

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

BRAIN MAIALE )  
 ) Civil Action  
 v. )  
 ) No. 03-5450  
P.O. MICHAEL YOUSE, et al. )

Padova, J.

MEMORANDUM

August \_\_, 2004

Plaintiff has filed an action alleging that his constitutional rights were violated when he was arrested and searched by City of Philadelphia police officers following a traffic accident. Plaintiff and Defendants have filed cross motions for summary judgment. For the reasons that follow, the Court will grant in part and deny in part Defendants' Motion for Summary Judgment, and will deny Plaintiff's Motion for Summary Judgment in its entirety.

I. RELEVANT BACKGROUND

In the early morning hours of September 30, 2001, Plaintiff Brian Maiale was driving his father's silver Jaguar in the vicinity of Broad and Fitzwater streets when he was involved in a minor automobile accident with another vehicle. A friend of Plaintiff's named Kevin Wood was traveling as a passenger in the Jaguar at the time of the accident. According to Plaintiff's testimony, he and the driver of the other vehicle pulled into a gas station in the vicinity of 740 South Broad St. According to Plaintiff, he and Mr. Wood both exited the vehicle to survey the damage, and then Plaintiff reentered his vehicle to obtain his insurance

information.

According to the police investigation report, Defendant Officer Cerutti was shortly thereafter flagged down in his patrol car by the occupants of the second vehicle involved in the accident, who informed Officer Cerutti that a man in the Jaguar had pulled out a gun and threatened them. At the same time, Defendant Officer Youse received a radio call of a person with a gun at Broad and Fitzwater Streets. Officers Cerutti and Youse then both drove to the vicinity of 740 South Broad Street and observed the silver Jaguar in the parking lot.

According to the testimony of Officer Youse taken at a suppression hearing related to criminal charges filed against Plaintiff as a result of this incident, as Officer Youse was exiting his vehicle at the gas station, he observed Plaintiff standing next to the silver Jaguar, and observed Mr. Wood walking away from the Jaguar and towards the cashier booth at the gas station. (Pl's Ex. 3 at 6.) Officer Cerutti arrived on the scene at this time and proceeded to conduct a pat down for weapons on Mr. Wood. (Id.) Also at this time, another vehicle pulled up, the occupants of the vehicle exited the vehicle, pointed to both Plaintiff and Mr. Wood and stated "they have a gun." (Id.) Officer Youse then pushed Plaintiff up against the Jaguar and attempted to pat him down for weapons. According to Officer Youse, Plaintiff was uncooperative, and appeared to be attempting to get

back into the silver Jaguar. At this time, Officer Youse observed Officer Cerutti retrieve a gun from the waistband of Mr. Wood. (Pl's Ex. 3 at 7.) Officer Youse then proceeded to "take [Plaintiff] down to the ground" with assistance from Officer Cerutti. (Id.) Officer Youse claims that Plaintiff resisted him during his attempt to take him to the ground, and attempted to either reach into or physically enter the Jaguar. (Pl's Ex. 3 at 8.) Plaintiff asserts that he did not resist Officer Youse or Officer Cerutti in any way. (Maiale Dep. at 18-19). Plaintiff alleges that he suffered serious injury to his head, neck and back in the course of Officer Youse's "take down." Officer Youse then completed his pat down of Plaintiff's person, but found no contraband or weapons. (Pl's Ex. 3 at 8.) At this time, Officer Youse also placed Plaintiff in handcuffs. (Maiale Dep. at 20). Officer Youse then proceeded to open the door of the silver Jaguar and search the inside of the vehicle. (Pl's Ex. 3 at 8). Upon searching the inside of the Jaguar, Officer Youse observed a plastic baggie folded over several times. (Pl's Ex. 3 at 9). Officer Youse then proceeded to remove this item from the vehicle, at which point he discovered that the bag contained a green leafy substance that he believed to be marijuana. (Id.) Officer Youse then formally placed Plaintiff under arrest.

Plaintiff subsequently filed a motion to suppress the marijuana found in the vehicle in state court, arguing that the

search of his vehicle was in violation of the Fourth Amendment to the United States Constitution and relevant state law. This motion to suppress was subsequently granted by the Pennsylvania Court of Common Pleas. (See Pl's Ex. 6). After the motion to suppress was granted, the Commonwealth of Pennsylvania declined to prosecute this matter and the charges were dismissed.

## II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

### A. Federal Law Claims

Plaintiff asserts the following federal law claims pursuant to 42 U.S.C. § 1983 against Officers Youse and Cerutti: unlawful arrest, unlawful detention, excessive force and malicious prosecution. In addition, Plaintiff asserts a claim against the City of Philadelphia pursuant to Monell v. Dep't. of Social Services of the City of New York, 436 U.S. 658 (1978). Defendants have not moved for summary judgment on Plaintiff's excessive force claims. Defendants have, however, moved for summary judgment on all of Plaintiff's other federal law claims.

