



discussion, informed the car owner that, if he wanted his car back, he would have to pay the towing charge, after which Downey agreed to release the car.

This lawsuit, and the related criminal prosecution in state court, stem in large measure from this one routine incident in the winter of 1994.

During the next year-and-a-half, Downey and Officer Rose regularly crossed paths on the streets of Roxborough. To take one unedifying example, on May 10, 1995, Officer Rose and Downey found themselves in Roxborough Village, a housing complex in the Fifth District. According to Downey, Officer Rose told Howard Thompson, the Village's administrator, that Downey, with whom the Village had contracted to tow cars parked illegally in its parking lot, operated "outside of the law" and that Thompson should award the Village's towing contract to Todd's Towing. See Downey's Mem. of Law at 3. According to Downey, "Todd's Towing is a towing business owned by Todd Marvin. Mr. Marvin has been a personal friend of Officer Rose's for some fifteen years. Officer Rose learned locksmithing, his afterhours business, at Todd Marvin's lot in Manayunk." See id. at n.1. To take another such instance, later that summer, on August 25, 1994, Officer Rose ticketed Downey for illegally parking his tow truck on the sidewalk. See City's Mem. of Law at 2. Downey claims that his truck was parked where it was because he was assisting an elderly couple start their car. See Downey's Mem. of Law at 2. Whatever

the merits of Downey's defense, he ultimately paid the ticket.  
See City's Mem. of Law at n.2.<sup>1</sup>

While Downey views these encounters as instances of harassment, and, in fact, complained to the Commanding Officer of the Fifth District, Captain Augustine Carre, Officer Rose believes that Downey was tailing him on his radio call assignments. In response to Downey's complaints, Captain Carre called Officer Rose into his office on more than one occasion to review the Pennsylvania Motor Vehicle Code and the City's Ordinances with him. See City's Mem. of Law at 3. Captain Carre also advised Officer Rose to avoid contact with Downey to the extent possible, and, to assist Officer Rose in this regard, he placed him on foot patrol along Main Street in the Manayunk section of Philadelphia, which is also in the Fifth District.  
See id.<sup>2</sup>

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1. In the City's view, encounters between police officers and tow truck operators are, as a general matter, not unusual because, given the nature of police work and the towing business, contact is inevitable and regular. For example, Officer Rose patrolled the Andorra Shopping Center, and Downey was the towing contractor for the Shopping Center; Officer Rose responded to radio calls, and Downey, who participated in the Roxborough Town Watch, had (according to the City) a proclivity for showing up at the scene of police calls. See City's Mem. of Law at n.1.

2. The City at some length explains that Officer Rose's reassignment to foot patrol was in no way a disciplinary measure. See id.; see also id. at n.3 ("Captain Carre's temporary reassignment of Officer Rose was a result of several factors including manpower shortages and the need for additional deployment of officers on Main Street. In light of the personality conflict between Officer Rose and Mr. Downey, Captain Carre sought to accomplish several goals with this change in assignment."). Whatever the motive, it appears that Officer Rose  
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The denouement of this story came on the night of October 3, 1995. According to Officer Rose, he was on patrol in his radio car around 6:30 that evening when he noticed that a Bell Atlantic van was following him. See City's Mem. of Law at 3; Downey Mem. of Law at 4. At some point, Officer Rose was able to identify the driver of the Bell Atlantic van as Downey.<sup>3</sup> According to Officer Rose's account, for the next hour-and-a-half, Downey stalked him around Roxborough and followed him back to the Fifth District stationhouse around 8:00 p.m., parking in front of it.

Downey admits to driving a Bell Atlantic van that evening, but denies following Officer Rose around Roxborough from 6:30 p.m. to 8:00 p.m. Downey claims that in January of 1996, his defense counsel, Arthur R. Shuman, Esquire (who is also his counsel in this case), informed the District Attorney's Office that he had found witnesses who could account for his client's whereabouts from 7:05 p.m. to 8:00 p.m., on October 3, 1995, thereby contradicting Officer Rose's allegation of harassment. See supra n.4.<sup>4</sup> Furthermore, Downey admits to being parked in

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2. (...continued)  
complained about his "temporary" reassignment to the Fraternal Order of Police, the City police union, and, soon thereafter, Captain Carre re-reassigned Officer Rose to radio car duty, thus making Officer Rose's tenure walking the beat on Main Street in fact "temporary." See Downey's Mem. of Law at n.2.

