

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

BYRON S. MORRIS : CIVIL ACTION
: :
: :
v. : :
: :
: :
SGT. DANIEL DIXON : NO. 03-cv-6819

MEMORANDUM AND ORDER

April 20, 2005

PRATTER, DISTRICT JUDGE

I. PROCEDURAL HISTORY AND SUMMARY DECISION

Mr. Morris filed the Complaint against Defendants Borough of West Chester (the “Borough”) and Sgt. Daniel Dixon of the West Chester Police Department on December 18, 2003 (Docket No. 1). Mr. Morris’s claims are as follows:

- Count I: Unlawful Arrest (Federal Law) v. Defendant Borough and Defendant Sgt. Dixon
- Count II: Unlawful Strip Search (Federal Law) v. Defendant Borough and Defendant Sgt. Dixon
- Count III: Unlawful Detention and Arrest (State Law) v. Defendant Borough and Defendant Sgt. Dixon
- Count IV: Unlawful Strip Search (State Law) v. Defendant Borough and Defendant Sgt. Dixon.¹

¹ Mr. Morris also alleges in his Complaint that he was denied medical attention in the course of the events leading to his claims. See Compl. ¶¶ 44, 46, 51 (attached to Defendants’ Statement of Relevant Undisputed Facts in Support of Defendants’ Motion for Partial Summary Judgment as Exhibit A). However, at his deposition Mr. Morris withdrew this allegation, stating, “[n]o, I wouldn’t say I was denied medical attention.” Morris Dep. Tr. at 95-96.

On March 9, 2004, Defendants filed their Answer and Affirmative Defenses to Mr. Morris's Complaint (Docket No. 5). The parties have completed discovery, including the depositions of Mr. Morris (hereafter "Morris Dep. Tr."), Defendant Daniel Dixon² (hereafter "Dixon Dep. Tr."), and non-party witnesses, Sgt. Louis DeShullo, Officer Robert Kuehn, and Veronica Parrilla, as well as the exchange of written discovery. Defendants filed their Motion for Partial Summary Judgment on March 18, 2005. Plaintiff Morris filed his Opposition to the Motion for Partial Summary Judgment on April 7, 2005. During oral argument on the Motion, held April 13, 2005, Plaintiff Morris agreed to dismiss all Counts filed against the Borough of West Chester, which was documented by Order dated April 18, 2005.

Mr. Morris claims that Sgt. Dixon arrested him without probable cause, in violation of (a) the Fourth and Fourteenth Amendments and (b) Article I, Section 8 of Constitution of the Commonwealth of Pennsylvania. For the reasons set forth below, this Court finds that it is undisputed as a matter of fact and law that Sgt. Dixon had probable cause to arrest Mr. Morris based on the charges asserted. Furthermore, pursuant to the Pennsylvania Political Subdivision Tort Claims Act, 42 P.S. § 8541, et seq. (the "PSTCA"), Sgt. Dixon is immune from Mr. Morris's claims arising under the Pennsylvania Constitution.³ Plaintiff Morris has proffered no

² There is indication within the parties' submissions that Daniel Dixon, the officer who arrested Mr. Morris, is no longer working as a police officer for the Borough of West Chester.

³ State law claims brought against a public official based on his official capacity are barred by the PSTCA, as such official acts within the scope of his office or duties, thus entitling him to official immunity. Devatt v. Lohenitz, 338 F.Supp.2d 588, 599 (E.D.Pa. 2004) (citing 42 P.S. § 8545). Individual defendants are immune from liability for acts within the scope of their employment to the same extent as the employing municipality, unless the conduct of the defendant consists of "actual fraud, crime, actual malice or willful misconduct." 42 P.S. §§ 8545, 8550.

evidence to this Court that Sgt. Dixon engaged in any type of willful misconduct, which would otherwise abrogate the protections provided by the PSTCA. See 42 P.S. §§ 8545, 8550. Thus, no genuine issue of material fact exists as to the claims subject to the Defendants' Motion for Partial Summary Judgment. Therefore, all of Plaintiff Morris' claims against Sgt. Dixon, except Count II (the Section 1983 illegal strip search allegation), must be dismissed with prejudice.

II. FACTUAL BACKGROUND

On May 31, 2002, at approximately 2:00, p.m., Sgt. Daniel Dixon of the West Chester Police Department (the "WCPD") observed Mr. Morris seated in the driver's seat of a vehicle that was parked illegally in the fire zone at the Apartments for Modern Living in West Chester, Pennsylvania. Morris Dep. Tr. at 50-51, 92; Dep. Tr. Dixon at 17, 21; WCPD Incident Investigation Report for Incident No. 20020531M24(01) (hereafter, "Report No. 20020531M24(01)").

At the time of the incident, Sgt. Dixon was the Sergeant of Community Policing at WCPD. Dixon Dep. Tr. at 8. In his capacity as Sergeant of Community Policing, Sgt. Dixon worked with the management of the Apartments for Modern Living, as well as other properties in the Borough, on a daily basis. Dixon Dep. Tr. at 16-17. Sergeant Dixon was aware that the Apartments for Modern Living had a documented problem with a high number of crimes, including drug trafficking, loitering, and assaults. Dixon Dep. Tr. at 25. He had made over 100 arrests on that property during his 26 years as a West Chester police officer for various crimes. Dixon Dep. Tr. at 25. On the day of the incident, when Sgt. Dixon noticed Mr. Morris's car, approximately eight to ten individuals had encircled the car, many of whom Sgt. Dixon

recognized and knew to be illegally on the property. See Dixon Dep. Tr. at 20-21. As soon as Sgt. Dixon arrived, many of these individuals “immediately left the area in a rather quick fashion.” Id.

Mr. Morris admits that he was parked illegally when he was approached by Sgt. Dixon. Morris Dep. Tr. at 52; Dixon Dep. Tr. at 17. Sergeant Dixon asked Mr. Morris for identification. Morris Dep. Tr. at 52; Dixon Dep. Tr. at 26. It is undisputed that there was confusion regarding Mr. Morris’s identity during or immediately following the incident, as the suspect’s wallet contained identification for both Byron Morris and Timothy Bowman. See, e.g., Morris Dep. Tr. at 52-54; Dixon Dep. Tr. at 27-29; Compl. ¶ 17; Def. Ex. “E”. Sgt. Dixon claims that Mr. Morris initially failed to provide him with physical evidence of identification, but instead stated that he was “Timothy Bowman” and provided verbal information, including a residential address and birthdate, consistent with the identity of Timothy Bowman⁴. Dixon Dep. Tr. at 26. Alternatively, Mr. Morris claims that upon Sgt. Dixon’s request for identification, he pulled his wallet from his pocket and, before he could do anything else, Sgt. Dixon grabbed the wallet and went back to his marked police car.⁵ Morris Dep. Tr. at 52. Nevertheless, it is undisputed that, when Sgt. Dixon encountered him, Mr. Morris had two forms of identification in his wallet: (1) a Pennsylvania **Driver’s License** for Timothy Bowman, and (2) a Pennsylvania **State Identification Card** for Byron Scott Morris. Dep. Tr. Morris at 54, 60; Dixon Dep. Tr. at

⁴ Timothy Bowman is Mr. Morris’s cousin. Morris Dep. Tr. at p. 54.

