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

MICHAEL VASSALLO,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 04-697
PHILADELPHIA POLICE DET. MICHAEL FOX and CITY OF PHILADELPHIA,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **DECEMBER 9, 2004**

Presently before this Court is Defendants', Michael Fox and City of Philadelphia, Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. For the reasons that follow, the Motion will be granted in part and denied in part.

I. BACKGROUND

In considering a motion for summary judgment in a case such as this, "we arrange the facts in the light most favorable to the plaintiff, and then determine whether, given precedent, those facts, if true, would constitute a deprivation of a right." Wilson v. Russo, 212 F.3d 781, 786 (3d Cir. 2000).

Plaintiff Michael Vassallo ("Vassallo") is a sergeant with the Philadelphia Police Department.[1] Beginning in April 2002, Vassallo was retained by the owner of the Flatspin American Grill and Dance Hall ("Flatspin") as a security consultant. Vassallo was responsible for security at Flatspin, overseeing the security staff, directing the placement of security cameras,

[1] At the time of the incident in question, Vassallo was not employed by the Philadelphia Police Department, but was reinstated on January 3, 2004, as a result of union arbitration.

and interacting with police responding to incidents there. As Flatspin had a reputation for fighting-prone patrons and problems with underage drinking, security was understandably aggressive. Defendant Michael Fox ("Fox"), is a detective with the Philadelphia Police Department, assigned to the Northeast Detectives Division ("NEDD"). Fox was assigned to investigate the incidents in question in this case.

At some time in May or June 2002, Fox was denied entry to Flatspin by Greg Guidis ("Guidis"), a member of the Flatspin security staff. After observing Fox, Guidis concluded that Fox was highly intoxicated and refused to admit him. After Fox became belligerent and refused to leave, Guidis called for Vassallo to handle the situation. Vassallo supported Guidis' decision to deny Fox entry due to his intoxication. Fox remained belligerent with Vassallo, threatening to arrest Vassallo the next time police were called to Flatspin. As Fox did not appear willing to leave voluntarily, Vassallo removed him from the premises by escorting him to the end of the sidewalk. Fox continued to threaten Vasasllo as he walked away.

In the early morning hours of July 14, 2002, there were at least two fights at Flatspin. In the first fight, Andrew Dymond ("Dymond") was beaten by Jeremy Patton ("Patton"). Vassallo was a witness to the incident. Dymond was struck several times in the face, and required extensive medical attention. After the first fight was broken up, Patton attempted to leave Flatspin. At Andrew Dymond's request, Vassallo stopped Patton and detained him on Flatspin property until he could be arrested by the police. Patton was escorted out the front door and made to kneel in the grass, facing the wall, and held there until he was arrested. Vassallo remained with Patton until his assistance was required in response to the second incident. Two Flatspin security staff members, Matthew Hill and Jeremy Duff, were assigned by Vassallo to watch Patton to prevent him from escaping. Patton was arrested by Philadelphia Police Officers

Beachmim and Cannon. The officers interviewed Dymond, who told them that Patton had struck him several times in the face, and then took Patton into custody. Officers Beachmim and Cannon took Patton to NEDD and were the only police officers to speak to him on Flatspin property. As Dymond was injured, he was placed in an ambulance for transportation to the Frankford Torresdale Hospital.

The second incident on July 14, 2002, involved Anthony Mancano ("Mancano"). Mancano was involved in several fist fights that night, assaulting two women in the club, hitting one of them with a bottle. Mancano was removed from Flatspin by the security staff and, similarly to Patton, was detained outside. Vassallo was involved in Mancano's detention after Mancano was brought outside. However, unlike Patton, Mancano resisted the security staff and attempted to escape. Mancano broke free from the security staff and attempted to climb a fence to get away. The security staff was able to catch Mancano by pulling him down from the fence and holding him to the ground. Mancano received a broken arm in the struggle and required medical attention. He was transported to the Frankford Torresdale Hospital in the same ambulance as Andrew Dymond.

