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

| | | |
|---|---|---|
| **RYAN K. SERODY and ANNE SERODY,** | : | |
| **Plaintiffs** | : | **CIVIL ACTION** |
| | : | **NO. 04-2197** |
| **v.** | : | |
| | : | |
| **JOHN HAMILL et al.,** | : | |
| **Defendants** | : | |

**MEMORANDUM OPINION AND ORDER**

**RUFE, J.** **June 30, 2005**

Plaintiffs Ryan K. Serody ("Serody") and his wife Anne Serody bring this action against Defendants Ridley Township Police Officers Sergeant John Hamill, Corporal William Wright and John Does 1-13, as well as Ridley Township, Pennsylvania. Plaintiffs allege that Defendants brutally assaulted Serody on the evening of January 14, 2002, violating his constitutional rights and committing several state law torts. Defendants have filed a Motion for Summary Judgment on six of eight counts in Plaintiffs' Complaint.

## I. BACKGROUND

The following facts are taken from the evidence on the record and are recited in the light most favorable to Plaintiffs, the non-moving party.[1] At approximately 7:55 p.m. on January 14, 2002, Serody was driving alone from his home to pick up his niece from cheerleading practice. To avoid a red traffic light, he used a shortcut through the parking lot of Ridley Township's municipal building and police station. After driving through the lot and stopping at the exit to MacDade Boulevard, a four-lane highway, he sped onto the left-hand lane of MacDade Boulevard

[1] For the purposes of their Motion for Summary Judgment only, Defendants accept Plaintiffs' version of events.

in order to get in front of oncoming traffic. Defendant Hamill observed Serody 's driving and turned on his emergency lights. Serody did not pull over to the right because of the traffic, and instead turned left at the next intersection, drove up the street and pulled into a parking lot in a shopping center. Serody parked his vehicle and fled on foot, successfully eluding Hamill. Serody fled because he was driving with a suspended license and feared that receiving a citation would delay reinstatement of his license.

After hurdling several property fences, Serody began looking for a phone to call his wife and notify her that he would not be picking up their niece. Several police officers then spotted Serody as he swiftly crossed MacDade Boulevard on foot. Police vehicles surrounded Serody in the parking lot of a Wendy's restaurant on MacDade Boulevard, and one of the vehicles knocked Serody down to his hands and knees. As Serody got up and started to walk, Defendant Wright exited his vehicle and demanded that Serody "get down." While Serody complied, Wright landed on his back, yanked his left arm behind his back, and banged his head into the ground several times. After handcuffing Serody and asking other officers if anyone was looking, Wright punched Serody ten to fifteen times in the back of the head, telling him that he would never run from the police again. Other (unidentified) officers kicked Serody in the shoulders and in the back. He then lost consciousness.

Serody regained consciousness when the officers forcibly walked him to a police cruiser for transport to Ridley Township police station. During the short ride to the police station Serody realized he had urinated on himself, was experiencing great pain, and was bleeding from his head, forearms, and knees. At the police station, as the officers searched and taunted Serody, Defendant Wright slammed every item removed from Serody's pockets into the back of Serody's

head. Subsequently, Defendant Hamill walked into this area of the police station. He charged at Serody and kicked him in the chest. When Serody fell, other officers caught him and propped him up, allowing Hamill to knee him in the face. Serody heard his nose break. While Serody was being searched and beaten, the officers jeered, joking about Hamill "getting WWF" [World Wrestling Federation] on Serody. Hamill then kneed Serody in the side of the head, and Serody lost consciousness again.

As Serody lay on the floor, the officers attempted to obtain a breathalyzer sample, but he was unable to perform the test. The officers then summoned an ambulance. Serody was still lying on the floor when the paramedics arrived. The ambulance took Serody to Taylor Hospital, where he was diagnosed with numerous injuries, including concussion of the brain, nasal fracture, deviated and swollen nose, left shoulder and lumbar strain, AC joint separation, left neck sprain and contusion, an abrasion on left side of forehead, right chest wall contusion, acute dizziness with loss of balance, headache, nausea and visual disturbances. He remained in the hospital for four days with these injuries.[2]

A urine test taken at the hospital revealed no alcohol in Serody's system but confirmed his admission that he had smoked marijuana the night before. He was charged with driving under the influence, fleeing a police officer, aggravated assault, simple assault, resisting arrest, harassment, public drunkenness, and various traffic violations.[3] At trial, a jury found Serody

[2] See Taylor Hospital Discharge Summary, dated January 18, 2002 (Plaintiff's Response, Ex. B).