⁵ Even if this allegation concerning the manner of acquiring Mr. Morris’s wallet was determined to be true, during oral argument before this Court, counsel for Plaintiff Morris acquiesced that Morris is not alleging that the alleged “snatching” or “grabbing” of the wallet violated any right. See Oral Arg. Tr. pp. 10-11 and 28-29.

35; Def. Ex. E (photocopies of the Pennsylvania Driver's License for Timothy Bowman and Pennsylvania State Identification Card for Byron Scott Morris). At the time of the incident, the driving privileges for Plaintiff Morris were, in fact, suspended.

When Sgt. Dixon processed the name "Timothy Bowman" from his police cruiser, he was advised that there was a warrant for Bowman's arrest on burglary charges. Dixon Dep. Tr. at 28-29. When Sgt. Dixon told Mr. Morris he was under arrest on a warrant for "Timothy Bowman", Mr. Morris denied that he was Bowman and stated that he was Byron Scott Morris. Morris Dep. Tr. at 53; Dixon Dep. Tr. at 29-30. Nonetheless, because Sergeant Dixon was unable to positively determine Mr. Morris's identity at the time, Dixon arrested Mr. Morris and had him transported back to WCPD. Morris Dep. Tr. at 53, 58-59; Dixon Dep. Tr. at 28-29. Furthermore, as a result of Mr. Morris having two forms of identification in his wallet, for separate identities, both of which Sgt. Dixon contends resembled Mr. Morris, Sgt. Dixon had Mr. Morris transported to nearby West Goshen Police Department, so he could be processed on Livescan⁶ and positively identified. Morris Dep. Tr. at 54, 66-67; Dixon Dep. Tr. at 36. Mr. Morris was ultimately identified by Livescan as Byron Morris. Morris Dep. Tr. at 67. There were no active warrants for Mr. Morris's arrest at that time. Morris Dep. Tr. at 67.

During his transport, Mr. Morris claims that he was placed in a police vehicle that lacked sufficient ventilation and he was left shackled, handcuffed and unattended. Morris Dep. Tr. at 61-65, 93. Morris testified that he started banging his head against the vehicle window because he could not breathe. Morris Dep. Tr. at 62-65. After he was taken from the West Goshen

⁶ Livescan is a system used by law enforcement that digitally captures an individual's fingerprints and transmits the information electronically to a remote identification bureau for processing and positive identification.

Police Department back to the WCPD, Mr. Morris contends that he was subjected to a strip search. Morris Dep. Tr. at 72-73.

As a result of the incident at the Apartments for Modern Living, Sgt. Dixon charged Mr. Morris with providing false identification to law enforcement authorities and driving while Morris' operating privilege was suspended or revoked. See Criminal Complaint, Def. Ex. F. The Chester County District Attorney's Office reviewed the charges and determined that the evidence was sufficient to prosecute Mr. Morris on the charges of providing false identification to law enforcement authorities, 18 P.S. § 4914(a) and driving while his operating privilege was suspended or revoked, 75 P.S. § 1543(a). See August 7, 2002 Information; Def. Ex. G.

After a full preliminary hearing before a duly authorized district justice, the charges against Mr. Morris were bound over for trial. Morris Dep. Tr. at 85. Mr. Morris resolved the charges filed by Sgt. Dixon by pleading no contest to the lesser charge of driving under a suspended license. Morris Dep. Tr. at 85-86. Mr. Morris claims that Sgt. Dixon arrested him without probable cause and that he unlawfully strip-searched Mr. Morris.⁷ See Compl. ¶¶ 53-71.

III. JURISDICTION

The Court has original jurisdiction over the alleged violation of 42 U.S.C. § 1983

⁷ The facts regarding the alleged strip search are vigorously contested and thus **are not** the subject of Defendants' Motion for Partial Summary Judgment. Nevertheless, throughout the Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment, counsel for Plaintiff Morris relies on arguments with regard to the propriety of the strip search. Such reliance may be due to the haste in which the Opposition papers were prepared. Pursuant to Local Rule of Civil Procedure 7.1(c), the Defendant's Opposition to the Motion for Partial Summary Judgment was due April 1, 2004. However, despite courtesy reminders from this Court's staff, defense counsel failed to submit its opposition papers until April 7, 2004.

pursuant to 28 U.S.C. § 1331. The Court maintains supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

IV. STANDARD OF REVIEW

Pursuant to Fed.R.Civ.P. 56(c), 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 summary judgment as a matter of law.” Celetox Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed.R.Civ.P. 56(c). To avoid a ruling granting summary judgment pursuant to the applicable standard, disputes must be both (1) material, i.e., predicated upon facts that are relevant and necessary and that may affect the outcome of the matter pursuant to the underlying law and (2) genuine, i.e., the evidence must support a finding by the court that a reasonable jury could return a verdict for nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Summary judgment is appropriate against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, because such a failure as to an essential element necessarily renders all other facts immaterial. Cella v. Villanova Univ., 2003 WL 329147 at *6 (E.D. Pa. Feb. 12, 2003) (citing Celetox, 477 U.S. at 322-23). In such circumstances, there is only one reasonable conclusion regarding the potential verdict under the governing law and judgment must be awarded to the moving party. Liberty Lobby, 477 U.S. at 250 (finding that the standard is the same as for a motion for judgment as a matter of law under Fed.R.Civ.P. 50(a)).

When making a determination on a motion for summary judgment, the Court expects the moving party to bear the primary responsibility of explaining the basis for the motion and for identifying those parts of the record that demonstrate the absence of a genuine issue of material fact. Celetox, 477 U.S. at 323. Thus, the moving party is not required to produce any evidence negating the nonmovant's claim. Id. The burden then shifts to the nonmovant to produce, through affidavits and other evidentiary materials in the record, specific facts to show that there exists a genuine issue to be determined by the factfinder at trial. Id. at 324; Fed.R.Civ.P. 56(e). The evidence provided by the nonmovant is to be believed, and the court must draw all reasonable and justifiable inferences in the nonmovant's favor. Liberty Lobby, 477 U.S. at 255. However, the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The nonmovant must present to the court competent evidence from which the court can draw such inferences. Cella, 2003 WL 329147 at *6. Furthermore, the Court of Appeals for the Third Circuit, in Orsatti v. New Jersey State Police, 71 F.3d 480, 484 (3d Cir. 1995) (citing Celotex, 477 U.S. at 322), held that a nonmovant plaintiff cannot defeat a motion for summary judgment by merely "restating the allegations of his Amended Complaint," but instead, must "point to concrete evidence in the record that supports each and every essential element in his case." Thus, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough, 891 F.2d 458, 460 (3d Cir. 1989) (citing Celotex, 477 U.S. at 325 (1986)).

IV. DISCUSSION

A. Mr. Morris's Federal Claims

1. Liability Under §1983.

Pursuant to 42 U.S.C. §1983, a private right of action exists for an individual who asserts that his civil rights under the Constitution or another federal law have been violated and deprived by an actor who allegedly violated those rights under the color of state law. The statute itself does not create any substantive rights, but instead protects rights established by the Constitution or through other federal laws. The statute reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Mr. Morris alleges in Count I of his Complaint that Sgt. Dixon violated his civil rights by unlawfully arresting him. Therefore, to establish a claim under §1983, Mr. Morris must show the Court that Sgt. Dixon, (1) while acting under the color of the law of the Commonwealth of Pennsylvania as a police officer, (2) deprived Morris of some right secured by the Constitution or another federal law. See Anderson v. Davila, 125 F.3d 148, 159 (3d Cir. 1997).

