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

JOSEPH ESKRIDGE	:	
Plaintiff,	:	
v.	:	
OFFICER MYRA HAWKINS and OFFICER MICHAEL WILLIAMS	:	**CIVIL ACTION NO. 05 - 2352**
Defendants.	:	

M E M O R A N D U M

DuBOIS, J. **AUGUST 8, 2006**

I. INTRODUCTION

Pro se plaintiff Joseph Eskridge ("Eskridge") was arrested on June 25, 2003 by Philadelphia Police Officers Myra Hawkins and Michael Williams ("Officer Hawkins" and "Officer Williams," respectively) five weeks after he allegedly made a narcotics sale to Officer Hawkins, who was working undercover. Eskridge was convicted on two drug-related charges. Those convictions were overturned because of inconsistencies in the evidence presented at trial.

Eskridge filed this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights arising out of his arrest and prosecution. Eskridge claims, inter alia, that Officers Hawkins and Williams falsely arrested him, planted false evidence, committed perjury, and conspired to violate his constitutional rights. Presently before the Court is Defendants' Motion for Summary Judgment. For the reasons set for below, the Court concludes that Officers

Hawkins and Williams had probable cause to arrest Eskridge and that there is no evidence of planting false evidence, perjury, or a conspiracy to violate Eskridge's rights. Thus, the Court grants Defendants' Motion for Summary Judgment.

II. BACKGROUND

A. The Alleged Sale

Eskridge denies that he sold crack cocaine to Officer Hawkins on the evening of May 20, 2003. He testified that he spent that night at home and did not come into contact with any police officers. Eskridge Dep. at 11-13, Def. Ex. B.

Officers Hawkins and Williams offer a contrary story. According to them, the following events occurred while they conducted a narcotics investigation in the area of 816 S. 13th Street, Philadelphia, Pennsylvania on May 20, 2003. At approximately 7:30 p.m. that evening, Officer Hawkins had a "drug-related" conversation with an unidentified person and was directed to a bald, black male with a long beard. Trial Transcript, Commonwealth v. Eskridge, CP#0309-0378, December 16, 2003 (hereinafter "Trial Transcript") at 8, Def. Ex. D. Officer Hawkins approached the black male, gave him a prerecorded $20 bill, and asked him for two "dimes." Id. In exchange, the man gave her two clear packets that contained "an off-white substance of alleged crack cocaine." Id. at 8:23-24. After the sale was completed, Officer Williams conducted a field test on the items purchased; they tested positive for a cocaine base.[1] Id. at 10-11. Officers Hawkins and Williams later identified the bald black male with a beard as Eskridge.

[1] According to Philadelphia police property receipt number 2457796, it states "Field test: NIK 'G', positive." Property Receipt No. 2457796, Def. Ex. E. The Philadelphia Police Narcotics Field Unit Summary Sheet explains that, on May 20, 2003 at 7:30 p.m., Officer Hawkins purchased two clear packets of crack cocaine that weighed 0.20 grams and had a street value of $20.00. Philadelphia Police Narcotics Field Unit Summary Sheet, Def. Ex. E.

Hawkins Decl. ¶ 8, Def. Ex. C; Williams Decl. ¶ 8, Def. Ex. F. According to Philadelphia Police Department records, Eskridge is a black male with a bald head and a beard. Eskridge Arrest Photo, June 26, 2003, Def. Ex. C.

B. Eskridge's Arrest

On June 24, 2003, as part of a separate investigation, Officer Williams directed a confidential informant to attempt a narcotics purchase inside 1216 Webster Street, Philadelphia, Pennsylvania.[2] Probable Cause For Search & Seizure Warrant #110454 at 1, Pl. Ex. C [marked as "D"]. The confidential informant entered the residence, exited a few minutes later, and surrendered two black tinted packets of crack cocaine to Officer Williams. Id. Based on these and other facts, Officer Williams believed that crack cocaine was being stored in and sold from 1216 Webster Street, and sought a search warrant to conduct a search of the premises. Id. at 2. The search warrant was issued on June 25, 2003. Id. Several police officers, including Officers Hawkins and Williams, executed the search warrant later that day. Trial Transcript at 9.

