

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

JOHN PINO : CIVIL ACTION
 :
 v. :
 :
 THOMAS M. BAUMEISTER, :
 DETECTIVE, LOWER MERION POLICE :
 DEPARTMENT : NO. 96-5233

MEMORANDUM ORDER

Presently before the court is defendants' motion to dismiss in which they seek to quash a self-styled handwritten "Summons" filed by plaintiff by which he appears to seek to add a new claim and to join additional defendants, including counsel of record for the named defendants.

To add new claims or parties, plaintiff must file a motion for leave to do so, serve such motion on defendants and give them an opportunity to respond, and receive leave from the court. If such leave is obtained, service must be properly directed to any additional defendants. Plaintiff may not simply present current parties with a summons or other document declaring that others have been added as defendants to a lawsuit.

If plaintiff intends to seek leave to assert a new claim against the Lower Merion Police Department for towing away his stolen vehicle when he was arrested on March 31, 1995, an occasion apparently distinct from the arrest on which his initial claim was predicated, he may wish to consider the following. The police may constitutionally remove from a public area the vehicle of an arrestee. See South Dakota v. Opperman, 428 U.S. 364, 368-69 (1977); U.S. v. Frank, 864 F.2d 922, 1001 (3d Cir. 1988),

cert. denied, 490 U.S. 1095 (1989). While the subsequent theft from a private parking facility of a vehicle so seized may give rise to a negligence claim, it does not alone support a federal constitutional claim under 42 U.S.C. § 1983. While a municipality may be sued under § 1983, a municipal police department is not a party subject to suit under § 1983. See Irvin v. Borough of Darby, 937 F. Supp. 446, 450 (E.D. Pa. 1996); Johnson v. City of Erie, 834 F. Supp. 873, 878-79 (W.D. Pa. 1993); PBA Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808, 825-26 (D.N.J. 1993). The two year statute of limitations for any § 1983 claim predicated on conduct on March 31, 1995 has expired.

If plaintiff intends to seek leave to join additional officers who allegedly participated in his arrest of May 13, 1996, he should note that Fed. R. Civ. P. 11, which authorizes monetary and other sanctions for asserting unwarranted factual allegations or legal claims, is applicable to pro se litigants. See, e.g., Wright v. Tackett, 39 F.3d 155, 158 (7th Cir. 1994), cert. denied, 115 S. Ct. 1100 (1995); Mayfield v. Klevenhagen, 941 F.2d 346, 348 (5th Cir. 1991); Fariello v. Campbell, 860 F. Supp. 54, 71 (E.D.N.Y. 1995). In this regard, plaintiff should note that personal displeasure with opposing counsel provides no basis for suing him or adding him as a defendant in a § 1983 action. Plaintiff may also want to consider the surveillance camera film submitted in support of defendant Baumeister's motion for summary judgment from which it appears that plaintiff was in

fact advised on May 13, 1996 that he was being placed under arrest and thereafter persisted in resisting.

Because no evidence was presented or indeed any allegation made from which a claim against the municipality, let alone its police department, could be sustained, the motion to dismiss of Lower Merion Police Department has been granted. Because there is no evidence to support plaintiff's claim against defendant Baumeister and indeed plaintiff acknowledged at his deposition that this officer was in fact not even present at the arrest complained of, his motion for summary judgment has been granted. The court cannot conscientiously leave pending insupportable claims because plaintiff may, after appropriate consideration, decide properly to seek leave to assert a new facially deficient claim or to sue other defendants in lieu of officer Baumeister.

Plaintiff may, however, file a complaint with an application to proceed in forma pauperis, containing any cognizable claims against newly named individuals which can be asserted in good faith. Should he present such a complaint and should leave to proceed be granted, the court will not require a further filing fee. Plaintiff is reminded, however, that the statute of limitations for any § 1983 claim arising from the arrest of May 13, 1996 is two years and thus will expire on May 13, 1998.

ACCORDINGLY, this day of December, 1997, **IT IS**
HEREBY ORDERED that defendants' motion to dismiss (Doc. #32) is

GRANTED, without prejudice to plaintiff timely to file any other federal claims he may wish and in good faith be able to assert.

BY THE COURT:

JAY C. WALDMAN, J.