Mr. Morris contends that Sgt. Dixon is liable under §1983 because Sgt. Dixon's alleged actions caused the deprivation of Morris' rights secured under the Fourth and Fourteenth⁸

⁸ The Equal Protection and Due Process clauses. Section 1 of the Fourteenth Amendment provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction

Amendments.

2. Substantive Due Process, the “Shocks the Conscience” Standard and Qualified Immunity.

The proper analysis regarding Mr. Morris’s claim for false arrest is whether Sgt. Dixon’s actions “shocks the conscience,” as interpreted and applied by the Court of Appeals for the Third Circuit in United Artists Theatre Circuit, Inc. v. Township of Warrington, 316 F.3d 392, 399 (3d Cir. 2003). Sgt. Dixon argues that he is not subject to legal liability for the actions underlying Mr. Morris’s Complaint because (a) no action(s) by Sgt. Dixon support the necessary elements for Mr. Morris’s *prima facie* case that Mr. Morris may have suffered the deprivation of a right secured by the Constitution or another federal law or, in the alternative, (b) even if Mr. Morris could establish the elements of his *prima facie* case, Sgt. Dixon’s actions are protected pursuant to the affirmative defense of qualified immunity, infra.⁹

In County of Sacramento v. Lewis, 523 U.S. 833 (1998), the Supreme Court established the “shocks the conscience” standard to be applied when a plaintiff alleges that actions taken by a government official violated substantive due process. Here, Sgt. Dixon is considered a government official because he is a police officer, part of the government of the Commonwealth of Pennsylvania. As a Commonwealth employee, Sgt. Dixon’s arrest of Mr. Morris constitutes

the equal protection of the laws.

⁹ The Supreme Court has emphasized that **issues regarding qualified immunity should be resolved at the earliest stages of litigation.** Anderson v. Creighton, 483 U.S. 635, 646 n.6. (emphasizing that “[o]ne of the purposes of the Harlow qualified immunity standard is to protect public officials from the ‘broad-ranging discovery’ that can be ‘peculiarly disruptive of effective government.’ Harlow v. Fitzgerald, 457 U.S. 800, 817 (1982). For this reason, we have emphasized that qualified immunity questions should be resolved at the earliest possible stage of a litigation.” Id. at 818)) (emphasis added).

state action because Sgt. Dixon's actions set in motion the decision-making processes and actions resulting in Mr. Morris's arrest and prosecution by the Borough. However, just because there is an arrest or detainment by a state-empowered person does not mean that such an actor has violated an individual's Constitutional rights or, in the alternative, is not protected by the qualified immunity standard.

In Lewis, the Supreme Court found that "the core of the concept" of due process is "protection against arbitrary action" and that "**only the most egregious official conduct** can be said to be 'arbitrary in the constitutional sense.'" Id. at 845-46 (emphasis added). Lewis then held that the substantive element¹⁰ of the Due Process Clause is violated by government action only when it "can properly be characterized as arbitrary, or conscious shocking, in a constitutional sense." Id. at 847; United Artists, 316 F.3d at 399;¹¹ see also, Fagan v. Vineland,

¹⁰Substantive rights are general rights that are reserved to the individual and give the individual the power to possess or to do certain things, despite the state's desire to restrict those rights.

¹¹ In United Artists, the Court of Appeals for the Third Circuit, when discussing the "shocks the conscience" standard established by the Supreme Court in Lewis, noted that there were two parallel lines of cases within this circuit discussing whether **all** substantive due process claims should be assessed under a "shocks the conscience" standard or whether the less-demanding "improper motive" standard may sometimes be appropriate for finding a civil rights violation. United Artists, 316 F.3d at 399-400 (discussing Bello v. Walker, 840 F.3d 1124 (3d Cir. 1988) and its progeny, where the "improper motive" test was applied by the reviewing court). However, in concluding that Lewis dictated a clearly established standard by the Supreme Court that "shocks the conscious" should be the benchmark for allegations regarding the deprivation of civil rights, the United Artists court emphasized that the "improper motive" line of cases is now clearly distinguishable and the less-demanding standard established by Bello was only appropriate for land-use cases. Id. at 400. Moreover, in contrast to "improper motive," United Artists noted the Supreme Court's emphasis in Lewis that the "shocks the conscience" standard encompasses "only the most egregious official conduct." Id. Therefore, the court in United Artists found that, because in the common vernacular, the term "improper" encompasses a wide spectrum, the line of cases within this circuit that rely on the "improper motive" standard are "in direct conflict" with the very limiting "most egregious" language in Lewis. Id.

22 F.3d 1296, 1303 (3d Cir. 1994) (en banc) (“[T]he substantive component of the Due Process Clause can only be violated by governmental employees when their conduct amounts to an abuse of official power that ‘shocks the conscience.’”); Brown v. Com. Dept. of Health Emer. Med. Servs. Training Inst., 318 F.3d 473, 479-80 (3d Cir. 2003). Furthermore, “the measure of what is conscience-shocking is no calibrated yard stick,” and “[d]eliberate indifference that shocks in one environment may not be so patently egregious in another.” Lewis, 523 U.S. at 847, 850.

However, in Fagan, the Court of Appeals for the Third Circuit held that even reckless indifference **will not** give rise to a cause of action for a violation of Section 1983 regarding substantive due process rights. 22 F.3d at 1303-07 (emphasis added). Thus, with regard to the affirmative defense of qualified immunity, all cases within the Third Circuit are to be evaluated under the “shocks the conscience” standard. 316 F.3d at 399.

(a) The “Shocks the Conscience” Standard, the Fourth Amendment and False Arrest.

The Fourth Amendment to the United States Constitution provides the following protections:

The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon **probable cause**, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis added).

As a corollary, probable cause to arrest exists:

Consistent with this rationale, United Artists contains the reasoning that the concept of something being “improper” only if it shocks the conscience is clearly contradictory. Id. Thus, the Court of Appeals for the Third Circuit expressly held that in light of the Lewis decision, Bello and its progeny are no longer good law. Id. at 401.

if at the moment the arrest was made . . . the **facts and circumstances within defendants' knowledge** and of which they had **reasonably** trustworthy information were sufficient to warrant a prudent man **in believing that plaintiff had violated the law**.

Olender v. Township of Bensalem, 32 F.Supp.2d 775, 788 (E.D. Pa. 1999), aff'd sub nom, Olender v. Rubenstein, 202 F.3d 254 (3rd Cir. 1999) (citing Hunter v. Bryant, 502 U.S. 224, 228 (1991) and quoting Beck v. Ohio, 379 U.S. 89, 91 (1964) (internal quotations omitted) (emphasis addeed)); see also, Merkle v. Upper Dublin School Dist., 211 F.3d 782, 789 (3d Cir. 2000).

Mr. Morris was arrested because, at the time Sgt. Dixon was questioning Mr. Morris for being illegally parked in a fire lane, Sgt. Dixon was unable to determine Mr. Morris's true identity, as one of two contradictory pieces of identification contained within the suspect's wallet belonged to an individual subject to an outstanding arrest warrant for burglary.¹²

¹² Counsel for Mr. Morris attempted to argue during oral argument that Sgt. Dixon:

Counsel: . . . called out to my client, and my client didn't respond. And it was because of him not responding, that he goes over to - to my client . . . I mean, is a person subject to an arrest simply because if an officer says 'Yo', and the person looks down or doesn't respond, that gives the officer the justification to arrest a person? I don't know. I don't think so . . .

