

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

NORMAN OVERTON,
Plaintiff

v.

**SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,**
Defendant

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**CIVIL ACTION
No. 04-904**

MEMORANDUM OPINION AND ORDER

RUFE, J.

June 3, 2004

This case comes before the Court on Plaintiff Norman Overton’s Motion for Leave of Court to File an Amended Complaint and Defendant Southeastern Pennsylvania Transportation Authority’s (“SEPTA”) Motion for Judgment on the Pleadings. For the following reasons, Plaintiff’s Motion is granted and SEPTA’s Motion is granted in part and denied in part.

I. FACTUAL BACKGROUND

The following facts are taken from the Complaint and proposed amended complaint and accepted as true for the Court’s consideration of the instant motions. On March 18, 2002, Plaintiff traveled to downtown Philadelphia on SEPTA’s R-8 train to obtain a replacement for his senior citizen’s SEPTA card which had been lost. While Plaintiff was on the train, the SEPTA train conductor gave him a “hard time” because Plaintiff did not have his senior citizen’s SEPTA card. When the R-8 train arrived at Suburban Station, SEPTA Police Officer Arthur Brown “stopped, assaulted and arrested” Plaintiff and transported him to SEPTA’s Suburban Station office.¹ At the station office, the train conductor identified Plaintiff as “one of the troublemakers,” following which Officer Brown pushed Plaintiff against a glass wall, twisted Plaintiff’s arms behind his back, and

¹ Pl.’s Mot. For Leave of Court to File an Am. Compl. Ex. D at 2.

handcuffed him.² Officer Brown then transported Plaintiff to the SEPTA transit police station where he remained handcuffed for twenty to thirty minutes. It is unclear from the complaint how and when Plaintiff was released from custody.

II. PROCEDURAL HISTORY

On February 5, 2004, Plaintiff filed a complaint in the Philadelphia Court of Common Pleas (the “Original Complaint”) against SEPTA only, asserting seven causes of action: 1) negligence; 2) assault and battery; 3) intentional infliction of emotional distress (“IIED”); 4) violation of Article I, Section 1 of the Pennsylvania Constitution; 5) false arrest; 6) violation of Article I, Section 26 of the Pennsylvania Constitution; and 7) a cause of action under 42 U.S.C § 1983. On March 2, 2004, SEPTA removed this case pursuant to 28 U.S.C. § 1441.

On March 22, 2004, SEPTA filed the instant Motion for Judgment on the Pleadings, arguing that: 1) SEPTA is entitled to sovereign immunity on the state law causes of action; 2) no private cause of action for damages exists for violations of Article I, Sections 1 and 26 of the Pennsylvania Constitution; and 3) Plaintiff’s complaint did not properly assert the elements required by Monell v. Department of Social Services of New York, 436 U.S. 658 (1978), to establish liability against a government agency for violations of civil rights.

On March 26, 2004, Plaintiff filed an amended complaint (“Proposed Amended Complaint I”) without seeking leave of Court. Proposed Amended Complaint I asserted only three causes of action: 1) false arrest; 2) assault and battery; and 3) a cause of action under 42 U.S.C. § 1983. Plaintiff also added as defendants two Doe SEPTA conductors and three Doe SEPTA Transit Police Officers. In addition, Plaintiff alleged, as required by Monell, that SEPTA’s actions were

² Id. at 2-3.

pursuant to a SEPTA custom, practice or policy. On April 1, 2004, Plaintiff filed his Response to SEPTA's Motion for Judgment on the Pleadings, arguing only that Proposed Amended Complaint I remedied any shortcomings raised in SEPTA's motion.

On April 16, 2004, SEPTA filed a Motion to Strike Proposed Amended Complaint I, alleging that: 1) Plaintiff's Monell claim is barred by the statute of limitations; 2) Plaintiff's state law claims are barred by SEPTA's sovereign immunity; and 3) Plaintiff did not obtain leave of Court to file Proposed Amended Complaint I as required by Federal Rule of Civil Procedure 15(a).

On April 30, 2004, Plaintiff filed the instant Motion for Leave to File an Amended Complaint. The proposed amended complaint accompanying this Motion ("Proposed Amended Complaint II") adds Officer Brown as a defendant and removes the Doe defendants but is otherwise identical to Proposed Amended Complaint I. Plaintiff cites no legal authority in support of his motion, stating only that he should be allowed to amend his complaint to add Officer Brown because he did not become aware of Officer Brown's identity until March 29, 2004, when SEPTA made its Rule 26 initial disclosures.