#### 1. Unlawful Arrest and Unlawful Detention Claims Against Officers Youse and Cerutti

Plaintiff argues that his initial "take down" by Officer Youse, with the assistance of Officer Cerutti, before Officer Youse searched the vehicle and found the marijuana, amounted to an arrest, and that this arrest was unlawful and undertaken without

probable cause.<sup>1</sup> There are no bright line rules to use in determining when a stop and frisk under Terry v. Ohio, 392 U.S. 1 (1968), is converted into an arrest. Indeed, "[t]here is no per se rule that pointing guns at people, or handcuffing them, constitutes an arrest." Baker v. Monroe Township, 50 F.3d 1186, 1193 (3d Cir. 1995); see also United States v. Edwards, 53 F.3d 616 (3d Cir. 1995). Rather, a court "must look at the intrusiveness of all aspects of the incident in the aggregate," and determine if, in light of all of the circumstances, the degree of restraint used by the officers was justified by the officers' need to investigate or their personal safety. Baker, 50 F.3d at 1193. If the degree of restraint was not so justified, then the detention may be considered an arrest which must be supported by probable cause.

In this case, considering the facts in the light most favorable to Plaintiff, a reasonable jury could find that the initial detention of Plaintiff amounted to an arrest. Indeed, according to Plaintiff's version of events, he never resisted Officer Youse's attempts to detain him, and never threatened Officer Youse in any manner. (Maiale Dep. at 17.) Rather, according to Plaintiff, he was standing by the side of his car examining his insurance information when Officer Youse approached

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<sup>1</sup> At oral argument heard on August 2, 2004, Plaintiff conceded that his unlawful arrest and unlawful detention claims were based solely upon his initial detention before the search of the vehicle. (See 8/2/04 Tr. at 3, 8).

him, frisked him, threw him to the ground and handcuffed him. According to Plaintiff, he did not struggle with or resist Officer Youse during the episode, but rather told him, "I will cooperate, I just don't understand what's going on." (Maiale Dep. at 17.) Given Plaintiff's version of events, a reasonable juror could find that Officer Youse and Officer Cerutti's actions of handcuffing Plaintiff and throwing him to the ground constituted an arrest. Moreover, given the fact that no weapons or contraband were found on Plaintiff's person when he was initially searched, a reasonable juror could find that there was no probable cause to arrest Plaintiff at this time. Finally, given Plaintiff's version of events, a reasonable juror could conclude that Officers Youse and Cerutti are not entitled to qualified immunity in connection with the actions they took during the initial detention of Plaintiff. Cf. Hung v. Watford, Civ. A. No. 01-3580, 2002 WL 31689328, at \*6 (E.D. Pa. Dec. 3, 2002) ("It is apparent that an unprovoked grab, punch, kick and handcuffing of an individual who is not resisting arrest or even being arrested, not fleeing the scene of a crime and not engaging in any threatening activity to an officer or others, was clearly established as a violation of a constitutional right at the time of the incident.") Accordingly, Defendants' Motion for Summary Judgement is denied with respect to the counts of unlawful arrest and unlawful detention.

2. The Unlawful Search of the Passenger Compartment by Officer Youse<sup>2</sup>

Plaintiff asserts that Officer Youse unlawfully searched his vehicle after detaining and handcuffing him. Plaintiff also argues that Officer Cerutti is liable under a theory of supervisory liability for failing to prevent Officer Youse from conducting the illegal search. Defendants argue that Officer Youse's search of the vehicle was lawful under current Fourth Amendment precedent, and that, in any event, they are both entitled to qualified immunity for this search.

"The doctrine of qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" Powell v. Marino, No. Civ. A. 03-5420, 2004 WL 377662, at \*3 (E.D. Pa. Feb. 25, 2004)(quoting Malley v. Briggs, 475 U.S. 335 (1986)). A determination of whether an officer is entitled to qualified immunity requires a two part inquiry. "First, the court must determine whether the facts, taken in the light most favorable to the plaintiff, show a constitutional violation. If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity. Bennett v. Murphy, 274 F.3d 133, 136 (3d Cir. 2002). Once a

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<sup>2</sup> Although Plaintiff's Complaint does not explicitly assert a cause of action for a violation of his rights under the Fourth Amendment to the United States Constitution, it is clear that Plaintiff challenges the legality of the search under the Fourth Amendment. Accordingly, the Court has analyzed the legality of the search pursuant to the Fourth Amendment.

plaintiff makes out a constitutional violation, courts evaluating a qualified immunity claim "must proceed to the second step of the analysis to determine whether the constitutional right was clearly established." Id. In determining whether a constitutional right is clearly established, the Court must consider whether a reasonable officer would have understood that his actions were unlawful under the factual scenario established by the plaintiff. See Saucier v. Katz, 533 U.S. 194, 201 (2001) ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."); see also Pahle v. Colebrookdale Twp., 227 F. Supp. 2d 361, 373 (E.D. Pa. 2002) (officers are entitled to qualified immunity if "reasonable officers could have believed that their conduct was lawful 'in light of clearly established law and information available to [them] at the time of the incident.'") (quoting Anderson v. Creighton, 483 U.S. 635, 641 (1987)). In order for a right to be clearly established, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson, 483 U.S. at 640. In Saucier, the Court explained:

[t]he concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual

situation the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether [his actions are] legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

Saucier, 533 U.S. at 206. The subjective intent of the officer or official is ordinarily not relevant in a qualified immunity inquiry. Doe v. County of Centre, PA, 242 F.3d 437, 454 (3d Cir. 2000).

