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

JULIAN HAYES,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 04-554
	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA,	:	
PHILADELPHIA POLICE DEPARTMENT	:	
and DETECTIVE WILLIAM VARENAS,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S.J. November 14, 2005

Presently before the Court are Defendants' Motion for Summary Judgment (Docket No. 17) and Plaintiff's opposition thereto (Docket No. 20). For the reasons stated below, Defendants' Motion for Summary Judgment is granted in part and denied in part.

I. BACKGROUND

Before discussing the facts, the Court will recite the relevant procedural history of the instant matter. In this Court's Order of August 19, 2004 (Docket No. 8), the Court granted Defendants' Motion for Judgment on the Pleadings, except as to Plaintiff's claims of malicious prosecution under the Fourth and Fourteenth Amendments and Pennsylvania law. Plaintiff conceded that his false arrest, false imprisonment and intentional infliction of emotional distress claims were barred by the applicable statutes of limitations.

Currently before the Court is Defendants' Motion for Summary Judgment. In their motion, Defendants ask the Court to grant summary judgment on the remaining malicious

prosecution claims. In his response to Defendants' Motion for Summary Judgment, Plaintiff not only concedes to the dismissal of his claims against Defendant Philadelphia Police Department, but he also agrees to the dismissal of his Monell claim and state law claim against Defendant City of Philadelphia. (Pl.'s Br. 13.) Therefore, this Memorandum only addresses Plaintiff's claims of malicious prosecution under the Fourth and Fourteenth Amendments and Pennsylvania law against Defendant Detective William Varenas ("Defendant Varenas").

The following facts are gleaned from the deposition of Defendant Varenas,[1] deposition of Plaintiff,[2] Affidavit of Probable Cause for Arrest Warrant ("Affidavit of Probable Cause")[3] and the 75-48 Philadelphia Police Department Complaint or Incident Report ("Incident Report").[4]

On May 22, 2000, Plaintiff went to a bar to meet a friend. (Defs.' Br. Ex. H at 8-9.) When he arrived at the bar, Ms. Valynn Ruff asked Plaintiff to buy her a beer. Id. Ms. Ruff told Plaintiff that her name was Gina. Id. Plaintiff bought "Gina" a drink, gave her his phone number and then left the bar because his friend never arrived.[5] Id.

Later that night, Ms. Ruff was assaulted. Officer Erwin interviewed Ms. Ruff and filed the Incident Report concerning Ms. Ruff's assault. In the "Description of Incident" section of the Incident Report, Officer Erwin wrote the following:

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1. This document is Exhibit E of Defendants' Motion for Summary Judgment.

2. This document is Exhibit H of Defendants' Motion for Summary Judgment.

3. This document is Exhibit D of Defendants' Motion for Summary Judgment.

4. This document is Exhibit F of Defendants' Motion for Summary Judgment.

5. In his deposition, Plaintiff specifically denied going to Ms. Ruff's house, and further, he denied assaulting Ms. Ruff. (Defs.' Br. Ex. H at 29, 39.) According to Plaintiff, after leaving the bar, the next time he saw Ms. Ruff was at his trial. Id. at 8-9.

> [Assault] . . . [Complainant] stated below male did beat her about the face and head with a hand gun while riding in his car because she refused to have sex with him. Male goes by the name of Quincy B/M approx 40 yrs 5'6" to 5'8" med complex drives a green Honda w/ maroon front end, works at Cotters Unlimited Barber Shop 6301 Saybrook. [Complainant] was transported to HP by Medic #19 where she is admitted and being treated by Dr. Gracias for a fracture skull[.]

(Defs.' Br. Ex. F at 1.)

Defendant Varenas, a detective of the Philadelphia Police Department, was assigned to the case shortly after the assault on Ms. Ruff. On June 17, 2000, Defendant Varenas interviewed Ms. Ruff at the South West Detective Division. (Defs.' Br. Ex. E at 31.) On June 30, 2000, Detective Varenas filed the Affidavit of Probable Cause. (Defs.' Br. Ex. D at 1-3.) In the Affidavit of Probable Cause, Defendant Varenas wrote the following information:

> On 6-17-00, at 12:28 AM the compl. Valynn Ruff . . . was interviewed by Det. Varenas #786 inside SWDD and stated the following in summary:
> On 5-22-00 at approx: 11:00 PM Valynn met a B/M at a bar on 61st and Kingsessen Ave., Lanaes Lounge, where she gave the male her address and phone number. At approx: 12:40 AM on 5-23-00 Valynn states the B/M knocked on her front door and took her for a ride to a family member's house. Valynn states the male gave her the name of Quincy and took her to an unk B/F's house where he offered to take Valynn inside the house. Valynn told the male no and waited for him to pick up something. At approx. 2 to 3 minutes the male came back into his vehicle and drove Valynn to 49th and Grays Ave. where he parked his vehicle. The male then got out of his vehicle, reached behind the driver's seat where he grabbed something and came around to Valynn's side of the vehicle. The male opened Valynn's door and stated "let me talk to you". Valynn states the male stated this several times and Valynn told the male "no thank you, we can talk at my house". At this time the male grabbed Valynn by the back of her jacket, threw her on the ground and screamed "bitch!" Valynn began to scream and the male said "shut the hell up, shut the fuck up!" The male proceeded to strike Valynn on the right side of her face and mouth multiple times with a black object she believed to be a gun. Valynn states the male kicked her and punched her about the

mid to upper body as she got up and pleaded with him asking "why are you doing this to me?" The male stated "I should kill you!" Valynn continued to plead for help and for him to stop. The male then jumped into his vehicle and drove off. Valynn managed to get up off the ground and walked towards Baltimore Ave. where Valynn approached an unk B/F and told her that she was assaulted. The B/F then brought Valynn to Valynn's home. Valynn's sister, Jennifer, and Jennifer's friend, Tennille, brought Valynn to HUP. Between 5-23-00 and 5-24-00 while inside HUP, Valynn's sister and Tenniville told Valynn that the male who assaulted her was Julian. Valynn states that Jennifer asked around the neighborhood of who "Quincy" was, describing him to neighbors and also described "Quincy's vehicle. A neighbor known as Shannon told Jennifer that her boyfriend, Julian, fits the description of "Quincy". Shannon then told Jennifer to come over her house and look at a picture of Julian. Once Jennifer looked at the picture, Jennifer acknowledged it was "Quincy". Valynn states that Shannon gave a negative picture of Julian. Valynn also states Jennifer seen "Quincy" when he came to Valynn's house to pick her up. Valynn states she was told by another neighbor that Julian's last name was Hayes and that he was her uncle's nephew. On 6-17-00 at 12:25 AM Det. Varenas #786 showed Valynn a picture of a Julian Hayes from the computer imager inside SWDD and Valynn positively identified him as the male who assaulted her on 5-23-00 at approx: 1:00 AM.

Q: Valynn, what were your injuries?

A: The floor of my right eye-bone was broken, my two top front teeth was broken, two bottom teeth was chipped and a gash over my right eyebrow.

Q: Can you describe "Quincy"?

A: Yes, a B/M: dark compl, 5'7' to 5'8'', 160 to 165, short dread-locks, slight mustache, big nose, 28 to 29 years, wearing a blue jersey and black jeans.

Q: Do you know "Quincy's last name?

A: No, the male only gave the name of Quincy, he did not give me his last name or address. The male told me he was in the Navy.

Q: Did you see what the male struck you with?

A: I just seen that it was a black object, but I think it was a gun.

Q: Have you seen this black male before?

A: Never.

Q: Can you describe 'Quincy's" vehicle?

A: Yes, white and brown tow-tone possibly a '88 or '89 Regal.

Q: Is there anything else you would like to say?

A: Yes, I had surgery on the floor bone of my right eye and I had my front tooth capped.

Id. at 2-3.

On or about June 30, 2000, Defendant Varenas submitted the Affidavit of Probable Cause to the Honorable Felice Stack, a Philadelphia Municipal Court judge. (Defs.' Br. Ex. D at 1, 3; Defs.' Br. Ex. G at 1; Pl.'s Compl. ¶ 12.) The Warrant of Arrest signed by Judge Stack was based on the Affidavit of Probable Cause. (Defs.' Br. Ex. G at 1.) On February 22, 2001, Plaintiff was arrested and charged with attempted murder, aggravated assault, simple assault, kidnapping, possession of an instrument of crime, carrying a firearm without a license, terroristic threats and reckless endangerment of a person. (Defs.' Br. Ex. D at 1; Defs.' Br. Ex. G at 1; Defs.' Br. Ex. H at 6; Pl.'s Compl. ¶ 16.) Detective McGarrey arrested Plaintiff.[6] (Defs.' Br. Ex. E at 10.) After his arrest and while awaiting trial, Plaintiff spent approximately twelve months in prison because he could not make bail. (Defs.' Br. Ex. H at 41.) Plaintiff was acquitted of the charges against him on February 7, 2002. Id. at 17-18. According to Plaintiff, in November 2003, over a year after his acquittal, he encountered Ms. Ruff on a trolley, and they discussed the criminal case. Id. at 12-14. Plaintiff alleges that Ms. Ruff stated that she had accused Plaintiff of the crime and testified Plaintiff committed the crime, even though she knew that Plaintiff was innocent, because Defendant Varenas coerced her to do so.[7] Id. at 12-14, 44.

6. Other than carrying out the arrest warrant, Detective McGarrey had no involvement in this case. (Defs.' Br. Exhibit E at 10.) Defendant Varenas was the only detective assigned to the case. Id.

7. Plaintiff's statement is arguably admissible under Rule 804(b)(3) of the Federal Rules of Evidence. The parties did not discuss this issue in their briefs. Therefore, other than identifying the relevant evidence rule, the Court will not discuss this issue in this Memorandum.

II. STANDARD

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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Because a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

III. DISCUSSION

As discussed above, this Memorandum only addresses Plaintiff's malicious prosecution claims against Defendant Varenas remain. First, the Court will address Plaintiff's 42 U.S.C. § 1983 malicious prosecution claim based on the Fourth Amendment.[8] Second, the Court will discuss Defendant Varenas' qualified immunity defense. Third, the Court will analyze Plaintiff's state law claim of malicious prosecution and Defendant Varenas' immunity defense.

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8. In addition to his 42 U.S.C. § 1983 claim based on the Fourth Amendment, Plaintiff also attempts to state a § 1983 claim based on the Fourteenth Amendment. Despite Plaintiff's attempt, the Court finds no reason to apply a Fourteenth Amendment procedural due process analysis. Plaintiff has failed to articulate what constitutes his § 1983 claim based on the Fourteenth Amendment. Further, Plaintiff has failed to point to evidence supporting his § 1983 claim based on the Fourteenth Amendment. Therefore, the Court grants summary judgment in favor of Defendant Varenas on his claim.

The Court must note that with respect to applying a Fourteenth Amendment substantive due process analysis, the Supreme Court has "held that a claim of malicious prosecution under [§] 1983 cannot be based on substantive due process considerations, but instead must be based on a provision of the Bill of Rights providing 'an explicit textual source of constitutional protection.'" Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 792 (3d. Cir. 2000) (quoting Albright v. Oliver, 510 U.S. 266, 273 (1994)).

A. Section 1983

To recover under § 1983, Plaintiff must establish that Defendant Varenas "engaged in conduct that deprived him of right, privileges, or immunities secured by the constitution or laws of the United States." Wilson v. Russo, 212 F.3d 781, 786 (3d Cir. 2000) (internal quotations omitted) (citation omitted). With respect to Plaintiff's federal malicious prosecution claim, prosecution without probable cause alone is not a constitutional tort in and of itself, but it can be a constitutional tort if a plaintiff can demonstrate a "deprivation of liberty consistent with the concept of seizure." Brockington v. City of Philadelphia, 354 F.Supp.2d 563, 568-69 (E.D. Pa. 2005) (internal quotations omitted) (citing Gallo v. Philadelphia, 161 F.3d 217, 222 (3d Cir.1998)). To prevail on his § 1983 malicious prosecution claim, Plaintiff must show:

> (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding.

