

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

TYRONE LEWIS,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
THE CITY OF PHILADELPHIA,	:	
SAMARCO, MERRILL, AND	:	
MARABLE,	:	
Defendants	:	NO. 03-2310

Gene E.K. Pratter, J.

Memorandum Opinion

18 November 2004

Defendant City of Philadelphia (“City”) has moved for an entry of summary judgment in its favor in this Section 1983 case. For the reasons discussed below, the City’s Motion is granted.

**FACTUAL BACKGROUND**

The motion presently before the Court arises from a complaint filed by Tyrone Lewis. Mr. Lewis alleges that on February 26, 2003, as he was walking toward his home at 33<sup>rd</sup> Street and Susquehanna Avenue in Philadelphia, he was approached by two Philadelphia police officers, Defendant Officer Merrill and Defendant Officer Marable (“Defendant Merrill,” “Defendant Marable” and, along with Defendant Officer Samarco, the “Defendant Officers” and collectively, along with the City of Philadelphia, the “Defendants”). (Complaint at ¶ 7). The Defendant Officers, who were apparently waiting to serve Mr. Lewis with a restraining order, requested that Mr. Lewis acknowledge and sign the order. (Complaint at ¶¶ 8-9). Mr. Lewis refused to sign for the order. (Complaint at ¶ 9). The parties dispute what happened after this.

Mr. Lewis contends that after he refused to sign for the order, he began to walk away and Defendant Officer Merrill drew his weapon and pointed it at Mr. Lewis. (Complaint at ¶¶ 10-11). Mr. Lewis asserts that he became frightened when he saw the weapon and began running away from the Defendant Officers. (Complaint at ¶ 11). Defendant Officers Merrill and Marable apparently gave chase, and Mr. Lewis alleges that ultimately Defendant Officer Merrill assaulted Mr. Lewis by punching him in the face, slamming his face into a step and jamming a knee into Mr. Lewis' back. (Complaint at ¶ 13). Mr. Lewis further asserts that as he lay on the ground, Defendant Officer Merrill again pointed his weapon at Mr. Lewis and threatened to kill him. (Complaint at ¶ 14). Mr. Lewis alleges that he was then handcuffed. (Complaint at ¶ 15).

Mr. Lewis asserts that after he was handcuffed, Defendant Officer Merrill again punched him in the face, slammed him into the police vehicle and struck him in the face several times. (Complaint at ¶ 15-16). Mr. Lewis alleges that Defendant Officers Merrill and Marable drove him around the corner and asked him about the location of his daughter. (Complaint at ¶18). Mr. Lewis contends that when he responded that his daughter was with Mr. Lewis' sister, Defendant Officer Marable began to choke Mr. Lewis. (Complaint at ¶ 19.) At this point, Defendant Officer Samarco allegedly arrived at the scene and instructed Defendant Officers Merrill and Marable to say that Mr. Lewis had assaulted them. (Complaint at ¶ 21). Mr. Lewis was subsequently charged with aggravated assault, simple assault, resisting arrest and reckless endangerment of another person. (Complaint at ¶ 22). Mr. Lewis contends that all of the charges against him were later dismissed. (Complaint at ¶ 23).

On April 14, 2003, Mr. Lewis filed his complaint against the City and the Defendant

Officers, pursuant to 42 U.S.C. § 1983. (Docket No. 1). Mr. Lewis alleges that his Fourth and Fourteenth Amendment rights were violated, specifically including: (1) a violation of the right to equal protection of the laws; (2) a violation of the right to freedom from unreasonable searches and seizures; (3) false arrest; (4) false imprisonment; (5) excessive force; (6) malicious prosecution; (7) security in one's person and property; (8) the right to access to the courts; and (8) the right to due process of the law. (Complaint at ¶ 44).<sup>1</sup> Mr. Lewis also claims that the City is liable for the Defendant Officers' actions because the City allegedly "permitted, encouraged, tolerated, ratified and was deliberately indifferent to a pattern, practice and custom" of police misconduct. (Complaint at ¶ 46).

The City<sup>2</sup> filed its Motion for Summary Judgment on September 1, 2004. (Docket No. 25). The City argues that summary judgment should be granted in its favor because Mr. Lewis has not presented sufficient evidence to prove that it had adopted a policy or custom of allowing its police officers to violate the constitutional rights of citizens. Mr. Lewis responded by filing his opposition on September 8, 2004 (Docket No. 26), and the City filed an additional brief prior to the oral argument that was held on November 2, 2004. (Docket No. 38).