As a preliminary matter, Plaintiff argues that the decision in the Pennsylvania Court of Common Pleas suppressing the marijuana seized from Plaintiff's vehicle collaterally estops Defendants from arguing that the search of the vehicle was lawful under the Fourth Amendment. The Court disagrees. "Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first case." Allen v. McCurry, 449 U.S. 90, 94 (1980). "The test under federal law for when an issue is precluded because it has been litigated already requires the presence of four factors: '(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from re-litigating the issue was fully represented in the prior action.'" Broadus v. Sturm, Civ. A. No. 03-4859, 2004 WL 1490335, at \*4 (E.D. Pa. Jul.

2, 2004) (citing Dam Things From Denmark v. Russ Berrie & Co., 290 F.3d 548, 559 n.15 (3d Cir. 2002)). In this case, contrary to Plaintiff's suggestion, it is not clear that the specific issue of whether the search of Plaintiff's vehicle violated Plaintiff's Fourth Amendment rights was ever decided by the state court. It is well-settled that the Pennsylvania Supreme Court provides more protection to Pennsylvania's citizens under the state Constitution than the United States Supreme Court ("Supreme Court") provides pursuant to the United States Constitution. See Commonwealth v. Gelineau, 696 A.2d 188, 195 (Pa. Super Ct. 1997). One of the areas in which the Pennsylvania Supreme Court provides this additional protection is in the area of searches and seizures by police officers. Specifically, Pennsylvania courts do not adhere to the holding in New York v. Belton, 453 U.S. 454 (1981)<sup>3</sup>, and instead limit a search of an automobile incident to the arrest of an occupant to property "immediately associated with the person of the arrestee." Gelineau, 696 A.2d at 195. In this case, the Pennsylvania Court of Common Pleas never issued a written decision in this matter, and did not even indicate on the record its rationale for granting the motion to suppress. Accordingly, it is impossible to tell from the court's decision whether it was based upon state or federal law, or whether the court would have reached

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<sup>3</sup> Pursuant to Belton, officers may search the passenger compartment of an automobile pursuant to the arrest of an occupant of that vehicle.

the same result had it been deciding solely whether the search violated the Fourth Amendment to the United States Constitution. Accordingly, the state court decision granting Plaintiff's motion to suppress evidence does not collaterally estop Defendants from arguing that Officer Youse's search was lawful pursuant to the Fourth Amendment.

In a recent decision, the Supreme Court held that officers may lawfully search the passenger compartment of a vehicle incident to a lawful arrest of a "recent occupant" of the vehicle, notwithstanding the fact that, at the time that the officers initiate contact with the suspect, that suspect has already exited the vehicle. Thornton v. United States, 124 S. Ct. 2127 (2004). In Thornton, the officer first made contact with the defendant immediately after the defendant had parked his vehicle and exited it. The Court in Thornton held that, regardless of whether a suspect exits a vehicle for reasons unrelated to the officer's presence, so long as the suspect is a "recent occupant" of the vehicle, the officer may search the passenger compartment of the vehicle incident to the suspect's lawful arrest. See id. at 2132.

In this case, a reasonable juror could find that Officer Youse did not have probable cause to arrest Plaintiff at the time that he searched the silver Jaguar. However, according to Officer Youse's uncontradicted testimony, at the time that Officer Youse searched the vehicle, Officer Cerutti had already stopped and searched Mr.

Wood and discovered a handgun in Mr. Wood's waistband. Defendants therefore argue, relying upon Thornton, that Officer Youse's search of the vehicle was lawfully conducted incident to the arrest of Mr. Wood.

In Thornton, the Court implied that the validity of an automobile search is dependant upon the proximity of a defendant to the vehicle at the time that he is stopped and arrested, and the suspect's attendant ability to grab a weapon or destroy evidence located in the vehicle. The Court wrote "In all relevant respects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle . . . . The stress [of an arrest] is no less merely because the arrestee exited his car before the officer initiated contact, nor is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle." Thornton, 124 S Ct. at 2131. However, the Court in Thornton refused to define the term "recent occupant." See id. at 2131 n.2. The Court did note that "an arrestee's status as a 'recent occupant' may turn on his temporal or spatial relationship to the car at the time of the arrest and search." Id. at 2131. However, as Justice Stevens pointed out in dissent, the Court never indicated "how recent is recent, or how close is close." Id. at 2140 (Stevens, J., dissenting). The Court in Thornton also emphasized the "need for

a clear rule, readily understood by police officers and not depending on differing estimates of what items were or were not within reach of an arrestee at any particular moment . . . ." Id. at 2132. Accordingly, courts interpreting Thornton's holding have allowed vehicle searches incident to the arrest of occupants located a significant distance away from their vehicles at the time that they are arrested. See United States v. Edwards, No. CR.A. 04000201KHV, 2004 WL 1534173 (D. Kan. Jun. 21, 2004)(vehicle search valid where occupant was initially approached by officer as he exited his vehicle, but was arrested some 40 feet away from his vehicle 15 minutes after he had exited it).<sup>4</sup>

According to the record before the Court, Mr. Wood had recently exited Plaintiff's vehicle at the time that Officer Cerutti approached and searched him. Moreover, at the time that Mr. Wood was searched both Mr. Wood and Plaintiff's vehicle were located on the premises of the same gas station. Accordingly, although the record is not clear as to the precise distance between

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<sup>4</sup> In Edwards, the defendant was initially met by police "on the driver's side of the car," although he was located approximately 40 feet from his vehicle at the time that he was actually arrested. 2004 WL 1534173, at \*1. In this case, by contrast, according to the record Mr. Wood was initially contacted by Officer Cerutti when he was standing by the cashier at the gas station. (See Maiale Dep. at 15.) However, the Court sees no functional difference relevant to "concerns regarding officer safety and the destruction of evidence," Thornton, 124 S. Ct. at 2131, between a vehicle search incident to the arrest of a suspect who is initially approached by police while standing beside his vehicle but arrested at a location a significant distance away from the vehicle and the vehicle search conducted in this case.

