

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

WILLIAM R. ROBINSON and	:	
DEBORAH ROBINSON	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
RADNOR TOWNSHIP,	:	
JERRY GREGORY,	:	
JAMES MCCARTHY, and	:	
CARTER FISHER	:	
Defendants.	:	NO. 98-CV-5780

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**AUGUST 16, 1999**

Presently before the Court is Defendants Radnor Township (“Radnor”), Jerry Gregory (“Gregory”), James McCarthy (“McCarthy”), and Carter Fisher’s (“Fisher”) Motion for Summary Judgement and Plaintiffs William Robinson (“Robinson”) and Deborah Robinson’s response thereto. For the reasons stated below, Defendants’ motion will be granted in part and denied in part.

**I. FACTUAL BACKGROUND**

On December 3, 1996, at 4:12 p.m. the Radnor Township Police Department received a report of a theft at the Acme supermarket located near the intersection of North Aberdeen and Lancaster Avenue in Wayne, Radnor Township. Radnor Police Officer McCarthy received a description over the radio of the suspect who was reportedly fleeing on foot. Plaintiff William Robinson was stopped in his car at a traffic light at approximately the time McCarthy arrived at the Acme to investigate the robbery. While entering the Acme parking lot, Officer McCarthy noted Robinson’s presence at the light and recognized that he roughly matched the description of

the fleeing suspect. After driving through the parking lot and seeing no one that matched the suspect's description, Officer McCarthy returned to the traffic light where Robinson was stopped and approached his car in order to ask Robinson a few questions. Officer McCarthy asked Robinson to roll down his window, yet Robinson failed to comply until Officer McCarthy's fourth or fifth request. Robinson then exited from his vehicle, although he had not been asked to do so. At that point both Officer McCarthy and Robinson were standing next to the car in the southbound lane of traffic with numerous cars stopped behind them and traffic proceeding in the northbound lane next to them.

It is undisputed that a struggle ensued and at some point, McCarthy did handcuff Robinson as the two moved to the rear of the car. At approximately this time, Officer Prorock arrived on the scene, soon followed by Officer Carter Fisher ("Fisher"), who was accompanied by the Acme manager. The manager said that Robinson was not the suspect that robbed the Acme earlier. Then Officers Fisher and McCarthy stepped to the side, out of earshot of Robinson and Officer Prorock, and apparently discussed the incident that had just taken place between McCarthy and Robinson. At the conclusion of that conversation, Officer McCarthy returned to his patrol car and prepared a citation for disorderly conduct. McCarthy gave Robinson the citation, released Robinson from the handcuffs, and told him he was free to leave. Robinson had been in custody for approximately twenty minutes.

Robinson was prosecuted for disorderly conduct. Delaware County District Justice Foster found Robinson guilty after a hearing. Robinson appealed that decision and his conviction was overturned in the Court of Common Pleas of Delaware County.

Robinson sued Radnor Township, Police Superintendent Gregory, who was never present

at the scene, Officer McCarthy, and Officer Fisher, alleging that Defendants violated his Fourth, Eighth, and Fourteenth Amendment rights. He also sued on a variety of common law theories.<sup>1</sup> Resting on the defense of qualified immunity, Defendants McCarthy, Fisher, and Gregory have moved for the dismissal of Plaintiffs' complaint. Should the qualified immunity defense fail, however, Defendants also move for summary judgement as to Plaintiff's false arrest and false imprisonment and intentional infliction of emotional distress claims. Radnor Township moves for summary judgement as well, basing its motion on the Supreme Court decision in Monell v. New York City Department of Social Services, 436 U.S. 658 (1977).

## **II. 42 U.S.C. § 1983**

Robinson claims violations of his Fourth, Eighth, and Fourteenth Amendment rights under 42 U.S.C. § 1983. To establish a successful § 1983 claim, Robinson must demonstrate two essential elements: (1) that the conduct complained of was committed by a person acting under state law and (2) that the conduct deprived Robinson of a right, privilege, or immunity protected by the Constitution. Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994).

