

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

SHAWN W. FRAZIER : CIVIL ACTION
: :
v. : :
: NOS. 04-cv-3648-JF &
: 06-CV-1497-JF
CITY OF PHILADELPHIA, et al. : (CONSOLIDATED)

MEMORANDUM AND ORDER

Fullam, Sr. J.

October 18, 2006

Plaintiff, Shawn Frazier, was arrested and charged with having violated his parole. At the hearing on that charge, in the Philadelphia Court of Common Pleas, on April 13, 2004, plaintiff became angry, upset the table behind which he had been seated, leaped over a railing and tried to assault the trial judge. The judge escaped through a side door, and the plaintiff attempted to follow him, whereupon the deputy sheriff who had had custody of the plaintiff shot the plaintiff in the back, causing serious injuries.

On August 2, 2004, plaintiff filed suit in this court against the City of Philadelphia and the Deputy Sheriff, alleging that his constitutional rights had been violated because of the excessive use of force. Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6). On November 16, 2004, I entered an order which dismissed certain of the claims made in the complaint, but for the most part denied the motion to dismiss "without prejudice to the filing of a properly-supported motion

for summary judgment, if deemed appropriate. The defendants thereupon filed their answer but had not yet sought summary judgment when, on April 14, 2005, plaintiff requested that the case be placed in civil suspense because plaintiff was then undergoing a life-threatening illness of some sort. That motion, which was uncontested, was granted on April 18, 2005. On October 3, 2005, the case was removed from civil suspense to the current docket for disposition. It later came to my attention that, on April 10, 2006, plaintiff, represented by different counsel, filed a new complaint, Civil Action No. 06-1497, naming as defendants the City of Philadelphia, the Philadelphia Sheriff's Office, Deputy Sheriff Clark and Sheriff Green, Philadelphia County Prisons, and Prison Health Services, Inc. That complaint asserts the same claims as are asserted in the original action, but adds some claims based on alleged failures to provide plaintiff with adequate medical treatment. It developed that neither of plaintiff's two lawyers was aware of the other's lawsuit. The confusion has now been somewhat resolved, in that the two cases have been consolidated, and plaintiff has filed a document expressing his desire that both lawyers represent him in the consolidated case.

The case is now before the court on defendants' motion for summary judgment. That motion will be granted.

Many of the defendants are not suable entities ("Philadelphia Sheriff's Office," "Philadelphia County Prisons"). The only viable defendants are the City of Philadelphia, the named police officers (the Sheriff and his specified deputies) and Prison Health Services, Inc.

I conclude that, as a matter of law, plaintiff cannot prevail on his claim that excessive force was used. In addition to the fact that the shooting was plainly justified, it should be noted that the Sheriff himself had no involvement in the matter. The only officer who could conceivably be sued for the shooting is the officer who fired the shot. Not only was his action plainly justified (the plaintiff was over six feet tall, and weighed 285 pounds), but he is entitled to qualified immunity in any event.

With respect to plaintiff's claims that he was denied adequate medical treatment, the record affirmatively establishes that he was rushed to the hospital immediately after the shooting, where it was determined that the spinal injury had rendered plaintiff paraplegic. Upon his release from the hospital on April 19, 2004, he was transferred to the Moss Rehabilitation Hospital for rehabilitation. He remained at Moss until June 4, 2004, when he was transferred to Graterford Prison. Unfortunately, in addition to his gunshot wound, plaintiff was suffering from diabetes. The most recent complaint alleges that,

after the transfer to Graterford, plaintiff's condition deteriorated and it became necessary to amputate one of his legs. The record suggests that the amputation occurred on September 24, 2004.

So far as can be determined from the record, none of the named defendants had any responsibility for plaintiff's medical treatment after his transfer to Graterford, a state institution. During the time the defendants had custody of the plaintiff, it is clear that they did in fact cause him to receive appropriate medical treatment. Under no circumstances could it reasonably be held that any of the named defendants was guilty of studied indifference to plaintiff's medical needs.

For all of the foregoing reasons, the defendants' motion for summary judgment will be granted.

An Order follows.

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ORDER

AND NOW, this 18th day of October 2006, upon
consideration of the defendants' motion for summary judgment,
IT IS ORDERED:

1. Defendants' motion for summary judgment is
GRANTED.

2. This action is DISMISSED with prejudice. The
Clerk is directed to close the file.

BY THE COURT:

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