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

MICHAEL MALONEY	:	CIVIL ACTION
	:	
v.	:	NO. 04-5318
	:	
CITY OF READING, et al.	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **February 8, 2006**

Defendants**,** City of Reading, Brian Craze and Constables Dennis Mulligan and Hector Luis Carrillo, ask this court to grant summary judgment against Michael Maloney in his civil rights action brought after he was arrested for a housing code violation. I will grant the Defendants' Motions for Summary Judgment on immunity grounds and the absence of a sufficient factual basis for the civil rights and state law claims.

FACTS

On March 18, 2004, Maloney was arrested by Constables Mulligan and Carrillo for failing to secure a $30.00 housing permit in violation of Reading Code Ordinance, Chapter II, Section II-102(h). Maloney appeared before Magisterial District Judges Scott and/or Lachina [1] and bail was set at $6,433.75.[2] Maloney was taken to Berks County Prison until he posted bail the following day.

[1] It is unclear from Maloney's Complaint whether he appeared solely before Judge Scott or before both Judge Scott and Judge Lachina.

[2]Maloney alleges the $6,433.75 was imposed for bail but it may well represent something else (e.g., fines). Despite offering no evidence to support his description of the monetary amount, the Court must accept the assertion because the facts must be viewed in a light most favorable to the plaintiff.

On April 1, 2004, after a hearing, Judge Scott fined Maloney $355.55 for his failure to secure the housing permit. On August 10, 2004, Maloney appeared before Common Pleas Judge Forrest Schaeffer for a criminal proceeding on the matter. Judge Schaeffer dismissed all charges against Maloney and ordered the cash bail returned. Maloney claims $4,522.15 of his bail was never returned to him.

DISCUSSION

A motion for summary judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). This initially requires a court to determine whether the moving party has demonstrated there is no dispute concerning the factual resolution of an essential element of the cause of action. A district court must consider the evidence presented by the moving party and draw all reasonable inferences in favor of the non-moving party. *Med. Protective Co. v. Watkins*, 198 F.3d 100, 103 (3d Cir. 1999); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). If the moving party carries the initial burden of demonstrating there is no genuine issue of material fact, then the non-moving party, to withstand a motion for summary judgment, must "come forward with specific facts showing there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citing Fed. R. Civ. P. 56(e)).

Invoking 42 U.S.C. § 1983, Maloney asserts the Defendants infringed his Fourth, Sixth, and Fourteenth Amendment rights.[3] Maloney's Complaint also states six causes of action under state

[3]Maloney raises the First Amendment as a foundation for this Court's jurisdiction, Complaint ¶ 3, but does not reassert it as a basis for the § 1983 action. The only fact raised in the Complaint arguably relevant to the rights protected under this amendment is Maloney's allegedly being "lawfully and properly [at his residence] seeking to partake in a peaceful demonstration" prior to his arrest. Complaint ¶ 74. There simply is no evidence in the record to suggest

law: false arrest (Count I), assault and battery (Count II), negligence in hiring and retaining (Count III), negligence in training and supervising (Count IV), negligence in performance of duties (Count V), and malicious prosecution (Count VI). A fair reading of the Complaint reveals no delineation by Maloney as to which counts apply to each defendant. Therefore, in ruling on the defendants' motions this Court presumes each action applies to each defendant.

To prevail in a § 1983 action, a plaintiff must establish a deprivation of a constitutionally or federally secured right, and the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Hicks v. Feeney*, 770 F.2d 375, 377 (3d Cir. 1985). Section 1983 provides a remedy for the violation of a federal constitutional or statutory right. Maloney's Complaint alleges a wide rage of constitutional claims, but at oral argument on the defendants' motions he clarified the only constitutional violation he claims was "not to be falsely arrested." Oral Ar. Tr. 47. Specifically, Maloney contends the Constables violated his constitutional rights by arresting him without an arrest warrant or probable cause and not showing him a copy of the arrest warrant. He alleges Craze fabricated evidence he was the owner of property for which he was arrested. Maloney also extends liability to the City of Reading for failure to adequately hire, train, supervise, retain, or discipline the Constables.