DiBella v. Borough of Beachwood, 407 F.3d 599, 601 (3d Cir. 2005) (citing Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir. 2003)). A police officer may be considered to have initiated a criminal proceeding if he or she provided false information which was used to initiate the criminal proceeding. See Brockington, 354 F.Supp.2d 563, 569 (E.D. Pa. 2005) (noting that while prosecutors are "generally responsible for initiating criminal proceedings, an officer may . . . be considered to have initiated a criminal proceeding if he or she 'knowingly provided false information to the prosecutor or otherwise interfered with the prosecutor's informed discretion.'" (quoting Gatter v. Zappile, 67 F.Supp.2d 515, 521 (E.D. Pa. 1999))).

1. The First, Second and Fifth Elements of Plaintiff's § 1983 Malicious Prosecution Claim

In analyzing Plaintiff's federal malicious prosecution claim, three of the five elements are clearly present. Concerning the first element of the claim, Defendant Varenas submitted the Affidavit of Probable Cause, and when all reasonable inferences are drawn in favor of Plaintiff, one can infer that he initiated the proceeding. Concerning the second element, Plaintiff's trial ended in his favor. With respect to the fifth element, Plaintiff suffered a deprivation of liberty as he was in jail for a year after his arrest while awaiting his trial. Pre-trial imprisonment is considered a seizure protected by the Fourth Amendment. Brockington, 354 F.Supp.2d at 570. More difficult are the analyses of the two remaining elements: the third element, whether the proceeding was initiated without probable cause; and the fourth element, whether Defendant Varenas acted maliciously or for a purpose other than bringing the plaintiff to justice.

2. The Third Element of Plaintiff's § 1983 Malicious Prosecution Claim

Regarding the third element, in attempting to show that the proceeding was initiated without probable cause, Plaintiff challenges the validity of the Affidavit of Probable Cause submitted by Defendant Varenas. "[S]ection 1983 plaintiff[s] who [challenge] the validity of a . . . warrant by asserting that law enforcement agents submitted . . . false affidavit[s] to the issuing judicial officer must satisfy the two-part test developed by the Supreme Court in Franks v. Delaware, 438 U.S. 154, 155-56 (1978) . . . ." Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997) (citation omitted). Under Franks, Plaintiff must prove, by a preponderance of the evidence: "(1) that the affiant knowingly and deliberately, or with a reckless disregard for the

truth, made false statements or omissions that create a falsehood in applying for a warrant; and (2) that such statements or omissions are material, or necessary, to the finding of probable cause." Id. (citations omitted). The alleged falsehood may consist of an affirmative misrepresentation or a material omission. Id. (citation omitted).

Applying the first part of the Franks test to the instant matter, the issue is whether Defendant Varenas acted with reckless disregard for the truth in omitting information in the Affidavit of Probable Cause or making false statements in the Affidavit of Probable Cause. The Court believes this first part of the Franks test is satisfied because Defendant Varenas failed to include information from the Incident Report in the Affidavit of Probable Cause and Defendant Varenas included the coerced statements of Ms. Ruff in the Affidavit of Probable Cause.

With respect to the omission, "[o]missions are made with reckless disregard if an officer withholds a fact in his ken 'that [a]ny reasonable person would have known that this was the kind of thing the judge would wish to know.'" Wilson, 212 F.3d at 787-788 (quoting United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir. 1993)). Certain information from the Incident Report, which Defendant Varenas did not include in the Affidavit of Probable Cause, contradicts facts contained in the Affidavit of Probable Cause. First, Ms. Ruff's description of the age of the assailant changed. The night of the assault, according to the notes of Officer Erwin, Ms. Ruff said that the assailant was approximately forty years old. When interviewed by Defendant Varenas, Ms. Ruff said her assailant's age was twenty-eight to twenty-nine years old.[9] Second, Ms. Ruff's description of her assailant's car changed. Ms. Ruff told Officer Erwin that the assailant drove a green Honda with a maroon front end. In her interview with Defendant

9. Plaintiff is twenty-four years old. (Def.'s Br. Ex. H at 31-32.)

Varenas, Ms. Ruff said that the assailant drove a white and brown two-tone 1988 or 1989 Regal. Third, according to the Incident Report, Ms. Ruff told Officer Erwin that her assailant worked at Cotters Unlimited Barber Shop. In her interview with Defendant Varenas, Ms. Ruff said that the assailant told her that he was in the Navy. The Court believes the contradiction in the age of the assailant, difference in the description of the car and inconsistency in Ms. Ruff's description of her assailant's employment are data that a judge determining probable cause would want to know. Based upon the above, there is evidence to support a finding of reckless disregard.

In addition to omitting the Incident Report information, there is evidence that Defendant included false statements in the Affidavit of Probable Cause. According to Plaintiff, Defendant Varenas coerced Ms. Ruff into accusing Plaintiff of the assault and testifying against Plaintiff.[10] Defendant Varenas included these allegedly coerced statements in the Affidavit of Probable Cause. This evidence would serve as an assertion made with reckless disregard for the truth. "An assertion is made with reckless disregard when 'viewing all the evidence, the affiant must have entertained serious doubts as to the truth of this statements or had obvious reasons to doubt the accuracy of the information he reported.'" Wilson, 212 F.3d at 788 (quoting United States v. Clapp, 46 F.3d 795, 801 n. 6 (8th Cir. 1995)). The Court believes that this evidence of coercion would establish that Defendant Varenas would have had reason to know that the information included in the Affidavit of Probable was false.

Because the first part of the Franks test is satisfied, the Court must analyze the second part of the Franks test, whether these omissions and false assertions were material.

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10. Plaintiff testified to Ms. Ruff's statement in his deposition. As the Court noted above, Plaintiff's statement is arguably admissible under Rule 804(b)(3) of the Federal Rules of Evidence.

Determining the materiality of omissions and false assertions requires the Court to excise the offending inaccuracies from the warrant affidavit and insert the facts omitted to determine if the corrected warrant affidavit would establish probable cause. Id. at 789. If the corrected affidavit does establish probable cause, the Court must grant summary judgment because the assertions and omissions are not material in that Plaintiff would have been arrested anyway. Id.

In the instant case, the Court finds that the coerced statements of Ms. Ruff included in the Affidavit of Probable Cause by Defendant Varenas are material. Because the entire Affidavit of Probable Cause was based on the statements of Ms. Ruff, excising her statements would leave no information in the corrected affidavit. It would be impossible for a judge to find probable cause. Clearly, the statements of Ms. Ruff are material, satisfying the second part of the Franks test. Therefore, viewing the facts in the light most favorable to Plaintiff, Plaintiff has satisfied the Franks test and established a genuine issue of material fact as to whether the proceeding was initiated with probable cause.[11]

3. The Fourth Element of Plaintiff's § 1983 Malicious Prosecution Claim

Finally, as to the fourth and remaining part of Plaintiff's malicious prosecution claim, the evidence of coercion presented by Plaintiff satisfies the remaining element because, viewing the facts in the light most favorable to Plaintiff, coercing false statements and submitting them to the judge determining probable cause is evidence of Defendant Varenas acting "maliciously or for a purpose other than bringing the plaintiff to justice."

11. Because the Court finds that Ms. Ruff's statements are material, it is not necessary for the Court to address the materiality of the omission of the Incident Report information.

4. Genuine Issues of Material Fact as to Plaintiff's § 1983 Malicious Prosecution Claim

Because genuine issues of fact exist as to the third and fourth elements of Plaintiff's § 1983 claim based on the Fourth Amendment, the Court must deny summary judgment on this claim as to Defendant Varenas.

B. Qualified Immunity

Defendant Varenas asserted a qualified immunity defense in response to Plaintiff's federal malicious prosecution claim. Under the doctrine of qualified immunity, "law enforcement officers acting within their professional capacity are immune from trial insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Wilson v. Russo, 212 F.3d at 786 (internal quotations omitted) (citations omitted). It is important to resolve qualified immunity issues at the earliest stages of litigation, but the resolution of these issues "'is in tension with the reality that factual disputes often need to be resolved before determining whether defendant's conduct violated a clearly established constitutional right.'" Brockington, 354 F.Supp.2d at 567 (quoting Curley v. Klem, 298 F.3d 271, 277-78 (3d Cir. 2002)). "A decision as to qualified immunity is 'premature when there are unresolved disputes of historical facts relevant to the immunity analysis.'" Id. at 567-68 (quoting Curley, 298 F. 3d at 278).

