Center.

A subsequent CT Scan at the hospital revealed Plaintiff was suffering from a brain aneurysm² which had rendered him unable to respond to external stimuli at the time of the encounter. Furthermore, Plaintiff claims to have suffered multiple fractured ribs, a collapsed lung, multi-layer open wounds, serious and permanent injury to his back, neck and both wrists, permanent partial loss of the use of his hands and permanent pain, and the loss of two teeth as a result of the officers' conduct.

On July 26, 2005, Plaintiff commenced this suit alleging: Defendant Officers Slatten, Dean, Zurinsky, Marino, Doe and Roe violated the Fourth and Fourteenth Amendments under 42 U.S.C. §1983 for use of excessive force, unreasonable seizure and detention, and deprivation of medical care; Defendant Tincum Township failed to adequately train, supervise, and discipline its officers; and Defendant Tincum Township violated the Americans With Disabilities Act of 1990, 42 U.S.C. §§12101 et seq., and the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq. Plaintiff also alleges state law claims against Defendant Officers Slatten, Dean, Zurinsky, Marino, Roe and Doe in their individual capacities for civil conspiracy, assault and battery, and false arrest; and a state law claim against Defendant Officer Slatten for invasion of privacy and defamation. Now we are faced with Defendants Motions for Summary Judgment

2. The Emergency Department Report from Crozer Chester Medical Center stated Plaintiff's condition as a large subarachnoid hemorrhage with intraventricular hemorrhages bilaterally. (Defs.' Ex: L, Crozer Chester Medical Center Emergency Room Report.)

arguing that there are no genuine issues of material fact and Defendants are entitled to qualified immunity.

For the purposes of their present motions, Defendants have divided themselves into three pools based upon their arrival times at the scene. The first pool consists of Defendant Tincum Township and the four Tincum Township officers who were the first to respond to the scene, Officers Slatten, Dean, Zurinsky, and Marino. The second pool consists of Defendant Officer Doe, who has since been identified as Officer Daly of the Norwood Borough Police Department, who was the fifth officer to arrive at the scene. The final pool consists of Officers Doe and Roe³ of Ridley Park, Prospect Park, Eddystone Borough, and Glenolden Borough Police Departments. The discussion below and accompanying order is applicable to all Defendants.

II. STANDARD

A motion for summary judgment will be granted where all of the evidence demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Because a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

3. This pool of Defendants currently remains an indefinite number of officers. It appears the parties have yet to resolve an agreement where Plaintiff stipulated to dismiss those officers not present at the Comfort Inn on the date of Plaintiff’s injury in exchange for the specific identities of the officers who were in fact present and involved. The Court will therefore continue to refer to the third pool of Defendants as James Roe, which at this point includes all or some of the officers from Ridley Park, Prospect Park, Eddystone Borough, and Glenolden Borough Police Departments.

The ultimate question in determining whether a motion for summary judgment should be granted is “whether reasonable minds may differ as to the verdict.” Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

After the moving party satisfies its burden, the nonmoving party "must present affirmative evidence to defeat a properly supported motion for summary judgment." Anderson, 477 U.S. at 256-57. Rule 56 of the Federal Rules of Civil Procedure requires the entry of summary judgment, after adequate time for discovery, where a party "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 v. Catrett, 477 U.S. 317, 322 (1986). "The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

III. DISCUSSION

With the exception of the claim for civil conspiracy, Defendants’ Motions for Summary Judgment are denied because there are genuine issues of material fact and the Court is unable to grant qualified immunity to Defendants.

A. Qualified Immunity

The Supreme Court has expressed the need to rule on issues of qualified immunity early in the proceedings to avoid the costs and expenses of trial where the defense is dispositive. Saucier v. Katz, 533 U.S. 194, 200 (2001).

Qualified immunity is “an entitlement not to stand trial or face the other burdens of litigation.” Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). The privilege is “an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.” Ibid. As a result, “we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.” Hunter v. Bryant, 502 U.S. 224, 227 (1991) (per curiam).