Philadelphia Police Officer Gail Woertz ("Woertz") responded to the second incident. Upon arriving at the scene she found Mancano on the grass, holding his injured arm. Vassallo met Officer Woertz and related to her that Mancano had been removed from the club for fighting, that he had assaulted two women and hit one of them with a bottle. Vassallo also provided Woertz with the names and telephone numbers of witnesses to Mancano's fights. Woertz recorded this information on a Philadelphia Police Form 75-48, Complaint and Incident Report, and then followed Mancano to the Frankford Torresdale Hospital. As Mancano complained that he was punched and kicked by the Flatspin security staff, Woertz also wrote

another 75-48 for a possible assault on Mancano, naming Patton as an eyewitness to the events even though she did not interview him.

Fox was the detective assigned to investigate both the Patton/Dymond incident and the Mancano incident. Patton was brought to NEDD for processing where he waived his Miranda rights and gave a statement to Fox in which he admitted hitting Dymond in the club. Patton also gave a statement in the Mancano incident, in which he described one of the security staff members who hit Mancano as a short man with a tan. Patton also identified Vassallo by name and selected his picture from a photo array. In addition to the statement taken from Patton, Fox also took statements from Bryn Campbell, a Flatspin patron in Dymond's party who witnessed Mancano's removal from the club, and Mancano. Campbell stated that she saw a man being held down by the security staff because he was trying to get away and that the man was being punched or kicked in the process. Mancano stated that he was pulled from the club by Flatspin employees, taken out the front door, held down in the grass, and punched and kicked for several minutes. Fox did not visit the scene, nor did he interview Vassallo or any other member of the Flatspin security staff.

Using the above information, Fox swore an affidavit of probable cause, naming Vassallo as the defendant. The affidavit relied upon the statements taken of Mancano and Campbell, neither of which identified Vassallo, and Patton's statement regarding the incident. The affidavit did not state that Patton had been arrested for committing his own assault in the club, nor does it mention that Vassallo detained Patton at Flatspin until he could be arrested by police. The affidavit was approved by the District Attorney's Charging Unit and then presented to the magistrate who issued a warrant for Vassallo's arrest for simple assault, aggravated assault, recklessly endangering another person, terroristic threats, and criminal conspiracy.

Vassallo was then arrested and spent two days in jail before he was granted bail. After a preliminary hearing, the felony charges of aggravated assault and criminal conspiracy against Vassallo were dismissed and the matter was referred to the Municipal Court on the misdemeanor charge of simple assault. Vassallo was then rearrested on the aggravated assault charge and held for an additional two to three days. A second preliminary hearing was held at which the felony charges were held over for trial. Patton was granted partial immunity to secure his cooperation in the case against Vassallo, and as a result, Patton testified at both the second preliminary hearing and at trial. Vassallo was later acquitted of all charges. Vassallo spent a total of five to six days in jail, and spent approximately $21,000 for his legal defense.

Fox's investigation of the Patton case appears to have been undertaken in a manner to benefit Patton. Although Dymond told the officers on the scene that Patton hit him multiple times, the statement Dymond gave to Fox erroneously states that Patton hit him only once. Also, Fox discouraged witnesses to the Dymond fight from making statements or from making complaints about other possible assaults at Flatspin.

Patton's assault case did not go to trial until June 30, 2004, where Patton was acquitted of all charges in the assault on Andrew Dymond. Fox failed to appear at Patton's trial, and as a result, Patton's statement confessing to the assault was not admitted into evidence because it could not be authenticated. When Patton was subpoenaed for deposition in this case, he refused to answer questions in reliance upon his Fifth Amendment right against self incrimination. Patton also indicated his intention to do so again if called to testify in this case.

Vassallo filed the current action on February 17, 2004, and after procedural motions were decided in March 2004, an amended complaint was filed on April 6, 2004, alleging constitutional violations and jurisdiction pursuant to Section 1983 of the Civil Rights Act. The

complaint has seven counts, alleging unlawful detention, false arrest, malicious prosecution, Monell liability, and state law claims for false arrest and malicious prosecution.[2] The parties conducted discovery, and Fox and the City of Philadelphia filed the instant motion for summary judgment on October 14, 2004.