3. Downey apparently had a towing contract with Bell Atlantic at the time. See City's Mem. of Law at 3.

4. Officer Rose's patrol log for that evening shows that from  
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front of the Fifth District's headquarters at around 8:00 p.m., but contends that he was waiting to meet one of his employees. See City's Mem. of Law at 4.

The City claims that, upon arriving at the stationhouse at 8:00 p.m., Officer Rose spoke to defendant Sergeant Anthony Rapone about the events of the preceding ninety minutes. After consulting the Pennsylvania Crimes Code, Officer Rose and Sergeant Rapone decided that Downey's conduct that evening was sufficient to cite him for harassment, a summary offense in the Commonwealth. See City's Mem. of Law at 4; 18 Pa. Cons. Stat. § 2079 (a) & (c)(1). "They [then] approached Mr. Downey's van and informed Mr. Downey that he was 'under arrest' for harassment. They asked him to accompany them into the Fifth Police District, which Mr. Downey did without protest. They escorted him into the cell block area, intending to detain him there for no more than the time it took them to prepare a summary citation. The officers claim that at this point Mr. Downey became belligerent, striking Officer Rose in the chest and elbowing Sergeant Rapone

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4. (...continued)

7:00 p.m. to 7:05 p.m. he conducted a check of the premises at 401 Domino Lane. According to the City, Downey followed Officer Rose around Roxborough before and after the premises check. See City's Mem. of Law at 3. Downey asserts that his witnesses could contradict Officer Rose's allegation that he had Downey constantly in view from 7:05 that evening, after the premises check, until 8:00 p.m., when he returned to the stationhouse. Downey claims that neither the District Attorney's Office nor the Philadelphia Police Department's Internal Affairs Division ever bothered to interview these alibi witnesses. See Downey's Mem. of Law at n.4. Furthermore, Downey asserts (without any supporting evidence) that had these witnesses been interviewed, the District Attorney would have aborted her prosecution of him.

and that Sergeant Rapone and Officers Rose and Stacey Wallace (who had been stationed in the adjacent operations room) [then] subdued and handcuffed Mr. Downey." Id.<sup>5</sup>

Downey agrees with the City's account of how he was brought into the stationhouse, but he has a different version of the events inside: "Once inside the cellblock . . . , Mr. Downey states he, Officer Rose and Seregant [sic] Rapone were standing facing a table when Officer Rose placed his leg behind Downey and then pushed him over backwards." Downey's Mem. of Law at 4-5. Any striking of any police officer was, according to Downey, purely accidental as he fell to the ground. See id.

In any event, the parties agree that after the altercation Downey was arrested and charged with two counts each of resisting arrest, aggravated assault, and simple assault. See Downey's Mem. of Law at 5. The District Attorney, however, decided to prosecute only the assault charges against Downey. Eleven months after his arrest, on September 16, 1996, a Court of Common Pleas jury acquitted Downey of these charges. See

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5. The City argues that, although Downey was told he was "under arrest" when he was taken out of the Bell Atlantic van and escorted into the stationhouse, he was, in fact, not "under arrest" as that term is understood in Fourth Amendment jurisprudence. See City's Mem. of Law at 9 ("[W]hen Officer Rose and Sergeant Rapone escorted Mr. Downey into the Fifth Police District they were not 'arresting' him in the legal sense of the term, but simply intended to detain him for the time it took to write him out a citation."). Whatever the merits of the City's position, see infra Part II.B.3, the parties agree that, if Downey was not "under arrest" when he entered the Fifth District's headquarters, he surely was after the altercation there.

Downey's Mem. of Law at 5. The District Attorney's Office then moved for a nolle prosequi of the remaining criminal charges against Downey. See City's Mem. of Law at 5.

Shortly after his acquittal and the entry of the nolle prosequi, Downey filed suit in the Court of Common Pleas of Philadelphia against Officer Rose, Sergeant Rapone, and the City of Philadelphia. The City then removed the suit to this Court on October 18, 1996.

In his amended complaint, filed on November 5, 1996 against the same three defendants, Downey alleges that his "constitutionally protected rights and privileges were abridged in that he was arrested without probable cause; he was arrested in violation of state law; he was forced to stand trial for a crime he never committed; he was knowingly prosecuted with perjured testimony; he suffered punishment without benefit of due process of law." Downey's Mem. of Law at 8-9. The City has now moved for summary judgment, and for the reasons set forth below we shall grant the City's motion.