Plaintiff's vehicle and Mr. Wood at the time that Mr. Wood was approached by Officer Cerutti, the Court finds that Mr. Wood was in sufficiently close proximity to Plaintiff's vehicle at the time he was approached for the search of Plaintiff's vehicle to be valid pursuant to Thornton and Belton.<sup>5</sup>

Moreover, even assuming, *arguendo*, that the search of Plaintiff's vehicle was not valid pursuant to Thornton, Officer Youse would be entitled to qualified immunity for the search of the vehicle. Neither the Supreme Court's decision in Thornton nor the decisions of the lower courts issued before Thornton clearly defined the propriety of an automobile search under the factual scenario described by Plaintiff, and, as discussed, *supra*, Thornton refused to provide a temporal or spatial limit for searches conducted incident to the arrest of recent occupants of vehicles.<sup>6</sup>

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<sup>5</sup> Defendants argue in the alternative that Officer Youse had probable cause to believe that there was a weapon in the vehicle based upon the fact that he was initially told by eyewitness that Plaintiff and Mr. Wood had a gun. However, Defendants have pointed to nothing in the record which indicates that these eyewitnesses told Officer Youse that there was a gun in the vehicle, or which would have otherwise given Officer Youse probable cause to believe that the vehicle contained a weapon. Accordingly, a reasonable juror could determine that Officer Youse lacked probable cause to conduct the search of the vehicle.

<sup>6</sup> The Court also notes that, before Thornton, the United States Court of Appeals for the Third Circuit ("Third Circuit") had not yet decided the issue of whether a search incident to the arrest of a recent occupant of a vehicle who had been initially contacted by police after exiting the vehicle was valid. See United States v. William, No. Crim. A. 03-315, 2004 WL 220862, at \*4 (E.D. Pa. Jan. 12, 2004).

Accordingly, because it is not disputed that Mr. Wood had recently been a passenger of the Jaguar at the time of the search, it would not have been clear to a reasonable officer in Officer's Youse's position that his conduct was unlawful "in light of clearly established law and information available to [him] at the time of the incident." Saucier, 533 U.S. at 201.

### 3. Malicious Prosecution

Plaintiff also asserts a malicious prosecution claim based upon his prosecution for marijuana possession. Plaintiff asserts that this prosecution was predicated upon the marijuana seized from his vehicle as a result of an illegal search. In order to establish a malicious prosecution claim pursuant to 42 U.S.C. § 1983, a plaintiff must establish all of the elements of the common law tort of malicious prosecution, as well as establish that "an explicit source of constitutional protection" was violated. Gallo v. City of Philadelphia, 161 F.3d 217, 222 (3d Cir. 1998). Accordingly, a plaintiff asserting a malicious prosecution claim under federal law must allege a constitutional deprivation over and above "substantive due process." Id. The most common way to establish this element is to establish that one's Fourth Amendment rights were violated as a result of a post-indictment seizure of one's person.

In this case, Plaintiff has not identified any "explicit source of constitutional protection" that has been violated.

Indeed, Plaintiff has not pointed to any evidence in the record which indicates that he was "seized" in the Fourth Amendment sense after his indictment, either by being imprisoned or by being forced to post bail after his indictment. See Gallo, 161 F.3d at 223 (a defendant who is forced to post bond and whose travel is restricted pending his court hearing date has suffered a Fourth Amendment seizure permitting him to bring malicious prosecution action pursuant to § 1983).

Moreover, Plaintiff has failed to establish all of the required common law elements of a malicious prosecution claim. The common law elements of malicious prosecution are as follows:

- (1) the defendants initiated a criminal proceeding;
- (2) the criminal proceeding ended in the plaintiff's favor;
- (3) the proceeding was initiated without probable cause;
- (4) the defendants acted maliciously or for a purpose other than to bring the plaintiff to justice.

Merkle v. Upper Dublin School Dist., 211 F.3d 782, 791 (3d Cir. 2000). Importantly, "a plaintiff claiming malicious prosecution must be innocent of the crime charged in the underlying prosecution." Hector v. Watt, 235 F.3d 154, 156 (3d Cir. 2000). As discussed, *supra*, the Court has found that Officer Youse's search of Plaintiff's vehicle did not violate the Fourth Amendment. Moreover, a malicious prosecution claim is not available to a plaintiff who merely alleges that her arrest and prosecution resulted from an illegal search. See id. at 157 ("victims of unreasonable searches or seizures may recover damages directly

related to the invasion of their privacy- including (where appropriate) damages for physical injury, property damage, injury to reputation, etc.; but such victims cannot be compensated for injuries that result from the discovery of incriminating evidence and consequent criminal prosecution.'") (quoting Townes v. City of New York, 176 F.3d 138, 148 (1999)). In this case, Plaintiff's malicious prosecution claim appears to be predicated solely upon Officer Youse's alleged unlawful search of Plaintiff's vehicle.<sup>7</sup> Accordingly, Defendants are entitled to summary judgment on Plaintiff's malicious prosecution claims.

