

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

HARRY DANTZLER : CIVIL ACTION
: :
: :
v. : :
: :
GEORGE WILLIAMS, THOMAS GAUL, : NO. 02-CV-7074
JOHN VERRECHIO, and RONALD SOLOMON, :
in their individual and official :
capacities. :
:

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

May 10, 2004

Plaintiff Harry Dantzler ("Dantzler") brings this suit against the City of Philadelphia, Detectives Williams, Gaul, and Verrechio, and Ronald Solomon ("Solomon"), a Philadelphia Housing Authority Police Officer, for 42 U.S.C. § 1983 violations arising from his arrest for shooting Solomon. Dantzler claims that the officers had information that someone else had confessed to the crime, but they failed to investigate properly and continued to hold him when they did not have probable cause.

I. Background

On September 21, 2000, an assailant shot Solomon in the head and arm and took his gun; Solomon was not on duty at the time. On September 23, 2000, while he was still in the hospital, Det. Williams interviewed Solomon who stated that a man he knew as "Tony" shot him. Williams later identified Dantzler as Tony Spence. Williams then showed Solomon a picture of Dantzler, and

Solomon identified Dantzler as the man who shot him. Dantzler was arrested on September 27, 2000. At the preliminary hearing, Solomon, the only witness, identified Dantzler as the man who shot him. Dantzler, unable to post bail, was incarcerated for almost two months. Dantzler maintained his innocence at all times.

On October 26, 2000, Police Detective Smith informed Verrecchio that, while interviewing a prisoner named Raheem Brown ("Brown"), he had received information concerning a police officer shooting. Brown told him that his cellmate, Kareem Harper-El, was bragging about shooting a police officer. Verrecchio and Gaul concluded that Brown was referring to the Solomon shooting and informed the District Attorney's Office. On February 2, 2001, Harper-El, interviewed by Gaul and Verrecchio, gave a statement admitting the shooting. On February 6, 2001, Assistant District Attorney Malone confronted Solomon with Harper-El's confession, and Solomon admitted he had fabricated the identification of Dantzler because he felt pressure to identify someone; the charges against Dantzler were dropped. Solomon later denied he had fabricated his shooter's identification.

Williams, Gaul, Verrecchio and the City of Philadelphia have moved for summary judgment. Partial summary judgment was granted to the City of Philadelphia on Count I by order dated October 11,

2003. Solomon has also moved for summary judgment.

II. Summary Judgment Standard

Summary judgment is appropriate "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). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

In moving for summary judgment, the moving party bears the initial burden of identifying the portions of the record that demonstrate the absence of material fact disputes. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To defeat summary judgment, the non-moving party must respond with evidence contradicting the facts identified by the moving party and may not rest on mere denials or assertions in the pleadings. See id. at 321 n.3; First Nat'l Bank v. Lincoln Nat'l Life Ins. Co., 824 F.2d 277, 282 (3d Cir. 1987).

III. Discussion

A. Count I - 42 U.S.C. § 1983

To establish a claim under 42 U.S.C. § 1983, a plaintiff must show that the defendants, acting under color of state law,

deprived him of a right or privilege secured by the Constitution or laws of the United States. Williams v. West Chester, 891 F.2d 458, 460 (3d Cir. 1989).

In his complaint, Dantzler alleges the defendants violated his Fourth Amendment Rights. The Fourth Amendment provides for "the right of the people to be secure in their person, houses, papers, and effects against reasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." U.S. CONST. amend. IV.

It is clear that the officers, with the exception of Solomon, were acting under color of state law. The issue is whether the officers had probable cause to arrest Dantzler at the time of his arrest. See Pierson v. Ray, 386 U.S. 547, 557 (1967). Probable cause exists at the time of arrest if "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [plaintiff] had committed or was committing an offense." Beck v. Ohio, 379 U.S. 89, 91; see also Wilson v. Russo, 212 F.3d 781, 789 (3d Cir. 2000).

Defendants assert they had probable cause to arrest Dantzler. The victim, Solomon, named "Tony" and said that he

knew the assailant; further investigation revealed that Dantzler used an alias of Tony; the victim identified Dantzler as the shooter when he was shown his picture; and an independent magistrate approved the arrest warrant.

Dantzler asserts the detectives had a duty to corroborate Solomon's identification before arresting him and states their investigation was very limited. However, probable cause exists when an officer has received an identification from the victim. "When a police officer has received a reliable identification by a victim of his or her attacker, the police have probable cause to arrest." Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997). Officials are not required to make an exhaustive investigation to have probable cause. Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 790 (3d Cir. 2000).