On May 3, 2004, the Court granted SEPTA's Motion to Strike and ordered Proposed Amended Complaint I stricken from the record. The Court reserved judgment on Plaintiff's Motion for Leave to File an Amended Complaint until receipt of SEPTA's response thereto. On May 14, 2004, SEPTA filed its response, so Plaintiff's Motion is ripe for the Court's consideration along with SEPTA's Motion for Judgment on the Pleadings.

III. DISCUSSION

A. Plaintiff's Motion for Leave to File an Amended Complaint³

In Proposed Amended Complaint II, Plaintiff makes three significant amendments to his Original Complaint: 1) the removal of his causes of action for negligence, IIED and violations of the Pennsylvania Constitution; 2) the modification of his § 1983 claim to comply with Monell; and 3) the addition of Officer Brown as a defendant. The first amendment does not warrant discussion as SEPTA does not object to the removal of claims against it, and accordingly leave to file this amendment is granted. The remaining two amendments are discussed below.

1. Plaintiff's Monell claim

In the Original Complaint, Plaintiff makes only the following allegation with respect to his § 1983 claim:

By striking Norman Overton without any cause therefor, by committing assault and battery upon him, by inflicting emotional distress upon him, by violating his natural and civil rights to be free of arbitrary and unlawful state action, the police officers have committed, as to Norman Overton, a violation of [§ 1983].⁴

As written, this allegation proceeds under a respondeat superior theory of liability against SEPTA.

As SEPTA points out, such a theory does not satisfy Monell.⁵ Accordingly, SEPTA would be entitled to judgment on the pleadings on this claim as alleged in the Original Complaint.

In the corresponding section of Proposed Amended Complaint II, Plaintiff alleges as

³ Federal Rule of Civil Procedure 15(a) sets out the standard for granting leave to amend a complaint when, as is the case here, a responsive pleading has been served: "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

⁴ Original Compl. at 7.

⁵ Monell, 436 U.S. at 691 ("[A] municipality cannot be held liable under § 1983 on a respondeat superior theory.").

follows:

24. The defendants [sic] use of excessive force, unlawful arrest and detention without probable cause comprised a violation of plaintiff's civil right to be free of such actions under the Forth [sic] and Fourteenth Amendments to the Constitution.

25. The defendants [sic] use of excessive force, unlawful arrest and detention without probable cause was pursuant to custom, practices, policy or uses of defendant, SEPTA.

26. Under this custom, usage, practice or policy, SEPTA:

(a) encouraged and/or condoned the use of excessive force, unlawful arrest and detention without probable cause;

(b) encouraged and/or condoned the practice of using excessive force, detaining individuals without probable cause and falsely accusing and arresting individuals;

(c) failed to investigate, or punish the excessive use of force, false arrest and unlawful detentions by SEPTA transit police officers;

(d) failed to provide adequate training to its transit police officers regarding the use of force, the constitutional limits of force, the proper use of police weapons including handcuffs and the proper method of detaining and arresting individuals.⁶

Thus, with this proposed amendment Plaintiff attempts to remedy the deficiency of the Original Complaint and comply with the requirements of Monell.⁷

SEPTA argues that this amendment should not be allowed because Plaintiff is attempting to assert a new cause of action which is barred by the statute of limitations. Plaintiff's § 1983 action is subject to Pennsylvania's two year statute of limitations governing personal injury actions.⁸ Plaintiff filed his Motion for Leave to File an Amended Complaint on April 30, 2004, more

⁶ Pl.'s Mot. For Leave of Court to File an Am. Compl. Ex. D at 5-6.

⁷ See 436 U.S. at 694 (“[I]t is when 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 that the government as an entity is responsible under § 1983.”).