Saucier, 533 U.S. at 200-201. As a result of Saucier, courts now follow a two-step process for evaluating claims of qualified immunity in a suit alleging a violation of a constitutional right. First, the court must determine whether the facts, taken in the light most favorable to Plaintiff, show the officer’s conduct violated a constitutional right. Id. at 201. If the facts fail to establish a constitutional violation, the officers are entitled to qualified immunity. Id. If, however, the facts demonstrate evidence of a constitutional violation, the second step is for the court to determine whether the right was clearly established. Id. “This inquiry . . . must be undertaken in light of the specific context of the case, not as a broad general proposition.” Id. Thus, the second step amounts to looking at the specific factual scenario established by Plaintiff and determining whether a reasonable officer would have understood that his conduct was unlawful. Bennett v. Murphy, 274 F.3d 133, 136 (3rd Cir. 2001); Saucier, 533 U.S. at 202. “If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.” Saucier, 533 U.S. at 202 (citing Malley v. Briggs, 475 U.S. 335, 341 (1986)).

Applying the Saucier test in the current case, it is immediately apparent that Plaintiff’s submissions, in the light most favorable to him, show evidence of the officers having violated his constitutional rights. In regards to the first pool of Defendants, Officers Slatten, Marino, Dean, and Zurinsky, their involvement in the violation of Plaintiff’s constitutional rights

is most obvious. These Defendants were the first to arrive at the motel, and after failing to receive an intelligible response from knocking on Plaintiff's door, they busted in and quickly proceeded to wrestle Plaintiff to the ground and eventually handcuff both his hands and ankles. The only non-party witness to the scene, Mr. Zizza, testified that following the officers forced entry, he immediately smelled pepper spray in the room and looked in to see an officer punching Plaintiff repeatedly while another forcefully pressed Plaintiff's face into the carpet to the point where the officer's hand and fingertips were white. (Zizza Dep. 13:19-15:4.) Plaintiff was observed to be completely defenseless and was later determined to have been suffering from a brain aneurysm and was thus unable to respond to external stimuli over the course of attack. (Id.) There is no doubt that these facts, taken in the light most favorable to Plaintiff, show Defendants having violated Plaintiff's constitutional rights by way of excessive force, unreasonable seizure and detention, and what was effectively an illegal arrest.

As for the second and third pools of Defendants, Officer Daly of Norwood Borough Police Department and Officers Doe and Roe of Ridley Park, Prospect Park, Eddystone Borough, and Glenolden Borough Police Departments, the facts taken in the light most favorable to Plaintiff also implicate them in the alleged violation of Plaintiff's constitutional rights. Officer Daly testified that he was the fifth officer to enter the room (Daly Dep. 15:9-15:11, May 19, 2006.) Upon entering and being asked by another officer to hold Plaintiff down, Officer Daly put his hand on Plaintiff's shoulder. (Daly Dep. 6:5-6:9.) Also of significance is Mr. Zizza's testimony that it was a Ridley Park officer who was in front of Plaintiff's facial and chest area punching him when he was down on the ground. (Zizza Dep. 41:18-42:11.) While Defendants argue that Mr. Zizza is mistaken in identifying the department this particular officer worked for,

Mr. Zizza is confident this officer was not from Tinicum. (Id. at 38:14-43:9.) Mr. Zizza also testified that there were five or six officers that initially entered the room when the door was kicked in, and another six or seven standing in the hallway outside of the room while he witnessed the events. (Id. at 30:15-32:19.) Given these facts, some if not all of Defendants in pools two and three were directly involved in violating Plaintiff's constitutional rights, as pool one consists of only four officers.

As for the officers of pools two and three that remained in the hallway, the evidence shows them too having violated Plaintiff's constitutional rights. "A police officer has a duty to take reasonable steps to protect a victim from another officer's use of excessive force 'If a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.'" Smith v. Mensinger, 293 F.3d 641, 650-651 (3d Cir. 2002) (quoting Byrd v. Clark, 783 F.2d 1002, 1007 (11th Cir. 1986)). The facts here, in the light most favorable to Plaintiff, indicate a number of Defendant officers were present in such a way to have violated Plaintiff's constitutional rights. The continuous moaning coming from the room, the smell of pepper spray detectable immediately after the officers entered, and the comment "we're trying to help you motherfucker," made by an officer in the room (Zizza Dep. 43:4-43:9.), are all facts indicating those Defendants stationed directly outside the room would have had at least some knowledge as to the conduct being exercised against Plaintiff. Applying the facts in the light most favorable to Plaintiff, their failure to intervene constitutes a violation of Plaintiff's constitutional rights. Therefore, for the purposes of qualified immunity, the Court finds there is evidence of all Defendants having violated Plaintiff's constitutional rights.