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<sup>1</sup> The Complaint originally included a number of state law claims, including assault and battery, false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, invasion of privacy, negligence, and neglect in hiring, retention and supervision. Complaint at ¶ 55. However, on October 4, 2004, Mr Lewis filed a Praecipe to Withdraw the State Law Claims. (Docket No. 30). Hence, only the federal law claims remain.

<sup>2</sup> The Defendant Officers have not sought summary judgment.

## **DISCUSSION**

### **Legal Standard for Summary Judgment**

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” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party’s initial burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence

presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

### **Section 1983 Liability for a Municipality**

While a municipality cannot be held liable for a Section 1983 violation on the basis of respondeat superior, Section 1983 liability may exist if a constitutional injury resulted from the execution of the municipality's policy or custom. Monell v. Department of Social Services of the City of New York, 436 U.S.658, 663 n.7 (1978). A plaintiff pursuing a Section 1983 claim on a theory that the municipality acquiesced in behavior violating constitutional rights bears the burden of a "rigorous culpability and causation" standard. Board of County Comm. of Bryan County v. Brown, 520 U.S. 397, 405 (1997).

To establish that a municipality has a policy that violates Section 1983, a plaintiff must (1) identify the challenged policy; (2) attribute it to the municipality; and (3) show a causal link between execution of the policy and the injury suffered. Losch v. Borough of Parkesburg, 736 F.2d 903, 910 (3d Cir. 1984); see also Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996) (discussing manner in which municipality may be held liable under Section 1983). To establish that a municipality has a custom that violates Section 1983, a plaintiff must identify a custom that is a practice "so permanent and well settled as to virtually constitute law." Andrews v. City of Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990). An actionable custom is one in which a municipality exercises deliberate indifference to individuals' constitutional rights by ignoring a "pattern of underlying constitutional violations." Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2004). Finally, a plaintiff must establish that there existed a "direct causal link"

between the custom and a resulting deprivation of constitutional rights. Board of County Comm. of Bryan County v. Brown, 520 U.S. 397 (1997); see also Brown v. Muhlenberg, 269 F.3d 205, 214 (3d Cir. 2001) (party may show causation by demonstrating either policy or custom existed that directly caused alleged loss ); Berg v. County of Allegheny, 219 F.3d 261, 276 (3d Cir. 2000) (deliberate conduct by municipality must be the “moving force” or cause of alleged injury).<sup>3</sup>

Thus, if the Court finds that the evidence presented by Mr. Lewis would not allow a reasonable juror to infer that the City acquiesced in a pattern of behavior constituting a “custom, policy or practice” of falsely arresting citizens or subjecting citizens to excessive force, the City cannot be held liable in this case.

Mr. Lewis argues that summary judgment is not proper in this case because the evidence presented establishes that the City was aware of prior instances of on-the-job misconduct by Defendant Samarco, and, he claims, the City acquiesced in allowing Defendant Samarco to violate the constitutional rights of citizens and fellow employees alike. Additionally, Mr. Lewis argues that the evidence presented supports a finding that his injuries were the result of the City’s failure to properly train its police force.

#### **Acquiescence with Respect to Excessive Force, False Arrest**

Mr. Lewis argues that the record contains a series of complaints filed by citizens against Defendant Samarco, which, when combined with the City’s failure to discipline Defendant Samarco for the falsification of police records by not filing proper reports, demonstrates a custom

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<sup>3</sup> One example of a policy from which a reasonable inference of a custom or policy of deliberate indifference to the violation of a constitutional right is an automated system used by a police department to generate arrest warrants that allowed for a clerical error leading to a false arrest of an individual. Berg v. County of Allegheny, 291 F.3d 261, 276 (3d Cir. 2000).

of deliberate indifference to constitutional violations. Mr. Lewis further argues that by its deliberate indifference to these violations, the City caused Mr. Lewis to be falsely arrested. In support of his claim, Mr. Lewis relies primarily on Beck v. City of Pittsburgh, 89 F.3d 966 (3d Cir. 1996).