The Constables contend they are entitled to qualified immunity from suit because they executed a valid warrant. Qualified immunity extends to a government official if his "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 427 U.S. 800, 818 (1982). It is a matter of law for the Court

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Maloney was engaged in a demonstration at the time of his arrest, and his own deposition testimony places him at "home asleep." Michael Maloney Dep. 96, Aug. 31, 2005.

to decide. *Id*.; *Sharrar v. Felsing*, 128 F.3d 810, 828 (3d Cir. 1997). The two-part query is whether the Constables' conduct violated a constitutional right, and if so, whether the right was clearly established. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). To determine whether a right was clearly established the question is whether the Constables reasonably believed their conduct was lawful in light of the information they possessed at the time. *Berg v. County of Allegheny*, 219 F.3d 261, 272 (3d Cir. 2000).

The Fourth Amendment prohibition against arrests without probable cause is the constitutional right at the heart of Maloney's § 1983 claim. Contrary to Maloney's contention of a warrantless arrest, the Constables executed Maloney's arrest pursuant to at least one warrant issued by a magistrate district judge. Aff. Hector Carrillo ¶ 3; Aff. Dennis Mulligan ¶ 3. A copy of that warrant was made a part of the summary judgment evidence.[4] Oral Ar. Ex. 1, Arrest Warrant. "Police officers acting pursuant to a facially valid warrant generally are deemed to have probable cause to arrest." *Garcia v. County of Bucks*, 155 F. Supp. 2d 259, 265 (E.D. Pa. 2001).

Maloney still contends, however, in his Complaint, and reiterated at oral argument, no probable cause exists because the arrests were for properties he had not owned for years and Judge Scott "went in to the computer and pulled up six different criminal matters, that had nothing to do with me." Oral Ar. 47. The Third Circuit has held a mistakenly issued or executed warrant cannot provide probable cause for an arrest. *Berg*, 219 F.3d at 269-71. Nevertheless, outside his bare allegations, Maloney cites to no record evidence to support his contention. While the Court must

[4]There is a discrepancy regarding the number of warrants issued. Although only one warrant was admitted into evidence, Constable Mulligan testified as many as thirteen warrants were issued for Maloney due to housing violations. Oral Ar. Tr. 10, 13. Nevertheless, this discrepancy is not material because it does not affect judgment in this case.

accept all facts in a light most favorable to the non-moving party, at the summary judgment stage Maloney "cannot simply reassert factually unsupported allegations contained in [his] pleadings." *Williams v. West Chester*, 891 F.2d 458, 460 (3d Cir. 1989). A party opposing a summary judgment motion must respond with affidavits or depositions setting forth "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). If, as Maloney claims, he did not own the properties in questions at the time the violations occurred, and the Defendants knew this, a genuine dispute as to a material fact – the validity of the warrant – would exist. Maloney was allowed discovery, yet, with the exception of his opposing brief, filed no evidence to support his contentions.[5] He does state in his opposing brief he procured certified copies of deeds for the properties in question to establish he did not own the properties. Pl.'s Br. 2. This Court, though, cannot simply take Maloney at his word that such documents exist. At the summary judgment stage, I can only consider submitted evidence.

Even if I were to accept Maloney's conclusory allegations and find the warrants were not validly issued and therefore no probable cause exists, the second part of the qualified immunity test remains. The clearly established query is whether a reasonable constable in Mulligan's and Carrillo's position could have concluded that there was probable cause to arrest Maloney based on the information they had at the time. The Third Circuit has extended qualified immunity to an officer who makes an arrest based on an objectively reasonable belief that there is a valid warrant. *Berg*, 219 F.3d at 272-73. An officer remains liable, however, "if his reliance on the warrant is unreasonable in light of the relevant circumstances," such as "other information that the officer

[5]The only documents attached to Maloney's response is the City of Reading and Craze's memorandum of law in support of the motion for summary judgment and affidavit of Constable Carrillo.

possesses or to which he has reasonable access." *Id.* at 273.