At the same time, Eskridge went to 1216 Webster Avenue to meet Alba Jordan, the mother of his adult son. Eskridge Dep. at 15-16. Soon after Eskridge arrived, six or seven police officers entered the building, chasing a person identified by Eskridge as "Derrick." Id. at 18-19. When Eskridge requested to leave the building, Officer Hawkins denied the request and accused Eskridge of previously selling drugs to her. Id. at 20. Eskridge testified that, in response to these accusations, he asked Officer Hawkins when he had sold the drugs. Id. Eskridge characterized Officer Hawkins's response as follows: "She couldn't even get the dates together. She didn't

[2] Officer Hawkins testified that 1216 Webster Street and 816 S. 13th Street are located "less than a block" apart. Trial Transcript at 11:12.

even know what day it was. She wasn't sure – at that particular time at that house, she wasn't sure what day it was." Id. at 20:20-24. According to Officer Hawkins, she immediately recognized Eskridge from the May 20, 2003 drug sale. Hawkins Decl. ¶ 8.[3] Officer Williams attested to the same facts: he "immediately recognized" Eskridge as the man who sold illegal drugs to Officer Hawkins on May 20, 2003. Williams Decl. ¶¶ 8, 11.

Soon thereafter, Eskridge was arrested and taken to the police station. Eskridge Dep. at 22-24. Eskridge testified that the arrest was based on mistaken identity and that Officers Hawkins and Williams had "picked the wrong person." Id. at 28:10-11.

C. Eskridge's Criminal Prosecution

On December 16, 2003, Eskridge was tried before Judge Chris R. Wogan in the Court of Common Pleas of Philadelphia County. Judge Wogan only heard testimony from Officer Hawkins. Trial Transcript at 7. During her testimony, Officer Hawkins described her purchase of two "dimes" from Eskridge on May 20, 2003 and Eskridge's arrest on June 25, 2003 during the search of 1216 Webster Street. Id. at 8-9. According to the Investigation Report, the two clear packets (two "dimes") Officer Hawkins purchased from Eskridge were placed on Property Receipt No. 2457757. Id. at 10. During cross-examination, Eskridge's counsel asked Officer Hawkins about Property Receipt No. 2457757. Id. at 13. It was at that time that she realized "[t]his isn't the right property receipt." Id. at 15:14-15. To the contrary, as Officer Hawkins testified, Property Receipt No. 2457757 related to two green tinted packets of crack cocaine purchased on May 9, 2003, by a confidential informant. Id. at 13. Based on the evidence

[3] Officer Hawkins testified that Eskridge's appearance had not changed between the alleged sale on May 20, 2003 and Eskridge's arrest on June 25, 2003. Trial Transcript at 16.

presented, Judge Wogan found Eskridge guilty on the charges of possession to deliver a controlled substance of crack cocaine and knowing and intentional possession of a controlled substance. Id. at 22.

Eskridge's counsel subsequently filed a Motion for Extraordinary Relief, challenging Eskridge's conviction. On February 5, 2004, Judge Wogan conducted a hearing to address the motion. Eskridge's counsel argued that Officer Hawkins's testimony was contradicted by the information on Property Receipt No. 2457757 and, as a result, there was insufficient evidence in the record to prove that Officer Hawkins had purchased a controlled substance from Eskridge on May 20, 2003. Transcript of Motion for Extraordinary Relief, Commonwealth v. Eskridge, CP 0309-0378, February 5, 2004 at 4, Def. Ex. G. Based on this argument, Judge Wogan overturned Eskridge's conviction. Id. at 7.

D. Error in the Investigation Report

Officers Hawkins and Williams have provided an explanation for the evidentiary problem at Eskridge's trial. In preparing the Investigation Report, Officer Williams listed the property receipt number related to the May 20, 2003 drug sale as 2457757. Williams Decl. ¶ 13. That was a mistake. Officer Williams testified that the Property Receipt related to the purchase of two clear packets of crack cocaine on May 20, 2003 was No. 2457796, not No. 2457757 as listed on the Investigation Report. Williams Dep. at 45, Pl. Ex. B. The Philadelphia Police Narcotics Field Unit Summary Sheet listed the two clear packets of crack cocaine purchased by Officer Hawkins from a black male at 7:30 p.m. on May 20, 2003 on Property Receipt No. 2457796. Philadelphia Police Narcotics Field Unit Summary Sheet (hereinafter "Summary Sheet"), Def. Ex. E.

III. DISCUSSION

A. Standard of Review

A court should grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A "genuine" issue exists 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). A factual dispute is "material" when it "might affect the outcome of the suit under the governing law." Id.

