

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

JULIUS TAYLOR : CIVIL ACTION
 :
 v. :
 :
 SOUTHEASTERN PENNSYLVANIA :
 TRANSPORTATION AUTHORITY, et :
 al. : NO. 06-3426

MEMORANDUM

Bartle, C.J.

April 5, 2007

Plaintiff Julius Taylor ("Taylor") instituted this action against the Southeastern Pennsylvania Transportation Authority ("SEPTA") and two SEPTA police officers, Richard McNeil ("McNeil") and Kevin Brewster ("Brewster"). Count I alleges civil rights violations under 42 U.S.C. § 1983 against all defendants. Count II alleges negligence under state law against SEPTA while Count III asserts state law claims of assault, battery and false imprisonment against Officers McNeil and Brewster. The claims arise out of allegations that the defendant SEPTA police officers used unnecessary force in arresting Taylor for smoking in a SEPTA subway station. Now pending before the court are: (1) the motion of defendant SEPTA for summary judgment as to Counts I and II; and (2) the motion of defendants McNeil and Brewster for summary judgment as to Count III. Defendants McNeil and Brewster do not move for summary judgment as to Count I against them.

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); see Fed. R. Civ. P. 56(c). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986). After reviewing the evidence, the court makes all reasonable inferences from the evidence in the light most favorable to the non-movant. In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004).

For present purposes defendants do not contest Taylor's factual allegations as set out in his complaint. At approximately 3:30 p.m. on August 3, 2004, Taylor, a sixty-one year-old male, was in the North Philadelphia SEPTA subway station. After paying his fare, he walked through the turnstile with a cigarette in his hand. Officer McNeil, who was in plain-clothes, approached Taylor and ordered him to take a seat but did not announce that he was a police officer. When Taylor continued to walk, Officer McNeil slammed him against a brick wall. Five officers, including Officers McNeil and Brewster, then threw him to the floor and held him until he was put in handcuffs. Taylor, who suffers from a seizure disorder, had a seizure at some point while being held down or handcuffed. Taylor was told that he was being arrested for smoking a cigarette while in a SEPTA subway station. Once Taylor was handcuffed, the officers dragged him up the station stairs and placed him into a police vehicle. He was

taken to a police station and later to the emergency room of the Temple University Hospital, where he was treated for head, wrist and back injuries. At the hospital the officers taunted him and refused to allow him, a diabetic, to eat the food proffered by the hospital.

Taylor was charged in state court with the crimes of aggravated assault, reckless endangerment of another person, resisting arrest and smoking. On January 24, 2005, the Commonwealth of Pennsylvania withdrew all charges against him. This lawsuit followed.

SEPTA first moves for summary judgment on Count I of the complaint, which asserts a federal civil rights claim under 42 U.S.C. § 1983 for violations of the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Section 1983 provides a federal cause of action against any person who, under color of state law, deprives another of any rights, privileges or immunities secured by the Constitution and laws of the United States. SEPTA does not dispute that it is a "person" as required by § 1983, nor does it contest that its actions are considered to be "under color of state law." See Davis v. Southeastern Pennsylvania Transp. Auth., 924 F.2d 51, 53 (3d Cir. 1991); Ascolese v. Southeastern Pennsylvania Transp. Auth., 902 F. Supp. 533, 546 (E.D. Pa. 1995).

SEPTA is treated as a municipal agency in determining its liability under § 1983. See Bolden v. Southeastern Pennsylvania Transp. Auth., 953 F.2d 807, 821 (3d Cir. 1991) (en

banc); Searles v. Southeastern Pennsylvania Transp. Auth., 990 F.2d 789, 790 (3d Cir. 1993). Although SEPTA may be sued directly under § 1983, it cannot be held liable for the acts of its employees under respondeat superior or any other theory of vicarious liability. See Monell v. Dep't of Soc. Serv., 436 U.S. 658, 691-94 (1987); McCoy v. Southeastern Pennsylvania Transp. Auth., 2002 WL 376913, *1 (E.D. Pa. 2001). SEPTA, as a government entity, can only be liable for an unconstitutional policy, custom or practice. Monell, 436 U.S. at 691-92; City of Canton v. Harris, 489 U.S. 378 (1989); Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000) (per curiam), cert. denied 531 U.S. 1072 (2001).

