

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

TROY ZAMICHIELI a/k/a
ANTHONY LASLEY, CP-8375

Plaintiff,

v.

POLICE OFFICER STOTT, badge #
3304, POLICE OFFICER
SANTOMIERI, badge # 2060 of the
PHILADELPHIA POLICE DEPT.

Defendants.

CIVIL ACTION

No. 96-0254

GREEN, S.J.

JUNE 30,1999

MEMORANDUM - ORDER

Presently before the Court are two motions: (1) a Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), brought by Defendant Police Department of Philadelphia and (2) a Motion for Summary Judgment, pursuant to Fed. R. Civ. P. 56, brought by Defendant Police Officers Stott and Santomieri. Plaintiff, Troy Zamichieli, did not respond to either motion. Consequently, the Court could decide the motion to dismiss as uncontested pursuant to Local Rule of Civil Procedure 7.1(c).¹ However, in the interest of applying a less stringent standard toward this pro se plaintiff, the Court will

¹ Local Rule of Civil Procedure 7.1(c) states in relevant part:

. . . any party opposing the motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within 14 days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested except that a summary judgment motion, to which there has been no timely response, will be governed by Fed.R.Civ.P. 56(c). . .

Local Rule Civ. P. 7.1(c).

address the merits of both motions before ruling.

I. FACTUAL AND PROCEDURAL HISTORY

On March 23, 1994, Philadelphia Police Officers Robert Stott and James Santomieri responded to a radio call asking them to investigate a disturbance involving a man with a gun.² (Pl.'s Am. Compl. at Ex. A). When the police arrived, they found Troy Zamichieli, a.k.a. Anthony Lasley, arguing with a woman. Id. They approached Mr. Zamichieli and he proceeded to walk and then run away from the scene. Id. The officers pursued him. Id.

During the chase, Officer Santomieri pursued Mr. Zamichieli in his police vehicle while Officer Stott pursued him on foot. Id. The investigative report filed after the incident contains Officer Santomieri's account of the chase. In it, Officer Santomieri states that he "observed Mr. Zamichieli toss a clear baggie into the street as he ran." (Pl.'s Am. Compl. at 1). The officer stopped to recover the baggie and found it contained a number of empty ziplock packets and a substance that appeared to be cocaine. Id.

Officer Stott continued pursuit of Mr. Zamichieli and ultimately apprehended him. Mr. Zamichieli asserts that during Officer Stott's attempt to place him in police custody, he hit Mr. Zamichieli in the head with his gun and kicked him in his "private parts." Id.

After his arrest, state prosecutors charged Mr. Zamichieli with two criminal offenses: (1) knowing or intentionally possessing a controlled substance; and (2)

² The Officers received the call at approximately 11:00 p.m. The events at issue in this case, therefore, began on March 23, 1994 and ended sometime after 12:00 a.m. on March 24, 1994.

manufacture, delivery or possession with intent to manufacture or deliver a controlled substance. (D's M. for Summ. J. at Ex. H). Mr. Zamichieli was subsequently convicted of the latter charge and is currently serving a sentence in state prison related to that conviction.

While incarcerated in state prison, Mr. Zamichieli filed a complaint in federal district court, pursuant to 42 U.S.C. § 1983, alleging that the Police Department of Philadelphia and Officer Robert Stott violated his constitutional and civil rights on March 23, 1994. Later, Mr. Zamichieli moved to amend the complaint to add Officer James Santomieri as a defendant.³ The court granted the plaintiff's motion to amend and ordered that Officer Santomieri be joined as a defendant in the case on November 25, 1997.

After approximately three years of pretrial activity, the Police Department of Philadelphia moved to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6). At the same time, Defendants Stott and Santomieri moved for summary judgment pursuant to Fed. R. Civ. P. 56. For the reasons set forth below, the Police Department of Philadelphia's motion to dismiss will be granted, insofar as the Plaintiff's complaint attempts to bring a section 1983 cause of action against the Police Department of Philadelphia. The plaintiff's claims that Officers Stott and Santomieri conspired to plant drugs on his person and Officer Santomieri falsified arrest reports in

³ Mr. Zamichieli moved to amend the complaint three times. After each request, the court granted leave to amend and directed the plaintiff to file an amended complaint within a certain allotment of time. When the plaintiff failed to file an amended complaint within the appointed time frame, the Court directed the Clerk of Court to file the motion to amend as the amended complaint.

violation of section 1983 will be dismissed without prejudice. And, the plaintiff's section 1983 claim of excessive force against Officer Stott may proceed.

