

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

SHANIQUA SUBER : CIVIL ACTION  
 :  
 v. :  
 :  
 JOSEPH PETERSON, et al. : NO. 04-1896

MEMORANDUM AND ORDER

McLaughlin, J.

August 4, 2005

This case involves the arrest of Shaniqua Suber by Officers Joseph Peterson and Angelo Troilo on November 22, 2003, at the Family Dollar Store located in Norristown, Pennsylvania. Ms. Suber seeks to recover damages for injuries allegedly sustained when Officers Peterson and Troili used physical force against her to effectuate the arrest. The plaintiff brings claims against the defendant officers under 42 U.S.C. § 1983 for excessive use of force, as well as state law claims for assault and battery.<sup>1</sup> The plaintiff brings a claim against the Borough of Norristown based on a theory of respondeat superior liability. The defendants move for summary judgment on all counts, as well as the plaintiff's claim for punitive damages.

The Court will grant summary judgment as to all claims against Officer Troili and the Borough of Norristown. In all other respects, the motion is denied.

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<sup>1</sup> The plaintiff has voluntarily withdrawn claims against the defendant officers for negligence and failure to render medical assistance.

I. Background

A. Undisputed Facts

On the morning of November 22, 2003, Shaniqua Suber went to the Family Dollar Store in Norristown, Pennsylvania to purchase some items and return other items. (Suber Depo. at 29.) Ms. Suber previously worked at the Family Dollar Store for a period of two months until she was suspended for suspicion of theft on November 1, 2003. (Suber Depo. at 24-28.) Ms. Suber was approximately twelve weeks pregnant on November 22, 2003. (Suber Depo. at 159.)

When Ms. Suber approached the cash register, the store manager, John Hanson, told her to leave the store. (Suber Depo. at 35.) Ms. Suber did not immediately leave the store, and Mr. Hanson called the police. (Suber Depo. at 35-38.) Ms. Suber left the store and went to her car to get a cigarette and drop off her packages. (Suber Depo. at 41-45.) Ms. Suber waited on the walkway in front of the store for the police to arrive. (Suber Depo. at 41-45.) Within a few moments, Officer Joseph Peterson of the Norristown Police Department arrived at the Family Dollar Store and went inside to speak to Mr. Hanson. (Suber Depo. at 51; Peterson Depo. at 49.)

After speaking to Mr. Hanson, Officer Peterson went back outside and asked Ms. Suber for her identification. (Suber Depo. at 54; Peterson Depo. at 64-65.) Some time shortly after

arriving at the Family Dollar Store, Officer Peterson received information from the police dispatch that there was an outstanding warrant for Ms. Suber's arrest. (Suber Depo. at 52; Peterson Depo. at 49-53, 65.)

Officer Peterson told Ms. Suber that there was a warrant and that she was under arrest. (Suber Depo. at 55; Peterson Depo. at 65.) Ms. Suber asked Officer Peterson what the warrant was for, and he responded that he did not know. (Suber Depo. at 55.) Ms. Suber told Officer Peterson that it was a mistake and there was no warrant for her arrest. (Peterson Depo. at 78-81.) As to what happened next, the following facts are in dispute.

B. Plaintiff's Version of the Incident

According to Ms. Suber's deposition testimony, Officer Peterson grabbed her arm and pushed the front of her body against the wall of the Family Dollar Store. (Suber Depo. at 56-61.) Ms. Suber told Officer Peterson that she was pregnant, and he responded by stating "that's what you all say." (Suber Depo. at 58-59.) Ms. Suber tried to turn around because she wanted to figure out what was happening, but Officer Peterson had her pressed against the wall so she could only turn her head. (Suber Depo. at 60.) Ms. Suber testified that although she did not put her hands behind her back and let Officer Peterson handcuff her,

she was not struggling. (Suber Depo. at 59-60.)

Ms. Suber testified that Officer Peterson kicked her feet out from under her and she fell to the ground on her stomach. (Suber Depo. at 68-69.) Ms. Suber felt herself begin to bleed vaginally almost immediately after she hit the ground. (Suber Depo. at 69-70.) Ms. Suber started screaming that she was pregnant and bleeding and that she needed to go to the hospital. (Suber Depo. at 69-70.) Ms. Suber could not say how long she was on the ground. (Suber Depo. at 70-71.) Ms. Suber could not remember when Officer Peterson got both handcuffs on her, but she thinks he put the handcuff on her left wrist while she was still pressed against the wall of the Family Dollar Store. (Suber Depo. at 65-71.)

Ms. Suber noticed that Officer Angelo Troili had arrived after she was on the ground. (Suber Depo. at 72, 107.) Ms. Suber asked Officer Troili to help her. (Suber Depo. at 107-08.) Officers Peterson and Troili lifted Ms. Suber off the ground by grabbing her under each arm. (Suber Depo. at 72.) The officers helped Ms. Suber get into the police vehicle. (Suber Depo. at 71-76.) Ms. Suber continued yelling at the officers that she was pregnant and bleeding and needed to go to the hospital. (Suber Depo. at 77.) Ms. Suber testified that the entire incident between the time Officer Peterson asked for her identification until the time that Officers Peterson and Troili

helped her into the police vehicle lasted only a few minutes.  
(Suber Depo. at 80.)

