

reconsideration should be granted sparingly.”). “A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant.” *Corneal v. Jackson Twp.*, 313 F. Supp. 2d 457, 472 (M.D. Pa. 2003) (citations omitted).

Plaintiffs contend that, in order to prevent manifest injustice, there is a need to correct clear errors of law and fact in our April 5, 2006 Order. “In order to show clear error or manifest injustice, the [movant] must base [his] motion on arguments that were previously raised but were overlooked by the Court.” *United States v. Jasin*, 292 F. Supp. 2d 670, 676 (E.D. Pa. 2003). Plaintiffs focus on the fact that Defendant Jeffrey Wojtylak’s described his assailant as a white male riding a black ATV, six feet tall and twenty years old, wearing black clothing. (Doc. No. 45 at 3.) Plaintiffs note that Benigno is thirty-eight years old, five feet six inches tall, and was wearing tan pants and a blue parka when he was arrested. Plaintiffs also complain that Benigno’s ATV was green in color, not green and black. (*Id.*) According to Plaintiffs, there was no probable cause for Benigno’s arrest and prosecution. (*Id.* at 2.) Plaintiffs argue that because of these factual discrepancies it was a manifest injustice for this Court to dismiss Plaintiffs’ claims of malicious prosecution, false arrest, and false imprisonment. Specifically, Plaintiffs argue that Wojtylak was either lying or omitting material evidence when he identified Benigno as his assailant, and accordingly there was no probable cause for the arrest of Benigno or for his prosecution.

On the evening of February 7, 2003, at approximately 8:00 p.m., Wojtylak and his supervisor, Jeremiah Cotton, were patrolling the grounds of the Byberry State Hospital in a pick-up truck when they saw two trespassers riding all-terrain vehicles (ATVs) on the property. They

unsuccessfully pursued these individuals who got away over a small foot bridge that crossed Roosevelt Boulevard. A short time later, Wojtylak and Cotton saw the same two trespassers sitting on their ATVs at the edge of the same bridge. As Wojtylak walked toward the trespassers, the trespassers started their ATVs. One of the trespassers drove his ATV at Wojtylak as Wojtylak approached and knocked him down. (Wojtylak Dep. 71-92; 194-98.) Wojtylak and Cotton then contacted the police, and Wojtylak described the assailant to the police as a white male wearing black clothing, and riding a black ATV. (Wojtylak Dep. at 101-03; Aug. 5, 2003 Trial Tr. at 7-8.) Wojtylak estimated the height of his assailant to be “about six foot.” (*Id.* at 86.) The Philadelphia Police Department’s incident report regarding the assault describes the assailant as a white male, age twenty, wearing black clothing and riding a black ATV. (Doc. No. 13 at Ex. C.) Sometime after 10:00 p.m., Christopher McCormick, a Town Watch volunteer, saw two individuals riding ATVs at high speed on Roosevelt Boulevard, not far from the hospital grounds. (McCormick Dep. at 34, 65). One of them was wearing a dark helmet and tan pants and was riding a green ATV. (*Id.* at 66-67.) McCormick also observed tire treadmarks in the snow near the Statewide security trailer on the hospital grounds. (McCormick Dep. at 18.) When McCormick was driving on Damar Avenue after leaving the security trailer, he saw what he thought might be the same tire treadmarks near an SUV and trailer that were parked in the area. (*Id.* at 51-52, 103-06.) Wojtylak learned from the Town Watch volunteers’ dispatch that they had observed Benigno loading his ATV onto the trailer a short distance from the hospital grounds. (Wojtylak Dep. at 112, 116, 121-22; McCormick Dep. at 20.) Benigno was wearing a green camouflage jacket and tan pants at that time. (Benigno Dep. at 74.) McCormick testified that Benigno was wearing a dark helmet and his ATV appeared to be green. (McCormick Dep. at 19-

20.) Benigno's trailer was illegally parked. (Benigno Dep. at 86.) Benigno testified that after he loaded his ATV onto his trailer, he changed into a blue parka. (*Id.* at 84-85.)

When Wojtylak arrived at the scene of Benigno's trailer, he saw Benigno and identified him as the individual who assaulted him earlier that night. At his deposition, Wojtylak testified as follows with regard to that identification:

Q. Okay. Now, tell me the conversation you had with the police who came to that scene, Delmar.

A. I don't remember the full conversation.

Q. What do you remember?

A. I remember them asking me if that was the gentlemen that hit me, and I told them yes.

Q. What else?

A. I don't remember what else.

Q. And why did you say it was the same person who hit you?

A. Because at the time I believed that was the gentleman that had hit me.

Q. What about him led you to believe that?

A. At that time I could have sworn that was the gentleman that had hit me from what I had saw and what I--up on the bridge.