II. STANDARD

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consol. Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact.[3] Big Apple BMW, Inc. v. BMW of N. Am. Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the non-movant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on

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[2] Counts VI and VII of the complaint are titled "Punitive Damages" and "Attorney Fees," and are considered to be requests for special damages.

[3] "A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be 'genuine,' i.e., the evidence must be such 'that a reasonable jury could return a verdict in favor of the non-moving party.'" Compton v. Nat'l League of Prof'l Baseball Clubs, 995 F. Supp. 554, 561 n.14 (E.D. Pa. 1998) (citations omitted), aff'd, 172 F.3d 40 (3d Cir. 1998).

which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

III. DISCUSSION

Defendants raise several issues in their motion for summary judgment. First, they contend that Vassallo has failed to properly plead a valid claim under the Fourteenth Amendment. Second, Defendants argue that the arrest warrant Fox prepared was supported by probable cause, defeating Vassallo's false arrest and false imprisonment claims; that Vassallo has failed to establish a claim of malicious prosecution; and that Fox is entitled to qualified immunity, which would entitle him to summary judgment. Third, Defendants argue that Vassallo has failed to establish a claim for section 1983 liability against the City of Philadelphia, and that his state law claims against the City are preculded by the Pennsylvania Political Subdivision Tort Claims Act. As a result, the City of Philadelphia is also entitled to judgment as a matter of law. These arguments are considered in turn.

A. IMPROPER PLEADING

Defendants argue that Vassallo has failed to properly plead a substantive due process or equal protection claim under Fourteenth Amendment.[4] Vassallo's claims are instead alleged violations of the Fourth Amendment for unlawful detention, false arrest, and malicious prosecution. Defendants contend that as these violations are to be analyzed under the Fourth Amendment, see Albright v. Oliver, 510 U.S. 266 (1994); Gavin v. Donahue, 280 F.3d 371, 379-80 (3d Cir. 2002), Vassallo should be required to specifically plead that as the source of his

[4] While I agree that the complaint fails to state a violation of the Fourteenth Amendment's guarantees of equal protection and substantive due process, Vassallo has not plead either equal protection or substantive due process as a an independent count. As a result, I do not see the need to analyze these claims any further.

constitutional injury. As Vassallo has failed to do so in his complaint, Defendants contend that they are entitled to judgment as a matter of law.

The Federal Rules of Civil Procedure require only a "short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957); see also Fed. R. Civ. P. 8(a)(2). The federal system of notice pleading "rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accepts the principle that the purpose of pleading is to facilitate a proper decision on the merits." Id. at 48.

The complaint as amended is a proper exercise in notice pleading. For example, Vassallo alleges that "[t]he conduct of defendant Fox was intended to culminate and did in fact result in such apprehension of plaintiff's person, forcing him to submit to defendant's custody and unreasonable interrogation, investigation, detention, arrest, and harassment which caused the plaintiff mental and emotional anxiety and violated plaintiff's constitutional rights." (Compl. ¶ 26; see also ¶¶ 31, 33). Such a statement is sufficient to place Defendants on notice of the nature of the claims made against them and, as a result, the complaint properly pleads a cause of action.

B. DETECTIVE MICHAEL FOX

1. Probable Cause

An arrest warrant issued by a magistrate or judge does not, in itself, shield an officer from liability for false arrest. Wilson, 212 F.3d at 786 (citing Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997)). A plaintiff may succeed in a section 1983 action for false arrest made pursuant to a warrant if the plaintiff shows by a preponderance of the evidence: (1) that the police officer knowingly and deliberately, or with reckless disregard for the truth, made false

statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause. Id.