C. Defendants' Version of the Incident

Officer Peterson's deposition testimony conflicts with Ms. Suber's version of the incident. Officer Peterson testified that after he told Ms. Suber that she was under arrest, Ms. Suber began to walk backwards away from him. Officer Peterson reached out and grabbed Ms. Suber's wrists with his hands. (Peterson Depo. at 97-100.) Ms. Suber tried to pull away from Officer Peterson, and at one point, she was able to pull one of her wrists free from Officer Peterson's grasp. (Peterson Depo. at 102-10.) Ms. Suber was flailing her arms and Officer Peterson thought she was trying to hit him. (Peterson Depo. at 110-12.) Ms. Suber lifted her leg and attempted to kick Officer Peterson. (Peterson Depo. at 113.) Officer Peterson said to Ms. Suber "don't do this" and he told her that they would get it straightened out at the police station. (Peterson Depo. at 112-13.) At some point during the struggle Ms. Suber started screaming that she was pregnant and bleeding. (Peterson Depo. at 116.)

Officer Peterson pushed Ms. Suber's left shoulder against the wall and placed one handcuff on her left wrist. (Peterson Depo. at 117-18, 148.) Ms. Suber moved back off the

wall and started struggling with Officer Peterson again.

(Peterson Depo. at 150.) Officer Troili arrived and helped Officer Peterson place the handcuff on Ms. Suber's right wrist.

(Peterson Depo. at 150.) Officer Peterson testified that Ms. Suber was never on the ground during the incident. (Peterson Depo. at 128.)

## II. Analysis

### A. Legal Standard for Summary Judgment

A motion for summary judgment will be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). In evaluating the evidence, the Court must view the facts and all inferences to be drawn from the facts in the light most favorable to the non-moving party. Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 637 (3d Cir. 1993).

The defendants make much of the fact that there is no evidence in the record to corroborate Ms. Suber's version of the incident. This is not a proper inquiry for the Court at the summary judgment stage. Ms. Suber's deposition testimony is

sufficient to create a genuine issue of material fact, and the Court must view the facts in a light most favorable to Ms. Suber as the non-moving party. At this stage of the proceedings, it is not for the Court to weigh the facts or accept one party's version of the facts over another. Rather, the Court must decide whether, accepting Ms. Suber's description of the incident as true, the defendants are entitled to judgment as a matter of law.

B. Excessive Use of Force

The defendants argue that they are entitled to qualified immunity on the plaintiff's excessive force claim because Officer Peterson's actions were reasonable under the circumstances and Officer Troili was not present during the events giving rise to the claim.

The Court must follow two steps in determining whether an officer is entitled to qualified immunity in an excessive force case. First, the Court must determine whether the defendant's actions, viewed in the light most favorable to the plaintiff, violated a constitutional right. If the plaintiff's allegations show that there was a constitutional violation, the Court must then determine "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier v. Katz, 533 U.S. 194, 200-07 (2001); see also Curley v. Klem, 298 F.3d 271, 277 (3d Cir. 2002).

Claims involving allegations that law enforcement officers used excessive force in the course of an arrest are analyzed under the Fourth Amendment's reasonableness standard. Graham v. Connor, 490 U.S. 386, 395 (1989). In considering whether a seizure was reasonable, the Court must judge from the "perspective of a reasonable officer on the scene," rather than with the perfect vision of hindsight. Id. at 396.

The reasonableness inquiry is an objective one - the question is whether an officer's actions were objectively reasonable in light of the facts and circumstances confronting the officer, without regard to the officer's intent or motivation. Id. at 397. The determination is based on the totality of the circumstances, including: (1) whether the suspect posed an immediate threat to the safety of the officer or others; (2) whether the suspect was actively resisting arrest; and (3) the severity of the crime at issue. Id. at 396.

In support of their argument that Officer Peterson acted reasonably under the circumstances, the defendants contend that Officer Peterson was attempting to restrain Ms. Suber who was violently acting out and that Officer Peterson only used enough force to gain control and place Ms. Suber in handcuffs. In making this argument, however, the defendants rely on their own version of the events and do not argue that they are entitled to summary judgment under the plaintiff's version of events.

Ms. Suber testified at her deposition that she was not struggling or resisting arrest and that Officer Peterson kicked her feet out from under her after she told him that she was pregnant. The defendants do not argue that this conduct, if true, would be reasonable under the circumstances. The facts here, viewed in a light most favorable to the plaintiff, are sufficient to support the claim that Officer Peterson's actions constituted an unreasonable use of force in violation of the plaintiff's Fourth Amendment rights.