[3] These traffic violations included failure to drive on right side of roadway, failure to keep right, emerging from alley, failure to drive vehicle at safe speed, and reckless driving.

not guilty of all counts except fleeing a police officer, on which it deadlocked.[4] As a result of a plea agreement with the Commonwealth, the remaining charge was nolle prosequied. Serody entered a guilty plea to the then-added summary violation of driving with a suspended license, for which he was fined $200.

The Complaint asserts seven causes of action by Serody against various Defendants, for violating his Fourth and Fourteenth Amendments rights and committing several state torts.[5] Plaintiff Anne Serody brings one state law claim against all Defendants for loss of consortium.

## II. DISCUSSION[6]

[4] It is not clear from this record whether the trial judge entered verdicts on the summary traffic violations. Even if Serody was cleared of all citations, our analysis *infra* remains the same.

[5] In a somewhat rambling manner the Complaint states that Defendants' actions "violated 42 U.S.C. § 1983." Since § 1983 provides a remedy to parties deprived of their constitutional and statutory rights by creating a cause of action against individual state officials for such deprivations, one does not "violate" § 1983. The Court interprets the Complaint to assert causes of action under § 1983 against (i) Defendants Wright and Hamill for violating Serody's Fourth and Fourteenth Amendment rights via excessive force, false testimony, malicious prosecution, and intentional infliction of emotional distress, (ii) the Doe Defendants for acquiescing in and encouraging Wright and Hamill's conduct, and for failing to act, and (iii) Ridley Township for adopting unconstitutional policies, customs and practices and inadequately training its police officers.

[6] The Court has federal question jurisdiction in this case under 28 U.S.C. § 1331. Under Federal Rule of Civil Procedure 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 judgment as a matter of law." To avoid summary judgment, disputes must be both 1) material, meaning concerning facts that are relevant and necessary and that might affect the outcome of the action under governing law, and 2) genuine, meaning the evidence must be such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The party seeking summary judgment bears the initial burden of showing a basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party can meet its burden "simply by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the non-moving party's case." Id. at 325. Once the moving party has met its initial burden, the adverse party's response, by affidavits or otherwise as provided in Federal Rule of Civil Procedure 56(c), must set forth specific facts showing that there is a genuine issue for trial. The Court should grant summary judgment if the non-moving party fails to make a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322.

Defendants move for summary judgment on (1) Serody's malicious prosecution claims against Defendants Hamill and Wright, and (2) Plaintiffs' claims against Ridley Township. Plaintiffs concede that they failed to produce sufficient evidence supporting their claims against Ridley Township, and agree to dismiss those claims. Accordingly, Count VI is dismissed with prejudice in its entirety, and Count VII is dismissed with prejudice insofar as it relates to Ridley Township.

**A. Malicious Prosecution**

In this Circuit, the plaintiffs can bring malicious prosecution claims under section 1983 by alleging the common law elements of the tort.[7] To prove malicious prosecution under Pennsylvania law, Plaintiffs have to prove that (1) Defendants initiated a criminal proceeding; (2) the criminal proceeding ended in Plaintiff's favor; (3) the proceeding was initiated without probable cause; and (4) Defendants acted maliciously or for a purpose other than bringing Plaintiff to justice.[8]

First, Plaintiffs cannot prove that the criminal proceeding against Serody terminated in his favor. It is undisputed that the jury acquitted him on all charges except for the charge of fleeing and eluding a police officer.[9] The trial court entered a nolle prosequi on that charge. A nolle prosequi "signifies termination of charges in favor of the accused *only when their final disposition is such as to indicate the innocence of the accused.*"[10] The charge against Serody was dismissed

[7] Donahue v. Gavin, 280 F.3d 371, 379 (3d Cir. 2002) ("prosecution without probable cause is not, in and of itself, a constitutional tort. . . and a plaintiff asserting a malicious prosecution claim must show some deprivation of liberty consistent with the concept of seizure").