II. DISCUSSION

A. Defendant Police Department's Motion to Dismiss.

1. Legal Standard

Dismissal of an action pursuant to Fed. R. Civ. P. 12(b)(6) is appropriate where it is certain that no relief could be granted under any set of proven facts. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). Granting a 12(b)(6) motion determines the merits at an early stage of a plaintiff's case. Therefore, the court must accept as true all of the allegations in the pleadings and must give the plaintiff the benefit of every favorable inference that may be drawn from those allegations. Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir.1991). Simply put, the complaint will withstand a Fed.R.Civ.P. 12(b)(6) attack if the material facts as alleged, in addition to inferences drawn from those allegations, provide a basis for recovery. See Menkowitz v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 125 (3d Cir. 1998).

The legal standard for deciding a 12(b)(6) motion is somewhat modified when the complaint at issue has been filed by a pro se plaintiff. Specifically, pro se prisoner complaints "however inartfully pleaded" are held to "less stringent standards than formal pleadings drafted by lawyers." See Jubilee v. Horn, 959 F. Supp. 276, 278 (E.D.Pa. 1997). Thus, a pro se action "can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " See Estelle v. Gamble, 429 U.S. 97, 106, 97

S. Ct. 285, 292 (1976).

2. The Motion to Dismiss the Plaintiff's Section 1983 complaint against the Police Department of Philadelphia.

In the instant case, the City of Philadelphia filed a motion to dismiss the plaintiff's complaint on behalf of the Police Department of Philadelphia. In support of their motion to dismiss, the City of Philadelphia argues that the police department cannot be sued in a section 1983 action because it is merely an arm of the municipality. (Def.'s Mem. in Supp. of Mot. to Dismiss at 2). The City of Philadelphia further asserts that departments and agencies of the City do not have a corporate existence separate from the City of Philadelphia, therefore, the Police Department of Philadelphia may not be subjected to the plaintiff's section 1983 suit. Id.

Municipal liability under section 1983 arises when a constitutional deprivation results from an official custom or policy. Montgomery v. DiSimone, 159 F.3d 120, 126, (3d Cir. 1998)(citing Monell v. Department of Social Servs. of City of New York, 436 U.S. 658, 691-94, 98 S.Ct. 2018, (1978)). Furthermore, if the actions of an officer of the municipality, in carrying out its customs and or policies, causes the deprivation of a plaintiff's constitutional or federal right, they are deemed to have occurred "under color of law" and the municipality may be liable for these actions under section 1983. Id.

In this case, however, the plaintiff did not name the municipality as a defendant. Instead, he named the Police Department of Philadelphia, which has no separate corporate existence apart from the City of Philadelphia. See 53 Pa.C.S.A.

§16257.⁴ Because all suits, including those brought pursuant to section 1983, growing out of activities of a department of the City of Philadelphia must be brought in the name of the City of Philadelphia, an action against the Police Department of Philadelphia cannot be maintained.⁵ See Irvin v. Borough of Darby, 937 F. Supp. 446, 450 (E.D.Pa. 1996)(citing Agresta v. City of Philadelphia, 694 F. Supp. 117, 118 (E.D.Pa. 1988)).

Since the plaintiff's complaint attempts to state a cause of action against the Police Department of Philadelphia, and as a matter of law, a civil suit cannot be maintained against the Police Department because it has no corporate existence outside of the City of Philadelphia, the plaintiff's complaint, insofar as it attempts to state a cause of action against the Police Department of Philadelphia, will be dismissed in its entirety.

B. Defendant Officers' Motion for Summary Judgment pursuant to Fed.R.Civ. P. 56.

1. Legal Standard

"Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) when the moving party establishes that there is no genuine issue of material fact that can be resolved at trial and that the moving party is entitled to

⁴ 53 Pa.C.S.A. § 16257 states in relevant part:
“. . . [N]o such department [of the City of Philadelphia] shall be taken to have had . . . a separate corporate existence [from the City of Philadelphia] . . . and all suits growing out of their transactions and all claims to be filed . . . shall be in the name of the city of Philadelphia.”
53 Pa.C.S.A. § 16257.

⁵ The court granted the plaintiff leave to amend his complaint, however, the amended complaint makes no attempt to alter the designation of the Police Department of Philadelphia as a named defendant in the case.

judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986). "When considering a motion for summary judgment, the Court must 'view all facts and inferences in the light most favorable to the party opposing the motion.' " Stephens v. Kerrigan, 122 F.3d 171, 176-77 (3d Cir.1997). Moreover, all inferences to be drawn from the material the nonmoving party submits will be viewed in the light most favorable to the party opposing the motion. Id. Finally, at this stage of the process, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249, 106 S.Ct. at 2511.