With respect to the plaintiff's claim against Officer Troili, the defendants are correct in stating that there is no evidence from which a reasonable factfinder could find that Officer Troili was present during the events giving rise to this claim. Ms. Suber testified that she did not see Officer Troili until after she was on the ground. Ms. Suber said that Officer Troili helped her off the ground and helped her get into the police vehicle.

Although Officer Peterson's testimony is inconsistent with Ms. Suber's because he contends that Ms. Suber was never on the ground, Officer Peterson testified that Officer Troili arrived after Ms. Suber moved away from the wall. The Court notes that neither party presented Officer Troili's deposition testimony. Under either party's version of the events, then, there is no evidence to support the plaintiff's claim that

Officer Troili witnessed Officer Peterson either push Ms. Suber against the wall or kick her feet out from under her. The Court will grant the motion for summary judgment as to Officer Troili.

With respect to the second qualified immunity inquiry, the Court must ask whether the violation of the constitutional right was clearly established, or in other words, whether a reasonable officer would have known that his conduct was in violation of the Fourth Amendment in the situation he confronted. Saucier, 533 U.S. at 201-02. The focus of this inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on police conduct. Id. at 205.

The factual disputes must be resolved by a jury before the Court can determine whether it would have been clear to a reasonable officer that Officer Peterson's conduct was unlawful. See Curley, 298 F.3d at 278. The Court cannot find that Officer Peterson can prevail at this stage while there are unresolved disputes of fact relevant to the immunity analysis.

### C. State Law Assault and Battery Claim

The defendants argue that they are entitled to summary judgment on the plaintiff's state law assault and battery claim because the defendant officers were acting reasonably in effectuating the arrest. Under Pennsylvania law, "[a]ssault is an intentional attempt by force to do an injury to the person of

another, and battery is committed whenever the violence menaced in an assault is actually done." Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994) (citations omitted). In a case alleging assault and battery by a police officer, the Pennsylvania Supreme Court has stated that "[i]n making a lawful arrest, a police officer may use such force as is necessary under the circumstances to effectuate the arrest. The reasonableness of the force used in making the arrest determines whether the police officer's conduct constitutes an assault and battery." Id.

The defendants' argument with respect to the reasonableness of Officer Peterson's actions fails for the same reasons as does the argument with respect to the excessive force claim. There are disputes related to issues of material fact which must be resolved by a jury. The Court will grant summary judgment as to Officer Troili on the plaintiff's assault and battery claim because, as previously stated, there is no evidence to support the plaintiff's claim that Officer Troili either engaged in unreasonable behavior or that he was present or witnessed any unreasonable behavior by Officer Peterson.

#### D. Municipal Liability

The plaintiff clarified that she is not bringing a Monell claim against the Borough of Norristown based on the § 1983 claim; rather, she is alleging that the Borough is liable

for the alleged assault and battery by Officers Peterson and Troili under a theory of respondeat superior liability. The defendants argue that the plaintiff is precluded by the Pennsylvania Political Subdivision Tort Claims Act ("Tort Claims Act"), 42 Pa.C.S.A. § 8541 et seq., from bringing a claim against the Borough of Norristown for assault and battery.

The Tort Claims Act grants the Borough immunity from liability for damages resulting from an injury to a person or property caused by any act of the Borough, its employees, or any other person, except as specifically provided. See 42 Pa.C.S.A. § 8541. The Tort Claims Act provides exceptions to this immunity for certain negligent acts, including acts that involve the operation of a motor vehicle; the care, custody, or control of personal or real property; dangerous conditions created by trees, traffic controls, street lighting, utility service facilities, streets, and sidewalks; and the care, custody, or control of animals. 42 Pa.C.S.A. § 8542(b)(1)-(8).

Here, the plaintiff attempts to bring a claim against the Borough of Norristown under a theory of respondeat superior liability for the alleged assault and battery committed by Officers Peterson and Troili. Assault and battery is an intentional tort and does not fall within the specific exceptions from immunity. Thus, the Court will grant the defendants' motion for summary judgment as to the plaintiff's claim against the

Borough of Norristown.

E. Punitive Damages Claim

The defendants seek summary judgment on the plaintiff's claim for punitive damages. The plaintiff concedes that punitive damages are not available against the Borough of Norristown or the defendant officers in their official capacity; however, the plaintiff contends that she is entitled to punitive damages against the officers in their individual capacities.

To recover punitive damages against a defendant in his individual capacity under § 1983, the defendant's behavior must be "shown to be motivated by evil motive or intent" or it must involve "reckless or callous indifference to the federally protected rights of others." See Brennan v. Norton, 350 F.3d 399, 428 (3d Cir. 2003) (internal quotations and citations omitted).

At this stage of the proceedings, the Court cannot say that Ms. Suber is not entitled to recover punitive damages against Officer Peterson as a matter of law. The Court will review this question after the jury resolves the factual dispute as to the relevant facts.

An appropriate Order follows.