### **A. Qualified Immunity Standard**

Defendants Fisher, Gregory, and McCarthy defend against Robinson's claims by relying on the doctrine of qualified immunity. In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Supreme Court said that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly

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<sup>1</sup>Robinson additionally claims loss of consortium, and his wife, Deborah Robinson, also is a plaintiff.

established statutory or constitutional rights of which a reasonable person would have known.” Id. at 818. A two-pronged test has evolved from this decision. First, the plaintiff must allege that a state or constitutional right was violated. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Second, the allegedly violated right must be “clearly established” so that a “reasonable official would understand that what he [wa]s doing violate[d] that right.” Id. Qualified immunity is designed to protect “all but the plainly incompetent or those that violate the law.” Malley v. Briggs, 475 U.S. 335, 341 (1986).

**B. Robinson’s § 1983 Eighth and Fourteenth Amendment Claims**

Robinson claims violations under the Eighth and Fourteenth Amendments in his complaint but then abandons them in his response brief, perhaps appropriately recognizing the futility in pursuing these claims. The Eighth Amendment applies only to prisoners who have been convicted of a crime. Ingraham v. Wright, 430 U.S. 651, 671-72 n.40 (1977); Nelson v. Mattern, 844 F. Supp. 216, 222 (E.D. Pa. 1994). Because Robinson was never a prisoner convicted of a crime he cannot avail himself of this Amendment’s protections. Consequently, summary judgement is granted as to Robinson’s Eighth Amendment claims.

Robinson also claims a Fourteenth Amendment infringement, although he never articulates specifically what the violation is. Robinson, however, does make false arrest and malicious prosecution state claims. Consequently, the Court will assume Robinson intends these claims, and a possible excessive force claim, are the Fourteenth Amendment violations alleged. Nonetheless, all three claims are properly analyzed under the Fourth Amendment. Albright v. Oliver, 510 U.S. 266, 273 (1994); Graham v. Connor, 490 U.S. 386, 394 (1989). As a result, Robinson has failed to articulate a Fourteenth Amendment violation, and summary judgement as

to Robinson's Fourteenth Amendment claims is granted as well.

**C. Fisher's, Gregory's, and McCarthy's Qualified Immunity Defenses**

**1. Officer Fisher**

**a. Assault & Battery and False Arrest & False Imprisonment**

Addressing the first prong of the qualified immunity defense analysis, namely whether a state or constitutional violation took place, it is undisputed that Fisher was not present for the alleged altercation that took place between McCarthy and Robinson. To hold Fisher personally liable under 42 U.S.C. § 1983, Robinson must show that Fisher (1) participated in, (2) directed others or (3) had knowledge of and allowed, the violation of Robinson's rights. Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995). As a result, even viewing the evidence in a light most favorable to the Plaintiff, Fisher is not liable to Robinson as a matter of law regarding Robinson's assault and battery and claims because he was not present at the scene and there is no way he could have prevented the incident.

The same reasoning is true with regard to Robinson's false arrest and false imprisonment claims. There is no disagreement that Fisher did not attend either of Robinson's hearings regarding the resolution of his disorderly conduct citation. Furthermore, because Fisher was not at the scene until after Robinson was handcuffed, he was not involved in McCarthy's decision to arrest Robinson. Consequently, Fisher cannot as a matter of law be held liable to Robinson regarding his claims of false arrest.