The first step in analyzing a challenge to the sufficiency of an arrest warrant is to determine whether there are deficiencies in its application in the form of false statements or omissions. Deficiencies may be made either intentionally or with reckless disregard for the truth. There are separate standards governing reckless disregard for the truth for assertions and omissions in an affidavit of probable cause. "An assertion is made with reckless disregard for the truth when 'viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had reasons to doubt the accuracy of the information he reported.'" Id. at 788 (quoting United States v. Clapp, 46 F.3d 795, 801 n.6 (8th Cir. 1995)). Additionally, "omissions are made with reckless disregard for the truth if an officer withholds a fact in his ken that any reasonable person would have known that this was the kind of thing the judge would wish to know." Id. (quoting United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir. 1993)).

Defendants contend that Vassallo has presented no evidence of deficiencies of the warrant. Vassallo on the other hand points to information about Patton that was within Fox's knowledge that did not end up in the warrant application. First, Vassllo argues that the affidavit of probable cause omits the fact that Patton was under arrest for committing his own assault at Flatspin. Second, Vassallo points to the fact that he personally detained Patton at Flatspin until Patton could be arrested. Vassallo argues that these omissions were intentionally made by Fox to make good on his May/June 2002 threats. To support this claim, Vassallo points to Fox's one-sided investigation and unwillingness to speak to Vassallo. Vassallo also points to Fox's lienient treatment of Patton, both in his investigation and in his failure to appear in Court to testify as required. While this may be sufficient to establish intent, at a minimum, Vassallo has presented

sufficient evidence from which a jury may conclude that the facts within Fox's knowledge were the type of facts the judge would want to possess and were intentionally omitted from the affidavit of probable cause.

Having determined that there were omissions in the affidavit of probable cause, the next step is to assess the materiality of those omissions. "To determine the materiality of the misstatements and omissions, we excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the 'corrected' warrant affidavit would establish probable cause." Id. at 789 (citing Sherwood, 113 F.3d at 399).

Probable cause exists if there is a "fair probability" that the person committed the crime at issue. Id. at 789-90 (citing Sherwood, 113 F.3d at 401). Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been committed by the person to be arrested. Orsatti v. N.J. State Police, 71 F.3d 480 (3d Cir. 1995). Generally the existence of probable cause is a factual issue. Groman, 47 F.3d at 635 (citing Deary v. Three Un-Named Police Officers, 746 F.2d 185, 191 (3d Cir. 1984)).

Special attention is paid to the identification of the suspect. "[C]ourts have consistently considered the context of an identification, and have not stated that the police can rely on any witness accusation, however unreliable or unbelievable." Wilson, 212 F.3d at 791. Independent exculpatory evidence or substantial evidence of the witness's own unreliability that is known by the arresting officers could outweigh the identification such that probable cause would not exist. Cases must therefore be examined on their facts. Id.

In this case, Vassallo points out that Patton's statement is the only statement included in the affidavit specifically identifying him as the suspect. When the omissions

regarding Patton are included in the warrant, Vassallo argues that Patton's reliability as a witness is subject to serious question. With Patton's reliability as a witness in doubt, the sufficiency of the affidavit to establish probable cause is also in doubt. To the extent that Defendant's claim that Patton's statement is corroborated by Woertz's Philadelphia Police Form 75-48 from the incident, Vassallo points to evidence regarding Woertz's credibility, namely that the 75-48s match the information given to Fox and not Officers Beachamin and Cannon, and statements made by Woertz critical of Vassallo. As a result, there is sufficient contest on this issue to warrant its submission to a jury, who may make the credibility determinations vital to a resolution of the factual matters in dispute in this case. An issue of triable fact exists with respect to probable cause; therefore, summary judgment is inappropriate.

2. Malicious Prosecution

In order to sustain a claim of malicious prosecution under section 1983, a plaintiff must show that the defendant (1) initiated proceedings against him; (2) without probable cause; (3) with malice; and (4) that the proceedings terminated in his favor. Gatter v. Zappile, 67 F. Supp. 2d 515, 519 (E.D. Pa. 1999). The plaintiff must also show "some deprivation of liberty consistent with the concept of seizure" as evidence of the constitutional violation. Gavin, 280 F.3d at 380 (quoting Gallo v. City of Phila., 161 F.3d 217, 222 (3d Cir. 1998)).