In Beck, the Court of Appeals for the Third Circuit considered whether judgment as a matter of law had been properly granted by the district court, where the district court found that recitation of a number of complaints asserting the use of excessive force by one police officer was not sufficient to establish that the municipality had a custom of tacitly approving such behavior. Beck, 89 F.3d at 973. In reversing the judgment, the Court of Appeals for the Third Circuit advised that the complaints, all relating to the use of excessive use of force, had been filed against the officer within the past five years and should have been considered along with other internal police department reports which stated that the “use of force has been an issue in the past” and that “[a]ctual discipline for excessive force is very low.” Id. at 970, 973. Reasoning that the complaints “came in a narrow period of time and were of similar nature,” and considering the circumstances surrounding the department’s historical problem with respect to the use of force, the Beck court concluded that a jury reasonably could have inferred that the municipality’s procedures were inadequate to protect civilians. Id. at 973-74.

In this case, Mr. Lewis presents five separate internal investigations of Defendant Samarco’s conduct as evidence of a “pattern of conduct” that would justify a finding of liability against the City under Beck. These investigations include: (1) a complaint investigated by the Philadelphia Police Internal Affairs Division (“IAD”) that Defendant Samarco had allegedly

improperly kicked in the front door of an individual without probable cause or justification to do so (IAD Investigation # 01-1121); (2) a citizen complaint investigated by IAD that Defendant Samarco physically and verbally abused him (IAD Investigation # 02-091); (3) an allegation investigated by IAD that Defendant Samarco had created a hostile work environment for a female officer (IAD Investigation # 00-1180); (4) an investigation by the EEO Unit into whether Defendant Samarco had sexually harassed and assaulted a female police officer (EEO Case #2002-008); and (5) an open IAD investigation filed by a female police officer alleging harassment, discrimination, inappropriate behavior and disparity in treatment. <sup>4</sup>

With respect to these investigations, the record shows that Defendant Samarco was exonerated of any alleged constitutional violations. Defendant Samarco was, however, found to have violated certain Police Department directives, including: (1) failure to make proper notifications with respect to damage of a citizen's property (IAD Investigation 01-1121); (2) delayed filing of an incident report (IAD Investigation # 02-091); (3) failing to convey a Citizen's Complaint Form to an individual who requested such a form from a district in which Defendant Samarco was working (IAD Investigation # 02-091);<sup>5</sup> (4) allowing two officers to leave work early in lieu of overtime compensation, in violation of the Discipline Code (IAD Investigation # 00-1180); and (5) making an inappropriate remark about a fellow officer (EEO Case # 2002-008).

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<sup>4</sup> Although Plaintiff disputes the adequacy of the investigations, the Plaintiff does not dispute the subject matter or results of the investigations that were conducted with respect to each of the complaints. Notably, none of the investigations presented contained allegations of false arrest, malicious prosecution or the use of excessive force in conducting an arrest.

<sup>5</sup> The complaint form was requested to file a report against another police officer, and not Defendant Samarco.

Mr. Lewis also cites that in his deposition, Defendant Samarco admitted to signing his supervisor's name on a citizen complaint form. Mr. Lewis asks the Court to conclude that the City's liability could reasonably be inferred pursuant to Beck because the City had sufficient notice of Defendant Samarco's prior bad conduct in these matters but failed to take disciplinary action, thereby condoning his behavior and encouraging other police officers to falsify records with respect to arrests.

After reviewing Beck, and considering the evidence in a light most favorable to Mr. Lewis, the Court disagrees that the incident reports and investigations conducted by IAD and the EEO Unit could be interpreted to establish a custom on the part of the City of deliberate indifference to repeated police violations of citizens' constitutional rights. In short, the Court concludes that there is not a sufficient nexus between the internal department violations committed by Defendant Samarco and the allegations that the City tacitly approved of the use of excessive force in making an arrest, of falsifying arrest documents, or of the commission of any constitutional violations. The Court reaches this conclusion after having inquired of both parties' counsel at oral argument how the complaints presented supported a finding of the City's tacit acknowledgment of the matters that form the substance of Mr. Lewis' complaint.

When confronted with the apparent qualitative differences between the various internal complaints and the conduct allegedly demonstrated against him, Mr. Lewis argues that the complaints he presents as evidence of an actionable custom establish that, by declining to discipline Defendant Samarco, the City tacitly approved the falsification of records and failure to follow department directives, thereby encouraging the Officer Defendants to falsely accuse Mr.