Regarding Robinson's false imprisonment claim against Fisher, Plaintiffs may seek damages "from the time of detention" up until the time they are released. Townes v. City of New York, 176 F.3d 138, 149 (2d Cir. 1999). Probable cause to arrest, however, defeats any such

claim. Id.; see also Gilbert v. Feld, 842 F. Supp. 803, 821 (E.D. Pa. 1993). Fisher arrived on the scene after the altercation but before Robinson was released. Assuming Fisher had any role in prolonging Robinson's imprisonment, Fisher also had probable cause. The Supreme Court has said "[t]he standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.'" Gerstein v. Pugh, 420 U.S. 103, 111 (1975); see also Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997). Because Fisher got to the scene after Robinson was already arrested, he would not have been acting as a reasonable and prudent police officer if he ordered Robinson to be released before ascertaining what occurred prior to Fisher's arrival. In addition, after Fisher conferred with McCarthy, he had probable cause, based on the limited information he had regarding the incident, that Robinson had committed the offense of disorderly conduct. Thus, because of the very nature of the behavior that warrants a citation for disorderly conduct, it was also not unreasonable for Fisher to require Robinson to wait until the citation was issued before allowing him to be released, which was, by all accounts, a matter of minutes. As a result, Fisher cannot be liable to Robinson for his claim of false imprisonment.

#### **b. Malicious Prosecution**

The factual basis tying Fisher to the malicious prosecution claim is that McCarthy consulted with Fisher immediately prior to issuing Robinson the citation. McCarthy admits to discussing the issuance of the citation with Fisher, (McCarthy Dep. at 79) which, reading the record in a light most favorable to the Plaintiff, is enough to conclude he had alleged a constitutional violation. Turning to the second prong, a reasonable police officer would know that issuing a citation to justify a Fourth Amendment violation, if proven, would violate

Robinson's rights. It is too speculative for the Court to decide as a matter of law whether Fisher, McCarthy's superior, advised or ordered McCarthy to issue Robinson the citation; that is a question of fact to be decided by the jury. The Court cannot say, as a matter of law, who the aggressor was on December 3, 1996, and if McCarthy had probable cause to arrest Robinson. Consequently, Fisher cannot avail himself of the qualified immunity defense with regard to Robinson's malicious prosecution claim. In addition, because liability for the malicious prosecution claim is directly connected to liability for the intentional infliction of emotional distress claim, Fisher's qualified immunity defense with regard to that claim also fails.

## **2. Superintendent Gregory**

It is undisputed that Gregory was never at the scene on December 3, 1996 and is a Superintendent of the Radnor Police Department. Because he was not directly involved, the only constitutional violation that Gregory could be responsible for is his failure to train and supervise. See Monell, 436 U.S. at 694. A reasonable superintendent would be aware of his responsibility to train and supervise officers not to violate citizen's Fourth Amendment rights. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). Accordingly, Gregory's qualified immunity defense fails.

## **3. Officer McCarthy**

At least for the purposes of the qualified immunity analysis, the record supports Robinson's allegation of assault and battery, false arrest and false imprisonment, malicious prosecution and intentional infliction of emotional distress. Under the second prong of this analysis, a reasonable police officer would know that McCarthy's alleged treatment of Robinson

violated Robinson's Fourth Amendment rights. Consequently, McCarthy cannot take advantage of the defense of qualified immunity.

### **III. SUMMARY JUDGEMENT STANDARD**

A district court should grant summary judgement "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 judgement as a matter of law." Fed. R. Civ. P. 56(c). An issue of material fact is "genuine" only if the evidence could allow a reasonable jury to find for the non-moving party, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and a factual dispute is "material" if it "might affect the outcome of the suit under the governing law." Id. It is not the judge's duty to weigh the evidence; rather, he is to decide only if there is a genuine issue for trial. Id. at 249; see also Contimortgage Corp. v. Mortgage Am., Inc., 47 F. Supp. 2d 575, 576 (E.D. Pa. 1999).

The movant bears the initial burden of demonstrating that there are no genuine issues of material fact for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Although the ultimate burden of persuasion remains on the moving party, the nonmoving party will not defeat a properly supported motion for summary judgement by merely emphasizing the "existence of some alleged factual dispute between the parties"; there must be a genuine issue of material fact. Anderson, 477 U.S. at 247-48. "A nonmoving party must adduce more than a mere scintilla of evidence in its favor." Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989).