The assertion of the qualified immunity defense by Defendant Varenas requires the Court to engage in a two-step analysis. First, the Court will "determine whether . . . [P]laintiff . . . alleged the deprivation of an actual constitutional right at all." Wilson, 212 F.3d at 786 (internal quotation omitted) (citation omitted). Second, if Plaintiff adequately alleged a

deprivation, the Court then will "proceed to determine whether that right was clearly established at the time of the alleged violation." Id. (internal quotation omitted) (citation omitted). A constitutional right is established if it is evident that a reasonable official would understand that his actions violate that right. Brockington, 354 F.Supp.2d at 567 (citing Carswell v. Borough of Homestead, 381 F.3d 235, 242 (3d Cir. 2004)). "[I]f no reasonable juror could conclude that [Plaintiff's] clearly established rights were violated," then it is appropriate for the Court to grant summary judgment. Wilson, 212 F.3d at 786 (citation omitted).

Applying the two-part qualified immunity analysis, the Court believes material issues of fact exist which prevent the Court from granting summary judgment based upon the defense of qualified immunity. First, as discussed above, the Court finds that, viewing all inferences in favor of Plaintiff, he has established that he was seized without probable cause, which is a violation of the Fourth Amendment. Second, the Court believes that Plaintiff's Fourth Amendment right was clearly established and that a reasonable official would understand that submitting an affidavit of probable cause for arrest, which was based on coerced statements and later used to seize someone, would have violated that person's clearly established constitutional right. Therefore, because genuine issues of material fact exist, summary judgment cannot be granted in favor of Defendant Varenas based on his qualified immunity defense.

C. State law Malicious Prosecution Claim

Plaintiff also makes a claim for malicious prosecution under Pennsylvania law. Under Pennsylvania law, Plaintiff must prove the following elements to succeed in a malicious prosecution claim: (1) Defendant initiated a criminal proceeding; (2) without probable cause; (3) with malice; (4) which was subsequently terminated in Plaintiff's favor. Russoli v. Salisbury

Twp., 126 F.Supp.2d 821, 870 (E.D. Pa. 2000) (cited by Tyson v. Damore, No. 03-5297, 2004 WL 1837033, *16 (E.D. Pa. August 13, 2004)). "Usually, the existence of probable cause is a question of law for the court rather than a jury question, but may be submitted to the jury when facts material to the issue of probable cause are in controversy." Kelley v. Gen. Teamsters, 376 Pa. 517, 544 A.2d 940, 941 (1988).

Applying the four part Pennsylvania malicious prosecution test, which has elements similar to the federal malicious prosecution claim discussed above, there is sufficient evidence to create material issues of fact as to all four parts. With respect to Detective Varenas' assertion of official immunity under state law, the evidence of coercion creates a material issue of fact which prevents the Court from granting summary judgment based on the official immunity protections of 42 PA. C.S.A. § 8550. Therefore, summary judgment is denied on this claim.

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendants' Motion for Summary Judgment as to Plaintiff's § 1983 malicious prosecution claim based on the Fourteenth Amendment. With respect to Plaintiff's § 1983 malicious prosecution claim based on the Fourth Amendment and Plaintiff's state malicious prosecution claim, the Court denies Defendants' Motion as to Defendant Varenas. Plaintiff concedes to the dismissal of his claims against Defendant Philadelphia Police Department and his Monell claim and state law claim against Defendant City of Philadelphia. An appropriate order follows.

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

JULIAN HAYES,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 04-554
	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA,	:	
PHILADELPHIA POLICE DEPARTMENT	:	
and DETECTIVE WILLIAM VARENAS,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 14th day of November, 2005, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 17) and Plaintiff's opposition thereto (Docket No. 20), it is hereby **ORDERED** that Defendants' Motion is **GRANTED in part** and **DENIED in part**.

Plaintiff concedes to the dismissal of his claims against Defendant Philadelphia Police Department and his Monell claim and state law claim against Defendant City of Philadelphia. Therefore, the Court grants Defendants' Motion as to those claims.

With respect to Plaintiff's federal malicious prosecution claim based on the Fourth Amendment against Defendant Varenas and Plaintiff's state malicious prosecution claim against Defendant Varenas, the Court denies Defendants' Motion as issues of material fact remain.

As to Plaintiff's federal malicious prosecution claim based on the Fourteenth Amendment, the Court grants Defendants' Motion.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.