⁸ 42 Pa. Cons. Stat. Ann. § 5524; Garvin v. City of Philadelphia, 354 F.2d 215, 220 (3d Cir. 2003).

than two years after March 18, 2002, the date of the incident. Thus, Plaintiff's Monell claim is time-barred unless it relates back to the Original Complaint. Federal Rule of Civil Procedure 15(c) governs the relation back of an amendment to a complaint and provides, in relevant part: "[a]n amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading" Plaintiff's Monell claim in Proposed Amended Complaint II clearly arises out of the same incident that is the subject of the Original Complaint.⁹ Accordingly, it relates back to the Original Complaint and is not barred by the statute of limitations.¹⁰ Mindful of the rule that "leave [to amend] shall be freely given when justice so requires,"¹¹ the Court grants Plaintiff leave to make this amendment.

2. The addition of Officer Brown

Plaintiff also seeks to amend the Original Complaint to add Officer Brown as a defendant. As with the Monell claim discussed supra, because the two year statute of limitations has expired, this amendment is time-barred unless it relates back to the Original Complaint. An amendment changing or adding¹² a party relates back when: 1) the claim arises out of the same incident; 2) the added party received notice within 120 days of the institution of the action and will

⁹ The cases relied upon by SEPTA are inapposite as they are Pennsylvania state cases and do not apply the Federal Rules of Civil Procedure.

¹⁰ See Garrison v. Borough of Yeadon, No. Civ.A.02-7731, 2003 U.S. Dist. LEXIS 548, at *8-11 (E.D. Pa. Jan. 7, 2003) (holding that amended complaint adding Monell claim related back because it arose out an occurrence regarding which the plaintiff alleged only state law claims in the original complaint).

¹¹ Fed. R. Civ. Proc. 15(a).

¹² Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc., 801 F. Supp. 1450, 1456 n.5 (E.D. Pa. 1992) (Pollak, J.) ("The word 'changing' has been liberally construed to cover amended pleadings that, as this one, add entirely new parties without any substitution.").

not be prejudiced; and 3) the added party “knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against that party.”¹³ SEPTA admits that the first requirement is satisfied and that the second requirement will be satisfied if the Court grants Plaintiff’s Motion for Leave to Amend. Thus, the only contested issue is whether the third requirement is satisfied.

In a conference with the Court and in his Motion to Amend, Plaintiff stated that he did not obtain the name of the SEPTA officer involved in the incident until receiving SEPTA’s initial disclosures. Therefore, Plaintiff did not make a mistake about Officer Brown’s identity; he lacked information about it. In general, this situation arises most often when a plaintiff seeks to amend a complaint to replace “John Doe” defendants with the names of specific individuals. These situations are governed by the Third Circuit’s decision in Varlack v. SWC Caribbean, Inc., 550 F.2d 171, 175 (3d Cir. 1977), holding that an amendment replacing the name of the actual employee in a complaint against “Unknown Employee of Orange Julius Restaurant” satisfied all of the requirements of Rule 15(c)(3), including the mistake requirement.

SEPTA relies on dicta in a more recent case, Singletery v. Pennsylvania, 266 F.3d 186 (3d Cir. 2001), to argue that Plaintiff does not satisfy the mistake requirement of Rule 15(c)(3)(B). In Singletery, the court upheld the district court’s ruling that an amendment replacing “unknown corrections officers” with the actual names of the officers did not relate back to the original complaint because the second requirement of Rule 15(c)(3), notice to the officers, had not been satisfied.¹⁴

¹³ Fed. R. Civ. Proc. 15(c)(3).

¹⁴ 266 F.3d at 189-90.

More significant to the instant case, the Singletary court also addressed the district court's holding that the amendment did not satisfy the mistake requirement. SEPTA points to the Singletary court's acknowledgment "that the bulk of authority from other Courts of Appeals takes the position that the amendment of a 'John Doe' complaint--i.e., the substituting of real names for 'John Does' or 'Unknown Persons' named in an original complaint--does not meet the 'but for a mistake' requirement in 15(c)(3)(B), because not knowing the identity of a defendant is not a mistake concerning the defendant's identity."¹⁵ SEPTA also points out that the court recommended that language in Rule 15(c)(3)(B) be changed to "knew or should have known that, but for a mistake or lack of information concerning the identity of the proper party, the action would have been brought against the party."¹⁶

SEPTA, however, conveniently disregards the Singletary court's discussion of Varlack. Although the Singletary court recommended that Rule 15(c)(3)(B) be changed, it nevertheless stated that the court was "bound by Varlack insofar as it held that the plaintiff's lack of knowledge of a particular defendant's identity can be a mistake under Rule 15(c)(3)(B)."¹⁷ Thus,

¹⁵ Id. at 200.