#### 4. Claim Against the City of Philadelphia for Supervisory Liability

In order to establish a claim against a municipality, Plaintiff must show more than negligence or the presence of

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<sup>7</sup> Plaintiff also argues that no chemical seizure analysis of the substance seized by Officer Youse in the vehicle was produced in discovery, although he appears to indicate that a field test of the substance conducted on the scene indicated the presence of marijuana. (Pl's Opp. Mem. at 20.) To the extent that Plaintiff is attempting to argue that the substance found in the vehicle was not marijuana, and that he is therefore innocent of the crime of marijuana possession, this argument fails. Plaintiff never asserts that the substance which was found in the vehicle was not marijuana, nor does he point to any evidence in the record which could indicate that the substance was not marijuana. To the contrary, Plaintiff admits at many points during his deposition that the substance found in the vehicle was marijuana. Plaintiff testified as follows:

Q: So there was a baggy of marijuana found in your car, right?

A: Right.

(Maiale Dep. at 23.)

respondeat superior liability. Rather, Plaintiff must demonstrate that "the alleged constitutional transgression implements or executes a policy, regulation or decision officially adopted by the governing body or informally adopted by custom." Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3rd Cir. 1996). Plaintiff has not produced any evidence of an official policy of the City of Philadelphia condoning the use of the excessive force to which Plaintiff was allegedly subjected. Rather, Plaintiff alleges that the City of Philadelphia engaged in a custom of inadequately disciplining police officers, and that this custom resulted in the unlawful treatment that he was subjected to by Officers Cerutti and Youse. "A course of conduct is considered to be a custom when, though not authorized by law, such practices by state officials [are] so permanent and well-settled as to virtually constitute law." Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990)(internal quotation marks omitted). Custom may also be established by knowledge of and acquiescence in a course of unlawful conduct undertaken by officers or employees. Accordingly, to show custom, a plaintiff may submit evidence that a policy-maker had notice that a constitutional violation was likely to occur, and acted with deliberate indifference to this risk. See Bielewicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990) (custom can be established where "policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future

violations, and that this failure, at least in part, led to [the plaintiff's] injury.") Notice may be inferred by a jury if there is a pattern of known prior constitutional violations. See Beck, 89 F.3d at 973 (numerous citizen complaints of violent behavior against police officer sufficient for jury to infer that chief of police, and the police department, had knowledge of officer's violent behavior.) However, "rigorous standards" of causation and culpability must be applied. Thus,

The Plaintiff must demonstrate that, through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged. That is, the plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

Bd. of County Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 404-05 (1997) (emphasis in original). "A showing of simple or even heightened negligence will not suffice. Id. at 407.

In this case, Plaintiff has presented scant evidence in support of his claim against the City of Philadelphia. Plaintiff has produced a Report of the Integrity and Accountability Office of the Philadelphia Police Department ("Report"), which criticizes the discipline meted out to officers who violate the Department's disciplinary code. (Pl's Mot. Ex. 22, Integrity and Accountability Office Report). Specifically, the authors of the Report conclude that, when charges of serious violations of the Philadelphia Police Department disciplinary code are sustained, officers often receive

either minimal or no discipline. The report contains 49 "case studies" of sustained charges against officers which, in the opinion of the authors, resulted in discipline that was far too lenient or no discipline at all. (Id.) Plaintiff does not submit that any of these case studies involved either Officer Cerruti or Officer Youse. Rather, Plaintiff argues more generally that the inconsistent discipline meted out to officers who engaged in unlawful and inappropriate behavior while on the job sent a message to Officers Youse and Cerutti that such unlawful behavior would be tolerated, thereby facilitating their unlawful actions against Plaintiff.

Even assuming, *arguendo*, that the Report creates a genuine issue of material fact as to whether the City was deliberately indifferent to constitutional violations committed by its officers, the Report in itself does not provide sufficient evidence of a causal nexus between the city's alleged inadequate discipline of certain problem officers and the alleged unlawful treatment of Plaintiff. A police department's failure to discipline an officer after multiple complaints have been lodged against him can result in municipal liability when that same officer then violates a plaintiff's civil rights, particularly in cases where the prior conduct which the officer engaged in is similar to the conduct which forms the basis for the suit. See Beck, 89 F.3d at 973. However, given the "rigorous standards" for causation and

culpability that the Supreme Court has dictated, no reasonable juror could find that the City of Philadelphia's failure to properly discipline other officers, without more, was the "moving force" behind Cerutti and Youse's alleged mistreatment of Plaintiff. Indeed, Plaintiff has presented no evidence that Officers Youse and Cerutti had any relationship to any of the officers cited in the report, or that the City's discipline of Officers Youse and Cerutti, or any of the officers they worked closely with, was in any way inadequate.

