

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

JOSE PAGAN,

Plaintiff,

vs.

OFFICER MICHAEL TRASK, et al.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

CIVIL NO. 03-6271

RUFE, J.

September 4, 2007

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a civil-rights case brought under 42 U.S.C. § 1983. On June 16, 2003, two Philadelphia Police Officers, Michael Trask and James Crown, arrested Jose Pagan inside a corner delicatessen in Northeast Philadelphia. Officers Trask and Crown used force during the arrest, and Pagan was injured as a result. Pagan has now brought this action for damages against Officers Trask and Crown,¹ claiming that the force that they used during the arrest was excessive, and thus violated his Fourth Amendment rights.²

This matter was tried to the Court without a jury on April 17, 2007. The Court heard testimony from Pagan, Officer Trask, and Officer Crown. The Court also received numerous documents into evidence. After hearing the trial testimony, and reviewing the exhibits and the parties' court filings, as well as the applicable law, the Court will now enter its findings of fact and

¹ Pagan also sued a third officer, Thomas Bartol, who was dismissed from this litigation during the trial. See Order of Apr. 18, 2007 [Doc. # 52].

² Under the Fourth Amendment, “[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated.” U.S. Const. amend IV. This right is binding on state and local governments through the due-process clause of the Fourteenth Amendment.

conclusions of law under Federal Rule of Civil Procedure 52(a).³

FINDINGS OF FACT

The parties have submitted a Joint Statement of Undisputed Facts [Doc. # 50]. Upon review of the trial transcript, the Court finds that those facts are supported by a preponderance of the evidence. Therefore, the Court incorporates those facts herein by reference. The Court also makes these additional findings of fact, as proven by a preponderance of the evidence:

1. Officers Trask and Crown of the Philadelphia Police Department were on duty during the day of June 16, 2003, stationed inside of Conwell Middle School in Philadelphia.⁴

2. Looking through the window from their station at the school, Officers Trask and Crown saw Pagan arguing with another man next to a house on Ruth Street.⁵

3. During the confrontation, Pagan brandished a gun and pointed it at the other man.⁶

4. The confrontation between Pagan and the other man then ended, and Pagan began walking back to his house on that same block.⁷

5. After seeing Pagan brandish the gun and point it at the other man, Officers Trask and Crown ran out of the school and pursued Pagan—Officer Crown on foot and Officer Trask in

³ “In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58.” Fed. R. Civ. P. 52(a).

⁴ Joint Stmt. [Doc. # 50] ¶¶ 1, 3.

⁵ Id. ¶¶ 3-6.

⁶ N.T. 4/17/07, 14:23 (testimony of Jose Pagan).

⁷ Id. 14:25.

his marked police car.⁸

6. As Pagan walked home, he indiscriminately fired two shots into the air in a fit of anger.⁹

7. Officer Crown saw Pagan fire the two shots into the air.¹⁰

8. Seeing Officer Crown, Pagan then rushed into his house at 1815 East Clearfield Street, and closed the door behind him.¹¹

9. Officers Crown and Trask then both approached and entered Pagan's residence; Crown entered forcibly through the front door, and Trask entered through the back door.¹²

10. Pagan then ran out of his house through a side door, crossed Ruth Street, and ran into a corner deli.¹³

11. Officers Trask and Crown followed Pagan into the deli.¹⁴

12. Although Pagan had left his gun inside the house before running into the deli,¹⁵ Officers Trask and Crown did not see him discard the weapon, and therefore believed that Pagan was still armed when they entered the deli.¹⁶

⁸ Joint Stmt. ¶ 7.

⁹ N.T. 4/17/07, 15:2 (testimony of Jose Pagan).

¹⁰ Joint Stmt. ¶ 9.

¹¹ Id. ¶ 10.

¹² Id. ¶¶ 12-15.

¹³ Id. ¶ 16.

¹⁴ N.T. 4/17/07, 97:25 (testimony of Officer Trask).

