

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

KAHL HAWKINS,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 97-CV-5380
	:	
	:	
CHARLES MICEWSKI, ET AL.,	:	
Defendants.	:	

McGlynn, J.

January 6, 1998

M E M O R A N D U M

Stripped of the conclusory verbiage,¹ the complaint alleges: (1) that on October 7, 1994 plaintiff was arrested by agents of the Pennsylvania Bureau of Narcotics Investigations without a warrant and without probable cause; (2) that at a preliminary hearing on October 18, 1994, plaintiff was held for trial on the basis of false testimony by one of the arresting agents; (3) that plaintiff was released from custody approximately one month later; and (4) that on August 30, 1996, all charges against plaintiff were dismissed.

As a result, plaintiff seeks money damages under Federal and State laws for false arrest and malicious prosecution.

The defendants, three Pennsylvania Bureau of Narcotics Enforcement agents and their supervisor, have filed a motion to dismiss grounded on: (a) the statute of limitations; (b) immunity; and (c) failure to state a claim.

¹ "[A] court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., No. 96-2134, 1997 WL 785534, at *3 (3rd Cir. December 23, 1997).

Plaintiff's response to the motion does not contest the dismissal of the 42 U.S.C. § 1983 or the state law claims based on the false arrest, apparently conceding that those claims are barred by the statute of limitations. Nor does the response challenge the dismissal of any claims based on the First, Fifth and Fourteenth Amendments and 42 U.S.C. § 1985.

1. Malicious Prosecution

With regard to the § 1983 claim predicated on the federal analog of malicious prosecution, Third Circuit jurisprudence recognizes such a cause of action with the two year statute of limitations accruing from the time of the favorable disposition of the underlying charges. Rose v. Bartle, 871 F.2d 331, 348, 349 (3d Cir. 1989).

However, a more recent decision by the United States Supreme Court has raised a question concerning the continued viability of malicious prosecution as a constitutional tort remediable by an action under § 1983. It is now clear that such a claim cannot be predicated on a violation of the Fourteenth Amendment since the standards for the initiation or continuation of a prosecution are not prescribed by the United States Constitution. Albright v. Oliver, 510 U.S. 266 (1994).² Nevertheless, the Court specifically left open the question of whether the common law tort of malicious prosecution can be given constitutional recognition under the

² "The Court has said that the accused is not 'entitled to judicial oversight or review of the decision to prosecute.'" Albright, 510 U.S. at 274.

Fourth Amendment's proscription against the unreasonable seizure of a person without probable cause. Id. at 275.

In the matter under consideration, the seizure took place at the time of the arrest on October 7, 1994, and all injuries suffered by plaintiff including his confinement ensued from that single act.

The Supreme Court's ruling that malicious prosecution cannot survive a Fourteenth Amendment challenge and its emphasis on a "seizure" as the controlling event in a Fourth Amendment analysis places a new cast on the application of the statute of limitations. Does the statute start to run at the time of the seizure (false arrest) or when the prosecution concludes in plaintiff's favor (malicious prosecution)?

The concurrence of Justice Ginsberg in Albright argues that the plaintiff "remained effectively 'seized' for trial so long as the prosecution against him remained pending, and that [the agent's] testimony at the preliminary hearing, if deliberately misleading, violated the Fourth Amendment by perpetuating the seizure, then the limitations period should have a different trigger." Albright, 510 U.S. at 280.

This analysis blurs the distinction between the common law torts of false arrest and malicious prosecution in order to fit malicious prosecution into a Fourth Amendment mold.

Nevertheless, given the present state of the law in this Circuit, I will deny the motion to dismiss the § 1983 claim based on malicious prosecution without prejudice to the defendants' right

to renew the motion by way of summary judgment or by a Fed. R. Civ. P. 50 motion after further development of the record.

2. Immunity

To the extent that plaintiff's claims are based on false testimony at the preliminary hearing, they must fail.