Plaintiff has also produced a series of internal investigation reports from the Internal Affairs Department ("IAD") concerning complaints filed against Officers Youse or Cerutti. The complaints are dated between 1991 and 2003, and thus span a twelve year time period. None of the complaints in the record concern the use of excessive force by Officer Youse while on duty. Moreover, in all but one of the complaints, the charges against Officer Youse were either dismissed as unfounded or were not sustained.<sup>8</sup> The IAD did

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<sup>8</sup> The mere fact that charges filed against an officer prior to the conduct which gives rise to the suit were not sustained will not shield a municipality from liability. If this were so, a municipality could avoid liability by maintaining a disciplinary system in which charges brought against police officers were impossible to sustain. See Beck, 89 F.3d at 973 (fact that prior accusations against accused officer had been dismissed as unfounded not sufficient to save municipality from liability, where "shallow" system used to investigate complaints failed to properly weigh credibility of officer and complainant when making its findings.) However, in this case, Plaintiff has presented absolutely no evidence that the investigations conducted against Officers Youse and Cerutti, or against any other officers, were conducted in a

sustain one complaint against Officer Youse for false arrest. (See Pl's Mot. Ex. 12, Internal Investigation # 90-280). According to the report, this complaint concerned an incident in which Officer Youse and another officer submitted police reports which indicated that Officer Youse had retrieved a weapon from a suspect, when in fact the weapon had been retrieved by Officer Youse's partner. (Id.) According to the report, this was ostensibly done in order to ensure that both officers would be needed in court, thereby ensuring that each would receive additional overtime pay. (Id.) The report did not find that the arrest itself was made without probable cause. (Id.)

The record also contains allegations of physical abuse committed while on duty against Officer Cerutti. These include one incident of alleged physical abuse while on duty in 1995, as well as one incident in 1990. (See Pl's Mot. Ex. 13, Internal Investigation # 95-020, #90-280).<sup>9</sup> However, neither of these

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biased or otherwise improper manner. Indeed, Plaintiff's response to Defendants' Motion for Summary Judgment does not even reference the IAD reports, let alone allege that the investigations conducted by the IAD were inadequate. Moreover, it should be noted that the Report submitted by Plaintiff does not challenge the process used by the Philadelphia Police Department to investigate officer misconduct. Rather, this Report criticizes the discipline given to officers who are found to have actually violated police department procedures. Accordingly, there is nothing in the record in this case which would provide a basis for the Court to question the IAD's findings with respect to the charges brought against Officers Cerutti and Youse.

<sup>9</sup> The record also contains an allegation of physical abuse lodged against Officer Cerutti in 2002, after the incident which

charges was sustained. The only charges against Officer Cerutti that were sustained concerned falsification of daily attendance records and failure to properly maintain property taken into custody. (See Pl's Mot. Ex. 13, Internal Investigation # 95-010, 00-1042). The IAD reports do not indicate whether Officers Youse and Cerutti were ever disciplined as a result of the charges which were sustained against them. Rather, the IAD reports simply refer the matters to the Commanding Officer for appropriate action. Accordingly, there is no evidence in the record which indicates that Officers Youse and Cerutti were inadequately disciplined as a result of these incidents. Accordingly, even when considered together with the Integrity and Accountability Office Report, the complaints lodged against Officers Cerutti and Youse do not create a genuine issue of fact as to whether the City was deliberately indifferent to the risk that Officers Cerutti and Youse would violate the Constitutional rights of the citizens they came into contact with. Accordingly, Defendants' Motion for Summary Judgment is granted with respect to Plaintiff's federal law claims against

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gives rise to the instant suit occurred. See Pl's Mot. Ex. 13, Internal Investigation # 02-346.) In Beck, the court held that five separate complaints of excessive force lodged against the officer in question, three of which occurred in a three month period, were sufficient to allow a jury to infer that the City of Pittsburgh knew, or should have known, of the officer's propensity for violence. 89 F.3d at 973. However, the three allegations of excessive force over a twelve year period in this case can be contrasted with the three separate allegations of excessive force lodged against the officer in a three *month* period in Beck.

the City of Philadelphia.

B. State Law Claims

Plaintiff asserts the following state law claims against both the individual defendants and the City of Philadelphia: assault and battery, false arrest, false imprisonment, intentional infliction of emotional distress, "outrageous conduct," and gross negligence in hiring, retention and supervision. Defendants seek summary judgment as to all of Plaintiff's state law claims.

1. Claims against the City of Philadelphia

Defendants assert that the City of Philadelphia ("City") is immune from suit on Plaintiff's state law claims based upon the Pennsylvania Subdivision Tort Claims Act (the "Tort Claims Act"). The Tort Claims Act provides the City with absolute immunity from tort liability, except in the existence of eight enumerated exceptions. See Wakshul v. City of Philadelphia, 998 F. Supp. 585, 588 (E.D. Pa. 1998). None of the enumerated exceptions is applicable to this case. Furthermore, while the Tort Claims Act does abrogate immunity for individual employees who commit intentional torts, this abrogation does not apply to the municipality itself. Plaintiff's memorandum in opposition to Defendant's Motion for Summary Judgment does not address this issue. Accordingly, the Court grants summary judgment in favor of the City of Philadelphia with respect to all of Plaintiff's state law tort claims.

## 2. Claims against Officers Youse and Cerutti

### a. Intentional Infliction of Emotional Distress

Plaintiff asserts that the actions of Cerutti and Youse toward him constitute the tort of intentional infliction of emotional distress.<sup>10</sup> The Pennsylvania Supreme Court has yet to clearly decide whether Pennsylvania recognizes the tort of intentional infliction of emotional distress. However, the Third Circuit has consistently held that this tort is recognized in Pennsylvania. See Stouch v. Brothers of the Order of the Hermits of St. Augustine, 836 F. Supp. 1134, 1145 (E.D. Pa. 1993) (collecting cases). Courts in this Circuit have further held that the contours of the cause of action are defined by the Restatement of Torts. Id. The Restatement definition requires that four elements be proven: "(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional and reckless; (3) the conduct must cause emotional distress; and (4) the distress must be severe." Id. (citations omitted).

