

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

WILLIAM HARRIS :
 : CIVIL ACTION
 v. :
 : 97-3666
 CITY OF PHILADELPHIA, :
 et al. :

MEMORANDUM

Broderick, J.

August 14, 1998

Presently before the Court is a motion for summary judgment filed by Defendants City of Philadelphia, Captain Thomas Barron, and Captain Orville Ballard. Also before the Court is a motion for summary judgment filed by Defendant Howard Seddon. For the reasons which follow, the Court will grant the motions in part and deny them in part.

Plaintiff William Harris commenced the instant action under 42 U.S.C. § 1983, and state law. Plaintiff alleges that his constitutional rights were violated as a result of two illegal arrests conducted by former police officers in Philadelphia's 39th District. Count One of Plaintiff's five count complaint alleges a civil rights claim under 42 U.S.C. § 1983 against the five individual police officers who were involved in Plaintiff's allegedly unlawful arrests-- Steven Brown, John Baird, Thomas Ryan, Howard Seddon, and Thomas DeGovanni. Count One of Plaintiff's complaint further alleges a claim under § 1983

against Captain Orville Ballard (who at the time of Plaintiff's allegedly unlawful arrests was Captain of the Narcotics Unit) and/or Captain Thomas Barron (who at the time of Plaintiff's allegedly unlawful arrests was Captain of the 39th District). The caption of Count One of Plaintiff's complaint refers to Captain Ballard, but the allegations in Count One refer to Captain Barron. The Court will assume that Plaintiff intended to name both Captain Ballard and Captain Barron as Defendants in Count One. Count Two of Plaintiff's complaint alleges a § 1983 claim against the District Attorney's Office for violating Plaintiff's due process right to exculpatory material under Brady v. Maryland. Count Three alleges a claim of § 1983 municipal liability against the City of Philadelphia. Count Four alleges state law claims of malicious prosecution, malicious abuse of process, false arrest, false imprisonment and intentional infliction of emotional distress against the individual Defendants officers Brown, Baird, Seddon, Ryan and DeGovanni, as well as Captain Ballard, and Captain Barron. Count Five alleges a claim for punitive damages against these same individual defendants.

In a separate memorandum and order issued on this day, the Court granted summary judgment in connection with Count Two of Plaintiff's complaint and ordered that summary judgment be entered in favor of Lynne Abraham, in her official capacity as

Philadelphia District Attorney, and against Plaintiff.

The undisputed facts, as disclosed by the admissible exhibits, depositions and affidavits submitted in connection with these motions for summary judgment, are summarized as follows:

On or about January 6, 1988 Plaintiff was arrested in his home by 39th District Police Officers John Baird, Steven Brown, Howard Seddon, Thomas Ryan and Thomas DeGovanni. According to Plaintiff's deposition testimony, Plaintiff was unlawfully arrested and was falsely charged with possession of a controlled substance with intent to deliver and delivery of a controlled substance. More than one of the defendant police officers have admitted that, on or about January 6, 1988, the officers entered Plaintiff's home without a search warrant, and then obtained a search warrant after they had searched Plaintiff's home and arrested Plaintiff. According to the deposition testimony of Defendant John Baird, Defendants Baird and Seddon left Plaintiff's home after the search and obtained the warrant. Defendant Seddon appears as an affiant on the warrant.

On October 31, 1989, Plaintiff pleaded guilty to the narcotics charges which arose from the January 6, 1988 arrest. Plaintiff testified in his deposition that, although he was innocent, he pleaded guilty to the charges because he was afraid of the police officers who arrested him, and did not think he had

a chance to prevail at trial.

On or about April 13, 1990, Plaintiff was again arrested by Officers Baird and Ryan of the 39th District. According to his deposition testimony, Plaintiff was again wrongfully arrested and falsely charged with possession with intent to deliver a controlled substance. Following his arrest, Plaintiff remained in prison for approximately six weeks. Plaintiff eventually posted bail and was released. Upon his release, Plaintiff went into hiding and failed to appear in court. According to Plaintiff's deposition, Plaintiff went into hiding because he was afraid of the 39th District officers who had arrested him. A warrant was issued for Plaintiff's arrest.