In this case, the circumstances known to Constables Mulligan and Carrillo reveal their reliance on the warrant was reasonable. The warrant named Michael Maloney and indicated his arrest was for failure to pay an administrative fee. When they executed the warrant, the officers informed Maloney "Wally said to come get you," Michael Maloney Dep. 66, Aug. 31, 2005, and Maloney understood this to mean Judge Scott, Maloney Dep. 67. He only told the Constables he did not have any matters pending before Judge Scott, but nonetheless stepped outside his home and proceeded to be placed under arrest. Maloney Dep. 66-67. He never disclosed to the Constables he did not own the properties for which the warrants were issued. Even if he had, it is well-settled that an officer making an arrest on the basis of a facially valid warrant is under no duty "'to investigate independently every claim of innocence, whether the claim is based on mistaken identity,' or otherwise."[6] *Kis v. County of Schuylkill*, 866 F. Supp. 1462, 1472 (E.D. Pa. 1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144-45 (1979)). Not only did the Constables have no reason to believe the warrant was not lawfully or validly issued, they also had no authority to disregard the arrest warrant. *See Duffy v. County of Bucks*, 7 F. Supp. 2d 569, 577 (E.D. Pa. 1998) (holding that law enforcement officers cannot disregard a bench warrant because only the judicial system can decide whether a person is guilty or not guilty).

Maloney also claims a Fourth Amendment violation occurred when the Constables failed to

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[6]Maloney also argues his housing code violations amount to summary offenses for which a fine, not imprisonment, is permitted, and the Constables violated state law by arresting him without allowing ten-days prior notice. These arguments, even if correct, would have no bearing on the facial validity of the warrant and liability of the Constables because "law enforcement officers have no duty to investigate the validity of the law underlying a facially valid arrest warrant, especially one that was issued sua sponte by a judge." *Kis*, 866 F. Supp. at 1471.

show him a copy of the arrest warrant. There is no evidence, however, Maloney ever asked to see a warrant or questioned whether a warrant existed. Maloney in fact testified he did not ask to be shown a warrant. Maloney Dep. 81. Even if the Constables never had the arrest warrant in hand, I find no constitutional violation. An arrest is not unlawful simply because the arresting officer executes the arrest without a copy of the warrant in his or her possession. *See United States v. Leftwich, 461* F.2d 586, 592 (3d Cir. 1972) (finding arresting officers need not have had a copy of the warrant in their possession at time of the arrest); *see also United States v. Buckner*, 717 F.2d 297, 301 (6th Cir. 1983) (holding officers lack of the warrant in hand was of "no consequence" where they had reliable knowledge that a bench warrant had issued); *United States v. Turcotte*, 558 F.2d 893, 896 (8th Cir.1977) (rejecting argument that arrest was unlawful because arresting officer failed to serve defendant with copy of arrest warrant); *Gill v. United States*, 421 F.2d 1353, 1355 (5th Cir. 1970) (finding an arrest proper even though the arresting officer did not have the actual written warrant in hand). As I have already determined, the Constables had an objectively reasonable belief a valid arrest warrant existed and they reasonably relied on it, regardless of whether they had a copy of the warrant.

After a careful review of the summary judgment evidence, I can discern no valid questions concerning the reasonableness of the Constables' conduct in this case. The Constables are therefore entitled to qualified immunity on the § 1983 claim.