Plaintiff has failed to present any evidence from which a jury could find that the distress he suffered was severe. Indeed,

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<sup>10</sup> The Court has assumed, as have Defendants, that Plaintiff's cause of action for "outrageous conduct" is synonymous with his claim for intentional infliction of emotional distress. To the extent that Plaintiff is attempting to assert a separate cause of action for "outrageous conduct," summary judgment will be granted to Defendants on this claim. See Beaver v. Kemper Nat. Ins. Cos., Civ. A. No. 93-3663, 1994 U.S. Dist Lexis 2793, at \*5 (E.D. Pa. Mar. 10, 1994)(Pennsylvania does not recognize separate tort for "outrage" or outrageous conduct.)

at his deposition, when asked if he has suffered any emotional distress from the incident, Plaintiff simply answered "I got a fear of police officers." (Tr. at 38.) Plaintiff further stated that he has not sought any treatment for his alleged emotional distress. (Id.) Plaintiff has pointed to nothing else in the record which would support his assertion that he has suffered severe emotional distress. See Young v. Lukens Steel Corp., No. Civ. A. 92-6490, 1994 WL 167953, at \*12 (E.D. Pa. May 4, 1994) ("To make out a claim for the tort of intentional infliction of emotional distress, there must be objective proof supported by competent medical evidence that the plaintiff actually suffered emotional distress.") Accordingly, on this record, no reasonable juror could find that Plaintiff had suffered the type of severe emotional distress required for a successful claim of intentional infliction of emotional distress. Defendants' Motion for Summary Judgment is therefore granted with respect to Plaintiff's claims of intentional infliction of emotional distress against Officers Youse and Cerutti.

b. Invasion of Privacy

Pennsylvania recognizes the tort of "intrusion upon seclusion." The Restatement of Torts defines intrusion upon seclusion as follows:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion

of his privacy, if the intrusion would be highly offensive to a reasonable person. Restatement (Second) of Torts, § 652B.

Plaintiff argues that the search of his vehicle constituted an intrusion into his private affairs, without legal justification. Defendants have not argued that, considering the facts in the light most favorable to Plaintiff, a reasonable juror could not find that Officer Youse had intentionally intruded upon Plaintiff's private affairs when he searched Plaintiff's vehicle.<sup>11</sup>

Defendants do argue, however, that they are entitled to official immunity pursuant to the Tort Claims Act for Officer Youse's search of the vehicle. The Tort Claims Act provides immunity for state employees, except in cases of willful misconduct. When the actors in question are police officers, the Pennsylvania Supreme Court has applied a stringent standard for willful misconduct. See Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994). This standard requires not only that the police officer intended to commit the acts that he is accused of carrying out, but also that the officer understood that the actions he intended to take were illegal and chose to take the actions anyway. See In re City of Philadelphia Litigation, 938 F. Supp. 1264, 1272 (E.D. Pa. 1996) ("[I]n short, what is called for to

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<sup>11</sup> As discussed, *supra*, although the Court has found that Officer Youse's search of Plaintiff's vehicle did not violate Plaintiff's Fourth Amendment rights, whether the search violated relevant state law is an entirely separate question.

demonstrate willful misconduct is not merely a showing of the use of excessive force to effectuate an arrest but a showing that the person who used excessive force not only intended to use such force but did so knowing that the force he was intentionally using was excessive and that he went ahead and used that excessive force anyhow"). Thus, immunity under the Tort Claims Act under Pennsylvania law is distinguishable from qualified immunity from suit on federal claims. Specifically, while a qualified immunity inquiry considers whether a reasonable officer would have believed that the actions he was taking were illegal, immunity under the Tort Claim Act requires a showing that the officer himself actually understood that what he was doing was illegal but chose to do it anyway. See id.

The existence of willful misconduct is generally a judicial determination. However, where the state of mind of the officer is at issue, the issue is for a jury to decide. Rusoli v. Salisbury Township, 126 F. Supp. 2d 821, 869 (E.D. Pa. 2000). The Court concludes that a reasonable juror could find that Officer Youse knew that he could not legally search the vehicle under state law but chose to do so anyway. Specifically, Officer Youse testified at the suppression hearing that he searched the vehicle because Plaintiff had attempted to enter the vehicle when Officer Youse attempted to arrest him. (Pl's Mot. Ex. 3 at 7.) However, Plaintiff testified that he did not resist Officer Youse in any

way when Officer Youse attempted to detain him, and specifically testified that he never attempted to enter his vehicle. (Maiale Dep. at 16-17.) Accordingly, a reasonable inference could be drawn that Officer Youse's justification for the search of the vehicle was fabricated, and that Officer Youse fabricated this explanation because he knew that he had no actual legal basis to search the vehicle. Accordingly, Defendants' Motion for Summary Judgment is denied with respect to Plaintiff's claim of invasion of privacy against Officer Youse. However, there is no evidence in the record that Officer Cerutti participated in the search of the vehicle in any way, that he directed Officer Youse to search the vehicle, or that he otherwise intended that the vehicle be searched. Accordingly, Defendant's Motion for Summary Judgment is granted with respect to the invasion of privacy claim against Officer Cerutti. Cf. McMonagle v. Bensalem Township, No. Civ. A. 97-3873, 1997 WL 765665, at \*6 (E.D. Pa. Dec. 11, 1997)(state law assault and battery claims dismissed against defendant officers where there was no evidence that they actually participated in the alleged beating of plaintiff).