Judge Pratter: Well, but isn't that - is that really a fair characterization of what happened?

Counsel: That's a - I think that's an accurate characterization of what happened.

. . .

What is he exactly doing that justifies the officer in the first instance stopping him, searching him, and subsequently arresting him? There was no probable cause for the officer, in our opinion, to justify that.

. . .

He wasn't doing anything that was *illegal* . (Emphasis added).

Additionally, pursuant to 18 P.S. § 4914(a), “False identification to law enforcement authorities,”

(a) Offense defined.--A person commits an offense if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.

(b) Grading.--An offense under this section is a **misdemeanor** of the third degree. (Emphasis added).

Pennsylvania Rule of Criminal Procedure 502 provides:

Criminal proceedings in court cases shall be instituted by:

...

(2) an arrest without a warrant:

(a) when the offense is a felony or **misdemeanor committed in the presence of the police officer making the arrest**[.]

Oral. Arg. Tr. at pp. 13-14. Defense counsel’s argument, on the plain, uncontroverted facts of the case is not borne out by the record. Counsel’s argument omitted the fact that Sgt. Dixon initially approached the vehicle because it was *illegally* parked in a fire lane. Thereafter, in order to write a citation for being illegally parked in a fire lane, it was necessary for Sgt. Dixon to ascertain Mr. Morris’s identity.

Furthermore, despite the lack of any evidence in the record that there was something improper about Sgt. Dixon’s investigation of Mr. Morris’s car (a) being parked at a known drug trafficking locale, (b) surrounded by eight to ten individuals who quickly vacated the area upon Sgt. Dixon’s arrival, and (c) while Mr. Morris was illegally parked in a fire lane, Plaintiff’s counsel argued:

Counsel: I think a jury can infer . . . that Sergeant Dixon did what he did simply because [Mr. Morris] was disrespectful. That what he said to Mr. Morris, ‘Yo’, and Mr. Morris didn’t respond to him, he’s like, you know, I’m going to get you.

...

I think [Mr. Morris] felt like [Sgt. Dixon] was disrespecting him, and I’m being - and I think that’s why [Sgt. Dixon] did what he did to this young man initially.

Oral Arg. Tr. at 20-21. Despite counsel’s surmise, there is absolutely no evidence in the record that Sgt. Dixon acted with any type of malice towards Mr. Morris or because Mr. Morris failed to respond when Sgt. Dixon called out to him for being parked in the fire lane.

Pa.R.Crim.P 502 (2004) (emphasis added). Consistent with these statutes, a warrant is required to make an arrest for a misdemeanor, unless the misdemeanor is committed in the presence of the police officer. Com. v. Thompson, 778 A.2d 1215, 1221-22 (Pa. Super. Ct. 2001); Com. v. Clark, 735 A.2d 1248, 1252 (Pa. Super. Ct. 1999) (citing Commonwealth v. Freeman, 514 A.2d 884, 888 (Pa. Super. Ct. 1986); Commonwealth v. Reeves, 297 A.2d 142, 143 (Pa. Super. Ct. 1972)). Here, on this record and consistent with the representations by the non-movant, Plaintiff Morris, it is undisputed that the misdemeanor was committed in the presence of Sgt. Dixon. Furthermore, pursuant to 42 P.S. 8952, “Primary municipal police jurisdiction,”

Any duly employed municipal police officer shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office anywhere within his primary jurisdiction as to:

- (1) Any offense which the officer views or otherwise has probable cause to believe was committed within his jurisdiction.
- (2) Any other event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth.

Pursuant to 53 P.S. § 46121, “Appointment, suspension, reduction, discharge, powers; mayor to have control,”

Borough council may, subject to the civil service provisions of this act, if they be in effect at the time, appoint and remove, or suspend, or reduce in rank, one or more suitable persons, citizens of the United States of America, as borough policemen, who shall be ex officio constables of the borough, **and shall and may, within the borough** or upon property owned or controlled by the borough or by a municipal authority of the borough whether such property is within outside the limits of the borough, **without warrant and upon view, arrest, and commit for hearing any and all persons guilty of** breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, **or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or for violating any ordinance of the borough for the violation of which a fine or penalty is imposed**, and notwithstanding any statute

pertaining to the same or similar offenses. **Any person so arrested shall be received for confinement by the keepers of the jails, lockups, or station houses within the county.** (Emphasis added).

According to the Pennsylvania Supreme Court, the elements for false arrest are (1) the detention of another person, and (2) the unlawfulness of the detention. Vazquez v. Rosnagle, 163 F.Supp.2d 494, 501 (E.D. Pa. 2001) (citing Fagan v. Pittsburgh Terminal Coal Corporation, 299 Pa. 109, 149 A. 159 (1930)); see also, McGriff, 699 A.2d at 799 (citing Pennsylvania Suggested Standard Civil Jury Instructions § 13.04) (indicating that, 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.”) An arrest based upon probable cause is justified, regardless of whether the individual arrested is found guilty. Id. Furthermore, in 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.” Russoli v. Salisbury Township, 126 F.Supp.2d 821, 869 (citing Patzig v. O’Neil, 577 F.2d 841, 851 (3d Cir. 1978)).

In Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988), the court held that “the proper inquiry in a section 1983 claim based on false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense.” See also, Losch v. Borough of Parkesburg, 736 F.2d 903, 907-08 (3d Cir. 1984); Patzig v. O’Neil, 577 F.2d 841, 848 (3d Cir. 1978); Bodzin v. City of Dallas, 768 F.2d 722, 724 (5th Cir. 1985). For example, in Merkle, 211 F.3d at 788, the court found that

[p]robable cause to arrest existed when the facts and circumstances within the arresting officer's knowledge were sufficient in themselves to warrant a reasonable person to believe that an offense has been or is in the process of being committed by

the person to be arrested. Orsatti v. New Jersey State Police, 71 F.3d 480, 482 (3d Cir. 1995). Generally, "the question of probable cause in a section 1983 damage suit is one for the jury." Montgomery v. De Simone, 159 F.3d 120, 124 (3d Cir. 1998); see also Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997); Deary v. Three Un-Named Police Officers, 746 F.2d 185, 190-92 (3d Cir. 1984). This is particularly true where the probable cause determination rests on credibility conflicts. See Sharrar, 128 F.3d at 818; Deary, 746 F.2d at 192. **However, a district court may conclude "that probable cause exists as a matter of law** if the evidence, viewed most favorably to plaintiff, reasonably would not support a contrary factual finding," and may enter summary judgment accordingly. Sherwood v. Mulvihill, 113 F.3d 396, 401 (3d Cir. 1997). (Emphasis added).

Here, consistent with the analysis above and, based on the plain wording of the Pennsylvania laws empowering the police officers within the Borough, see 42 P.S. 8952 and 53 P.S. § 46121, and with regard to Mr. Morris providing false identification to Sgt. Dixon, see 18 P.S. § 4914(a) and Pa.R.Crim.P 502,¹³ there can be no doubt that Sgt. Dixon had probable cause to arrest Mr. Morris. Thus, Daniel Dixon is entitled to summary judgment on Mr. Morris's unlawful arrest claim.