## II. Legal Analysis

### A. Summary Judgment Standard

Although the basic standards for summary judgment are well-known,<sup>6</sup> here it is necessary to rehearse its stress on

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6. Rule 56(c) of the Federal Rules of Civil Procedure instructs that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show  
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"specific facts" in order to appraise the City's motion against Downey's response.

The City, as the moving party, "bears the initial responsibility of informing the district court of the basis for its motion," and identifying which materials "it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp v. Catrett, 477 U.S. 317, 323 (1996); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are `material', and disputes are `genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (citations omitted). Accordingly, the City's burden can be "discharged by `showing' -- that is, pointing to the district court -- that there is an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325.

If the City carries its burden of demonstrating the absence of a genuine issue of material fact, the burden then

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6. (...continued)  
that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Accordingly, "summary judgment is appropriate when, after drawing all reasonable inferences in favor of the party against whom summary judgment is sought, no reasonable trier of fact could find in favor of the nonmoving party." Leon v. Murphy, 988 F.2d 303, 308 (2d Cir. 1993).

shifts to Downey, as the non-moving party, who "must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250 (quoting Fed. R. Civ. P. 56(e)). As the Supreme Court has noted, the party opposing a properly made summary judgment motion, must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. Instead, Downey "must set forth specific facts showing a genuine issue for trial and may not rest upon mere allegations, general denials, or vague statements." Quiroga v. Hasbro, Inc. 934 F.2d 497, 500 (3d Cir.), cert. denied, 502 U.S. 940 (1991). That is, Downey "may not rest upon the mere allegations or denials of . . . his pleadings," or merely present "colorable" or "not significantly probative" evidence, Anderson, 477 U.S. at 249-50, but rather must set forth "specific facts" through affidavit or other evidence. Fed. R. Civ. P. 56(e); see Lujan v. National Wildlife Fed'n, 497 U.S. 871, 884-85 (1990).

"If the adverse party does not so respond summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e). As the Supreme Court stated in Celotex, 477 U.S. at 322, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, 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." Where no such showing is made,

"[t]he 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 (internal quotation marks omitted).

B. Downey's "Theories" of Liability

In opposition to the City's motion for summary judgment, Downey proffers four "theories of the City's liability," Downey's Mem. of Law at 9 (emphasis added). We now quote those "theories" in full.

First, "[h]igh city officials and policy makers were put on notice on January 3, 1996, through Mr. Downey's attorney's notice to Deputy District Attorney Harley that Downey had been falsely accused; that Officer Rose was lying; and that the charges were false charges. They conducted an investigation which led them to conclude that the alibi testimony, if believed would unequivocally establish the falsity of the charges against Downey. In addition, these officials had no reason to doubt the accounts of the alibi witnesses who included a police officer and his wife, and two respected attorneys. To go forward with the prosecution under these circumstances, knowing that perjured testimony would be forthcoming from Rose, constitutes the infliction of constitutional injury upon Plaintiff by those who are high public officials and policy makers for the City." Downey Mem. of Law at 9.

Second, "the police department of the City was put on notice by the Plaintiff and high officials within the District Attorney's Office that serious allegations had been made concerning the false charges brought against the Plaintiff by Rose and Rapone. Chief Inspector Maxwell, a high city official and policy maker ordered an investigation into those charges. The progress or lack of progress in that investigation was regularly reported by Chief Inspector Maxwell to the Police Commissioner. The investigator assigned failed to interview any of the alibi witnesses referred to in Chief Assistant District Attorney Howard's letter to Chief Inspector Maxwell as 'unequivocally establish[ing] that Downey was not in the areas where Rose claims to have seen him'. In addition, neither Rose nor Rapone was ever interviewed, and the investigation focused on attempts to show that Mr. Downey had harassed Officer Rose in the past, an allegation that could not be established. Any reasonable jury could find that this investigation, conducted under the supervision of a Chief Inspector and the scrutiny of the Police Commissioner himself, was intended by those high officials and policy makers to hide, rather than seek the truth, and that in so doing, they caused the trial of Mr. Downey without probable cause and on the basis of perjured testimony; that they caused Mr. Downey to suffer punishment without due process of law in the loss of his money and injury to his business; and that they caused him to suffer physical and mental pain as the result of the anguish and humiliation of being tried and risking

conviction for a false accusation which they had reason to be aware of." Id.