Generally it is the prosecutor, not the police officer, who is responsible for initiating a proceeding against a defendant. Gatter, 67 F. Supp. 2d at 521 (citing Albright, 510 U.S. at 279). An officer may, however, be considered to have initiated a criminal proceeding if he or she "knowingly provided false information to the prosecutor or otherwise interfered with the prosecutor's informed discretion." Id.

Defendants argue that Vassallo has failed to present any evidence establishing a claim for malicious prosecution. Vassallo argues in return that he has met that burden. Vassallo argues that he was arrested without probable cause, that Fox's intentional provision of a faulty warrant application meets the requirement of initiation, and that statements from Bryn Campbell will demonstrate actual malice. Vassallo was charged with aggrivated assault, and found not guilty at trial. He has, therefore, established that he can proceed on a section 1983 claim for malicious prosecution.

3. Qualified Immunity

Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Because the qualified immunity doctrine provides the official with immunity from suit, not immunity from trial, any questions regarding immunity should be resolved at the earliest possible stage of the litigation. Saucier v. Katz, 533 U.S. 194, 200-01 (2001). In this case, Fox contends that he is entitled to qualified immunity.

A court required to rule upon qualified immunity must first consider the following threshold question: "Taken in the light most favorable to the [plaintiff], do the facts alleged show the officer's conduct violated a constitutional right?" Id. at 201 (citing Siegert v. Gilley, 500 U.S. 226, 232 (1991)). In the instant action, this question is answered in the affirmative. The facts taken in the light most favorable to Vassallo establish that Fox swore out a deficient affidavit of probable cause, and that Vassallo was falsely arrested and detained in violation of his Fourth Amendment protection against unreasonable seizures. See supra.

Having determined that the facts presented demonstrate a violation of a constitutional right, the next question to be answered is whether that right was clearly established. Saucier, 533 U.S. at 201. "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." Id. at 202. Under this standard, the qualified immunity doctrine "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." Orsatti, 71 F.3d at 483 (quoting Malley v. Briggs, 475 U.S. 335, 345 (1986)) (internal quotations omitted).

"[T]here is no question that the right at issue, namely, the right to be free from arrest except on probable cause, was clearly established at the time of [Vassallo's] arrest." Id. However, officers who act in ways they reasonably believe to be lawful remain protected by qualified immunity. Id. The standard for determining the reasonableness of the officer's belief in the existence of probable cause is "whether a reasonably well-trained officer would have known that his affidavit failed to establish probable cause and that he therefore should not have applied for the warrant under the conditions." Id. (citing Malley, 475 U.S. at 345).

As has previously been discussed, Vassallo alleges that Fox intentionally omitted information from the warrant application that would have eviscerated any finding of probable cause that Vassallo committed an assault at the time in question. See supra. A reasonably well-trained officer would be aware that such an action, manipulating a warrant application and related investigations to obtain the arrest of another without probable cause, is unlawful. As a result, Fox's actions were outside the scope of protection offered by qualified immunity and summary judgment is inappropriate.

C. CITY OF PHILADELPHIA

1. Liability Under Section 1983

The doctrine of *respondeat superior* does not apply in actions brought under section 1983. As a result, a municipality may only be held liable for the injuries directly attributable to its actions. Monell v. Dep't of Social Servs., 436 U.S. 658 (1978). Under Monell, a municipality may be liable under section 1983 if its policy or well-settled custom causes a constitutional injury. Estate of Henderson v. City of Phila., 1999 U.S. Dist. LEXIS 10367, at *56 (E.D. Pa. Jul. 9, 1999) (citing Monell, 436 U.S. at 694). In order to obtain damages from a municipality, a plaintiff must prove that "municipal policy makers established or maintained a policy or custom which caused a municipal employee to violate the plaintiff's constitutional rights." Id. The policy must be the moving force behind the constitutional tort. Furthermore, the policy must also exhibit deliberate indifference to the constitutional rights of those the policy affects. Id. A plaintiff must also present scienter like evidence of indifference attributable to a particular policymaker or group of policymakers. Simmons v. City of Phila., 947 F.2d 1042, 1060-61 (1991). In the absence of any unconstitutional policy, it is the plaintiff's responsibility to articulate a factional basis demonstrating considerably more proof than a single incident to support his claim. House v. New Castle County, 824 F. Supp. 477, 486 (D. Del. 1985) (citing Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985)).