I will also grant summary judgment as to Craze on the § 1983 action because Maloney has not produced sufficient evidence from which a reasonable jury could find his constitutional rights were violated due to Craze's conduct. Other than identifying him as a party, the Complaint makes only one other reference to Craze – that Craze used his position to "knowingly fabricate[] evidence

that [Maloney] was the owner of 415 Miltimore Street, Reading, Pennsylvania on or about September 24, 2003, knowing that plaintiff did not own the property." Complaint ¶ 29. It is this action, Maloney contends, led to his unlawful arrest. Complaint ¶ 29. Maloney, though, has produced no evidence, absent his bare allegation in the Complaint, Craze fabricated evidence.

Summary judgment is also proper for the City of Reading because municipalities cannot be liable under § 1983 for the acts of their agents based on the theory of *respondeat superior*. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). A municipality, like the City of Reading, may only be held liable under § 1983 "when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Id.* at 694; *Andrews v. City of Phila.*, 895 F.2d 1469, 1480 (3d Cir. 1990). In other words, the plaintiff must "identify the challenged policy, attribute it to the municipality, and show that the execution of the policy caused the injury suffered by the plaintiff." *Russoli v. Salisbury Twp.*, 126 F. Supp. 821, 839 (E.D. Pa. 2000) (citing *Losch v. Borough of Parkesburg*, 736 F.2d 903, 910 (3d Cir. 1984)). Maloney has offered no evidence, beyond the bare allegations in the Complaint, of an unlawful policy or custom by the City allowing for arrests to be made based on insufficient cause. Such allegations, without more, are inadequate to establish municipal liability. *Anderson*, 477 U.S. at 248-49.

Because I will grant summary judgment as to Maloney's § 1983 claim, there no longer is any basis for federal jurisdiction, and I must determine whether to exercise supplemental jurisdiction over Maloney's state law claims. Federal courts have discretion to hear state law claims if they "derive from a common nucleus of operative fact" with federal claims, such that a "plaintiff would ordinarily be expected to try them all in one judicial proceeding." *United Mine Workers of Am. v.*

Gibbs, 383 U.S. 715, 725 (1966). In exercising its discretion, "the district court should take into account generally accepted principles of judicial economy, convenience, and fairness to the litigants." *Growth Horizons, Inc. v. Del. County*, 983 F.2d 1277, 1284 (3d Cir. 1993) (citation omitted). In this case, the basis of the state law claims is the alleged violations arising out of Maloney's arrest – the same basis for the federal claim. As such, there is a common nucleus of operative facts and it would be expected that all of the claims would be tried in one judicial proceeding. The parties have already engaged in significant discovery and dismissing the state law claims at this late juncture would not support the interests of the parties, judicial economy, or fairness to the parties. Accordingly, I will exercise supplemental jurisdiction and decide whether to grant summary judgment on the state law claims for false arrest, assault and battery, negligence in hiring and retaining, negligence in training and supervising, negligence in performance of duties, and malicious prosecution.

As an initial matter, the City of Reading and Craze raise a defense of governmental immunity, whereas the Constables have asserted sovereign immunity, as to the state law claims. The City of Reading is a municipality of the Commonwealth of Pennsylvania and as such the City and its employees are entitled to governmental immunity. The Pennsylvania Political Subdivision Tort Claims Act (PSTCA), 42 Pa. C.S. §§ 8541-64, grants governmental immunity to local agencies, including municipalities, against claims for damages on account of any injury to a person or to property caused by their own acts or the acts of their employees. Immunity is abrogated, however, for negligent acts falling into one of eight proscribed categories: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of

animals. 42 Pa. C.S. § 8542(b). Maloney does not allege negligence within the eight enumerated exceptions set forth in the PSTCA, and therefore cannot sustain causes of action for negligence in hiring and retaining, negligence in training and supervision, and negligence in performance of duties by the City.

Under the PSTCA, a local agency also is exempt from its own acts or the acts of its employees that constitute "crimes, actual fraud, actual malice or willful misconduct." 42 Pa. C.S. § 8542(a)(2). Intentional torts are "willful misconduct" under section 8542(a). *Pahle v. Colebrookdale Twp.*, 227 F. Supp. 2d 361, 368 (E.D. Pa. 2002). Because false arrest, assault and battery, and malicious prosecution are intentional torts, a local agency cannot be liable for such claims. Therefore, I will grant summary judgment as to the state law causes of action against the City.