Third, "[t]hat Captain Carre recognized the fact that Officer Rose was engaging in illegal and unconstitutional acts by exceeding his lawful authority in harassing Mr. Downey and interfering with his business. That Captain Carre, who constitutes a high official and policy maker of the City recognized that fact to the extent that he ordered Rose to stay away from Downey, and then transferred Rose to foot patrol in another area of the district to keep him away from Downey. These measures certainly demonstrate Captain Carre's knowledge, based on Rose's repetitive conduct, of the risk that Rose would engage in other illegal and unconstitutional conduct towards Mr. Downey, and the Captain's act in returning Rose to his original assignment constitutes an endorsement of and acceptance of Rose's conduct. In addition, Captain Carre clearly failed to adequately supervise [sic] Officer Rose." Id. at 11-12.

Fourth, "Pennsylvania state law (Pa. Rules of Criminal Procedure) provides that a person being charged with summary harassment may not be arrested. While they may be taken to the police district in order to issue a citation, they may not be arrested. Mr. Downey was clearly arrested. Both Rose and Rapone stated that he was under arrest. He was taken to the Fifth District cell room, and he was in the process of being searched when Rose attacked him. Both Rose and Rapone have testified that the practice they employed is in accord with police department

policy. That being the case, either the policy violates state law, or the officers have not been properly trained in the policy and the state law." Id. at 12.

1. Downey's First and Second "Theories"

"Each of these theories of the City's liability," Downey argues, "are supported by the evidence of record in this matter as established by the exhibits appended to this Memorandum." Downey's Mem. of Law at 12. Furthermore, Downey states unequivocally that, "[i]n any event, there is certainly a sufficient quantum of evidence in each instance to raise material issues of fact, and to defeat the conclusion that the City is entitled to judgment as a matter of law." Downey's Mem. of Law at 12. Downey has, in fact, attached the complete transcripts of seven depositions taken in this case, and the whole transcript of Downey's criminal trial.

Downey does not, however, point to a single specific citation in the transcripts that would corroborate any of the assertions he has made in his complaint or in his response to the City's motion for summary judgment. Indeed, Downey's response to the City's motion for summary judgment is devoid of any citation to the record. Downey appears to operate under the misapprehension that, in response to a motion for summary judgment, he need only provide the Court with the record, assert that there is evidence somewhere therein to support his claims, and, in essence, challenge the Court to prove him wrong. See

United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)

("Judges are not like pigs, hunting for truffles buried in briefs.").

For example, with regard to Downey's first "theory" of liability, Downey has cited no evidence from which we could draw a reasonable inference -- much less any direct evidence -- that anyone in the Philadelphia District Attorney's Office "knew that plaintiff had been falsely accused" and knew that Officer Rose offered perjured evidence against Downey at trial. Downey's Reply at 1-2 (emphasis added). Downey's repeated and insistent incantation of these allegations, see Downey's Mem. of Law at 9 & Downey's Reply at 1-2, does not convert what are mere unsubstantiated assertions into evidence that will defeat a motion for summary judgment.

As to Downey's second "theory", he has not proffered a single item of evidence to support his allegation that "[v]arious high ranking officials within the police department knew that plaintiff had been falsely accused by [Officer] Rose, but nonetheless took no steps to address that fact and allowed the trial of plaintiff to proceed on the basis of perjurious testimony." Downey's Reply at 2 (emphasis added).<sup>7</sup> Downey's

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7. Downey's complaint is at bottom grounded in his displeasure with the outcome of the investigations (or lack thereof) of the District Attorney's Office and the Internal Affairs Division and their subsequent response (or lack of one) to his allegations against Officer Rose. Downey's constitutional rights, however, were hardly violated merely because the results of the District Attorney's and Internal Affairs' investigations were inconclusive  
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allegation in this regard, like his assertions against the District Attorney's Office (which is not even a defendant here), is bereft of factual support. See Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d Cir. 1990) ("The non-movant cannot escape summary judgment merely by vaguely asserting the existence of some unspecified disputed material facts, or defeat the motion through mere speculation or conjecture.") (internal citations and quotation marks omitted).

## 2. Downey's Third "Theory"

Downey's third "theory" of liability against the City is that, by transferring Officer Rose to foot patrol in Manayunk, see supra n.2 and accompanying text, Captain Carre recognized that Officer Rose was "misusing his official authority improperly to harass plaintiff" and was negligent in his supervision of Officer Rose when he re-transferred him to radio car patrol duty because Carre should have anticipated that Officer Rose would later violate Downey's constitutional rights. See Downey's Reply at 2.