¹⁶ Id. at 201 n.5 (emphasis added to reflect proposed change) (adopting a proposal from University of Michigan Law School Professor Edward H. Cooper's manuscript "Rule 15(c)(3) Puzzles").

¹⁷ Id. at 201; see also Advanced Power Sys., Inc., 801 F. Supp. at 1457 ("The more serious issue is the existence of a 'mistake concerning identity.' A literal reading of that phrase might suggest that only misnamed or misdescribed parties fall within the ambit of rule 15(c). However, 'in view of the history of the application of rule 15(c), the phrase 'a mistake concerning the identity of the proper party' should clearly not be read to limit its usefulness to cases of misnomer.' To do so would contravene the widely-held understanding that this rule allows, in certain circumstances, the addition of new parties that were never originally named or described. . . . The 'mistake condition . . . is concerned fundamentally with the new party's awareness that failure to join it was error rather than a deliberate strategy.") (internal citation omitted); compare Mailey v. SEPTA, 204 F.R.D. 273, 276 (E.D. Pa. 2001) (Brody, J.) (distinguishing Advanced Power as limited to situations where the original party and added party share a close identity of interests such as a situation where a plaintiff "[sues] a City employee in a civil rights action but fail[s] to sue the City itself.").

although the Third Circuit did not explicitly resolve this issue, it is clear that, despite the contrary holdings in other circuits, the Third Circuit would find that the mistake requirement is satisfied when a plaintiff does not know a defendant's name at the time he first files his complaint.¹⁸

Under Varlack and Singletery, Plaintiff's lack of knowledge of Officer Brown's identity at the time he filed the Original Complaint satisfies the mistake requirement of Rule 15(c)(3)(B). Because each of the elements of Rule 15(c)(3) is satisfied, Proposed Amended Complaint II relates back to the Original Complaint. Accordingly, Plaintiff's Motion for Leave to File an Amended Complaint is granted with respect to the addition of Officer Brown as a defendant.¹⁹

B. SEPTA's Motion for Judgment on the Pleadings²⁰

SEPTA filed its Motion for Judgment on the Pleadings prior to Plaintiff's Motion for Leave to Amend. In its Motion, SEPTA argues that the Court should rule in SEPTA's favor on each of the seven claims in the Original Complaint. Having granted Plaintiff's Motion for Leave to

¹⁸ Singletery, 299 F.3d at 201 n.4 (“We note, however, that two district court cases from within this Circuit have seemingly concluded that Varlack's holding does not entail that amended ‘John Doe’ complaints meet Rule 15(c)(3)(B)'s ‘mistake’ requirement, as these cases have followed the rule of the other Circuits in denying the relation back of amended complaints that replace ‘John Doe’ defendants because there was no mistake involved in the original complaints. The majority of district court cases from within this Circuit that have considered this issue, however, have followed the broader interpretation of Varlack and thus allowed the relation back of amended ‘John Doe’ complaints under Rule 15(c)(3). We think this to be the better reading of Varlack.”) (internal citations omitted); Parsons v. City of Philadelphia, No. Civ.A.02-1881, 2002 U.S. Dist. LEXIS 24764, at *9 (E.D. Pa. 2002) (“A plaintiff's lack of information regarding a particular defendant's identity is considered a ‘mistake’ within the meaning of Rule 15(c)(3)(B).”).

¹⁹ SEPTA does not argue that Plaintiff's claims against Officer Brown are barred by qualified immunity, so the Court does not reach that issue here.

²⁰ The standard of review for a Rule 12(c) motion is similar to the familiar standard for Rule 12(b)(6) motions: “As with a Rule 12(b)(6) motion, this Court ‘view[s] the facts alleged in the pleadings and the inferences to be drawn from those facts in the light most favorable to the plaintiff.’ That is, the motion should not be granted ‘unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law.’” Mele v. Fed. Reserve Bank, 359 F.3d 251, 253 (3d Cir. 2004) (quoting Leamer v. Fauver, 288 F.3d 532, 535 (3d Cir. 2002)).