An employee of a local agency acting within the scope of his duties enjoys the same immunity as the local agency, 42 Pa. C.S. § 8545, but the employee may be stripped of his immunity when he engages in conduct that is found to constitute "a crime, actual fraud or willful misconduct," *id.* § 8550. In other words, the Act extends immunity to negligent acts by employees except those falling into the eight proscribed categories, but abrogates immunity for individual employees who commit intentional torts. It is undisputed Craze is an employee of the City of Reading. This Court must dismiss the negligence in hiring and retaining, negligence in training and supervision, and negligence in performance of duties claims against Craze because the PSTCA extends the same level of protection to Craze as the City of Reading. Because none of the negligent acts falls within the eight enumerated exceptions, Craze is immune from suit.

Even if Craze were not entitled to immunity on the negligence actions, summary judgment

would still be proper. The Complaint only asserts the hiring and retaining claim as to the City of Reading, and the facts relevant to the hiring and retaining cause of action as well as the training and supervision claim relate only to the conduct and behavior of the Constables. Maloney has offered no facts nor produced any evidence Craze played any role in the hiring, retaining, training or supervision of the Constables. Nor will the negligence in performance of duties claim withstand scrutiny. At best, the foundation for this claim is the alleged fabrication of evidence. As I have already determined, absent the bare allegation in Complaint, Maloney has cited no record evidence Craze fabricated evidence he owned specific property which led to his arrest. Therefore, I will grant summary judgment to Craze on the negligence actions.

An employee of a local agency, however, can be held liable for intentional torts, including false arrest, assault and battery, and malicious prosecution. It is undisputed Craze was not present during Maloney's arrest and did not place Maloney into custody at any time. Other than the two references to Craze in the Complaint, Maloney has produced no evidence Craze was in any way connected to his arrest, let alone fabricated evidence he owned specific property which led to his arrest. Because he cannot rely on factually unsupported allegations in opposing a Rule 56 motion, I will grant summary judgment to Craze as to the intentional tort claims.

By raising a defense of sovereign immunity,[7] the Constables assert they are employees of the

[7]Pennsylvania's sovereign immunity scheme provides "the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. C.S. § 2310. Sovereign immunity is abrogated if the alleged harm arises out of nine enumerated negligent acts including: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. 42 Pa. C.S. § 8522(b)(1)-(9). Like governmental immunity, sovereign

Commonwealth, whereas Maloney believes the City of Reading is their proper employer. Whether the proper immunity analysis is pursuant to Pennsylvania's sovereign or governmental immunity scheme, the result is the same – Pennsylvania law does not extend immunity to constables.

By statute, both sovereign and governmental immunity extend to employees as defined as "any person who is acting or who has acted on behalf of a government unit," but not "independent contractors under contract to the government unit." 42 Pa. C.S. § 8501. Constables Mulligan and Carrillo cannot be considered Commonwealth or City of Reading employees because Pennsylvania law deems them independent contractors. The Pennsylvania Supreme Court first addressed the status of constables in *Rosenwald v. Barbieri*, 462 A.2d 644 (Pa. 1983), which involved an action by a constable claiming he was entitled to legal representation in a lawsuit brought by a property owner for alleged libel and negligent infliction of emotional distress in connection with the posting of a property sale. The constable sought a declaration against one of several defendants, including the Attorney General of Pennsylvania and Cheltenham Township. In determining the Attorney General and township were not responsible for providing legal representation, the court, referencing the definition of employee as defined in section 8501 of Title 42, determined a constable "neither act[s] for nor under the control of the Commonwealth." *Id.* at 647. Moreover, "a constable is not paid by [any municipal subdivision], but is compensated by fees for services." *Id.* at 648.