Dantzler, relying on Rogers v. Powell, 120 F.3d 446 (3d Cir. 1997), claims once the officers had exculpatory information, it was unlawful to continue holding him. Rogers is distinguishable in two respects: (1) the officers did not have probable cause to arrest the petitioner in the first place, as they were relying on statements of fellow officers who had no personal knowledge; and (2) the district attorney told the police officers there was no reason to continue to hold the plaintiff. Here, the detectives had only vague information that some prisoner's cellmate was talking about shooting a police officer

until Solomon confessed he had fabricated the identification of his assailant, at which time the charges against Dantzler were dropped.

There is no material issue of disputed fact; the information these detectives had when they arrested Dantzler constituted probable cause. There was no evidence that someone else committed the crime until a month after Dantzler's arrest. Dantzler has produced no evidence that defendants Gaul, Williams and Verrechio did not have probable cause to arrest him. Summary judgment will be granted on Dantzler's Fourth Amendment claim.

Defendants assert that if Dantzler's Fourth Amendment procedural due process claim fails, his Fifth and Fourteenth amendment claims must fail as well. See Albright v. Oliver, 510 U.S. 266, 273 (1994) (where a particular amendment "provides an explicit textual source of constitutional protection" against a particular source of government behavior, that Amendment and not more generalized substantive due process must be the basis for analyzing those claims).

To prevail on a substantive due process claim, Dantzler would have to show that the police conduct in question was so "ill-conceived or malicious that it 'shocks the conscience'" Miller v. City of Philadelphia, 174 F.3d 368, 375 (3d Cir. 1999). Because the police had probable cause to arrest Dantzler at the time he was arrested, their behavior would not shock the

conscience. Nor can he show that an inadequate investigation of Harper-El's confession shocks the conscience.

Even if Dantzler were able to state a constitutional violation, Gaul, Williams, and Verecchio would be entitled to qualified immunity. A two step process determines whether officers are entitled to qualified immunity. First, a court determines "whether the plaintiff has alleged the deprivation of an actual constitutional right at all." Wilson v. Layne, 526 U.S. 603, 609 (1999). Then a court determines, "whether that right was clearly established at the time of the alleged violation." Id. at 609. The standard is whether a reasonable officer could have believed his conduct to have been reasonable under the law. Kim v. Gant, 1997 WL 535138 at *10 (E.D. Pa. 1997). Even if Dantzler had stated a constitutional violation, he has not shown that reasonable officers would have known their conduct was unconstitutional.

Solomon is entitled to summary judgment on Count I as well. In his complaint, Dantzler brings a Section 1983 claim against Solomon in his official and individual capacities.¹ To bring a successful claim under Section 1983, a plaintiff must establish that the allegedly unlawful conduct: (1) was committed by someone acting under the color of state law; and (2) deprived plaintiff

¹This court already dismissed the counts against Solomon in his official capacity.

of rights, privileges and immunities protected by the Constitution or federal law. Cohen v. City of Philadelphia, 736 F.2d 81, 83 (3d Cir. 1984).

There is no liability under Section 1983 for those who do not act under color of state law. Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995). Solomon was not acting under color of state law; as an off-duty housing police officer, he was acting as a private party. A private party can only be held liable for a Section 1983 violation where the private party was involved in a conspiracy with one or more state officials to deprive a plaintiff of constitutional rights. Boykin v. Bloomsburg Univ., 893 F. Supp. 409, 417 (M.D. Pa. 1995).

Dantzler has not alleged a conspiracy between Solomon and one or more state officials, and he has not shown any evidence that Solomon was involved in such a conspiracy. Solomon gave the police officers information about who shot him. That this information may have been false does not create a conspiracy. Solomon is entitled to summary judgment on the Section 1983 claim.

B. Count II - State Law Claims

In Count II of his complaint, Dantzler brings claims of false arrest, false imprisonment and malicious prosecution against all defendants. Because the court is granting summary judgment on all federal claims against all defendants prior to

trial, the court will decline to exercise supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367(b)(3).

IV. Conclusion

Defendants' Gaul, Williams, Verecchio and the City of Philadelphia's Motion for Summary Judgment will be granted. Summary Judgment as to Defendant Solomon will be granted. The claims in Count II will be dismissed without prejudice. An appropriate order follows.

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ORDER

AND NOW, this ___ day of May 2004, upon consideration of the Motion for Summary Judgment by the City of Philadelphia, Gaul, Williams, and Verrecchio (paper no. 32) and Ronald Solomon's Motion for Summary Judgment (paper no. 37), it is hereby **ORDERED** that:

1. The Motion for Summary Judgment by the City, Gaul, Williams, and Verrecchio is **GRANTED**.
2. Ronald Solomon's Motion for Summary Judgment is **GRANTED**.
3. Count II is **DISMISSED WITHOUT PREJUDICE**.
4. Dantzler's Motion for Leave to Attach a Supplemental Exhibit is **DENIED AS MOOT**.
5. The Clerk is directed to mark this case **CLOSED**.

Norma L. Shapiro, S.J.