[8] Id.

[9] Section 3733(a) provides: "[a]ny driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop, commits a misdemeanor of the second degree." 75 Pa. C.S. § 3733(a).

[10] Id. at 383 (citations omitted).

because the jury deadlocked on this issue. The prosecutor had the option of retrying Serody but instead entered into an agreement with Serody to plead guilty to a charge of driving with a suspended license. This dismissal does not indicate Serody's innocence. Instead, it "merely reflected an informed and reasoned exercise of prosecutorial discretion as to how best to use [the] limited [judicial] resources."[11]

Second, Defendants had probable cause to arrest Serody for at least one of the offenses charged. Probable cause for a warrantless arrest exists when the officer has reasonable grounds to believe that an offense has been or is being committed.[12] It is a "fluid concept" that turns "on the assessment of probabilities in particular factual context. . . [T]he law recognizes that probable cause determinations have to be made 'on the spot' under pressure and do not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands."[13] "Evidence that may prove insufficient to establish guilt at trial may still be sufficient to find the arrest occurred within the bounds of the law. As long as the officers had some reasonable basis to believe [the plaintiff] had committed a crime, the arrest is justified as being based on probable cause. Probable cause need only exist as to ***any*** offense that could be charged under the circumstances."[14]

The undisputed facts on the record show that after Defendant Hamill turned on his overhead lights and signaled for Serody to stop, Serody improperly made a left-hand turn from a

---

[11] Id.

[12] United States v. Watson, 423 U.S. 411, 417 (1976).

[13] Paff v. Kaltenbach, 204 F.3d 425, 436 (3d Cir. 2000).

[14] Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1997) (emphasis added).

four-lane highway. Serody testified that he did not pull over to the right lane because there "was a line of cars on the right-hand side" and he "would have had to have gone forward, found a spot to pull over in the traffic, which [Hamill] would have had to have done, too," whereas he was the first vehicle in the left lane. After making the left turn, Serody drove up the street, parked in a parking lot on the next corner, and fled his vehicle on foot.

Despite Plaintiffs' argument to the contrary, fleeing one's vehicle on foot violates Section 3733(a).[15] While the 'recharge' given by the trial judge in the criminal proceedings against Serody instructed the jury to find him guilty of fleeing and eluding a police officer if he "willfully failed or refused to bring his vehicle to a stop," this recharge omitted the remainder of the statute.[16] A driver violates section 3733(a) if he fails to stop his vehicle after the police gives a visual or audible signal to do so, "or ***otherwise flees*** or attempts to elude a pursuing police vehicle. . ." (emphasis added). Courts have interpreted this language to find that where the driver flees on foot after his vehicle is stopped, a police officer has probable cause to believe that the driver violated Section 3733(a).[17]

Here, Serody sped out of a parking lot into the right lane of a four-lane highway, failed to pull over his vehicle to the right after Defendant Hamill gave him a visual signal to stop,

---

[15] Plaintiffs state that Serody never testified to speeding or otherwise attempting to flee or escape while driving, and that instead he was looking for an appropriate safe place to stop his vehicle. They further argue that Section 3733(a) criminalizes eluding the police only while driving, and point to the jury instruction allegedly given by the trial judge, which required the jury to find that the fleeing occurred by the use of Serody's vehicle.

[16] Plaintiffs were unable to obtain a transcript of the jury instruction in question, but submitted to the Court a letter enclosing an unverified transcript of the trial judge's "recharge" of this offense, which Plaintiffs' counsel "believes is either exactly or in substantial conformity to [the trial judge's] original charge." Even if the Court were to consider this information, it would not change the analysis above.

