

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

ANYIS ALI MCNEIL

v.

CITY OF ALLENTOWN, et al.

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CIVIL ACTION
NO. 99-CV-2892

O'Neill, J.

November , 2001

MEMORANDUM

Plaintiff Anyis McNeil has sued the City of Allentown, its former chief of police, and four of its officers in a twenty-five-count complaint claiming violations of the United States Constitution under 42 U.S.C. § 1983,¹ the Constitution of the Commonwealth of Pennsylvania, and a number of state laws. Before me is the defendant municipality's partial motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, asserting that no genuine issue of material fact exists as to the liability of the city or the chief of police (the "municipal defendants") and that these defendants are entitled to judgment as a matter of law. Specifically, the defendants assert that because plaintiff has failed to produce an expert witness to testify as to whether the municipality's alleged lack of screening in the hiring, supervising, training, and disciplining of its police officers constituted a policy or custom, the plaintiff cannot recover as a matter of law against the municipal defendants. For the reasons set forth below, I will deny the

¹ The plaintiff's § 1983 claims include the following: 1) excessive use of force in violation of the Fourth Amendment; 2) unreasonable search and seizure under the Fourth Amendment; 3) abuse of process under the Fourteenth Amendment; 4) malicious prosecution in violation of the Fourth Amendment; 5) violation of substantive due process under the Fourteenth Amendment; 6) violation of equal protection of the law under the Fourteenth Amendment; and 7) retaliation for exercising First Amendment rights.

motion.

BACKGROUND

Plaintiff alleges that on July 16, 1997, he was on a street corner talking to friends when he noticed the approach of a police vehicle containing Officer Milios and Officer Skutches, whom Milios was training. McNeil, not wanting an encounter with the police, began to walk toward his home. The officers allegedly followed and at some point “chased” McNeil through a series of alleyways in their patrol car,² ultimately pinning McNeil against a wall of a school with their patrol car and injuring his legs. McNeil was arrested after defendant officers Thomas and Reinik arrived on the scene to assist Milios and Skutches, and was charged with a number of crimes, including felony aggravated assault.³ After being released from jail, McNeil claims Officer Reinik frequently harassed him by making retaliatory stops and baseless searches.

McNeil’s claims against the City of Allentown and the Chief of Police stem from alleged inadequate employment screening, training, supervision, and discipline of the city’s police officers. Specifically, McNeil contends that the municipal defendants knew that Milios consistently used excessive force in making arrests and failed to take remedial action. McNeil points to 11 civil rights suits and 23 complaints filed against Milios to demonstrate that the municipal defendants had knowledge of Milios’ alleged violations of the constitution. The

² The defendants claim that McNeil pointed a firearm at Milios and Skutches. No weapon was recovered.

³ Unable to post bail, McNeil spent nearly six months in jail. McNeil was released after the Commonwealth dropped all charges and McNeil pleaded guilty to a summary offense of disorderly conduct.

plaintiff also asserts that the Allentown Police Department fosters a code of silence pertaining to officer misconduct.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate where “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 judgment as a matter of law.” Fed. R. Civ. P. 56(c). A court’s task is not to resolve disputed issues of fact on summary judgment, but to determine whether there exist any factual issues to be tried. See Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). In making this determination, all of the facts must be viewed in the light most favorable to the non-moving party. Id. at 248. The moving party bears the initial burden of identifying evidence that demonstrates an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The non-moving party must raise “more than a mere scintilla of evidence in its favor” in order to overcome a summary judgment motion, and cannot survive by relying on unsupported assertions, conclusory allegations, or mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989). “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent.” Big Apple BMW, Inc. v. BMW of North America,

Inc., 974 F.2d 1358, 1363 (3d Cir.1992).

DISCUSSION

The municipal defendants have failed to carry their initial burden of identifying an absence of a genuine issue of material fact. See Celotex Corp., 477 U.S. at 323 (requiring movant initially to identify the lack of evidence supporting a genuine issue of material fact). The defendants have based their motion upon a false premise. Defendants contend that because the plaintiff has not produced an expert witness to testify as to whether the municipality's alleged lack of screening in hiring, supervising, training, and disciplining its police officers constituted a policy or custom, the plaintiff's claims against the city and police chief must fail as a matter of law.⁴ Although plaintiff must produce evidence of custom or policy to succeed against the municipal defendants under § 1983,⁵ it is well established that expert testimony is not required.

⁴ Defendants did not cite to any case law to support the proposition.

⁵ 42 U.S.C. § 1983 supplies the statutory basis for remedying constitutional violations by state officials and provides in relevant part:

Every person . . . who, under color of any statute, ordinance [or] regulation . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws [of the United States], shall be liable to the party injured.

The word "person" includes municipalities; however, they are subject to liability only when the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." Monell v. Dep't of Social Services, 436 U.S. 658, 694 (1978). Municipalities are not liable under the theory of respondeat superior for the actions of their employees under § 1983. Id.

Under Monell and its progeny, municipal liability may be based on policy or custom. The Court of Appeals has defined the two terms as follows:

Policy is made when a 'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict. A course of conduct is considered to be a 'custom' when though not authorized by law 'such practices...[are] so permanent and well settled' as to

See, e.g., Beck v. City of Pittsburgh, 89 F.3d 966, 975-76 (3d Cir. 1996) (noting, in response to repeated complaints of police violating constitutional rights, that “It is not beyond the ken of an average juror to assess what a reasonable municipal policy maker would have done with the information”).

An appropriate order follows.

virtually constitute law.
Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990) (citations omitted). Custom “may also be established by evidence of knowledge and acquiescence” by the municipality thereby creating an atmosphere that encourages unconstitutional behavior. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996).

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ORDER

AND NOW, this day of November, 2001, after considering the municipal defendants' motion for summary judgment, and the plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendants' motion is DENIED.

THOMAS N. O'NEILL, JR., J.