Moreover, the threshold Fourth Amendment issue here is not the propriety of the arrest, but rather whether Sgt. Dixon permissibly questioned Mr. Morris when he saw his automobile parked illegally. Hoffa v. Township of Colebrookdale, 1999 WL 55171 at * 3 (E.D.Pa. Jan 15, 1999) (citing Terry v. Ohio, 392 U.S. 1, 16 (1968)). Here, Mr. Morris was arrested only after he was questioned by Sgt. Dixon, who saw Mr. Morris parked illegally in an area known to the WCPD for its high number of crimes, including drug trafficking, loitering, and assaults. Dixon Dep. Tr. at p. 25. "As a general matter, the decision to stop an automobile is reasonable where

¹³ It is uncontroverted, based upon Plaintiff Morris's version of events, that when attempting to determine Mr. Morris's true identity, Sgt. Dixon obtained identification from Morris's wallet for both Byron Morris and Timothy Bowman. See Def. Ex. "E". Thus, Sgt. Dixon could not be sure whether the person parked illegally in the fire lane was either Morris (driving with a suspended license) or Bowman (wanted on arrest warrant for burglary).

the police have probable cause to believe that a traffic violation has occurred.” Whren v. United States, 517 U.S. 806, 810 (1996). Moreover, “a brief seizure of an individual by police, based on a reasonable suspicion of criminal activity, an investigatory detention, is a ‘narrowly drawn’ exception to the probable cause requirement of the Fourth Amendment.”¹⁴ Nimley v. Baerwald, 2004 WL 1171733 at *8 (E.D. Pa. June 1, 2004) (citing Terry, 392 U.S. at 1). Terry held that probable cause is not required for an investigatory stop if an officer has a reasonable suspicion that criminal activity is afoot or that a crime is about to be committed. Terry, 392 U.S. at 21-22. Nevertheless, once Mr. Morris had been questioned by Sgt. Dixon, and Sgt. Dixon was justifiably unsure of Mr. Morris’s true identity, it is undeniable that Sgt. Dixon was authorized to arrest Morris pursuant to Pennsylvania law. See 18 P.S. § 4914(a) and Pa.R.Crim.P. 502.

It is undisputed that reasonable suspicion existed to cite Mr. Morris for being parked in a fire lane and, as the result of a lawful request for identification, Sgt. Dixon could not determine

¹⁴ “Reasonable suspicion” is determined from the totality of circumstances. United States v. Arvizu, 534 U.S. 266, 273 (2002). “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” Id., quoting United States v. Cortez, 449 U.S. 411, 418 (1981). “[T]he likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” Arvizu, 534 U.S. at 274, citing United States v. Sokolow, 490 U.S. 1, 7 (1989). Furthermore, “[t]he fundamental task of any Fourth Amendment analysis is assessing the reasonableness of the government search.” United States v. Sczubelek, __ F.3d __, 2005 WL 638158 at *6 (slip opinion), quoting U.S. v. Knights, 534 U.S. 112, 118 (2001). Thus, if a search is reasonable, no constitutional problem exists, because the Fourth Amendment only protects individuals from *unreasonable* searches and seizures. Skinner v. Railway Labor Executives’ Ass’n, 489 U.S. 602, 619 (1989). To determine whether a search was reasonable, the Court must weigh all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself. See id. This analysis involves balancing “on the one hand, the degree to which [the search] intrudes upon an individual’s privacy and, on the other hand, the degree to which [the search] is needed for the promotion of legitimate governmental interests.” Knights, 534 U.S. at 119.

whether Mr. Morris was himself or Mr. Bowman, and there can be no reasonable dispute that probable cause existed for the arrest of Mr. Bowman. To prevail on a claim for unlawful arrest pursuant to § 1983, Mr. Morris would need to prove that the police arrested him without probable cause. Sherwood, 113 F.3d at 401; Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995) (citing Dowling v. City of Phila., 855 F.2d 136, 141 (3d Cir. 1988)). On the undisputed facts here, such a showing is not reasonably possible. Here, as discussed supra, because Sgt. Bowman could not establish Morris's true identity, he was arrestable. Therefore, probable cause existed and no violation of the Fourth Amendment is implicated.

(b) Qualified Immunity

Even if Sgt. Dixon made a mistake with regard to the arrest of Mr. Morris, on this record Dixon is entitled to qualified immunity, which “protects police officers from facing suit, not merely liability.” See Saucier v. Katz, 533 U.S. 194 (2001). Sgt. Dixon is entitled to qualified immunity if a reasonable officer could have believed that the conduct at issue was lawful and consistent with clearly established law and the information the officer possessed at the time of his action(s). See Karnes v. Skrutski, 62 F.3d 485, 491 (3d Cir. 1995); Brooks v. Carrion, 1996 WL 563897 at *2 (E.D.Pa. Sept. 26, 1996). Thus, qualified immunity permits police officers “ample room for mistaken judgments” by protecting “all but the plainly incompetent or those who knowingly violate the law.” Hunter v. Bryant, 502 U.S. 224, 229 (1991). Moreover, the United States Supreme Court has directed that:

[w]here the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Qualified immunity is “an entitlement not to stand trial or face the other burdens of litigation.” The privilege is “an immunity

from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.” As a result, “we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.”

Saucier, 533 U.S. at 200-20. In Saucier, the Supreme Court reiterated the two-step analysis that determines whether a law enforcement officer is entitled to qualified immunity:

first . . . whether a constitutional right would have been violated under the facts alleged; second, assuming the violation is established, . . . whether the right was clearly established.

Id. at 2155. The second prong of the test, “clearly established” requires that “it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” Id. at 2156.

Sgt. Dixon is entitled to qualified immunity if his actions were those that a reasonable officer would have taken. Karnes, 62 F.3d at 494; Brooks, 1996 WL 563897 at *4. The test is not whether another reasonable, or more reasonable, interpretation of the events can be constructed *after the fact*. Humphrey v. Staszak, 148 F.3d 719, 725 (7th Cir. 1998) (citing Hunter v. Bryant, 502 U.S. 224, 228 (1991) (per curiam)).

Consistent with the standard established by United Artists, *supra*, the Court evaluated whether Officer Sgt. Dixon’s arrest of Mr. Morris could be considered by a reasonable factfinder to not only be (a) egregious official conduct that was arbitrary in the constitutional sense, but also (b) shocking to the conscience. *See* Lewis, 523 U.S. at 845-46.

The defense of qualified immunity protects government officials from civil damages when they are performing discretionary functions related to their governmental duties. United Artists, 316 F.3d at 398-99 (citing Harlow, 457 U.S. at 818 (discussing that the qualified

immunity doctrine shields public officials from actions for damages unless their conduct was unreasonable in light of clearly established law). Qualified immunity is judged under a standard of objective reasonableness. Orsatti, 71 F.3d at 483-84 (3d Cir. 1995). Qualified immunity will protect government officials from liability if their conduct does not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Id.; see also, Sterling v. Borough of Minersville, 232 F.3d 190, 193 (3d Cir. 2000) (a protected right is clearly established if “its outlines are sufficiently clear that a reasonable officer would understand that his actions violate the right.”) Furthermore, the Supreme Court in Davis v. Scherer, 468 U.S. 183, 194 (1984), held that “[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision.” Qualified immunity will only be lost if the facts available to the officer are “so lacking in indicia of probable cause as to render official belief in its existence unreasonable.” Orsatti, 71 F.3d at 483 (citing Malley v. Briggs, 475 U.S. 335, 341 (1986)). At the stage of summary judgment, the mere fact that Mr. Morris’s allegations, even if they were true, state a claim is insufficient for this Court to deny Sgt. Dixon’s Motion for Partial Summary Judgment. See id. at 484. Rather, the real issue is whether a reasonable person would believe “that an offense has been or is being committed by the person to be arrested.” Id. Here, Sgt. Dixon’s belief that probable cause existed for Mr. Morris’s arrest was not so lacking as to make his judgment unreasonable. See Davis, 468 U.S. at 194.

Absent a holding by this Court that Mr. Morris failed to establish that he had a clearly established right not to be arrested, the burden rests with Sgt. Dixon that he is otherwise entitled to qualified immunity. See Ryan v. Burlington County, 860 F.2d 1199, 1204 n.9 (3d Cir. 1988),

cert. denied sub nom, Fauver v. Ryan, 490 U.S. 1020 (1989). Whether Sgt. Dixon acted reasonably regarding the events leading up to Mr. Morris's arrest is judged under an objective standard. See Creighton, 483 U.S. at 641; see also, Sterling, 232 F.3d at 193; Orsatti, 71 F.3d at 483-84. Moreover, Mr. Morris retains the burden of coming forward with some **competent evidence** that Sgt. Dixon engaged in conduct that violated a clearly established federal right belonging to Mr. Morris and that the deprivation of that right was the proximate cause of Mr. Morris's injuries. See Good v. Dauphin County Social Services for Children & Youth, 891 F.2d 1087, 1091-92 (3d Cir. 1989). Mr. Morris is not permitted, at this stage in the litigation, to merely "restat[e] the allegations of his complaint," without "pointing to concrete evidence in the record that supports each and every essential element in his case." See Orsatti 71 F.3d at 484. As discussed below, Mr. Morris has not met his burden with regard to the allegation of false arrest. Neither Mr. Morris's Complaint, nor his specific deposition testimony, as cited in Mr. Morris's Opposition, provided competent evidence to this Court to establish, based on the circumstances surrounding the arrest, that Sgt. Dixon is not entitled to qualified immunity. See Good, 891 F.2d at 1091-92. Sgt. Dixon had a good reason to arrest Mr. Morris because, at the time of the arrest, Sgt. Dixon could not ascertain Mr. Morris's true identity and one of the identities contained within Mr. Morris's wallet, that of Mr. Bowman, who was arrestable pursuant to a warrant for burglary.¹⁵

¹⁵ Mr. Morris had two forms of identification in his wallet and one of the individuals was wanted for burglary. Thus, at a minimum, Sgt. Dixon had probable cause to take Mr. Morris into custody to determine his true identity. See Morris Dep. Tr. at pp. 52-54; Dixon Dep. Tr. at p. 36.

Furthermore, had Sgt. Dixon been able to conclusively establish Mr. Morris's identity at the time of the incident, based on the all factual circumstances within Sgt. Dixon's knowledge at the time, it would not have been unreasonable in the constitutional sense to arrest Mr. Morris for

both the false identification charge and driving with a suspended license. Pursuant to 75 P.S. § 1543, “Driving while operating privilege is suspended or revoked,”

(a) [A]ny person who drives a motor vehicle on any highway or trafficway of this Commonwealth **after the commencement of a suspension**, revocation or cancellation of the operating privilege and before the operating privilege has been restored **is guilty of a summary offense** and shall, upon conviction, be sentenced to pay a fine of \$200. (Emphasis added).

Additionally, Pa.R.Crim.P 440 (2004) states:

When an arrest without a warrant in a summary case is authorized by law, a police officer who exhibits some sign of authority may institute proceedings by such an arrest.

[Comment:]

Only a police officer . . . may institute a summary criminal proceeding by arrest. It is intended that these proceedings will be instituted by arrest on in exceptional circumstances, such as those involving . . . a danger that the defendant will flee.

Here, because at the time of the incident, Sgt. Dixon could not determine Mr. Morris’s true identity, even arresting him due to a suspended licence violation may not have been improper. See Com. v Williams, 568 A.2d 1281, 1284-85. Analyzing the application of former Pa.R.Crim.P. 70 (current Pa.R.Crim.P. 440), the court found:

Here there was **no verification of identification**; hence, there was **no guarantee that a summons would indicate appellant's true identity** or that Officer Brice would have **any way to locate appellant to pursue the charge if appellant failed to appear** in response to the summons on the appointed day. In this sense, **there was a risk of flight** within the meaning of the comment to Rule 70. In light of this possibility, and having no other way to verify any necessary information to ensure compliance with a citation, Officer Brice was **left with no alternative but to arrest appellant and transport him to the police station for processing in order to adequately verify the offered identification**. Had Officer Brice not elected to arrest appellant, his actions would have been tantamount to releasing appellant without charge. **Neither law nor reason could justify such a result**. Accordingly, we find that under the Pennsylvania law, appellant's arrest was authorized and that Officer Brice was merely **discharging his solemn duty to the community in arresting appellant under the circumstances of this case**.

To summarize, the test to be applied by the courts in the Third Circuit for determining the possible applicability of qualified immunity is: “(1) whether the plaintiff has alleged the deprivation of an actual constitutional right, and if so, (2) whether the right was clearly established at the time of the alleged violation.” United Artists, 316 F.3d at 398-99 (citing Saucier v. Katz, 533 U.S. 194, 200 (2001)); see also, Eddy v. Virgin Island Water and Power Authority, 256 F.3d 204, 208 (3d Cir. 2001). A specific right is clearly established in the law if “its outlines are sufficiently clear that a reasonable officer would understand that his actions violate the right.” Sterling v. Borough of Minersville, 232 F.3d 190, 193 (3d Cir. 2000). Mr. Morris’s allegations of civil rights deprivations fit the United Artists test, so the Court must determine whether Sgt. Dixon is protected by qualified immunity. In other words, the question becomes whether Mr. Morris’s right not to be arrested was “clearly established at the time of the alleged violation.” United Artists, 316 F.3d at 398-99.

However, our court of appeals has found that a “tension exists as to the proper role of the judge and jury where qualified immunity is asserted.” Russoli v. Salisbury Township, 126 F.Supp.2d 821, 841 (E.D. Pa. Oct. 20, 2000) (citing Sherwood v. Mulvihill, 113 F.3d 396, 401

(Footnote omitted) (emphasis added); see also, Com. v. Elliott, 599 A.2d 1335, 1337-1338 (Pa. Super. Ct. 1991) (discussing the interplay between 42 P.S. § 8952 and (former) Pa.R.Crim.P. 70); Jackson v. Mills, 1997 WL 701316 at *2 (E.D.Pa. Nov. 7, 1997) (finding that

[p]olice officers ordinarily are required to charge a person with a summary offense by issuing a citation. See [former] Pa.R.Crim.P. 52. An officer, however, may "in exceptional circumstances" arrest an individual for committing a summary offense. See [former] Pa.R.Crim.P. 70 & cmt. Such circumstances include a display or imminent threat of violence and a risk of flight. Id.)

(3d Cir.1997)).¹⁶ In the instant case, this tension exists because while "the application of qualified immunity is a question of law," Siegert v. Gilley, 500 U.S. 226, 232 (1991), whether probable cause exists in a § 1983 action is usually a question of fact, see Sherwood, 113 F.3d at 401; Groman v. Township of Manalapan, 47 F.3d 628, 635 (3d Cir. 1995); Velardi v. Walsh, 40 F.3d 569, 574 n.1 (2d Cir. 1994). Nevertheless, this Court may conclude that probable cause existed as a matter of law if the evidence, viewed in a light most favorable to Morris, "reasonably would not support a contrary factual finding." See Sherwood, 113 F.3d at 401.

As discussed supra, Sgt. Dixon had both reasonable suspicion and probable cause to question and subsequently arrest Mr. Morris. Dixon witnessed Morris parked illegally in an area known to have problems with crime, including drugs, and, subsequently could not determine the true identity of Mr. Morris because of the two contradictory pieces of identification in his wallet. See Morris Dep. Tr. at 52-54; Compl. ¶ 17, 20. Moreover, on the day of the incident, upon approaching Mr. Morris's car, approximately eight to ten individuals encircled the car, many of whom Sgt. Dixon recognized and knew to be illegally on the property. See Dixon Dep. Tr. at 20-21. As soon as Sgt. Dixon arrived, many of these individuals "immediately left the area in a rather quick fashion." Id. After consulting with and obtaining the approval of the Chester County District Attorney's Office, Sgt. Dixon filed criminal charges against Mr. Morris for providing false identification to law enforcement authorities and driving under a suspended

¹⁶ The Court of Appeals for the Third Circuit has also held that "the question of probable cause in a § 1983 damage suit is [usually] one for the jury," Montgomery v. De Simone, 159 F.3d 120, 124 (3d Cir. 1998). However, a district court may conclude, as a matter of law, that the evidence, as viewed in the light most favorable to the plaintiff, reasonably supports a finding of probable cause, and thus may enter summary judgment. See Sherwood, 113 F.3d at 401.

license. See Def. Ex. F, Criminal Complaint; August 7, 2002 Information. Moreover, there is no dispute within the record that (1) a duly authorized district justice determined, after a full hearing, that sufficient evidence existed to bind the charges over for trial,¹⁷ (2) the Chester County District Attorney's Office determined that sufficient evidence existed to prosecute Mr. Morris, and Mr. Morris subsequently pled no contest to the lesser charge of driving under a suspended license. See Morris Dep. Tr. at 85-86; Information of August 7, 2002.

The record also indicates that, at some point, Mr. Morris argued that he was not "driving" the car. See Compl. ¶ 12 (alleging that "[t]he automobile in which Plaintiff was seated belonged to his girlfriend . . . and the Plaintiff *was merely an unlicensed passenger* therein, **and not** its driver) (emphasis added). However, it is uncontroverted that the depositions of both Plaintiff Morris and Defendant Sgt. Dixon clearly establish that Mr. Morris was in the driver's seat at the time in question. Morris Dep. Tr. at 50-51, 92; Dep. Tr. Dixon at 17, 21; compare Oral Arg. Tr. at 22. (Mr. Morris's counsel stated on the record, "I didn't know there was testimony to say that he wasn't behind the wheel. He was always in the driver's - he - he never moved from the [driver's seat]"), with Compl. ¶ 16 ("[Mr. Morris] tried to tell Defendant Dixon that he had not been driving the automobile"). Nevertheless, it is the belief and perception of the investigating officer, and what he knew or didn't know at the time, that is the focus of the qualified immunity analysis. Karnes, 62 F.3d at 491. Thus, because Mr. Morris failed to make a factual showing that **no reasonable officer** would have (1) questioned him when he was parked illegally in a high

¹⁷ Under Pennsylvania law, the finding of probable cause by a neutral and detached magistrate is conclusive evidence of the existence of probable cause. Kelley v. General Teamsters, Local Union 249, 518 Pa. 517, 544 A.2d 940 (1988); see also, DeVatt v. Lohenitz, 338 F.Supp.2d 588, 599 (E.D.Pa. Oct. 01, 2004).

drug trafficking area and subsequently arrested Mr. Morris based on two contradictory pieces of identification for (2) believing Mr. Morris to be an individual (Timothy Bowman) subject to an outstanding arrest warrant or (3) to determine Mr. Morris's true identity with regard to driving while such privileges are suspended,¹⁸ Sgt. Dixon is entitled to qualified immunity.

3. Mr. Morris's State Law Claims Fail As a Matter of Law

(a) **There Is No Private Right to Civil Recovery against Defendants under the Pennsylvania Constitution**

Pennsylvania law does not include a statutory equivalent to 42 U.S.C. § 1983, providing a cause of action for damages due to a federal constitutional violation. Moreover, the question of whether the Pennsylvania Constitution provides such a cause of action directly, for damages, is not fully settled.¹⁹ “Although the Pennsylvania Constitution has been said to provide for an action for injunctive relief to enforce its equal rights provisions, there has been no such holding as to an action for damages.” Kaucher v. County of Bucks, 2005 WL 283628 at *11 (E.D.Pa. Feb. 7, 2005) (citations omitted). In Kaucher, the court noted, there is a significant difference between actions for injunctive relief and actions seeking damages. Id. (citing Mulgrew v. Fumo,

¹⁸ See fn. 15, supra.

¹⁹ The case law to which Plaintiff Morris cited in support of his argument **does not** in fact support his argument that, under the Pennsylvania Constitution, there exists a private right of action, for damages. See e.g., Com. v. Brown, 833 A.2d 1166 (Pa. Commw. Ct. 2003); J.S. v. Bethlehem Area School Dist., 794 A.2d 936 (Pa. Commw. Ct. 2002); Bronson v. Lechward, 624 A.2d 799 (Pa. Commw. Ct. 1993) (citing Fischer v. Dept. of Public Welfare, 502 A.2d 114 (1985)).

2004 WL 1699368, at *2-4 (E.D. Pa. July 29, 2004)).²⁰ Therefore, based on these persuasive rulings, Mr. Morris's state law claims against Defendants Daniel Dixon and the Borough fail as a matter of law.

(b) **Sgt. Dixon Is Immune from Mr. Morris's Derivative State Law Claims**

Mr. Morris is asserting derivative state law unlawful detention and arrest and unlawful strip search claims against Sgt. Dixon in his official capacity. However, even if a private cause of action for damages existed under the Pennsylvania Constitution, pursuant to the Pennsylvania Political Subdivision Tort Claims Act, 42 P.S. § 8541, et seq. (The "PSTCA"), Sgt. Dixon is immune from Mr. Morris's claims arising under the Pennsylvania Constitution. PSTCA immunity protects police officers sued in their official capacity. State law claims brought against a public official based on his official capacity are barred by the PSTCA, as such official acts within the scope of his office or duties, thus entitling him to official immunity. Devatt v. Lohenitz, 338 F.Supp.2d 588, 599 (E.D.Pa. 2004) (citing 42 P.S. § 8545). The PSTCA grants immunity from claims for monetary damages except with respect to eight specific types of

²⁰ The court in Ryan v. General Machine Products, 277 F.Supp.2d 585, 595 (E.D. Pa. 2003) found that "[t]he Supreme Court of Pennsylvania has not ruled on the issue of whether there is a private cause of action for damages under the state constitution, and the federal courts in this Circuit that have considered the issue have concluded that there is no such right under the Pennsylvania Constitution." See also, Douris v. Schweiker, 229 F.Supp. 2d 391, 405 (E.D. Pa. 2002) (citing Kelleher v. City of Reading, 2001 WL 1132401, at *2-3 (E.D. Pa. Sept. 24, 2001) (citing Dooley v. City of Philadelphia, 153 F.Supp. 2d 628, 663 (E.D. Pa. 2001)); Sabatini v. Reinstein, 1999 WL 636667, at *3 (E.D. Pa. Aug. 20, 1999); Holder v. City of Allentown, 1994 WL 236546, *3 (E.D. Pa. May 19, 1994); Lees v. West Greene Sch. Dist., 632 F.Supp. 1327, 1335 (W.D. Pa. 1986); Pendrell v. Chatham Coll., 386 F.Supp. 341, 344 (W.D. Pa. 1974)).

tortious conduct, none of which are applicable here.²¹ See Sameric Corp. v. City of Phila., 142 F.3d 582, 600 (3d Cir. 1998); Devatt v. Lohenitz, 338 F. Supp. 2d 588, 598-99 (E.D. Pa. 2004); Crane v. Cumberland County, 2000 U.S. Dist. LEXIS 22489, *1, *45-*46 (M.D. Pa. 2000), aff'd 64 Fed. Appx. 838 (3d Cir. 2003) (“[e]ven if the state constitution permits a direct action, it is clear that governmental entities are immune from suit pursuant to the Political Subdivision Tort Claims Act.”); Crighton v. Schuylkill County, 882 F. Supp. 411, 416 (E.D. Pa. 1995); Agresta v. Goode, 797 F. Supp. 399, 409 (E.D. Pa. 1992). Thus, as a matter of both statutory and common law, Sgt. Dixon is immune from liability for Mr. Morris’s alleged claims of unlawful arrest and unlawful strip search arising under the Pennsylvania Constitution. Therefore, Sgt. Dixon is entitled to an entry of judgment in his favor on these state law claims.

Sergeant Dixon is also entitled to immunity in his individual capacity. Individual defendants are immune from liability for acts within the scope of their employment to the same extent as the employing municipality, unless the conduct of the defendant consists of “actual fraud, crime, actual malice or willful misconduct.” 42 P.S. §§ 8545, 8550. Consistent with this Court’s finding that probable cause warranted the arrest of Mr. Morris, no evidence exists with the record to support any proposition that Sgt. Dixon committed any crime, any fraud, held any malice or engaged in any willful misconduct. See Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994). Under the Tort Claims Act, “[w]illful misconduct”

²¹ The eight exceptions to immunity are: (1) vehicle liability; (2) the care, custody or control of personal property; (3) the care, custody or control of real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; or (8) the care, custody or control of animals. 42 P.S. § 8542(d). These eight exceptions are to be narrowly construed. Mascaro v. Youth Study Ctr., 523 A.2d 1118, 1123 (Pa. 1987).

has been found to be synonymous with the term “intentional tort.” King v. Breach, 540 A.2d 976, 981 (Pa. Commw. Ct. 1988). However, the Pennsylvania Supreme Court’s decision in Renk v. City of Pittsburgh, 641 A.2d. 289, 293 (Pa. 1994) established that “willful misconduct” does not have the same meaning in tort actions against police officers. Where the allegedly tortious conduct at issue is that of a police officer, “wilful misconduct” is any misconduct “which the perpetrator recognized as misconduct and which was carried out with the intention of achieving exactly that wrongful purpose.”

Ehly v. City of Phila., 2004 WL 2644392 at *4 (E.D.Pa. Nov. 17, 2004). Willful misconduct “requires that the defendant actually knew that his conduct was illegal.” Lumumba v. Philadelphia Dept. of Human Services, 1999 WL 345501 at * 6 (E.D.Pa. May 21, 1999); Renk, 641 A.2d 289 (Pa. 1994); In re City of Phila. Litig., 938 F. Supp. 1264, 1271 (E.D.Pa. 1996)).

In the instant matter, Mr. Morris has alleged only that Sgt. Dixon “acted or failed to act in a manner so grossly negligent and reckless as to manifest deliberate indifference to rights secured to Mr. Morris by the Constitution.” Compl. ¶ 10. He has not alleged that Sgt. Dixon’s conduct amounted to “actual fraud, crime, actual malice or willful misconduct.” See 42 P.S. §§ 8545, 8550. However, “[m]ere negligence or deliberate indifference is not sufficient to break through governmental immunity on the grounds of ‘willful misconduct.’” Ehly, 2004 WL 2644392 at *4 (citing Owens v. City of Philadelphia, 6 F.Supp.2d 373, 395 (E.D. Pa. 1998); Smith v. County of Bucks, 2004 WL 868278 (E.D. Pa. 2004)); see also, Giandonato v. Montgomery County, 1998 WL 314694 at *6 f.4 (E.D. Pa. May 22, 1998) (holding that the defendant was entitled to immunity because deliberate indifference is not equivalent to finding “willful misconduct”). In the final analysis, Plaintiff Morris has failed to provide even a scintilla of evidence to support a willful misconduct claim against Sgt. Dixon for either the state false arrest claim or the strip search claim. Here, Mr. Morris, as the nonmovant plaintiff, cannot defeat Defendants’ Motion

for Partial Summary Judgment by merely “restating the allegations of his Amended Complaint,” and, with regard to his state law claims of false arrest and unlawful strip search, he has failed to “point to concrete evidence in the record that supports” the essential elements to his case. See Orsatti, 71 F.3d at 484 (citing Celotex, 477 U.S. at 322). Mr. Morris cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive the Motion for Partial Summary Judgment. See Williams v. Borough, 891 F.2d at 460 (citing Celotex, 477 U.S. at 325).

Therefore, Sgt. Dixon is immune under the Tort Claims Act from Mr. Morris’s state law claims with regard to all the state law claims, and is entitled to summary judgment on those claims.

VI. CONCLUSION

For the reasons stated above, the Court grants Defendants’ Motion for Partial Summary Judgment, as to Counts I, III and IV. An appropriate Order follows.

BY THE COURT:

/s/ _____

Gene E.K. Pratter

UNITED STATES DISTRICT JUDGE

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

BYRON S. MORRIS : CIVIL ACTION
:
v. :
:
DANIEL DIXON : NO. 03-cv-6819

ORDER

April 20, 2005

PRATTER, District Judge

AND NOW, this 20th day of April, 2005, upon consideration of the Complaint (Docket No. 1), the Defendants' Answer and Affirmative Defenses (Docket No. 5), Defendants' Motion for Partial Summary Judgment, Plaintiff's Opposition to the Motion for Partial Summary Judgment (Docket No. 18), and following oral argument on April 13, 2005, at which Plaintiff Morris agreed to dismiss all Counts filed against the Borough, it is hereby ORDERED:

1. Summary judgment is entered as to the civil rights claims brought pursuant to 42 U.S.C. § 1983 in Count I of the Complaint. Thus, Count I is DISMISSED with prejudice;
2. Summary judgment is entered as to the unlawful detention and false arrest claims brought pursuant to Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania. Thus, Count III is DISMISSED with prejudice; and
3. Summary judgment is entered as to the unlawful strip search claim brought pursuant to Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania because no private right, for damages, exists under the Pennsylvania Constitution. Thus, Count IV is DISMISSED with prejudice.

It is so ORDERED.

BY THE COURT:

/S/_____

Gene E.K. Pratter

UNITED STATES DISTRICT JUDGE