[17] United States v. Ryan, 128 F. Supp. 2d 232, 236 (E.D. Pa. 2000); United States v. Sanders, No. Crim. A. 97-591, 1998 WL 67547, at *4 (E.D. Pa. Feb. 18, 1998) (the defendant's attempt to flee on foot after failing to stop his vehicle supported conclusion that police officers had probable cause to suspect an offense was committed).

made an improper left-hand turn and continued driving up the street until pulling into a parking lot and fleeing. Serody's conduct, including his traffic violations and his hurried abandonment of the vehicle, gave Defendants probable cause to believe that Serody was attempting to elude Hamill, and that a criminal offense was being committed.[18] Accordingly, since Serody's subsequent arrest and prosecution did not violate Pennsylvania law or the Fourth Amendment, Plaintiffs cannot establish the existence of all elements essential to their claims of malicious prosecution and summary judgment is proper on these claims.[19]

**B. Qualified Immunity**

Existence of probable cause to arrest Serody for fleeing or attempting to elude a police officer also supports a finding that Defendants are entitled to qualified immunity on Serody's malicious prosecution claims against them pursuant to 42 U.S.C. § 1983. Even where probable cause is lacking, a government official performing discretionary functions has qualified immunity from liability under § 1983 insofar as his conduct "does not violate clearly established, statutory or constitutional rights of which a reasonable person would have known."[20] "The right the official is

[18] See Commonwealth v. Scattone, 672 A.2d 345, 539 (Pa. Super. 1996) (upholding conviction of the defendant for fleeing or attempting to elude police officer where the defendant's conduct was consistent with a "willful" failure to bring vehicle to a stop and eluding police, in light of totality of circumstances).

[19] Upon review of the evidence in the record, the Court concludes that Defendants did not have probable cause to arrest Serody for any offenses other than fleeing or attempting to elude a police officer, and for several summary traffic violations. Nonetheless, as long as they had probable cause to arrest Serody for at least one of the offenses charged, the arrest was justified, and Serody's malicious prosecution claims cannot survive summary judgment. Given this analysis, it is unnecessary to address Defendants' claims that probable cause existed to arrest Serody for violation of 75 Pa. C.S. § 3731 (which prohibits driving while under the influence of a controlled substance) because a subsequent test confirmed the presence of marijuana in Serody's system. The Court notes Defendants' failure to argue that Serody exhibited any signs of being under the influence of a controlled substance at the time of his arrest (or prior to it). Accordingly, it is not clear how a subsequent urine test could provide grounds for probable cause for arrest for violation of 75 Pa. C.S. § 3731.

[20] Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

alleged to have violated must have been 'clearly established' in a particularized sense. The contours of the right must be sufficiently clear thata reasonable official would understand that what he is doing violates that right."[21] Defendants are entitled to qualified immunity unless "there are cases that would make it *apparent* to a reasonable officer in [his or her] position that probable cause was lacking."[22] Plaintiffs do not point to any such cases. On the contrary, as discussed above, Defendants had probable cause to arrest Serody for violating Section 3733(a) and other traffic violations. Therefore, Defendants are entitled to qualified immunity on Serody's malicious prosecution claims brought under § 1983, and summary judgment on those claims is proper.

For all of the aforementioned reasons, the Court dismisses Plaintiffs' malicious prosecution claims in Counts I-IV of the Complaint with prejudice.

An appropriate Order follows.

---

[21] Kaltenbach, 204 F.3d at 436 (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

[22] Id. at 437.

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

| | | |
|---|---|---|
| **RYAN K. SERODY and ANNE SERODY,** | : | |
| **Plaintiffs** | : | **CIVIL ACTION** |
| | : | **NO. 04-2197** |
| **v.** | : | |
| | : | |
| **JOHN HAMILL et al.,** | : | |
| **Defendants** | : | |

**O R D E R**

**AND NOW**, this 30th day of June, 2005, upon consideration of Defendants' Motion for Summary Judgment [Doc. ##11-12], Plaintiffs' Response in Opposition thereto [Doc. ##13-14], and the record, it is hereby **ORDERED** that Defendants' Motion is **GRANTED**. It is specifically **ORDERED** as follows:

1. Plaintiffs' malicious prosecution claims are **DISMISSED WITH PREJUDICE** (¶¶ 73(b), 75(b), 77(c), 79(b) of Counts I-IV of the Complaint);

2. Plaintiffs' claims against Ridley Township are **DISMISSED WITH PREJUDICE** (Count VI in its entirety and Count VII of the Complaint insofar as it refers to Ridley Township).

It is so **ORDERED**.

**BY THE COURT:**

/s/ Cynthia M. Rufe

**CYNTHIA M. RUFE, J.**