The evidence presented by Vassallo is insufficient to establish a policy or practice of the City of Philadelphia that is deliberately indifferent to his constitutional rights. Vassallo cannot identify such a policy, nor has he identified a policymaker making such a decision. Furthermore, while Vassallo points to two incidents of either poor investigation or an unwillingness to investigate a complaint by the police, these are also insufficient to establish the

necessary custom to create liability. Instead, the evidence presented demonstrates misconduct on the part of municipal employees, and not their compliance with an unconstitutional policy. Vassallo's expert reaches the same conclusion, pointing to occasions when Fox deviated from established police investigatory procedure and directives. As a result, Vassallo cannot meet his burden with regard to a municipal policy. As a result, summary judgment is appropriate for this issue.

2. Liability Under State Law

Municipal liability in Pennsylvania is governed by the Political Subdivision Tort Claims Act, 42 Pa. Cons. Stat. Ann. §§ 8541-64. The Act "raises the shield of governmental immunity against any damages on account of any injury to a person or property caused by any act of a local agency or employee thereof or any other person" except as provided by the Act. Mascaro v. Youth Study Ctr., 514 Pa. 351, 355; 523 A.2d 1118, 1120 (1987); see also 42 Pa. Cons. Stat. Ann. § 8541. The Act provides that liability may be imposed if two conditions are met. First, damages must be recoverable under the common law or a statute that imposes liability against one without an immunity defense. Mascaro, 514 Pa. at 355; 523 A.2d at 1120. Second, the injury must be caused by the negligent acts of an agency or its employee acting within the scope of his employment working in one of the categories set out by the Act. Id.; see also 42 Pa. Cons. Stat. Ann. § 8542(b).[5] The Act specifically excludes liability for "conduct which constitutes a crime, actual fraud, actual malice, or willful misconduct." 42 Pa. Cons. Stat. Ann. § 8542(a)(2).

Vassallo brings state law claims for false arrest, false imprisonment, and malicious prosecution. These are intentional torts specifically excluded by the Act, which covers

[5] The eight exceptions are for vehicles, personal property, real property, trees, traffic signals, and street lighting, utility services, streets, sidewalks, and animals. Id. § 8542(b).

only the negligent acts of municipal employees. Furthermore, these acts have no relation to any of the eight exceptions to governmental immunity established by the Act. As a result, these claims will not lie against the City of Philadelphia and they will be dismissed.

IV. CONCLUSION

As an issue of triable facts exists with respect to the existence of probable cause to arrest Vassallo, Defendants' motion for summary judgment will be denied with respect to his claims of false arrest, false imprisonment, and malicious prosecution made against Fox. However, as Vassallo has not shown a policy or practice of the City of Philadelphia deliberately indifferent to his constitutional rights, and his state law claims are precluded by the Pennsylvania Political Subdivision Tort Claims Act, summary judgment will be entered in favor of the City of Philadelphia.

An appropriate Order follows.

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

MICHAEL VASSALLO,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 04-697
PHILADELPHIA POLICE DET. MICHAEL FOX and CITY OF PHILADELPHIA,	:	
Defendants.	:	

ORDER

AND NOW this 9th day of December, 2004, upon consideration of Defendants', Michael Fox and the City of Philadelphia, Motion for Summary Judgment (Doc. No. 17), and the Response in opposition thereto, it is hereby **ORDERED**:

1. that as to Defendant Michael Fox, the Motion is hereby **DENIED**; and

2. that as to Defendant City of Philadelphia, the Motion is hereby **GRANTED**;

BY THE COURT:

/s/ Robert F. Kelly
Robert F. Kelly, Sr. J.