Lewis of the crimes for which he was arrested. The Court disagrees that such an inclusive description would be an appropriate judicial leap to permit the claim against the City to proceed to trial. While there remain obvious questions of fact with respect to the remaining Defendant Officers, the internal complaints presented plainly do not amount to evidence from which a reasonable juror could conclude that the City was aware of, and acquiesced in, violations of constitutional rights of its citizens. In this regard, this case is materially distinct from Beck.

Moreover, regardless of whether the City did or did not discipline Defendant Samarco for the violations, the dissimilarity of the complaints relied upon by Mr. Lewis and the conduct of which he complains present an important distinction from the situation the Beck court addressed, in that there is not a sufficient nexus between the violations investigated and the injury allegedly suffered by Mr. Lewis. While violations such as failing to distribute a complaint form, late filing of paperwork, and making derogatory or harassing comments to a co-worker are not respectable qualities for a police officer, they do not provide evidence that the City was aware of or condoned the use of excessive force or falsifying arrests. Even the fact that Defendant Samarco signed his supervisor's name to a report does not suggest that the City fostered a policy of blatantly falsifying arrest reports, as Mr. Lewis would necessarily have to ask a jury to believe.

### **Failure to Train**

Mr. Lewis also asserts that the City may be held liable in this case because it never disciplined Defendant Samarco or required him to undergo further training or supervision despite the City's knowledge that Defendant Samarco had violated citizens' rights. The evidence presented, however, does not appear to be sufficient to establish that the City was aware that its

police officers were violating constitutional rights and that it acted with deliberate indifference by not implementing training policies.

There is a narrow band within which a plaintiff may assert a Section 1983 violation grounded on a municipality's failure to properly train its employees. Inadequate training may serve as the basis of a Section 1983 claim only where the inadequacies were so obvious that a municipality's disregard for modifying the training regimen constituted deliberate indifference to the constitutional rights of those who would be affected by the employees' behavior. Board of County Comm. of Bryan County v. Brown, 520 U.S. 397, 407 (1996) (addressing municipality culpability for failure to train); City of Canton, Ohio v. Harris, 489 U.S. 378, 288 (1989) (same).

A claim against a municipality for failure to train its employees may not rest on the activities of just one employee; the failure of a training program must be evidenced by constitutional violations committed by multiple employees. Bryan County, 520 U.S. at 408 ("the existence of a pattern of tortious conduct by inadequately trained employees may tend to show that the lack of proper training, rather than a one-time negligent administration of the program or factors, . . . was the 'moving force' behind the alleged violation").

In this case, virtually all of the evidence that Mr. Lewis has put forth is associated with complaints against one officer – Defendant Samarco. Aside from an off-duty shooting associated with Defendant Merrill, Mr. Lewis does not present any evidence that there were repeated complaints against the other Defendant Officers or that the City was aware of a pattern of violations by multiple employees. Thus, there does not appear to be sufficient evidence to support a claim that the City failed to properly train its police officers.

## CONCLUSION

In summary, this case is not sufficiently analogous to Beck, in which the court made note of the similarity of the complaints filed against the police officer to the complaint that was before the court, to permit a reasonable jury to hold the City liable to Mr. Lewis. Based on the evidence presented by Mr. Lewis, no reasonable juror could infer that the City tacitly encourages its police officers to either use excessive force in making an arrest or to falsify an arrest. As such, the City's Motion for Summary Judgment will be granted. An appropriate Order follows.

/S/ Gene E.K. Pratter  
Gene E.K. Pratter  
United States District Judge

November 18, 2004

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

TYRONE LEWIS,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
THE CITY OF PHILADELPHIA,	:	
SAMARCO, MERRILL, AND	:	
MARABLE,	:	
Defendants	:	NO. 03-2310

**ORDER**

And now, this 18th day of November, upon consideration of the City of Philadelphia's Motion for Summary Judgment [Docket No. 25], the Plaintiff's response thereto [Docket Nos. 26, 29], the City of Philadelphia's Memorandum of Law in Further Support of its Motion for Summary Judgment [Docket No. 32], and oral argument held on November 2, 2004 [Docket No. 39], it is hereby ORDERED that the Motion for Summary Judgment is GRANTED.

BY THE COURT:

/S/ Gene E.K. Pratter  
GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE