

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

BRYANT K. JOHNSON : CIVIL ACTION  
: :  
v. : :  
: :  
MONTGOMERY COUNTY PRISON : :  
WARDEN LAWRENCE V. ROTH, JR., : :  
et al. : NO. 04-01760-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 1, 2005

Plaintiff, acting *pro se*, filed this lawsuit on April 23, 2004. It was not until September 6, 2005 that plaintiff saw fit to seek a jury trial (the case had already been scheduled for non-jury trial in November). Plaintiff's request for a jury trial was denied as untimely. Plaintiff has now filed a "Motion to Stay for Interlocutory Appeal from Being Denied Trial by Jury." That motion, too, must be denied. Denial of plaintiff's request for a jury trial is not an appealable order at this juncture. If plaintiff is dissatisfied with the outcome of the trial, he may appeal, and one of the issues he would be entitled to raise at that point would be whether the jury trial request should have been granted. The order is purely interlocutory, and cannot be appealed at this time. The motion for stay will therefore be denied.

The only remaining defendants in this case are Philip Owen and Charles Crawford. Both men have filed motions for partial summary judgment.

Plaintiff asserts that, at the time of his arrest, the defendant Owen assaulted him by pushing his head into the window of the automobile he was riding in. Although Owen denies that excessive force was used, there is plainly a factual issue to be resolved at trial, as to the defendant Owen. As to the defendant Crawford, on the other hand, it is clear that he was merely driving the car at the time of the alleged assault, and the assault occurred in the backseat. Crawford had no involvement whatever, and was not in a position to have prevented whatever occurred. He is entitled to summary judgment.

Plaintiff also alleges, as to the defendant Owen, that a further assault occurred on a later occasion, when Owen was attempting to take plaintiff's picture in a photo lineup. Here again, there is a factual dispute, and summary judgment would be inappropriate. The defendants contend that whatever Owen did on that occasion was entirely justified, and too trivial to constitute actionable conduct, but plaintiff is entitled to submit the case to a factfinder.

An Order follows.

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ORDER

AND NOW, this 1st day of November 2005, IT IS ORDERED:

1. Summary judgment is GRANTED in favor of the defendant Charles Crawford, and against plaintiff Bryant K. Johnson. All claims against the defendant Crawford are DISMISSED with prejudice.

2. The motion for summary judgment filed on behalf of the defendant Philip Owen is DENIED.

3. Plaintiff's motion for a stay of proceedings for the purpose of permitting an interlocutory appeal from the order denying plaintiff's request for jury trial is DENIED.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.