Amend, the Court now addresses SEPTA's arguments with respect to the two remaining state law claims (false arrest and assault and battery) in Proposed Amended Complaint II.²¹

Plaintiff's state law claims are barred by SEPTA's sovereign immunity.²² As stated in Title 1, section 2310 of the Pennsylvania Consolidated Statutes:

[T]he Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity.

SEPTA is a Commonwealth party with respect to this immunity,²³ and because Plaintiff concedes that Officer Brown was acting within the scope of his duties, Officer Brown enjoys this immunity as well.²⁴ However, the Pennsylvania General Assembly waived "sovereign immunity as a bar to an action against Commonwealth parties for damages arising out of a negligent act" when such damage was caused by one of the following: 1) vehicle liability; 2) medical professional liability; 3) the care, custody or control of personal property; 4) Commonwealth real estate, highways and sidewalks; 5) potholes and other dangerous conditions; 6) care, custody or control on animals; 7) liquor store sales; 8) National Guard activities; or 9) toxoids and vaccines.²⁵

²¹ With respect to Plaintiff's § 1983 claim, SEPTA argues that it is entitled to judgment because Plaintiff did not satisfy the requirements of Monell. As discussed in section A, supra, Proposed Amended Complaint II modifies this claim to comply with Monell. Accordingly, SEPTA's Motion is denied as moot with respect to this claim.

²² Clark v. S. E. Pa. Transp. Auth., 691 A.2d 988, 991-92 (Pa. Commw. Ct. 1997).

²³ Id. ("SEPTA, as a Commonwealth party, enjoys sovereign immunity except for those actions where immunity is specifically waived.").

²⁴ See Prop. Am. Compl. II at 2 ("Defendant, Arthur Brown, is a SEPTA police officer/employee who at all times relevant hereto, was employed by SEPTA and acted in the course of his/her employment with the defendant Septa [sic]."); Litzenberger v. Vanim, No. Civ.A.01-5454, 2002 U.S. Dist. LEXIS 13843, at *14 (E.D. Pa. July 31, 2002) ("Commonwealth officials acting within the scope of their duties enjoy the same immunity as the Commonwealth itself.").

²⁵ 42 Pa. Cons. Stat. Ann. § 8522.

False arrest and assault and battery are both intentional torts that do not involve a “negligent act.”²⁶ Therefore, they do not fall within an exception to SEPTA’s sovereign immunity.²⁷ Accordingly, SEPTA’s Motion is granted with respect to these state law claims.

IV. CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Leave to File an Amended Complaint is granted, and SEPTA’s Motion for Judgment on the Pleadings is granted in part and denied in part. Plaintiff may amend his complaint with respect to his § 1983 claim and the addition of Officer Brown as a defendant. However, because Plaintiff’s state law claims are barred by SEPTA and Officer Brown’s sovereign immunity, he shall not include those claims in the amended complaint.

An appropriate Order follows.

²⁶ Id.

²⁷ Clark, 691 A.2d at 989.

**IN THE UNITED STATES DISTRICT COURT
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NORMAN OVERTON,	:	
Plaintiff	:	CIVIL ACTION
	:	No. 04-904
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY,	:	
Defendant	:	

ORDER

AND NOW, this 3rd day of June, 2004, upon consideration of Plaintiff Norman Overton's Motion for Leave of Court to File an Amended Complaint [Doc. #10], Defendant SEPTA's Opposition thereto [Doc. #12], SEPTA's Motion for Judgment on the Pleadings [Doc. #4], and Plaintiff's Response thereto [Doc. #7], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** as follows:

1. Plaintiff's Motion for Leave of Court to File an Amended Complaint is **GRANTED**;
2. SEPTA's Motion for Judgment on the Pleadings is **GRANTED IN PART** and **DENIED IN PART**. SEPTA's Motion is **GRANTED** with respect to Plaintiff's claims for false arrest and assault and battery. SEPTA's Motion is **DENIED AS MOOT** with respect to all other claims.
3. Plaintiff may file, within five (5) days of the date of this Order, an amended complaint that adds SEPTA Police Officer Arthur Brown as a defendant and asserts only the claim under 42 U.S.C. § 1983 as pleaded in the proposed amended complaint submitted as Exhibit D to Plaintiff's Motion [Doc. #10].
4. Defendants SEPTA and Arthur Brown shall file, within twenty (20) days of service of Plaintiff's amended complaint, appropriate responsive pleadings to said amended complaint.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.