¹⁵ Id. 15:10 (testimony of Jose Pagan).

¹⁶ Id. 100:8 (testimony of Officer Trask); id. 173:4 (testimony of Officer Crown).

13. When Pagan and Officers Trask and Crown entered the deli, roughly six other people were in the deli, including staff and customers.¹⁷

14. Based on their belief that Pagan was still armed, Officers Trask and Crown feared both for their own safety and also for the safety of the others in the deli.¹⁸

15. After Officers Trask and Crown entered the deli, Pagan faced them and put his empty hands in the air, chest high.¹⁹ Pagan did not tell the officers that he was unarmed.²⁰

16. Pagan was wearing a long white tee shirt that covered his waistband.²¹

17. While holding his service revolver in his right hand, Officer Trask reached out and grabbed Pagan with his left hand, prompting Pagan to lurch away.²²

18. Officer Trask then grabbed Pagan a second time, while Pagan was facing a shelving unit in the deli.²³

19. Officers Crown and Trask then tackled Pagan against the shelving unit, and all three men fell to the ground together, with Pagan underneath the weight of the two officers.²⁴

20. At the time of the arrest, Officers Trask and Crown each weighed roughly 225

¹⁷ Id. 100:5 (testimony of Officer Trask).

¹⁸ Id. 99:25 (testimony of Officer Trask); id. 174:12 (testimony of Officer Crown).

¹⁹ Id. 117:19 (testimony of Officer Trask).

²⁰ Id. 65:9 (testimony of Jose Pagan).

²¹ Id. 157:6 (testimony of Officer Crown).

²² Id. 100:15-16 (testimony of Officer Trask).

²³ Id. 100:17-24 (testimony of Officer Trask).

²⁴ Id.

pounds.²⁵

21. After a brief struggle, Officers Trask and Crown handcuffed Pagan and called for backup.²⁶ Pagan was arrested, and then taken to Temple University Hospital for treatment.²⁷ After treatment, Pagan was taken to the 24th Police District and processed.²⁸

22. Subsequently, in connection with the events of June 16, 2003, Pagan was a party to a Guilty Plea Agreement, concerning violations of 21 U.S.C. § 841(a)(1) & 841(b)(1)(C); 21 U.S.C. § 860; and 18 U.S.C. §§ 922(g)(1) & 924(e).

23. The force of the tackle against the shelving unit caused Pagan to sustain a head injury that required five staples to close.²⁹

24. The force of the tackle also caused Pagan to sustain a mild ankle fracture, which healed within about six weeks.³⁰

25. Pagan was physically able to play handball in September 2004, about fifteen months after the arrest in the deli.³¹

26. Neither Officer Trask nor Officer Crown pistol-whipped, punched, or kicked Pagan.³²

²⁵ Id. 125:18 (testimony of Officer Trask).

²⁶ Id. 101:23, 102:19 (testimony of Officer Trask).

²⁷ Id. 60:5 (testimony of Jose Pagan).

²⁸ Joint Stmt. ¶ 21.

²⁹ Id. 25:3 (testimony of Jose Pagan).

³⁰ Id. 25:1, 59-61 (testimony of Jose Pagan).

³¹ Id. 58:12 (testimony of Jose Pagan).

³² Id. 102:5-16 (testimony of Officer Trask); id. 175:1-10 (testimony of Officer Crown).

DISCUSSION

A. Credibility of the Witnesses

Aside from the facts surrounding the tackle and arrest of Pagan inside the Deli, the Court notes that the parties agree on most, if not all, of the other facts. The key factual discrepancies concern the arrest itself. At the trial, Pagan testified that he was not tackled, but rather that Officer Trask pistol-whipped him multiple times, causing him to fall to the ground.³³ Pagan then testified that while he was lying on the floor, the officers kicked him multiple times.³⁴