"In determining the facts, the court should draw all reasonable inferences in favor of the nonmoving party." Id. at 255; Highlands Ins. Co. v. Hobbs Group, LLC, 373 F.3d 347, 351 (3d Cir. 2004). The nonmoving party, however, cannot rely merely upon bare assertions, conclusory allegations, or suspicions to support a claim. Fireman's Ins. Co. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982); see also Anderson, 477 U.S. at 249-50 (stating that summary judgment must be granted if the evidence is "merely colorable" or "not significantly probative"). In a summary judgment motion, the moving party has the initial burden of identifying evidence which demonstrates the absence of a genuine issue of material fact. However, where the nonmoving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Finance Co. v. C.I.T. Financial Services Corp., 812 F.2d 141, 144 (3d Cir. 1987) (citing Celotex, 477 U.S. at 323-24).

B. Eskridge's Allegations

Because Eskridge instituted suit as a *pro se* plaintiff, the Court construes his claims

liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Eskridge's Complaint lists five theories of liability for Officers Hawkins and Williams under § 1983: false arrest, violation of due process, planting of false evidence, violation of ethical conduct, and conspiracy. Compl. at 4-5. Eskridge alleges that he was the victim of a false arrest arising out of his June 25, 2003 arrest and subsequent prosecution for two drug-related charges. Id. at 4. Eskridge also claims that Officers Hawkins and Williams conspired to falsify evidence and to offer false testimony in order to cover-up the fact that he had been wrongfully arrested. Id. at 4-5. Although Eskridge does not reference a specific constitutional provision in the Complaint, the Court construes Eskridge's allegations as asserting a claim under the Fourth Amendment.

C. Eskridge's False Arrest Claim

Defendants argue that Eskridge has failed to establish a Fourth Amendment violation because there was probable cause to arrest him on June 25, 2003. In the alternative, defendants argue that they are entitled to qualified immunity, because, even if Eskridge has demonstrated that a constitutional violation occurred, defendants were reasonable in their belief that there was probable cause to arrest Eskridge and that their conduct did not violate clearly established law. Viewing the evidence in the light most favorable to Eskridge, the Court concludes that defendants had probable cause to arrest him and that no constitutional violation occurred.

1. Probable Cause Standard

To establish a claim under the Fourth Amendment for false arrest, a plaintiff must demonstrate that the defendants lacked probable cause to arrest. See Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988) ("The proper inquiry in a section 1983 claim based on false arrest . . . [is] whether the arresting officers had probable cause . . . ."). In

determining whether an arrest is valid, the Court looks to the law of the state where the arrest took place. Wright v. City of Philadelphia, 409 F.3d 595, 601 (3d Cir. 2005) (citing United States v. Myers, 308 F.3d 251, 255 (3d Cir. 2002)). Under Pennsylvania law, police officers can execute warrantless arrests for felonies and any grade of theft and attempted theft.[4] Id. (citing 18 Pa. Cons. Stat. Ann. § 3904); see also Commonwealth v. Taylor, 677 A.2d 846 (Pa. Super. 1996) (noting that police officers may make warrantless arrests for felonies and breaches of the peace). "An arrest by a law enforcement officer without a warrant 'is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.'" Wright, 409 F.3d at 601 (quoting Devenpeck v. Alford, 543 U.S. 146, 152 (2004)).

Probable cause to arrest "exists whenever reasonably trustworthy information or circumstances within a police officer's knowledge are sufficient to warrant a person of reasonable caution to conclude that an offense has been committed by the person being arrested." Myers, 308 F.3d at 255. In determining whether probable cause existed, the Court considers the objective facts available to the officer at the time of the arrest and determines whether these facts were sufficient to justify a reasonable belief that the individual committed a crime. Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 789 (3d Cir. 2000). Probable cause requires more than mere suspicion that a person has committed a crime, but it does not require that the police officer have sufficient evidence to prove guilt beyond a reasonable doubt. Orsatti v. New Jersey State Police, 71 F.3d 480, 482-83 (3d Cir. 1995) (citing United States v. Glasser, 750 F.2d 1197, 1205 (3d Cir.1984)). The crime or crimes with which a suspect is eventually is charged is insignificant

[4] Pennsylvania law prohibits "possession with intent to . . . deliver [] a controlled . . . substance . . . ." 35 P.S. § 780-113(a)(30). A violation of subsection (30) involving a narcotic drug constitutes a felony. See 35 P.S. § 780-113(f)(1).

to the probable cause analysis. Wright, 409 F.3d at 602 (citing Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994) ("Probable cause need only exist as to any offense that could be charged under the circumstances.").

