

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

DIANA M. HOLMES	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-1299
KEVIN McGUIGAN	:	

MEMORANDUM

Baylson, J.

April 13, 2005

The Complaint in this case is brought under 28 U.S.C. § 1983 by Diana Holmes, a black woman who alleges that on March 17, 2003 she was unlawfully arrested, charged and injured by the Defendant, a police officer employed by the City of Coatesville, Pennsylvania. Plaintiff alleges that she was lawfully driving an automobile and was pulled over, allegedly for speeding, but denies that she was speeding. Plaintiff alleges that the Defendant was engaged in racial profiling. Plaintiff also alleges that the Defendant handcuffed her with unnecessary force, unlawfully searched her car and her purse, caused her humiliation and embarrassment, and took her to a police station where she was kept in a holding cell for over two hours.

Plaintiff acknowledges an outstanding bench warrant dated January 30, 2003, but asserts it was issued for a minor traffic offense and did not justify what happened. Although she was found guilty of the traffic citation issued for the automobile stop on March 17, 2003, on appeal to the Court of Common Pleas, the case against her was dismissed because the Defendant did not appear for trial.

Defendant has moved for Partial Summary Judgment¹ contending that Plaintiff's racial discrimination claims could only be brought for a violation of the Equal Protection Clause of the

¹Defendant does not seek summary judgment as to the excessive force claim.

Fourteenth Amendment, which is not asserted in her Complaint, and that the undisputed facts show probable cause on the part of the police officer to stop her car; once her identity was known, the Defendant police officer discovered that there was an outstanding bench warrant which justified the further steps that were taken. Defendant also asserts that Plaintiff's claim for malicious prosecution is not cognizable under § 1983 and is negated as a matter of law by the undisputed fact of the outstanding bench warrant. Defendant also asserts qualified immunity.

But for the allegations of racial profiling and racial discrimination, Defendant's Partial Motion for Partial Summary Judgment would have substantial merit. However, the Defendant has not, and probably could not, on summary judgment, negate the racial allegations, and the Court concludes that the Plaintiff should be able to present her allegations to the jury.

The Court is concerned whether Plaintiff has stated a claim based on her race when she has not specifically articulated an equal protection claim, either in her Complaint or in her response to the partial summary judgment motion. However, the Court will not grant summary judgment, but directs Plaintiff's counsel to be prepared at trial to present this case under the proper legal theory with proper jury instructions, and if necessary, seek any necessary amendments to the pleadings.

As to the claim of qualified immunity, no decision of case law is necessary to conclude that the racial discrimination claim obviates granting summary judgment on this ground at this time.

An appropriate Order follows.

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ORDER

AND NOW, this 13th day of April, 2005, for the reasons stated in the foregoing Memorandum, Defendant's Motion for Partial Summary Judgment (Doc. No. 13) is hereby DENIED.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.