#### **A. Constitutional and State Claims against Defendant Radnor Township**

Robinson alleges that Radnor Township is liable to him for failing to train and supervise

their police officers adequately, therefore ensuring that the kind of abuse Robinson alleges he was subjected to would not occur. A local government can be sued under § 1983 “when execution of a government’s policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983.” Monell, 436 U.S. at 694. In Canton v. Harris, 489 U.S. 378 (1988), the Supreme Court expounded upon its decision in Monell, holding that a municipality may be liable for inadequate police training under § 1983 only “where the failure to train amounts to a deliberate indifference to the rights of persons with whom the police come into contact.” Id. at 388. The Court went on to say that “[o]nly where a municipality’s failure to train . . . evidences a ‘deliberate indifference’ to the rights of its inhabitants can such a shortcoming be properly thought of as a ‘policy or custom’ that is actionable under § 1983.” Id. at 389.

Terming something as a “policy” implies that it is a course of action willfully adopted and chosen from a variety of options. Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1984). “[I]t is therefore difficult in one sense” to believe that a municipality would espouse “a ‘policy’ of ‘inadequate training,’ unless evidence be adduced which proves that the inadequacies resulted from conscious choice-- that is, proof that policy makers deliberately chose a training program which would prove inadequate.” Id. Monell requires proof of a city policy before a claim can be adjudicated on the theory that a particular municipal “policy” prompted the violation of a citizen’s rights. Id. The constitutional violation alleged and the “policy” or custom must be “affirmatively link[ed].” Id. Finally, evidence of a single incident of unlawful activity is insufficient to establish the existence of an official policy used by a municipality, unless the alleged activity can be linked to a previously existing custom and attributed to a policy maker.

Id. at 823-24.

Robinson points to no evidence of a policy or practice in Radnor Township that might lead to inadequate training or supervision. Robinson has produced no probative evidence concerning the nature and quality of the Radnor Township's Police Department supervisory and training programs. In addition, Robinson produced no evidence that Radnor Township's alleged violation was part of a pattern or existing custom. Consequently, Defendant Radnor Township's motion for summary judgement is granted.

**B. Constitutional and State Claims Against Defendant Officers McCarthy, Fisher and Superintendent Gregory.<sup>2</sup>**

**1. Officer McCarthy**

In failing to address Plaintiff's assault and battery and malicious prosecution claims, McCarthy has presented an incomplete defense to Plaintiff's false arrest and false imprisonment and intentional infliction of emotional distress claims. Due to the conflicting testimony and depositions given by Robinson, McCarthy, and witnesses Ms. Whitehead and Ms. Feaster regarding what occurred at the scene on December 3, 1996, genuine issues of material fact exist as to Robinson's claims against McCarthy. Robinson asserts that he was attacked by McCarthy. (Pl. Comp. ¶ 11.) However, McCarthy claims that he was merely trying to gain control of Robinson. (McCarthy Dep. at 51.)

As a result, whether Robinson was falsely put in handcuffs and detained is an issue of

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<sup>2</sup>Defendants have only moved for summary judgement on Robinson's false arrest and false imprisonment and intentional infliction of emotional distress. Absent Defendants' qualified immunity defense, they have failed to defend against and move for summary judgement with regard to Robinson's assault and battery and malicious prosecution claims. Therefore, Plaintiff's claims of assault and battery and malicious prosecution are not examined under the summary judgement portion of this memorandum.

material fact that cannot be determined without further inquiry. Whether McCarthy had probable cause to handcuff Robinson depends on whose version of the incident the jury accepts as true. As stated above, the judge's role is to determine if there are questions of fact, not to weigh the evidence. Anderson, 477 U.S. at 249. The same reasoning applies to Robinson's intentional infliction of emotional distress claim against McCarthy because it is related to whether McCarthy or Robinson instigated the violent altercation that took place. Genuine issues of material fact exist and, therefore, McCarthy's motion for summary judgement is denied.