2. Defendants Had Probable Cause to Arrest Eskridge

Viewing the evidence in the light most favorable to Eskridge, the Court concludes that Officers Hawkins and Williams had probable cause to arrest Eskridge without a warrant when they encountered him at 1216 Webster Street on June 25, 2003. First, the Court notes that the 816 S. 13th Street, the place of the alleged, sale is located "less than a block" from 1216 Webster Street, where Eskridge was arrested. Trial Transcript at 11. Next, upon entering the building, both Officers Hawkins and Williams immediately recognized Eskridge as someone who had sold crack cocaine to Officer Hawkins in the past. Hawkins Decl. ¶ 8; Williams Decl. ¶ 8. This recognition was the result of their personal involvement in the sale and a field test on the powder purchased immediately thereafter by Officer Williams. Trial Transcript at 10. According to both Officers Hawkins and Williams, Eskridge's physical appearance – a black male with a bald head and a beard – was the same as that of the man who sold the drugs on May 20, 2003. Id. at 16; Williams Decl. ¶ 12.

Eskridge's testimony does not undermine this conclusion. According to Eskridge, Officer Hawkins did not remember, at the moment of the arrest, the exact date of the alleged sale. Eskridge Dep. at 20. Officer Hawkins, however, was certain that Eskridge had previously sold drugs to her. See Hawkins Decl. ¶ 8; Trial Transcript 8-10. On this issue, as noted above, probable cause does not require evidence sufficient to prove guilt beyond a reasonable doubt. See Orsetti, 71 F.3d at 482-83. Also, Eskridge had the same physical characteristics as the man

who had previously sold drugs to Officer Hawkins, Eskridge was arrested less than a block from the site of the sale, and both defendants immediately recognized Eskridge as the seller.

Eskridge has failed to present evidence of a constitutional violation arising out of his arrest. Thus, the Court grants Defendants' Motion for Summary Judgment on Eskridge's claim of false arrest.

D. Other Claims

Although the gravamen of Eskridge's Complaint is the claim of false arrest, Eskridge asserts alternative theories of liability, all of which the Court concludes are without merit. The Court will address each theory in turn.

1. Violation of Due Process

Eskridge alleges that "[d]efendant was personally responsible for targeting Plaintiff for arrest." Compl. at 4. Defendants argue that Eskridge's due process claim is a restatement of his claim for false arrest under the Fourth Amendment and, therefore, summary judgment should be granted under the rule announced in Albright v. Oliver, 510 U.S. 266 (1994). The Court agrees.

In Albright, the Supreme Court rejected the plaintiff's section 1983 malicious prosecution claim based on the Fourteenth Amendment's due process clause because the plaintiff's surrender to the State "constituted a seizure for the purposes of the Fourth Amendment." Id. at 271. The Supreme Court explained that where "a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process must be the guide for analyzing these claims." Id. at 273 (citing Graham v. Connor, 490 U.S. 386, 395 (1989)).

Eskridge's due process claim is most properly characterized as an allegation of a violation

of his rights under the Fourth Amendment. In fact, Eskridge specifically mentions his "arrest" under the heading of "Violation of Due Process" in the Complaint. Compl. at 4. The Fourth Amendment provides an explicit textual source of constitutional protection, and, therefore, Eskridge's due process claim fails under the rule announced in Albright. Because the Court concludes that Defendants' Motion for Summary Judgment should be granted on the underlying Fourth Amendment claim for false arrest, the Court likewise grants Defendants' Motion for Summary Judgment on the alleged due process violation arising out of the arrest.

2. Planting of False Evidence

Eskridge alleges: "Defendant supplied and record [sic] false evidence against plaintiff, and thus sought to have plaintiff persecuted with false evidence." Compl. at 4. These allegations also raise a Fourth Amendment issue. See Johnson v. Knorr, 2005 WL 3021080, at *4 (E.D. Pa. Oct. 31, 2005) (citing Lee v. Gregory, 363 F.3d 931, 936 (9th Cir. 2004) (deliberately fabricating false evidence that leads to criminal charges constitutes violation of Fourth Amendment)).

Eskridge has not produced any evidence that defendants falsified evidence. To the contrary, the evidence reveals that Officer Williams, in preparing the Investigation Report, made a clerical error in recording the property receipt related to Officer Hawkins's purchase of crack cocaine on May 20, 2003. Williams Dep. at 45; Summary Sheet. For that reason, the Court grants Defendants' Motion for Summary Judgment on this claim.