Finding sufficient evidence of a constitutional violation, it now becomes necessary to determine whether the constitutional right was clearly established. Given the factual scenario established by Plaintiff, would a reasonable officer have understood that his actions were prohibited? Bennett, 274 F.3d at 136. At this stage of the proceedings, a reasonable officer faced with these circumstances would understand these actions to be prohibited.

In addition to facts previously stated, it appears that the officers who busted into Plaintiff's room did so shortly after one of them remarked that Plaintiff was likely under the influence of "dust" as a result of his continuous moaning and failure to intelligibly respond to demands. (Zizza Dep. 16:8-16:17.) When the officers entered, they found Plaintiff sitting on the floor half naked and still unresponsive, with no visible evidence of drugs or alcohol in the room. (Daly Dep. 24:7-24:16.) Nevertheless, when Plaintiff tensed up after being physically touched by one of Defendants, Defendants jointly proceeded to utilize pepper spray on Plaintiff, wrestle him to the ground, punch him repeatedly, forcefully press his head into the floor, and "hogtie" him with handcuffs around his wrists and ankles. (Zippa Dep. 13:13-14:16.)

In regards to the remaining Defendants, the Court finds that reasonable officers in that situation would have found their fellow officers' conduct to be inappropriate and would have taken reasonable steps to protect the victim. The facts indicate that there was no action taken. According to Mr. Zizza, there were as many as six or seven officers who did not enter but witnessed these events from outside the room. (Zizza Dep. 32:9-32:16.) Given these facts, the Court has determined that a reasonable officer would have understood the failure to intervene in this situation to be unlawful.

Having now completed the two-step process for evaluating claims of qualified immunity when constitutional violations are alleged, the Court has determined that qualified immunity must be denied to all three pools of Defendants. The facts, taken in the light most favorable to Plaintiff, shows that all of the Defendants exercised conduct in violation of a constitutional right. Furthermore, given the specific factual scenarios established by Plaintiff, reasonable officers would have understood their respective conduct to be unlawful. Therefore, qualified immunity is denied to all Defendants with respect of all of Plaintiff's constitutional claims.

B. Civil Conspiracy

Now addressing Plaintiff's state law claims, Count VIII of Plaintiff's complaint alleges that Defendants Dean, Zurinsky, Marino, Slatten, Roe and Doe entered into a conspiracy to commit a criminal assault upon Plaintiff. After a careful review of the record, the Court finds that Defendants are entitled to summary judgment on this count only. Under Pennsylvania law, to state a cause of action for civil conspiracy, "it must be shown that two or more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means. Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 211 (1979). "Proof of malice, i.e., an intent to injure, is an essential part of a conspiracy cause of action; this unlawful intent must also be without justification." Rutherford v. Presbyterian-University Hosp., 417 Pa.Super. 316, 333 (Pa.Super. 1992) (citing Thompson, 488 Pa. at 211). While Defendants argue that agents of a single entity cannot legally conspire with one another, they fail to address the fact that at least several Defendants here are agents of differing entities. Nevertheless, the Court finds that there are insufficient facts of Defendants having agreed with unlawful intent to injure

Plaintiff. Even if, as Plaintiff suggests, Defendants entered Plaintiff's room with the preconceived notion that Plaintiff was on drugs, this fact alone fails to demonstrate an intent of Defendants to injure. Plaintiff has provided no additional evidence in this regard. The Court therefore finds it appropriate to grant Defendants Motions for Summary Judgment on this count, thus dismissing Plaintiff's claim of civil conspiracy.

As to Plaintiff's other claims against Defendants both individually and collectively, there remain genuine issues of material fact and thus summary judgment is not appropriate.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motions for Summary Judgment are **DENIED**, except as to the claim of Civil Conspiracy (Count VIII) to which Defendants' Motions for Summary Judgment are **GRANTED**. An appropriate order follows.