On or about August 5, 1991, Plaintiff was again arrested-- this time, by police officers outside the 39th District. According to Plaintiff's deposition testimony, Plaintiff was arrested on the outstanding warrant. However, evidence produced by Defendants (including the court records of Plaintiff's criminal case) reveals that Plaintiff was again charged with possession of a controlled substance, possession with intent to deliver and criminal conspiracy. Plaintiff remained in prison following his August 1991 arrest. He pleaded guilty to the charges arising from the April 1990 arrest as well as the August 1991 arrest. The charges against Plaintiff were consolidated and, on March 3, 1992, Plaintiff was sentenced to two concurrent

terms of three to six years imprisonment. Plaintiff was assigned to a half-way house in February 1994. In August 1994, Plaintiff was paroled.

In early 1995, former 39th District police officers Baird, Brown, Ryan and DeGovanni (along with former officer James Ryan) were indicted for criminal activities which they undertook as police officers in the 39th District. The former officers have admitted to providing false information on affidavits for probable cause which were prepared in connection with applications for search warrants.

On July 20, 1995, the District Attorney's Office nolle prossed the charges and convictions against Plaintiff which arose from his arrests in 1988 and 1990 by officers in the 39th District. Following the nolle prosee of said charges, Plaintiff's criminal defense counsel moved to have Plaintiff resentenced for the offenses which arose from the August 1991 arrest. On October 19, 1995, Plaintiff was resentenced on the charges which arose from the August 1991 arrest. The sentencing court vacated Plaintiff's sentence of March 3, 1992 and sentenced Plaintiff to two concurrent terms of one to two years imprisonment on the charges arising from the 1991 arrest. The sentencing court credited Plaintiff with time served. In light of the fact that Plaintiff had served over three years imprisonment (considering credit for time served), Plaintiff was

released without parole.

From December 1987 until April 1990, Captain Orville T. Ballard served as Captain of the Narcotics Unit. In April 1990, Ballard became Captain of the Documents Processing Unit. As Captain of the Narcotics Unit, Ballard was responsible for overseeing the Narcotics Processing Unit. Captain Ballard did not directly participate in Plaintiff's arrests or prosecution. In his deposition testimony, Captain Ballard stated that, while he worked in the Narcotics Processing Unit, he had never received any information that police officers Baird, DiGovanni, Brown, Seddon and Ryan were falsifying evidence or creating false affidavits.

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant summary judgment "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 as a matter of law." Fed.R.Civ.P. 56(c).

The law is clear that when a motion for summary judgment under Fed.R.Civ.P. 56 is properly made, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby,

Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

The Court must draw any inferences from the underlying facts in favor of the non-moving party, and must deny summary judgment if there is a disagreement over what inferences can be reasonably drawn from the facts even if those facts are undisputed. Ideal Dairy Farms v. John Labatt, 90 F.3d 737, 744 (3d Cir. 1996). However, the Supreme Court has made clear that "[t]he mere existence of a scintilla of evidence" in support of the non-movant's position will not be sufficient to defeat a motion for summary judgment. Anderson, 477 U.S. at 252.

In Wilson v. Garcia, 471 U.S. 261 (1985), the Supreme Court held that the statute of limitations period for claims under § 1983 is equivalent to the period provided under state law for personal injury claims. Under Pennsylvania statute, the statute of limitations for personal injury claims is two years. 42 Pa.C.S.A. § 5534 (1982). Section 5534 provides in relevant part:

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... (7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional

or otherwise tortious conduct or any other action proceeding sounding in trespass...

The limitations period for claims of false arrest and abuse of process begins to run at the time the plaintiff was arrested because "on that date a plaintiff would have reason to know of the injury which those two torts encompass." Rose v. Bartle, 871 F.2d 331, 350 (3d Cir. 1989) (citations omitted). Similarly, claims of false imprisonment accrue on the date on which the plaintiff discovers or reasonably should have discovered that he was falsely imprisoned. Sandutch v. Muroski, 684 F.2d 252 (3d Cir. 1982). Likewise, claims of intentional infliction of emotional distress arise at the time the plaintiff experienced emotional distress. Osei-Afriyie v. Medical College of Pennsylvania, 937 F.2d 876, 884 (3d Cir. 1991); Bougher v. University of Pittsburgh, 882 F.2d 74, 80 (3d Cir. 1989). For claims of malicious prosecution, however, the statute of limitations begins to run at the time the criminal proceedings against plaintiff were terminated in his favor. Rose, 871 F.2d at 348-349.