3. Violation of Ethical Conduct

Eskridge alleges that: "In supplying false testimony, defendant admitted that she did not follow police procedures but made up a story about purchasing a product from plaintiff without proper proof." Compl. at 4. Defendants argue that Eskridge's claim for a violation of ethical

conduct must fail because it is not cognizable under § 1983. The Court agrees with defendants on this issue.

Section 1983 provides a cause of action against any "person, who acting under the color of state law, deprives another of his federal rights." Williams v. Bitner, --- F.3d ----, 2006 WL 2052179, at *4 (3d Cir. July 25, 2006). A police officer's obligation to comply with standards of "ethical conduct" is not a right guaranteed by the U.S. Constitution or federal law and, thus, does not create a cognizable claim under § 1983. The Court also notes that a police officer cannot be held liable under § 1983 for giving false testimony. "[A] police officer who gives false testimony at trial cannot be held liable for a Section 1983 violation." Howard v. Domenic, 2003 WL 1086449, at *2 (E.D. Pa. Mar. 13, 2003) (citing Briscoe v. LaHue, 460 U.S. 325, 343 (1983)). Therefore, the Court grants Defendants' Motion for Summary Judgment on this claim.

4. Conspiracy

Eskridge alleges: "Defendants in this instant matter conspired to obtain Plaintiff's false arrest and the planting of false evidence." Compl. at 5. To establish a conspiracy claim under § 1983, "a plaintiff must prove that persons acting under the color of state law conspired to deprive him of a federally protected right." Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 254 (3d Cir. 1999) (citing Dennis v. Sparks, 449 U.S. 24, 29 (1980)). Moreover, section 1983 "does not create a cause of action per se for conspiracy to deprive one of a constitutional right. Without an actual deprivation, there can be no liability under Section 1983." Morley v. Philadelphia Police Dept., 2004 WL 1527829, at *7 (E.D. Pa. July 7, 2004) (citing Defeo v. Sill, 810 F.Supp. 648, 658 (E.D. Pa. 1993), aff'd, 16 F.3d 403 (3d Cir. 1993)).

Eskridge's conspiracy claim fails in both respects. He has not produced evidence of an

agreement between or concerted action by Officers Hawkins and Williams to violate his rights; and, bare assertions and conclusory allegations are insufficient to survive a motion for summary judgment. Montanye v. Wissahickon School Dist., 399 F. Supp. 2d 615, 618-19 (E.D. Pa. 2005) (citing DuFresne, 676 F.2d at 969). More importantly, as explained above, Eskridge has failed to demonstrate that any constitutional violation occurred. Accordingly, the Court grants Defendants' Motion for Summary Judgment on Eskridge's claim of conspiracy.

IV. CONCLUSION

Because Officers Hawkins and Williams had probable cause to arrest him on June 25, 2003, the Court concludes that Eskridge has failed to establish a Fourth Amendment violation. The remainder of Eskridge's allegations are either reiterations of Eskridge's false arrest claim or are unsupported by the record. Because Eskridge has failed to produce any evidence of a constitutional violation, the Court grants Defendants' Motion for Summary Judgment on all of Eskridge's claims, and enters judgment in favor of defendants and against Eskridge. In view of this determination, the Court need not address defendants' argument that they are entitled to qualified immunity.

An appropriate Order follows.

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

JOSEPH ESKRIDGE	:	
Plaintiff,	:	
v.	:	
OFFICER MYRA HAWKINS and OFFICER MICHAEL WILLIAMS	:	**CIVIL ACTION NO. 05 - 2352**
Defendants.	:	

O R D E R

AND NOW, this 8th day of August, 2006, upon consideration of Defendants' Motion for Summary Judgment (Document No. 23, filed March 24, 2006), *Pro se* Plaintiff's Motion for Denied Summary Judgment (Document No. 26, filed April 12, 2006), and the supporting documents, **IT IS ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED** and **JUDGMENT IS ENTERED** in **FAVOR** of defendants, Officer Myra Hawkins and Officer Michael Williams, and **AGAINST** *pro se* plaintiff, Joseph Eskridge.

IT IS FURTHER ORDERED that the Clerk of Court shall **MARK** this case **CLOSED** for **STATISTICAL PURPOSES.**

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.