In Briscoe v. LaHue, the Supreme Court held that a police officer is absolutely immune from liability under section 1983 for allegedly perjured testimony given at a criminal defendant's trial. Briscoe v. LaHue, 460 U.S. 325, 342-43 (1983). The Third Circuit has explicitly extended a police officer's immunity in section 1983 suits to pretrial proceedings. See William v. Hepting, 844 F.2d 138, 141-43 (3d Cir.), cert. denied, 488 U.S. 851 (1988)(affirming extension of Briscoe absolute immunity to police officer testimony at preliminary hearing); Kulwicki v. Dawson, 969 F.2d 1454, 1467 n.16 (3d Cir. 1992)(declining to override Briscoe broad witness protection); McArdle v. Tronetti, 961 F.2d 1083, 1085 (3d Cir. 1992)(extending absolute immunity doctrine to witness testimony at preliminary hearings). Accordingly, defendants' Motion to Dismiss will be granted with regard to the claims based on the false testimony at the preliminary hearing.

With respect to the state law claims, the defendants have statutory immunity. 1 Pa. Cons. Stat. Ann. § 2310. In LaFrankie v. Miklich, 618 A.2d 1145, 1149 (Pa. Cmwlth. 1992), the court held that state officers are immune from claims of actual malice and willful misconduct, including claims arising out of the initiation of criminal proceedings.

3. Supervisor Liability

Plaintiff alleges that defendant Sunderhauf, in his individual capacity as the agents' supervisor, is responsible for the wrongful acts of defendant agents.

To hold supervisory personnel liable under § 1983, plaintiff must demonstrate that defendant Sunderhauf "exhibited deliberate indifference" to the alleged deprivations of plaintiff's constitutional rights.³ Specifically, a plaintiff 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, 885 F.2d at 1118, and City of Canton v. Harris, 489 U.S. 378, 489 (1989)). A plaintiff may also demonstrate supervisory liability by showing that the defendant participated in violating plaintiff's rights, or that he directed others to violate them, or that he, as the person in charge, had knowledge of and acquiesced in his subordinates' violations.⁴

³ Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) ("a 'person' is not the 'moving force [behind] the constitutional violation' of a subordinate, [citation omitted], unless that 'person' -- whether a natural one or a municipality -- has exhibited deliberate indifference to the plight of the person deprived."); see Rizzo v. Goode, 423 U.S. 362, 370 (1979)(stating no respondeat superior liability in section 1983 actions).

⁴ Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995)(finding supervisory liability demonstrated if supervisor participated in violating rights, or directed others to violate rights, or had knowledge of and acquiesced in subordinates'

According to plaintiff's complaint:

Defendant Sunderhauf knew or should have know [sic] of defendant agents conduct of arresting innocent citizens without proper legal basis to justify such acts. The Defendant Sunderhauf had actual and/or constructive notice that defendant agents routinely made wanton, malicious, and improper arrests. Despite this actual and/or constructive notice, Defendant Sunderhauf failed to act accordingly to correct said actions and protect the Constitutional rights of private citizens against such police action.

Compl. ¶ 17.

In particular, plaintiff asserts that defendant Sunderhauf "failed to properly investigate the circumstances regarding arrests made by the Bureau of Narcotics Investigations, including defendant agents, thereby causing and encouraging said agents to engage in unlawful conduct." Id. ¶ 21.

These pleadings are insufficient to maintain a claim for supervisory liability. Plaintiff does not allege that defendant Sunderhauf was personally involved in the alleged unconstitutional conduct.⁵ Rather, plaintiff contends that defendant Sunderhauf was aware of defendant agents' conduct and by failing to take action to prevent this conduct, defendant Sunderhauf tacitly acquiesced to defendant agents' actions. Plaintiff, however, has not provided any specific factual support for these contentions. Nowhere in his

violations)(citing Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990)).

⁵ "A defendant in a [§ 1983] action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

pleading does plaintiff demonstrate that defendant Sunderhauf was involved in, knew of or acquiesced to defendant agents' alleged misconduct. Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3d Cir. 1988) (finding heightened pleading standard for evaluating the sufficiency of civil rights complaints is satisfied if the complaint alleges "the specific conduct violating the civil rights at issue, the time and place of the unlawful conduct, and the identity of the responsible officials"), cert. denied, 489 U.S. 1065 (1989); Brown v. Stewart, 910 F. Supp. 1064, 1068 (W.D. Pa. 1996) (applying heightened pleading standard in cases brought against governmental officials in their personal capacities); House v. New Castle County, 824 F. Supp. 477, 482-83 (D. Del. 1993) (granting summary judgment for failure to plead supervisory liability with specificity). Accordingly, plaintiff has failed to state a claim against defendant Sunderhauf for supervisory liability under section 1983.