

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

OMAR FARRELL RUIZ, : CIVIL ACTION
Plaintiff :
 :
VS. :
 :
PHILADELPHIA HOUSING AUTHORITY, :
et al., :
Defendants : NO. 96-7853

MEMORANDUM AND ORDER

I. INTRODUCTION

Plaintiff, Omar Farrell Ruiz, brought the instant action against defendants, the Philadelphia Housing Authority, et al., asserting federal claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 (1994), and state law claims of assault and battery, false arrest and false imprisonment, and intentional infliction of emotional distress. This lawsuit arises in the context of an alleged intentional and malicious shooting of plaintiff by defendant police officers without probable cause. Defendant has filed a Motion for Summary Judgment and, for the reasons which follow, I will DENY the Motion.

II. FACTS AND HISTORY¹

Plaintiff claims that, on June 1, 1994, he was approached by three plain clothed police officers, defendants Hakim Dunbar,

¹ The factual history is compiled from a review of the Complaint, Answer, defendants' Motion for Summary Judgment with Supporting Memorandum and plaintiff's Response to the Motion for Summary Judgment with Supporting Memorandum. However, all of the alleged facts of the June 1, 1994 incident detailed here were denied by defendants in their Answer.

Kimm Dye and John Doe, who did not identify themselves as law enforcement officials. When plaintiff began to walk away, defendant Officer Dunbar allegedly grabbed him by the shoulder, ordered him to stop and told him to put his hands up. As plaintiff raised his hands, Officer Dunbar shot plaintiff in the abdomen, threw him to the ground and shoved his knee into plaintiff's back.

Plaintiff instituted this action by filing for a Writ of Summons in the Court of Common Pleas, Philadelphia County on September 18, 1996.² On November 26, 1996, defendants successfully removed the case to Federal Court.³ Subsequently, on January 29, 1997, the defendants submitted their Answer to the Complaint.

Defendants now move for summary judgment on all claims based on the contention that this lawsuit is barred by the applicable statute of limitations since plaintiff did not bring suit within two years of his reaching the age of majority.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56(c) states that summary judgment is proper "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 judgment

² Defendants were not served with a copy of the complaint until November 16, 1996.

³ Although plaintiff filed a petition for remand, Judge Yohn of this court denied the petition both originally and on reconsideration. Plaintiff appealed the matter to the Third Circuit which dismissed it on October 22, 1997, for lack of appellate jurisdiction.

as a matter of law." FED. R. CIV. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Williams v. Borough of West Chester, 891 F.2d 458, 463-64 (3d Cir. 1989). A factual dispute is "material" only if it might affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). For an issue to be "genuine", a reasonable fact finder must be able to return a verdict (or render a decision) in favor of the non-moving party. Id. On summary judgment, it is not the court's role to weigh the disputed evidence and decide which is more probative. Brewer v. Quaker State Oil Refining Co., 72 F.3d 326, 331 (3d Cir. 1995). The court must always consider the evidence, and the inferences from it, in the light most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Tigg Corp. v. Dow Corning Corp., 822 F.2d 358, 361 (3d Cir. 1987); Baker v. Lukens Steel Co., 793 F.2d 509, 511 (3d Cir. 1986). If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255.

IV. DISCUSSION

Because Congress did not establish a statute of limitations applicable to §1983 actions brought in federal court, federal district courts must "borrow" state laws of limitations governing analogous state causes of actions. Nelson v. County of Allegheny, 60 F.3d 1010, 1012 (3d Cir. 1995) cert. denied Beddingfield v. Allegheny County, 116 S. Ct. 1266 (1996) citing Board of Regents v. Tomanio, 446 U.S. 478, 483-85 (1980)(citations

omitted). The Supreme Court, in Wilson v. Garcia, 471 U.S. 261, 279 (1985), held that well-founded causes of action under section 1983 are best characterized as tort actions for the recovery of damages for personal injuries and that state statutes of limitations governing personal injuries would fairly serve federal interests. Pennsylvania maintains a two-year limitations period for personal injury actions. See 42 PA. CONS. STAT. ANN. §5524 (Supp. 1995); Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 457 n.9 (3d Cir. 1996). This same two-year period also applies to any other actions based on negligent or intentional tortious conduct. See 42 PA. CONS. STAT. ANN. §5524; Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir. 1985) cert. denied 474 U.S. 950 (1985).⁴

However, under Pennsylvania law the statute of limitations is tolled for personal injuries suffered during infancy. Osei-Afriyie v. Medical College of Pennsylvania, 937 F.2d 876, 882 (3d Cir. 1991) citing Bowser v. Zachary, 544 A.2d 1022, 1024 (Pa. Super. 1988).⁵ Therefore, the statute of limitations for

⁴ 42 PA. CONS. STAT. ANN. §5524(1) and (2) provides:
The following actions and proceedings must be commenced within two years:

(1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

⁵ 42 PA. CONS. STAT. ANN. §5533(b) states:

(b) Infancy.--If an individual entitled to bring a civil action is an unemancipated minor at the time the cause of action accrues, the period of minority shall not be deemed a portion of the time period within which the action must be commenced. Such person shall have the same time for

civil rights claims brought under §1983 will similarly be tolled should the plaintiff be under the age of majority at the time the action accrues. See Faison v. Sex Crimes Unit of Philadelphia, 845 F. Supp. 1079 (E.D. Pa. 1994).

The cause of action in the instant matter arose on June 1, 1994, the date of the alleged shooting. On September 18, 1996, two years, three months and seventeen days later, plaintiff filed the Writ of Summons in this action. However, because plaintiff was only seventeen at the time of the shooting, the statute of limitations, under Pennsylvania law did not begin to run until he reached eighteen years of age. Therefore, the issue in this motion hinges on the correct birth date of the plaintiff. Defendants assert that, because plaintiff's birth date is listed as September 9, 1976 on his Philadelphia Police Department criminal rapsheet and other documents supplied by him to law enforcement officials, the action was commenced two years and nine days after his eighteenth birthday, thus making the suit time-barred. To the contrary, plaintiff has produced his birth certificate and an affidavit showing his birth date as September 19, 1976, which would, in turn, establish that the lawsuit was indeed filed within the two year limitations period. Because the evidence produced by both sides is contradictory and the determination of plaintiff's birth date would affect the outcome of the case, there clearly

commencing an action after attaining majority as is allowed to others by the provisions of this subchapter. As used in this subsection the term "minor" shall mean any individual who has not yet attained the age of 18.

exists a genuine issue of material fact. Under this court's obligation to construe the evidence, and the inferences from it, in the light most favorable to the non-moving party, plaintiff's affidavit and birth certificate must be given great weight. As such, defendants' Motion for Summary Judgment must be denied.