In the instant case, the two years limitations period for Plaintiff's claims of false arrest, false imprisonment, excessive force, abuse of process and intentional infliction of emotional distress, under § 1983 and state law, began to run at the time Plaintiff was arrested (in January 1988 and April 1990), or imprisoned (in August 1991). Plaintiff commenced the instant

action on May 27, 1997-- more than seven years after his second arrest and almost six years after Plaintiff was imprisoned. Accordingly, Plaintiff's claims which arise from his January 1988 arrest and his April 1990 arrest, as well as his August 1991 imprisonment-- including his § 1983 and state law claims of false arrest, false imprisonment, excessive use of force, abuse of process and intentional infliction of emotional distress-- are barred by the statute of limitations.

Plaintiff's malicious prosecution claim, however, accrued on the date the criminal proceedings against him were favorably terminated by virtue of the District Attorney's grant of nolle prosequi-- on July 20, 1995. Accordingly, Plaintiff may proceed with his malicious prosecution claims under both § 1983 and Pennsylvania law.

Under both § 1983 and Pennsylvania law, a plaintiff bringing a malicious prosecution claim must establish that (1) the defendant initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; and (4) the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice. Hilferty, 91 F.3d at 579. The Third Circuit has recognized that a grant of nolle prosequi can be sufficient to satisfy the favorable termination requirement for a malicious prosecution claim. Id. (citing Haefner v. Burkey, 534 Pa. 62,

66, 626 A.2d 519, 521 (1993)).

In most circumstances, a plaintiff can not proceed against a police officer for a claim of malicious prosecution because a prosecutor, not a police officer, "initiates" criminal proceedings against an individual. See Albright, 510 U.S. at 279 n. 5 (Ginsburg, J. concurring). However, a police officer may be held to have "initiated" a criminal proceeding if he knowingly provided false information to the prosecutor or otherwise interfered with the prosecutor's informed discretion. See, Reed, 77 F.3d at 1054; Torres, 966 F.Supp. at 1365. In such cases, "an intelligent exercise of the ... [prosecutor's] discretion becomes impossible," and a prosecution based on the false information is deemed "procured by the person giving the false information." Restatement 2d Torts §653, cmt. g.

As the Third Circuit has repeatedly emphasized, in order to be liable under § 1983, a defendant must have personal involvement in the alleged violative conduct. Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988). In order for a supervising officer to be individually liable to a plaintiff under § 1983, the plaintiff must show, at a minimum, that the supervisor officially authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the police officers at the scene of the incident. Black v. Stephens, 662 F.2d 181,

189 (3d. Cir. 1981). Moreover, there must be a causal connection between the supervisor's actions and the police officers' alleged unconstitutional conduct. Id. A supervisor may only be liable for deficient training if the supervisor has "both (1) contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents, and (2) [there are] circumstances under which the supervisor's inaction could be found to have communicated a message of approval to the offending subordinate[s]." Bonenburger v. Plymouth Township, 132 F.3d 20, 25 (3d Cir. 1997).

A municipality is liable under § 1983 if the municipality itself, through the implementation of a municipal policy or custom, causes a constitutional violation. Monell v. New York City Dep't of Social Services, 436 U.S. 658, 691-95 (1978). In order to prove municipal liability, a plaintiff must establish "that, through its deliberate conduct, the municipality was the 'moving force' behind the [constitutional] injury alleged." Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397, --, 117 S.Ct. 1382, 1388 (1997). Municipal liability may not be premised on respondeat superior. Monell, 436 at 693-94.

The Supreme Court has recognized that a municipality may be held liable for a failure to train its employees if "the failure to train amounts to deliberate indifference to the rights of persons" with whom the employees come in contact, and thus

constitutes a violative policy or custom. City of Canton v. Harris, 489 U.S. 378 (1989). As the Supreme Court has stated, “[o]nly where a failure to train reflects a ‘deliberate’ or ‘conscious’ choice by a municipality-- a ‘policy’ as defined by our prior cases-- can a city [or municipal entity] be liable for such a failure under § 1983.” Id. at 390 (citations omitted).