The non-employee status accorded to constables was reaffirmed in *In Re Act 147 of 1990*, 598 A.2d 985 (Pa. 1991), which involved a legislative attempt to place the supervision, training and

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immunity extends to the Commonwealth for intentional torts, but also limits liability for employees acting within the scope of their duties against intentional torts. *Pierce v. Montgomery County Opportunity Bd., Inc.*, 884 F. Supp. 965, 972 (E.D. Pa. 1995)

certification of constables under the judicial branch of the Pennsylvania state government. In holding the act violated the "separation of powers doctrine" contemplated by the Pennsylvania Constitution, the Court described a constable as "an elected official authorized to appoint deputy constables. 13 Pa.C.S. § 1, *et seq*. A constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township or the county in which he works." 598 A.2d at 986. Therefore, Constables Mulligan and Carrillo do not qualify for sovereign or governmental immunity.

Alternatively, the Constables contend they are entitled to summary judgment on the state law claims because the record is factually insufficient to support the claims. I agree. Maloney's first cause of action, false arrest, requires (1) the detention of another person and (2) the unlawfulness of the detention.[8] *Vazquez v. Rossnagle*, 163 F. Supp. 2d 494, 501 (E.D. Pa. 2001) (citing *Fagan v. Pittsburgh Terminal Coal*, 299 Pa. 109, 149 A. 159 (1930)). The central issue in determining liability for false arrest is whether the person arrested was unlawfully detained by the police without probable cause. Probable cause exists when "the facts and circumstances which are within the knowledge of the police officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has

[8]At various points in the Complaint, Maloney references his arrest as false imprisonment, although Count I only asserts a false arrest claim. False arrest and false imprisonment claims are "nearly identical claims," and "are generally analyzed together." *Brockington v. City of Phila.*, 354 F. Supp. 2d 563, 571 n.8 (E.D. Pa. 2005) (quotations omitted); *Gagliardi v. Lynn*, 285 A.2d 109, 110 (Pa. 1971) (reasoning "false arrest and false imprisonment are merely different labels, which describe the same conduct" when the civil wrong from detainment and confinement is "committed by an individual who illegally asserts or employs authority over another while purportedly enforcing the law"). False imprisonment requires "(1) the detention of another person, and (2) the unlawfulness of such detention." *Renk v. City of Pittsburgh*, 641 A.2d 289, 293 (Pa. 1994). Such detention is unlawful if it is a consequence of a false arrest. *Brockington*, 354 F. Supp. 2d at 572.

committed or is committing a crime." *Commonwealth v. Rodriguez*, 585 A.2d 988, 990 (1991) (citation omitted). As already determined with respect to Maloney's federal claim, it is clear that, at the time of the arrest, the Constables reasonably relied on a facially valid warrant issued by a magistrate district judge. Although Maloney asserts Judge Scott had no probable cause to issue the warrant, it was incumbent upon Maloney to produce evidence beyond the bald assertions in his pleading to support his allegation. He has not met his burden of proof.

"Assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person." *Cohen v. Lit Bros.*, 70 A.2d 419, 421 (1950) (citation omitted). Police officers may use such force as is necessary under the circumstances to effectuate a lawful arrest. *Renk v. City of Pittsburgh*, 641 A.2d 289, 293 (Pa. 1994). "The reasonableness of the force used in making the arrest determines whether the police officer's conduct constitutes an assault and battery." *Id.* Maloney can sustain the assault and battery claim only if the force used by the Constables was unnecessary or excessive. *Id.* I find the evidence does not support such conclusion.