c. Assault and Battery

Plaintiff asserts a state law cause of action of assault and battery for Defendants' alleged use of excessive force in their initial detention of Plaintiff. Cerutti and Youse argue that they are entitled to official immunity for their actions in connection

with the initial detention. However, given that Plaintiff claims that he was beaten and thrown to the ground with no provocation, a reasonable juror could determine that Youse and Cerutti knew that the force that they were using was excessive but chose to use such force anyway. See In re City of Philadelphia Litigation, 938 F. Supp. at 1272. Accordingly, Defendants' Motion for Summary Judgment with respect to Plaintiff's assault and battery claims against Officers Youse and Cerutti is denied.

d. False Arrest and False Imprisonment

Plaintiff argues that Officers Cerutti and Youse are liable to Plaintiff for false imprisonment and false arrest. "Pennsylvania state law false arrest claims and federal constitutional false arrest claims are co-extensive both as to elements of proof and elements of damages. In Pennsylvania, a false arrest is defined as 1) an arrest made without probable cause or 2) an arrest made by a person without privilege to do so . . . . The Pennsylvania and federal standards for the existence of probable cause are the same." Rusoli, 126 F. Supp. at 869. "The elements of false imprisonment are (1) the detention of another person, and (2) the unlawfulness of such detention." Id. False arrest and false imprisonment are thus nearly identical claims, and are generally analyzed together. See Olender v. Township of Bensalem, 32 F. Supp. 2d 775, 791 (E.D. Pa. 1999)(citing Gagliardi v. Lynn, 285 A.2d 109 (Pa. 1971)). As

discussed, *supra*, in connection with Plaintiff's federal false arrest and unlawful detention claims, a reasonable juror could determine from this record that the initial detention of Plaintiff, at the time he was "taken down" and handcuffed by Officers Youse and Cerutti, amounted to an arrest. Moreover, considering the facts in the record in the light most favorable to Plaintiff, a reasonable juror could find that Defendants Youse and Cerutti intended to arrest Plaintiff with knowledge that they had no probable cause to do so. Accordingly, Defendants' Motion for Summary Judgment is denied with respect to Plaintiff's state law false arrest and false imprisonment claims against Officers Youse and Cerutti.

### III. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff has filed a motion seeking summary judgment in his favor on all of the claims in this action. Plaintiff's motion has no merit. Plaintiff's main legal argument is that he is entitled to collateral estoppel on many of his claims based upon the holding of the state court suppressing the introduction of the marijuana at his trial. However, the holding of the Court of Common Pleas does not provide a basis for the Court to grant summary judgment on any of Plaintiff's claims. Accordingly, Plaintiff's Motion for Summary Judgment is denied in its entirety.

### IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary

Judgment is granted in part and denied in part. Plaintiff's Motion for Summary Judgment is denied in its entirety. This case will go forward against Officers Youse and Cerutti on Plaintiff's Section 1983 claims of unlawful arrest, unlawful detention and excessive force. In addition, this case will go forward against Officers Youse and Cerutti on Plaintiffs' state law claims of assault and battery, false arrest and false imprisonment. In addition, this case will go forward against Officer Youse on Plaintiffs' state law claim of invasion of privacy. An appropriate order follows.



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

BRAIN MAIALE )  
 ) Civil Action  
 v. )  
 ) No. 03-5450  
P.O. MICHAEL YOUSE, et al. )

**ORDER**

**AND NOW**, this \_\_ day of August, 2004, upon consideration of Plaintiff's Motion for Summary Judgment (Doc. # 17), Defendants' Motion for Summary Judgment (Doc. # 13), all related submissions, and the argument conducted in open court on August 2, 2004, **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part as follows:

1) Defendants' Motion for Summary Judgment is **GRANTED** with respect to Plaintiff's Malicious Prosecution claim (Count Two), and Plaintiff's Section 1983 claim against the City of Philadelphia (Count Three), and Judgment is hereby entered in favor of Defendants and against Plaintiff on these claims.

2) Defendants' Motion for Summary Judgment is **GRANTED** with respect to Plaintiff's claims of intentional infliction of emotional distress and outrageous conduct against Defendants Youse and Cerutti, and Judgment is hereby entered in favor of Defendants Youse and Cerutti and against Plaintiff on these claims.

3) Defendants' Motion for Summary Judgment is **GRANTED** with

respect to Plaintiff's claim of invasion of privacy against Defendant Cerutti, and judgment is entered in favor of Defendant Cerutti and against Plaintiff on this claim.

4) Defendants' Motion for Summary Judgment is **GRANTED** with respect to all of Plaintiff's state law claims against Defendant City of Philadelphia, and Judgment is hereby entered in favor of Defendant City of Philadelphia and against Plaintiff on these claims.

5) Defendants' Motion for Summary Judgment is **DENIED** in all other respects.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED** in its entirety.

BY THE COURT:

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John R. Padova, J.