## **2. Officer Fisher**

Officer Fisher can be liable only for Robinson's intentional infliction of emotional distress claim against him. Fisher, too, has presented an incomplete defense to these claims. Fisher's liability for the intentional infliction of emotional distress claim rests on whether he is liable for Plaintiff's malicious prosecution claim against him. Yet, Fisher failed to raise any defense to the malicious prosecution claim. As a result, Fisher's motion for summary judgement as to the intentional infliction of emotional distress claim is denied.

## **3. Superintendent Gregory**

Liability under § 1983 cannot be imposed vicariously or on grounds of respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Claims of participation or actual knowledge must be made with particularity. Id. Merely because a defendant is in a supervisory position does not necessarily lead to a finding of liability. Wilson v. Horn, 971 F. Supp. 943, 947 n.2 (E.D. Pa. 1997).

As stated above, it is undisputed that Gregory was not at the scene and did not participate in any of Robinson's subsequent hearings regarding his citation. The only factual basis linking

Gregory with Robinson's claims against him is that he is McCarthy's superior. This is an insufficient basis on which to assign liability. See Colburn v. Upper Darby Township, 838 F.2d 663, 673 (3d Cir. 1988) (dismissing the police commissioner and mayor as defendants because neither was personally involved with any activity related to the suit). Superintendent Gregory's Motion for Summary Judgement as to Plaintiff's claims of false arrest and false imprisonment and intentional infliction of emotional distress is therefore granted.

#### **IV. CONCLUSION**

In conclusion, Radnor Township's Motion for Summary Judgement is granted and it is dismissed as a defendant in this civil action. Summary judgement is granted with regard to Robinson's Eighth and Fourteenth Amendment claims. Officer Fisher is immune to liability only for Robinson's assault and battery and false arrest and false imprisonment claims. Summary judgement is denied regarding Robinson's intentional infliction of emotional distress claim against Fisher because Fisher's liability for that claim is causally related to whether Fisher is liable for Robinson's malicious prosecution claim. Superintendent Gregory is not immune to any of Robinson's claims but his Motion for Summary Judgement is granted as to Robinson's false arrest and false imprisonment and intentional infliction of emotional distress claims against him. Officer McCarthy is also not immune to any of Robinson's claims but because genuine issues of material fact exist, his Motion for Summary Judgement is denied. With the exception of Radnor Township, who properly defended every claim against it, Robinson's claims of assault and battery claim and malicious prosecution against all other defendants are not addressed or ruled on in this Memorandum.

An Order follows.



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

WILLIAM R. ROBINSON and	:	
DEBORAH ROBINSON	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
	:	
RADNOR TOWNSHIP,	:	
JERRY GREGORY,	:	
JAMES MCCARTHY and	:	
CARTER FISHER	:	
Defendants.	:	NO. 98-CV-5780

**ORDER**

AND NOW, this 16th day of August, 1999, upon consideration of Defendants Radnor Township, Jerry Gregory, James McCarthy, and Carter Fisher's Motion for Summary Judgement, it is hereby **ORDERED**:

1. Defendant Radnor Township's Motion for Summary Judgement is **GRANTED**; judgement is entered in favor of Defendant Radnor Township, and against Plaintiffs William and Deborah Robinson;

2. Defendant Carter Fisher is immune with regard to Plaintiffs' assault and battery and false arrest and false imprisonment claims, which are **DISMISSED**;

3. Defendant Carter Fisher's Motion for Summary Judgement as to Plaintiffs' intentional infliction of emotional distress claim is **DENIED**;

4. Defendant Jerry Gregory's Motion for Summary Judgement as to Plaintiffs' false arrest and false imprisonment and intentional infliction of emotional distress claims is **GRANTED**; and

5. Defendant James McCarthy's Motion for Summary Judgement is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.