In support of their motion for summary judgment, the defendant police officers make three arguments: (1) the plaintiff's claims are not actionable under section 1983 (Defs.' Mem. in Supp. of the Mot. For Summ. J. at 8)(citing Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364(1994)); (2) the plaintiff's claims against officer Santomieri are barred by the applicable statute of limitations (Defs.' Mem. in Supp. of the Mot. for Summ. J. at 5)(citing Deary v. Three Un-Named Police Officers, 746 F.2d 185 (3d Cir. 1984)); and (3) the plaintiff's claims of conspiracy to plant drugs are barred by the doctrines of res judicata and collateral estoppel. (Defs.' Mem. in Supp. of Mot. for Summ. J. at 6) (citing Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 414 (1980). What follows below is an analysis of each of the plaintiff's claims to determine whether summary judgment in favor of the police officer defendants must be granted as a matter of law.

2. The Applicability of Heck to the Plaintiff's Section 1983

Claims for Relief.

The defendant police officers assert that the Supreme Court's decision in Heck v. Humphrey , 512 U.S. 477, 114 S.Ct. 2364 (1994), bars the plaintiff from recovering on several of his section 1983 claims for relief. Therefore, the Court begins its analysis by examining whether the defendants' assertions are correct. In Heck, the Court held that a section 1983 plaintiff may recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, if he proves that the conviction or sentence has been reversed, expunged, declared invalid, or called into question by a writ of habeas corpus. Id. at 489, 114 S.Ct. at 2372. Therefore, a claim for damages that calls a valid conviction or sentence into question is not cognizable under section 1983. Id.

Accordingly, when a state prisoner seeks damages in a section 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. Id. But, if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit. Id.

In this civil rights action, Troy Zamichieli alleges that (1) defendants Stott and Santomieri conspired to plant drugs on his person; (2) defendant Santomieri falsified arrest reports; and (3) defendant Stott used excessive force during his arrest.

The Court will examine each of these allegations to determine whether they are tenable under Heck.

a. Claims that the Defendant Police Officers Planted Drugs on the Plaintiff's Person at the Time of Arrest.

After Officers Stott and Santomieri arrested him on March 24, 1994, the State charged Mr. Zamichieli with various counts of drug possession. At his criminal trial, the State offered evidence showing that Mr. Zamichieli possessed cocaine at the time of his arrest. Mr. Zamichieli was ultimately convicted of the drug possession charges and is currently serving a state prison sentence for this conviction.

In his section 1983 complaint, Mr. Zamichieli argues that the defendant police officers planted drugs on his person at the time of his arrest and that these actions led to his subsequent prosecution and conviction for drug possession. The Court concludes that the plaintiff's allegations of conspiracy to plant drugs against the defendant police officers bears a direct relationship to the conviction for which he is currently serving a state prison sentence. Specifically, if the plaintiff successfully proved that the defendant officers planted drugs on his person at the time of his arrest and the Court awarded him damages on his section 1983 claims of conspiracy to plant drugs, the plaintiff would have successfully launched a civil attack on his criminal conviction. The Supreme Court clearly prohibited these kinds of attacks in Heck. See Heck v. Humphrey at 489, 114 S.Ct. at 2372 (finding that section 1983 actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments).

Since success on the plaintiff's section 1983 claims of conspiracy

to plant drugs on his person would effectively call his state conviction for drug possession into question, these claims are not actionable while the state conviction remains intact. Id. Consequently, the plaintiff's section 1983 cause of action for conspiracy to plant drugs against the defendant police officers will be dismissed without prejudice.

b. Claim that Defendant Officer Santomieri Falsified Arrest Reports.

Officer Santomieri filed an arrest report detailing the events that occurred on the night of the plaintiff's arrest for drug possession. In the report, Officer Santomieri included statements that he "observed the male [Troy Zamichieli] toss a clear baggie into the street," and after recovering the baggie, he "found it contained a white chunky substance, which the officer believed to be alleged cocaine." (Pl.'s Am. Compl. at Ex. A). Officers later conducted field tests on the substance and determined that it was cocaine. Id. Consequently, Mr. Zamichieli was charged and convicted of drug possession and he continues to serve a prison sentence related to that conviction.

In his section 1983 claim against Officer Santomieri, the plaintiff asserts that in furtherance of the conspiracy to plant drugs on his person, Officer Santomieri falsified arrest reports to include statements that he observed Mr. Zamichieli in possession of cocaine prior to his arrest. This claim is simply not actionable at this time because a judgment in favor of the plaintiff on the claim that Officer Santomieri falsified the report detailing the arrest that led to his conviction for drug possession, would effectively call Mr. Zamichieli's state court conviction for drug

possession into question. The court concludes, therefore, that the plaintiff's claims asserting that Officer Santomieri falsified arrest reports in violation of section 1983 must be dismissed without prejudice.

c. Excessive force claims against Officer Stott

On March 23, 1994, Mr. Zamichieli fled from the police and was later apprehended by Officer Stott after a brief chase. In his section 1983 complaint, Mr. Zamichieli alleges that Officer Stott hit him in the head with his gun and kicked him in his "private" area prior to placing him under arrest on March 24, 1994. (Pl.'s Am. Compl. at 1).