Although municipalities and other local governmental bodies are "persons" within the meaning of § 1983, a municipality may not be held liable under § 1983 solely because it employs a tortfeasor. See Monell v. New York City Dept. of Social Servs.,

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7. (...continued)  
or not to his liking. See Kelsey-Andrews v. City of Philadelphia, 713 F. Supp. 760, 765 (E.D. Pa. 1989), aff'd in part and vacated in part by 895 F.2d 1469 (3d Cir. 1990).

436 U.S. 658, 689 (1978). As the Supreme Court stated in Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986), "[w]hile Congress never questioned its power to impose civil liability on municipalities for their own illegal acts, Congress did doubt its constitutional power to impose such liability in order to oblige municipalities to control the conduct of others." Thus, the Supreme Court has consistently held that municipalities may not be held liable under a theory of respondeat superior. See, e.g., Oklahoma City v. Tuttle, 471 U.S. 808, 818 (1985); Canton v. Harris, 489 U.S. 378, 392 (1989).

Instead, a plaintiff like Downey who seeks to impose liability on a municipality under § 1983 must identify a municipal "policy" or "custom" that caused plaintiff's constitutional injury. See Monell, 436 U.S. at 694; Pembaur, 475 U.S. at 480-81. As the Supreme Court explained this April, identifying a "policy" "ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality." Board of the County Comm'r of Bryan County v. Brown, 117 S. Ct. 1382, 1388 (1997). "Similarly, an act performed pursuant to a 'custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law." Id.

The failure to train employees can constitute a "policy" sufficient to render a municipality liable under § 1983, see Canton, 489 U.S. at 387 ("[T]here are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under § 1983."), "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id. at 388; see also Bryan County, 117 S. Ct. at 1390.

A failure to supervise has been likened to a failure to train that can also give rise to municipal liability under § 1983, see Groman v. Township of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995), but only if a failure to supervise evidences a municipality's deliberate or conscious choice, in other words, a policy. Accordingly, the City here may only be held liable under § 1983 for the constitutional violations Officer Rose allegedly committed if Captain Carre "exhibited deliberate indifference" to the alleged deprivations of Downey's constitutional rights. See Canton, 489 U.S. at 392. That is, in order to hold the City liable for Captain Carre's allegedly negligent supervision of Officer Rose, Downey must: "1) identify with particularity what the supervisory official failed to do that demonstrates his deliberate indifference; and 2) demonstrate a close causal relationship between the identified deficiency and the ultimate injury." Kis v. County of Schuylkill, 866 F. Supp. 1462, 1474 (E.D. Pa. 1994) (citing Sample and Canton).

First of all, putting aside the question of whether Captain Carre is even an official with "final policymaking authority" such that his deliberate indifference could subject the City to § 1983 liability, see City of St. Louis v. Praprotnik, 108 S. Ct. 915, 924 (1988),<sup>8</sup> we do not see how the

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8. The question of who is a "policymaker" is a question of state law. See Praprotnik, 485 U.S. at 142. When we look to the law of the Commonwealth, we must determine which official has final, unreviewable discretion to make a decision or take an action. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990). As the Supreme Court in Praprotnik observed:

When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality. Similarly, when a subordinate's decision is subject to review by the municipality's authorized policymakers, they have retained the authority to measure the official's conduct for conformance with their policies. If the authorized policymakers approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality because their decision is final.

485 U.S. at 127.

The City argues that the Internal Affairs Division of the Philadelphia Police Department had the authority to review Captain Carre's decisions (and that Downey knew this), and, thus, the City asserts, Captain Carre is not a final policymaker whose actions or omissions can subject the City to liability under § 1983. See Kelsey-Andrews, 713 F. Supp. at 765 ("[A] police captain and sergeant . . . could [not] be considered policymakers in the Philadelphia Police Department; it appears that only the Police Commissioner could, by his acts or omissions, subject the City to § 1983 liability under relevant Supreme Court