In the instant case, the Court will grant summary judgment in favor of Captain Orville T. Ballard. Plaintiff has presented no admissible evidence that Defendant Ballard was personally involved in Plaintiff’s malicious prosecution, or that Ballard authorized, approved, or knowingly acquiesced in Plaintiff’s malicious prosecution. Captain Ballard did not supervise the officers in the 39th District who allegedly committed the malicious prosecution against Plaintiff. Ballard was never assigned to the 39th District. Furthermore, Plaintiff has presented no evidence that Ballard knew of Plaintiff’s malicious prosecutions, or knew of a pattern of similar malicious prosecutions. Accordingly, summary judgment will be granted in favor of Captain Orville Ballard.

The Court will deny summary judgment with respect to Captain Barron. Captain Barron had no personal involvement in Plaintiff’s malicious prosecution. However, there remains a genuine issue of material fact as to whether Barron knew of a

prior pattern of similar incidents of malicious prosecutions, and communicated a message of approval to the offending police officers. Accordingly, the Court will deny summary judgment as to Captain Thomas Barron.

The Court will deny summary judgment in connection with Plaintiff's claim of malicious prosecution against the City of Philadelphia. The Court has determined that genuine issues of material fact remain as to whether Plaintiff's alleged malicious prosecutions were the result of a municipal policy or custom, or a failure to train which amounted to deliberate indifference.

Moreover, the Court will deny summary judgment as to Plaintiff's claim of malicious prosecution against Defendant Howard Seddon with respect to the prosecution which arose from Plaintiff's January 1988 arrest. In light of the fact that Defendant Seddon appears as affiant on the search warrant which was obtained in connection with the 1988 arrest, there remains a genuine issue of material fact as to whether Defendant Seddon committed a malicious prosecution against Plaintiff Harris.

Accordingly, for the reasons stated above, the Court will allow Plaintiff to proceed to trial with his claim of malicious prosecution, under Pennsylvania law and § 1983. The Court will grant summary judgment as to Plaintiff's claims of false arrest, false imprisonment, excessive use of force, abuse of process and intentional infliction of emotional distress-- under both state

law and § 1983-- on the ground that said claims are barred by the statute of limitations. Additionally, the Court will grant summary judgment in favor of Captain Orville T. Ballard. The Court will deny summary judgment in connection with Plaintiff's malicious prosecution claims against Captain Thomas Barron and against the City of Philadelphia. Furthermore, the Court will deny summary judgment as to Plaintiff's malicious prosecution claim against Defendant Howard Seddon in connection with Plaintiff's prosecution which arose from the January 1988 arrest.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of August, 1998; upon consideration of the motion for summary judgment filed by the City of Philadelphia, Captain Orville Ballard and Captain Thomas Barron ("the City Defendants") and Plaintiff's response thereto; upon consideration of the motion for summary judgment filed by Defendant Howard Seddon and Plaintiff's response thereto; and for the reasons stated in the Court's accompanying memorandum;

IT IS ORDERED: the City Defendants' motion for summary judgment is **GRANTED** in connection with Captain Orville T. Ballard, and judgment shall be entered in favor of Defendant Orville T. Ballard and against Plaintiff William Harris;

IT IS FURTHER ORDERED: the City Defendants' motion for summary judgment is **GRANTED** in connection with Plaintiff's § 1983

and state law claims of false arrest, false imprisonment, excessive force, malicious abuse of process and intentional infliction of emotional distress on the ground that said claims are barred by the statute of limitations, and judgment shall be entered in favor of the City Defendants and against Plaintiff Harris with respect to said claims;

IT IS FURTHER ORDERED: the City Defendants' motion for summary judgment is **DENIED** in connection with Plaintiff's § 1983 and state law claims of malicious prosecution against Defendant Captain Thomas Barron and the City of Philadelphia;

IT IS FURTHER ORDERED: Defendant Howard Seddon's motion for summary judgment is **GRANTED** in connection with Plaintiff's § 1983 and state law claims of false arrest, false imprisonment, excessive force, malicious abuse of process and intentional infliction of emotional distress on the ground that said claims are barred by the statute of limitations, and judgment shall be entered in favor of Defendant Howard Seddon and against Plaintiff Harris with respect to said claims; and

IT IS FURTHER ORDERED: Defendant Howard Seddon's motion for summary judgment is **DENIED** in connection with Plaintiff's § 1983 and state law claim for malicious prosecution which arose from Plaintiff's January 1988 arrest.

RAYMOND J. BRODERICK, J.