To the extent that the officers' version of the events conflicts with Pagan's version, the Court credits the testimony of Officers Trask and Crown. Pagan's injuries—a head wound and a mild ankle fracture—are consistent with a forceful tackle against a shelving unit by two large men. Meanwhile, Pagan admitted during cross-examination that the Temple University medical records from June 16, 2003 do not contain any reference to bruises on his body, which would inexorably have resulted from the multiple kicks that he claims to have received.³⁵

Pagan also showed the Court that he was wearing an orthopedic shoe during the trial—an incident to the permanent right-ankle injuries that he claims to have sustained during the arrest.³⁶ Yet he also confirmed during cross-examination that x-rays of his right ankle taken in prison on July 26, 2003, just weeks after the arrest, reflected no fractures. Additionally, after his

³³ Id. 21:17-22 (testimony of Jose Pagan).

³⁴ Id. 22:23 (testimony of Jose Pagan).

³⁵ Id. 63:24 (testimony of Jose Pagan).

³⁶ Id. 36 (testimony of Jose Pagan).

arrest and before the trial, he admitted that he was playing handball in the Federal Detention Center, where he was incarcerated.³⁷ This, of course, strongly suggests that any permanent ankle trauma that Pagan currently suffers has a cause other than the arrest.

Finally, the Court's dockets reflect that on September 6, 2005, Pagan pleaded guilty before U.S. District Judge Marvin Katz to: (1) possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(C); (2) possession with intent to distribute a controlled substance within 1000 feet of school property in violation of 21 U.S.C. § 860; and (3) possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) & 924(e).³⁸ These charges all arose out of Pagan's activity on June 16, 2003. At the trial in this case, however, Pagan insisted that the government forced him to plead guilty to the charges, suggesting that he misrepresented the truth at the plea hearing.³⁹ This of course, means that one of two mutually exclusive possibilities obtains: On one hand, Pagan lied at his plea hearing before Judge Katz, by admitting guilt to conduct he had not engaged in. Alternatively, he lied under oath at the trial in this case, by claiming that the government coerced him into taking a plea against his will for conduct that he in fact committed. In either scenario, it is clear that Pagan has at some point misrepresented the truth before the Court.

Based on all these internal inconsistencies in Pagan's story, the Court finds Pagan not to be a credible witness, at least with respect to those portions of his story that diverge from that of the Officers.

³⁷ Id. 58:12 (testimony of Jose Pagan).

³⁸ See United States v. Pagan, No. 03-CR-621 (E.D. Pa. Sept. 6, 2005) (Guilty Plea Agreement) [Doc. # 67].

³⁹ N.T. 4/17/07, 78:5 (testimony of Jose Pagan).

B. Excessive Force

Pagan's single legal claim is that Officers Trask and Crown violated his Fourth Amendment rights, by employing excessive force to arrest him.⁴⁰ Under the Fourth Amendment, arresting officers are permitted to use force, as long as that force is "objectively reasonable."⁴¹ This is a heavily fact-driven determination, requiring the Court to consider "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."⁴² Applying these factors, the Court concludes that the Officers' application of force during Pagan's arrest in the deli was reasonable.

Pagan points out that at the time of his arrest, he had left his weapon in his house, and that he had put his hands up into the air as an act of surrender. Therefore, he contends, the Officers' decision to tackle him was an unreasonable use of force.

Officers Trask and Crown, however, did not know that he had left the gun in the house, and in pursuit of Pagan, had no time to search those premises. Pagan was wearing a long tee shirt that covered his belt, leaving open the possibility that he might have still had the gun concealed under the shirt in his waist area. Moreover, Pagan had pointed his gun at another man just moments before, after which he fired it twice. Thus, the Officers' belief that Pagan posed a threat to the people in the deli, and to the Officers themselves, was a reasonable one.

⁴⁰ Because Pagan's Amended Complaint plainly alleges the violation of his right to be free of excessive force during an arrest, Officers Trask and Crown are not qualifiedly immune from this lawsuit. See Saucier v. Katz, 533 U.S. 194, 201 (2001) (qualified immunity applies only if the Complaint does not allege the violation of a constitutional right, or if the right that is allegedly violated is not clearly established by Supreme Court precedent).