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"harassment" alleged here is a constitutionally significant injury. See City of Los Angeles v. Heller, 475 U.S. 796 (1978) (holding that a municipality cannot be held liable for the failure to supervise or train an officer when there is no underlying constitutional violation by the officer). What we have in this case is one instance of Officer Rose accusing Downey of illegally towing a car, one instance of Officer Rose allegedly questioning Downey's modus operandi, and one instance of Officer Rose issuing a ticket to Downey for illegally parking his tow truck on the sidewalk. See Bieras v. Nicola, 860 F. Supp. 226, 233 (E.D. Pa. 1994) ("Mere verbal harassment however, does not rise to the level of a constitutional deprivation so as to qualify for a claim under section 1983 . . . .") (citing many cases); Arnold v. Truemper, 833 F. Supp. 678, 682 (N.D. Ill. 1993) (same) (also citing many cases). The sum of these allegations, even if proven true, does not equal a violation of Downey's constitutional rights. See Tuttle, 471 U.S. 823-24; Bryan County, 117 S. Ct. at 1390.

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8. (...continued) precedents."). While it appears that Downey, in fact, knew that he could file a formal complaint with the Internal Affairs Division about Officer Rose's "harassment" but did not until after his arrest, and that Internal Affairs could, in fact, review Captain Carre's response to the complaints of "harassment," the record is unclear regarding whether Captain Carre was the final policymaker with regard to his decision to re-transfer Officer Rose back to radio car duty. In any event, even if we assume arguendo that Captain Carre was a final decisionmaker on at least this latter issue, as will become clear, see infra, Captain Carre's actions or omissions vis-a-vis Officer Rose do not subject the City to liability under § 1983.

Second, even if we assume arguendo that the "harassment" alleged here amounts to a constitutional tort, Captain Carre's response evidences anything but deliberate indifference. The record is abundantly clear and undisputed that Captain Carre, in response to Downey's complaints, spoke to Officer Rose on several occasions, reviewed the apposite law with him, and had him reassigned to an area in the district where he would be less likely to run across Downey. See supra. Indeed, the penultimate contact between Officer Rose and Downey involved Officer Rose telling Downey that, as a result of Captain Carre's instructions, he would be avoiding him in the future. See City's Mem. of Law at 15 (citing Downey's Dep. at 107-09, attached as Exh. J. to City's Mot. for Summary Judgment).

Finally, even if we assume arguendo that Downey suffered a constitutional violation and that Captain Carre was deliberately indifferent, there is still no evidentiary support here to suggest that there is a close causal connection between Captain Carre's alleged negligent supervision and Downey's constitutional violation. Downey's theory is that Captain Carre evidenced deliberate indifference to his plight when he re-retransferred Officer Downey to radio car patrol. See supra n.2. It simply cannot be said that, when Captain Carre returned Officer Downey to radio car patrol, he evidenced a "conscious disregard for the known and obvious consequences of his actions." Bryan County, 117 S. Ct. at 1393 n.1. The City cannot be held liable for Captain Carre's decision to place Officer Rose in a

radio patrol car because Downey has not demonstrated that this decision reflected a conscious disregard for a high risk that Officer Rose would violate Downey's federally-protected rights. See id. at 1394 ("As we recognized in Monell and have repeatedly reaffirmed, Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights. A failure to apply stringent culpability and causation requirements raises serious federalism concerns . . .").

We find that the record simply will not support a reasonable jury finding of municipal policy or custom of "negligent supervision" which rises to the level of deliberate indifference required for § 1983 liability.

### 3. Downey's Fourth "Theory"

Downey's fourth theory claims that when Officer Rose and Sergeant Rapone escorted him from the Bell Atlantic van into the Fifth District's stationhouse, they violated Pennsylvania state law. See Downey's Reply at 12. A violation of state law, standing alone, is insufficient to establish a violation of the United States Constitution. See Swonden v. Hughes, 321 U.S. 1, 11 (1944); Ms. B v. Montgomery County Emergency Serv., Inc., 799 F. Supp. 534, 537 (E.D. Pa. 1992), aff'd 989 F.2d 488 (3d Cir.), cert denied 510 U.S. 860 (1993); Molgaard v. Town of Caledonia, 527 F. Supp. 1073, 1082 (E.D. Wis. 1981) ("[I]t is well-settled that a violation of a state statute does not in and of itself

establish a constitutional violation.), aff'd, 696 F.2d 58 (7th Cir. 1982); Robinson v. Leahy, 401 F. Supp. 1027, 1030 (N.D. Ill. 1975) ("[A] failure to follow the dictates of a state statute does not, by itself, constitute a civil rights violation.").

An appropriate Order follows.