Q. And what about him led you to believe that?

A. From seeing him up on the bridge.

Q. And what did you see on the bridge that led you to conclude that this was the same man?

A. I saw him.

- Q. What was it? I mean, I could say I see you, and I see you later and say that I remember that he had blue eyes. What was it that you remembered that led you to believe it was the same person?
- A. His face, his posture, his stance. It all looked like the same person.
- Q. What about his face?
- A. What do you mean?
- Q. What about his face led you to believe it was the same person? You said [] his face, his posture.
- A. It looked like the same face.
- Q. What about it? Tell me what you saw on his face that you saw on the bridge?
- A. I don't remember now.
- Q. What about the posture?
- A. The way he stood, the height that he was. It all looked like the same person.
- Q. How high was he? What height is he?
- A. Short. A little under six foot, maybe six foot tall. I can't remember now.
- Q. But you remember the person you saw--
- A. At the time I could have sworn that was the man that had hit me.
- Q. And later on you did swear that, didn't you?
- A. Yes.

(Wojtylak Dep. at 137-40.) Wojtylak also testified that he did not see any other ATVs on the hospital grounds that evening besides the two involved in his assault. (Wojtylak Dep. at 116.)

McCormick testified that he did not see any other ATVs like Benigno's vehicle that night other than the two vehicles he saw on Roosevelt Boulevard. (McCormick Dep. at 143.) At the time of the incident, Wojtylak was working as a private security guard and McCormick was a Town Watch volunteer. (Wojtylak Dep. at 11-12; McCormick Dep. at 8-9.) Neither McCormick nor Wojtylak is a police officer.

Plaintiffs contend that the Court made factual and legal errors in concluding that Plaintiffs had failed to establish the requisite probable cause to support his claims of false arrest, false imprisonment, and malicious prosecution. When analyzing whether there is probable cause for an arrest, a court must examine whether there is "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation" to believe that a party has committed an offense. *Strickland v. Univ. of Scranton*, 700 A.2d 979, 984 (Pa. Super. Ct. 1997) (citations omitted).

Initially, Plaintiffs note that in the background section of the April 5, 2006 Memorandum and Order, Benigno's ATV was described as "green and black." We are satisfied that this inadvertent error does not rise to the level of creating manifest injustice. Moreover, we conclude as we did in the April 5, 2006 Memorandum and Order that based upon all of the circumstances considered in a light most favorable to Plaintiffs, Wojtylak had reasonable grounds to support his conclusion that Benigno was the individual who assaulted him on the evening of February 7,

2003.¹ Wojtylak saw Benigno on two occasions on the evening of February 7th before identifying him. On one of the occasions, Benigno was literally close enough to Wojtylak to touch him. His positive identification of Benigno must be taken at face value.

Moreover, Plaintiffs have failed to provide any evidence demonstrating that Wojtylak knowingly provided false information to the police regarding the identity of his assailant. *See Bradley v. Gen. Accident Ins. Co.*, 778 A.2d 707, 711 (Pa. Super. Ct. 2001) (a private individual is liable for malicious prosecution if he “provides knowingly false statements to an official to initiate charges or directs or pressures an official to initiate charges, thereby making the officer’s intelligent use of discretion impossible”); *see also Neczypor v. Jacobs*, 169 A.2d 528, 530 (Pa. 1961) (“One is justified in launching a criminal prosecution if the facts convince him, as a reasonable, honest and intelligent human being, that the suspected person is guilty of a criminal offense. The arresting person may be in error, but if his error is an honest one, not motivated by personal malice, bias, or revenge, the law will hold him harmless, regardless of the eventual result of the criminal prosecution.”). Wojtylak had no prior contact with Benigno. He believed in good faith that Benigno was the person who assaulted him. If he was wrong, it was an honest

¹ Plaintiffs cite to several Pennsylvania criminal cases in support of their contention that the record here does not support the conclusion that Wojtylak had probable cause to initiate the arrest and criminal proceedings against Benigno. In each of these cases, the court determined that the police officer did not have sufficient probable cause to arrest the defendant based on the description of the suspect that the officer possessed. *See Commonwealth v. Pinney*, 378 A.2d 293 (Pa. 1977); *Commonwealth v. Jackson*, 331 A.2d 189 (Pa. 1975); *Commonwealth v. Anderson*, 520 A.2d 1184 (Pa. Super. Ct. 1987); *Commonwealth v. Blakey*, 423 A.2d 402 (Pa. Super. Ct. 1980). However, as the Supreme Court of Pennsylvania observed in *Commonwealth v. Pinney*, “[t]he existence or nonexistence of probable cause . . . can only be decided in the concrete factual context of the individual case.” *Pinney*, 378 A.2d at 295. Therefore, these cases provide limited insight into whether probable cause existed in the present case.

error. Nothing in this record except speculation indicates otherwise. Accordingly, Plaintiff's Motion for Reconsideration will be denied.

An appropriate Order follows.

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

STEPHEN BENIGNO, et al.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-CV-2142
	:	
JEFFREY WOJTYLAK, et al.	:	

ORDER

AND NOW, this 30th day of May, 2006, upon consideration of Plaintiffs' Motion For Reconsideration (Doc. No. 45), it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s R. Barclay Surrick

R. Barclay Surrick, Judge