As a preliminary matter, the Court notes that the plaintiff accused Officer Stott of using excessive force during the March 24, 1994 arrest, not Officer Santomieri. (Pl.'s Compl. at 1); (Pl.'s Am. Compl. at 1). The Defendants' motion for summary judgment and supporting memorandum of law, however, do not specifically address this claim against Officer Stott.⁶ Rather, the defendants generally state that "[p]laintiff's

⁶ The Defendants' Memorandum of Law in Support of the Motion for Summary Judgment makes a brief reference to the plaintiff's claims that Officer Stott used excessive force against him on March 23, 1994. Specifically, the defendant officers state that "[p]laintiff was arrested on March 2[4], 1994, by Officers Stott and Santomieri. Plaintiff knew at that time of the injury being inflicted upon him and therefore, the statute of limitations accrued at that time and ran two years later." (Defs.' Mem. in Supp. of Mot. for Summ. J. at 5-6). This statute of limitations argument, however, cannot operate to preclude the claim of excessive force against Officer Stott because the plaintiff's cause of action for Officer Stott's alleged use of excessive force on March 23, 1994 was present in his original complaint, filed on March 11, 1996.

Therefore, to the extent that the Defendant Officers attempt to argue that the statute of limitations precludes the plaintiff's section 1983 claim of excessive force against Officer Stott, the Court finds that the excessive force claims against Officer Stott are not time barred.

Furthermore, since the plaintiff's claims of excessive force against Officer Stott were not litigated in the criminal trial, the doctrines of res judicata and collateral estoppel do not preclude the plaintiff from litigating the issues attendant to that particular claim. See Allen v. McCurry,

constitutional claims against defendant Police Officers Stott and Santomieri are barred under Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), therefore Police Officers Stott and Santomieri are entitled to judgment as a matter of law.” (Defs.’ Mot. for Summ. J. at 3, ¶ 22).

After evaluating the plaintiff’s claims under Heck, the Court finds that recovery for damages in a section 1983 action stemming from Officer Stott’s alleged use of excessive force against the plaintiff would not invalidate the plaintiff’s conviction. See Heck at 489, 114 S.Ct. at 2372. Heck, therefore, does not bar the plaintiff from recovering on these claims while his state conviction remains intact. Id. Consequently, the Plaintiff’s excessive force claim against Officer Stott may proceed.

III. CONCLUSION

For the reasons stated above, the Motion to Dismiss, brought by the City of Philadelphia on behalf of the Police Department of Philadelphia, will be granted, insofar as the plaintiff’s complaint attempts to state a cause of action against the Police Department of Philadelphia.

Since the plaintiff’s claims of conspiracy to plant drugs and false arrest are not actionable under section 1983 while his state conviction for drug possession remains intact, these claims against Officers Stott and Santomieri will be dismissed without prejudice. The claim of excessive force against Defendant Stott remains. An appropriate order follows.

449 U.S. 90, 101 S.Ct. 411(1980).

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY ZAMICHEL I a/k/a :

ANTHONY LASLEY, CP-8375 :

:

Plaintiff, :

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CIVIL ACTION

v. :

:

No. 96-0254

POLICE OFFICER STOTT, badge # :

3304, POLICE OFFICER :

SANTOMIERI, badge # 2060 and the :

PHILADELPHIA POLICE DEPT. :

:

Defendants. :

ORDER

AND NOW, this 30th day of June 1999, upon consideration of the Defendant Philadelphia Police Department's Motion to Dismiss, pursuant to Fed.R.Civ. P. 12(b)(6),

and Defendant Police Officers' Stott and Santomieri's Motion for Summary Judgment, pursuant to Fed.R.Civ.P. 56, the Court HEREBY ORDERS the following:

1. The Motion to Dismiss is GRANTED. The Plaintiff's complaint, insofar as it attempts to state a cause of action against the Police Department of Philadelphia is DISMISSED WITH PREJUDICE;
2. The Plaintiff's Section 1983 claims of conspiracy to plant drugs against Officers Stott and Santomieri are DISMISSED WITHOUT PREJUDICE⁷; and
3. The plaintiff's Section 1983 claim of falsification of a police report against Officer Santomieri is DISMISSED WITHOUT PREJUDICE.⁸
4. The plaintiff's Section 1983 claim of excessive force against Officer Stott may proceed.

BY THE COURT,

⁷ The Court does not decide whether the plaintiff's claims against the Defendant Police Officers may be barred by the statute of limitations, res judicata, or collateral estoppel.

⁸ The Court does not decide whether the plaintiff's claims against the Defendant Police Officer Santomieri may be barred by the statute of limitations, res judicata, or collateral estoppel.

CLIFFORD SCOTT GREEN, S.J.