A policy is made when "a decisionmaker possessing final authority to establish [governmental] policy with respect to the action issues an official proclamation, policy, or edict." Berg, 219 F.3d at 275 (citations and internal quotation marks and alteration omitted); Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986) (plurality opinion). A custom consists of "practices of state officials so permanent and well settled as to virtually constitute law." Berg, 219 F.3d at 275 (internal quotation marks omitted) (quoting Monell, 436 U.S. at 691). A policy or custom may also be inferred from "informal acts or omissions of supervisory [] officials ... although not from the misconduct of a single low-level officer." Colburn v. Upper Darby Twp., 838 F.2d 663, 671 (3d Cir. 1988) (abrogated on other grounds by Leatherman v. Tarrant County Narcotics Intelligence and

Coordination Unit, 507 U.S. 163 (1993)) (internal citations omitted).

Here, Taylor maintains that SEPTA had a policy or custom of inaction when "a sergeant, along with Officers Brewster and McNeil, participated in the deprivation of his constitutional rights." Pl.'s Mem. in Opp'n at 1. Taylor appears to be referencing the following exchange from his deposition, where he described the officer that threw him down to the ground:

Q: How was he dressed?

A: Uniform, a sergeant uniform or something.

Q: What did the uniform look like?

A: I don't know, black.

Q: Was it a black shirt?

A: I imagine it was black. I can't recall. ... [A]lso he had sergeant stripes or something.

Q: What are sergeant stripes?

A: It looks like three stripes.

Q: Where were they?

A: On his shoulder.

Q: Which shoulder?

A: I don't remember.

Taylor Dep. 21:1 - 21:21, Feb. 1, 2007. Even if true, the action or inaction of a police sergeant at the scene is not sufficient to demonstrate an agency or municipal policy or custom. Colburn, 838 F.2d at 671; see also Brennan v. Norton, 350 F.3d 399 (3d Cir. 2003). Taylor has produced no other evidence sufficient to

raise a genuine issue of material fact as to whether SEPTA had an illegal policy or custom. Accordingly, we will grant SEPTA's motion for summary judgment as to Count I of plaintiff's complaint.

SEPTA next moves for summary judgment as to Count II of the complaint, which alleges a state law negligence claim for failure properly to hire, train and supervise its police officers. SEPTA argues that this claim is barred by state sovereign immunity. 1 Pa. Cons. Stat. Ann. § 2310.

Article I, § 11 of the Pennsylvania Constitution provides that the Commonwealth may be sued only "in such manner, in such court, and in such cases as the Legislature may by law direct." In 1978, the Pennsylvania General Assembly enacted legislation, which reads:

Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provisions of Title 42 (relating to judiciary and judicial procedure) ... unless otherwise specifically authorized by statute.

1 Pa. Cons. Stat. Ann. § 2310. The General Assembly thereafter enumerated the limited circumstances under which the

Commonwealth's immunity would be waived. 42 Pa. Cons. Stat. Ann. §§ 8521(a) and 8522.

SEPTA, while treated as a municipal agency for purpose of § 1983, has the cloak of sovereign immunity under state law. See Bolden v. Southeastern Pennsylvania Transp. Auth., 953 F.2d 807, 821 (3d Cir. 1991) (en banc); Feingold v. Southeastern Pennsylvania Transp. Auth., 517 A.2d 1270, 1275-76, n.8 (Pa. 1986); Southeastern Pennsylvania Transp. Auth. v. Hussey, 588 A.2d 110, 111 (Pa. Commw. 1991). In order to fall within an exception to immunity, an action against a Commonwealth party must be for damages "arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action," 42 Pa. Cons. Stat. Ann. § 8522(a), and must be based on one or more of the acts specified in § 8522(b). Those acts are limited to the following: (1) the operation of a motor vehicle; (2) acts of health care employees; (3) the care, custody or control of personal property; (4) a dangerous condition of Commonwealth real estate; (5) a dangerous condition of highways; (6) the care, custody and control of animals; (7) the sale of liquor at Pennsylvania liquor stores; (8) acts of members of the Pennsylvania National Guard; and (9) use of toxoids or vaccines.