⁴¹ Graham v. Connor, 490 U.S. 386, 397 (1989).

⁴² Mellott v. Heemer, 161 F.3d 117, 122 (3d Cir. 1998) (internal quotation omitted).

Moreover, Pagan was fleeing in order to evade arrest. Pagan contends that as soon as he entered the deli, which had no back-door escape, that his immediate surrender rendered the Officers' subsequent tackle unreasonable. The courts hold, however, that this reasonableness determination must take into account that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”⁴³ Therefore, although arresting officers could conceivably avoid applying unnecessary force by considering the meaning of each subtle change in circumstance during an arrest, the Fourth Amendment does not require this. The Fourth Amendment does not proscribe unnecessary force, only unreasonable force.

A neutral observer might, with the benefit of hindsight, conclude that Officers Trask and Crown could have successfully arrested Pagan in a less violent manner. If the Officers, for example, after chasing Pagan into the deli and seeing his hands in the air, had taken a moment to interpret his physical gesture as an act of nonviolent surrender, they might have arrested Pagan without barreling into him and injuring him. But a fleeing suspect, presumably armed and dangerous, might also exploit that reflective pause to his advantage, by pulling out his weapon and using it in a crowded deli, injuring the officers and innocent customers. As the Supreme Court has stated, “[n]ot every push or shove, even if it may seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment.”⁴⁴ This Court, therefore, will not second-guess the Officers’ split-second decision, informed by experience and training that this Court does not possess. Accordingly, the Court concludes that Officers Trask and Crown did not apply unreasonable force

⁴³ Couden v. Duffy, 446 F.3d 483, 497 (3d Cir. 2006) (quoting Graham, 490 U.S. at 397).

⁴⁴ Graham, 490 U.S. at 396.

during the arrest of Jose Pagan.

CONCLUSIONS OF LAW

1. Officers Trask and Crown are not immune from suit under the doctrine of qualified immunity.

2. On June 16, 2003, when Officers Trask and Crown followed Jose Pagan into the corner deli, they reasonably believed that he was armed and dangerous.

3. When Officers Trask and Crown entered the deli, they reasonably feared for their own safety, as well for the safety of the people inside the deli.

4. After seeing Pagan face them and put his hands into the air, the Officers' failure to interpret that as a gesture of unequivocal surrender was not unreasonable.

5. The Officers' decision to incapacitate Pagan by physically tackling him, as opposed to using a less intrusive use of force, was reasonable under the circumstances.

6. Therefore, because Officers Trask and Crown did not use unreasonable force in arresting Pagan, they did not violate his Fourth Amendment rights.

Finally, the Court expresses its gratitude to Pagan's counsel, Messrs. Klein and Stanoch, who represented Pagan pro bono. The Court is convinced that Pagan's interests could not have been more strongly represented, and Pagan's counsel made this Court's job in understanding and adjudicating his claim for relief substantially easier. Advocating for those accused and convicted of crimes is not always a popular cause, especially against dedicated public servants who daily risk their lives in the name of public safety. Nonetheless, representing the unpopular remains

a vital function of the bar and is essential to protecting the civil liberties of all Americans. The Court appreciates counsel's hard work and professionalism.

An appropriate Order follows.

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

JOSE PAGAN,

Plaintiff,

vs.

OFFICER MICHAEL TRASK, et al.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

CIVIL NO. 03-6271

ORDER

AND NOW, this 4th day of September 2007, upon consideration of the testimony, exhibits, and oral arguments presented in a non-jury trial, and after reviewing the applicable law and the entire record in this case, it is hereby

ORDERED, that judgment is **ENTERED** in favor of Defendants Michael Trask and James Crown; it is further

ORDERED, that the Amended Complaint [Doc. # 33] is **DISMISSED**; and it is further

ORDERED, that the Clerk shall **CLOSE** this case.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.