Maloney contends the Constables used excessive force by handcuffing him and attaching restraints in the presence of his family and neighbors. Oral Ar. Tr. 45, Jan. 17, 2006. When asked to describe the physical contact by the Constables, however, Maloney stated Constable Mulligan grabbed his biceps area with both hands, but he could not recall the level of force applied. Maloney Dep. 96. No struggle ensued during the arrest, and he suffered no bruises, cuts, lacerations, or other injuries. Maloney Dep. 97. Other than affixing handcuffs and ankle restraints, the only other physical contact Maloney testified to was being "helped up the [courthouse] step" by Constable Carrillo because "it was difficult getting up the steps" due to the ankle restraints. Maloney Dep. 102.

He denied receiving any bruises or cuts or there being any physical struggle as a result of Constable Carrillo's assistance. The only consequence Maloney admits resulted from his arrest was being embarrassed the arrest occurred in front of his family and neighbors. Maloney Dep. 98. The Constables do not dispute Maloney's account of the physical contact used during his arrest, and in fact consistently averred in affidavits the arrest was made without incident, no force was required, and Maloney was not struck, hurt or injured in any way. Affidavit of Hector Luis Carrillo ¶ 8; Affidavit of Dennis Mulligan ¶ 8. Maloney has neither produced any documents of any injuries or residual problems as a result of his arrest, nor offered any witness testimony to contradict these facts.[9] I find the evidence insufficient to show the force used was unreasonable.

The Constables also have demonstrated there is no dispute concerning the factual resolution of the negligence causes of action. The Complaint only asserts the hiring and retaining claim as to the City of Reading, Complaint ¶ 49, and there is no evidence either Constable supervised the other or otherwise played any role in the training and supervision of Constables generally. Consistently, Maloney concedes these two claims are not applicable to the Constables. Oral Ar. 46. The remaining negligence claim for performance of duties also must fail. Maloney alleges the Constables negligently arrested him without conducting a proper investigation and with great force and violence. Complaint ¶ 59. As I have already determined, the Constables reasonably relied on the arrest warrant, had no legal obligation to investigate any claims of innocence (which Maloney never brought to their attention), and used reasonable force in executing the arrest. There simply are no

[9]Maloney references the testimony of three individuals who allegedly witnessed his arrest and testified at the criminal trial. Pl.'s Resp. 12. This Court cannot consider Maloney's summary of this testimony, and neither the transcripts of the testimony nor depositions of these witnesses have been offered into the record.

disputed facts upon which a reasonable jury could conclude the Constables negligently performed their duties. Therefore, I will grant summary judgment to the Constables on the negligence actions.

Finally, to present a prima facie case for malicious prosecution, Maloney must demonstrate the defendants (1) initiated a criminal proceeding that (2) ended in his favor, which was (3) initiated without probable cause and (4) for a malicious purpose (i.e., other than to bring him to justice). *Rose v. Bartle*, 871 F.2d 331, 349 (3d Cir. 1989). Generally, it is the prosecutor, not the police officer, who is responsible for initiating a proceeding against a defendant. An officer may, however, 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." *Gatter v. Zappile*, 67 F. Supp. 2d 515, 521 (E.D. Pa. 1999) (quotation and citations omitted). I will dismiss the malicious prosecution case because, as Maloney conceded at oral argument, the Constables did not initiate a criminal proceeding. Oral Ar. 45-46. The summary judgment evidence establishes the Constables neither provided false information to the prosecutor nor interfered with the prosecutor's informed discretion – they merely executed arrest warrants for which they had no role in issuing.

An appropriate Order follows.

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

MICHAEL MALONEY	:	CIVIL ACTION
	:	
v.	:	NO. 04-5318
	:	
CITY OF READING, et al.	:	

ORDER

AND NOW this 8th day of February, 2006, Defendants City of Reading, Brian Craze, Constable Dennis Mulligan and Constable Hector Luis Carrillo's Motions to Dismiss (Documents 35 & 36) are GRANTED. Judgment is entered in favor of the Defendants and against Plaintiff, and the Complaint is hereby DISMISSED with prejudice. The Clerk of the Court is directed to close the above captioned case.

BY THE COURT:

S/Juan R. Sánchez, J.

Juan R. Sánchez, J.