SEPTA, as noted above, is unquestionably a Commonwealth agency for purposes of the Pennsylvania sovereign immunity statute. See Feingold, 517 A.2d at 1275-76, n.8; Hussey, 588 A.2d at 111. The Commonwealth Court has also addressed the

questions of whether allegations of assault by SEPTA employees and of failures by SEPTA to supervise those employees fit within any exceptions to its immunity. In each case, the Commonwealth Court has determined that they do not. See Clark v. Southeastern Pennsylvania Transp. Auth., 691 A.2d 988, 992 (Pa. Commw. 1997), appeal denied, 704 A.2d 640 (Pa. 1997); Martz v. Southeastern Pennsylvania Transp. Auth., 598 A.2d 580 (Pa. Commw. 1991); Borosky v. Commonwealth, 406 A.2d 256 (Pa. Commw. 1979). Taylor does not argue otherwise. Accordingly, we will grant SEPTA's motion for summary judgment as to Count II of plaintiff's complaint.

Finally, Officers McNeil and Brewster move for summary judgment as to Count III of the complaint. In that Count, Taylor brings a claim against them for assault, battery and false imprisonment. The officers argue that this claim is barred by sovereign immunity.

As employees of SEPTA, Officers McNeil and Brewster are protected under the same standard of sovereign immunity as SEPTA itself when acting under the scope of their employment duties, as was the case here. The plain language of the sovereign immunity statute makes this clear: "the Commonwealth, *and its officials and employees acting within the scope of their duties*, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. Cons. Stat. Ann. § 2310 (emphasis added); see also 42 Pa. Const. Stat. Ann. § 8522; id.

§ 8501. Thus, a SEPTA employee acting within the scope of his duties can be liable only in situations in which the employee acted negligently. 42 Pa. Cons. Stat. Ann. § 8522(a). As recognized by the Commonwealth Court, assault, battery and false imprisonment are all intentional torts and thus cannot serve to undo the officers' immunity. See Clark 691 A.2d at 992; Martz, 598 A.2d at 582.

Taylor's reliance on Wiehagen v. Borough of North Braddock, 594 A.2d 303, 305 (Pa. 1991), and Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994) is misplaced. Taylor contends that these cases stand for the proposition that "while the Court determined that the governmental agency may be immune from liability, its employees do not share in that immunity." Pl.'s Mem. in Opp'n at 2. Both Wiehagen and Renk were indemnification cases brought under the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. § 8541, *et seq.* That Act details the circumstances under which a local governmental agency may claim immunity. It is wholly inapplicable to Commonwealth parties such as the defendants in the instant matter, whose sovereign immunity is governed by 1 Pa. Cons. Stat. Ann. § 2310 and 42 Pa. Cons. Stat. Ann. § 8522. Officers McNeil and Brewster are entitled to immunity under the plain language of that statute, and Taylor does not allege that the Commonwealth has waived its immunity for the acts complained of in this case. We will therefore grant the motion of Officers McNeil and

Brewster for partial summary judgment as to Count III of the plaintiff's complaint.

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ORDER

AND NOW, this 5th day of April, 2007, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of the defendant Southeastern Pennsylvania Transportation Authority for summary judgment as to Counts I and II of plaintiff's complaint is GRANTED;

(2) judgment is entered in favor of defendant Southeastern Pennsylvania Transportation Authority and against plaintiff Julius Taylor;

(3) the motion of defendants Richard McNeil and Kevin Brewster for partial summary judgment as to Count III of plaintiff's complaint is GRANTED; and

(4) judgment is entered in favor of defendants Richard McNeil and Kevin Brewster and against plaintiff Julius Taylor with respect to Count III of plaintiff's complaint.

BY THE COURT:

/s/ Harvey Bartle III

C.J.