



Doe of Prime Care Medical, Manager J. Doe of Cash Converters, and Loan Official(s) J Doe(s) of the Sovereign Bank were dismissed. Gresh substituted Adalberto Carrasquillo for officer J. Doe after leave to amend was granted.

The complaint arises from Gresh's arrest for burglary, theft by unlawful taking, receiving stolen property and conspiracy on a warrant signed by an independent magistrate. Defendants Adalberto Carrasquillo ("Carrasquillo"), Michael Godshall Jr. ("Godshall"), and Michael Bailey III ("Bailey") filed a motion to dismiss. Plaintiff was then granted leave to join Gregory Davis ("Davis"), and to file an Amended Complaint. Carrasquillo, Godshall and Bailey again responded by filing a joint motion to dismiss; Davis separately filed his own motion to dismiss.

Gresh's amended complaint did not list specific counts. The four defendants read the amended complaint to contain five allegations: 1) false arrest on October 24, 2002; 2) unlawful search and seizure of property; 3) false arrest on November 13, 2002; 4) infliction of emotional distress; and 5) conspiracy. In his response to Davis' motion to dismiss, Gresh asserted the "said defendant(s)" had failed to address five additional allegations raised in his amended complaint: 1) false imprisonment; 2) unconstitutional seizure of property; 3) punitive police misconduct/outrageous governmental misconduct; 4) malicious prosecution; and 5) violations of procedural and substantive due process. Gresh filed his complaint *pro se* and the court must liberally construe his pleadings and apply the applicable law, irrespective of whether he has mentioned it by name. See Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir.2003).

Carrasquillo, Bailey, Godshall, and Davis are members of the Exeter Police Department. Davis signed an affidavit of probable cause to obtain an arrest warrant on October 15, 2002. Carrasquillo arrested Gresh on October 24, 2002, pursuant to the October 15<sup>th</sup> warrant. As

incident to the arrest, Bailey and Carrasquillo searched and seized Gresh's automobile. An inventory search revealed marijuana and drug paraphernalia.

On October 28, 2002, another criminal complaint with an affidavit of probable cause, signed by Carrasquillo, was presented to an independent magistrate who issued a second arrest warrant for Gresh. On November 13, 2002, pursuant to the second warrant, Carrasquillo and Bailey arrested Gresh. On November 27, 2002, charges for burglary and related charges were dismissed for failure to establish a *prima facie* case. Godshall allegedly told Gresh's mother, Janet Ann Gresh, not to post bail for Gresh or allow him into her home because drug addicts steal from their mothers. On December 20, 2002, Gresh was released on bail on the drug charges. On June 5, 2003, both of the drug charges resulting from the vehicle inventory search were dismissed, but Gresh pleaded guilty to disorderly conduct.

A motion to dismiss all or part of an action for failure to state a claim upon which relief may be granted looks to the legal sufficiency of the claim. Fed. R. Civ. P.12(b)(6). In deciding a motion to dismiss, a court must accept all factual allegations of the complaint as true and make reasonable inferences in favor of the non-moving party. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). In a *pro se* pleading, a motion to dismiss will be granted only when beyond doubt a plaintiff can prove no set of facts that would entitle him to relief.

Estelle v. Gamble, 429 U.S. 97, 106 (1976). A court does not need to credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In Re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir. 1997) (citing Glassman v. Computervision Corp., 90 F.3d 617, 628 (1st Cir. 1996)).

When a plaintiff files a claim under 42 U.S.C. § 1983, he "must allege both a deprivation

of a federally protected right and that this deprivation was committed by one acting under color of state law.” Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997). There is no question that these defendants were acting under color of state law.

### **False Arrest and False Imprisonment Relating to the October 24, 2002 Arrest**

Gresh contends that the affidavit of probable cause contained false information and that the officers knew they did not have probable cause to arrest him. When the arrest is based on a facially valid warrant, probable cause is lacking only when the police: “1) knowingly and deliberately, or with a reckless disregard for the truth, made false statements or omissions that create a falsehood in applying for a warrant; and 2) that such statements or omission are material, or necessary, to the finding of probable cause.” Wilson v. Russo, 212 F.3d 781, 786-87 (3d Cir. 2000). The affidavit of probable cause states, “Judith advised that she observed the defendant as he exited 417 Ada Drive while carrying electronic equipment and placed the equipment inside a small black vehicle.” Based on a plain reading of the affidavit of probable cause and the arrest warrant issued by an independent magistrate, an arresting officer could have reasonably believed that Gresh committed the offense and his arrest was legal.

Gresh in his amended complaint refers to testimony of Judith Yates before District Justice Phyllis Kowalski on November 27, 2002. Gresh alleges that Judith Yates testified, “she observed a person, but not his face, as he exited 417 Ada Drive.” Gresh also alleges Judith Yates testified, “she had neither knowledge as to whether the vehicle was a two door or four door, nor knowledge to the registration of the said vehicle.”

Gresh also acknowledges the October 15, 2002 charges were based on an alleged phone call by Gresh that placed him at the scene of the crime. Gresh does not allege the arresting

officers knowingly made false statements materially necessary to the finding of probable cause. There is no reason to believe that the arresting officers lacked probable cause to arrest Gresh.

Gresh has asserted his amended complaint also contains a false arrest allegation. His false arrest and false imprisonment are essentially the same claim. “Under certain circumstances . . . . false arrest and false imprisonment are merely different labels which describe the same conduct. Detainment and confinement constitute the gravamen of the civil wrong committed by an individual who illegally asserts or employs authority over another while purportedly enforcing the law. This civil wrong can be denominated as either false arrest or false imprisonment.” Gagliardi v. Lynn, 285 A.2d 109, 110 (1971). Gresh has no claim for false arrest or false imprisonment pursuant to the warrant.

#### **Search and Seizure of Property**

Gresh alleges Bailey and Carrasquillo unlawfully searched and seized his car. On October 24, 2002, as incident to the arrest, the Exeter Township police ordered the impoundment of Gresh’s car. An inventory search revealed marijuana and drug paraphernalia. The search was conducted pursuant to the policies and procedures of the Exeter Township Police Department. The Supreme Court has repeatedly upheld the validity of warrantless inventory searches of impounded motor vehicles. Colorado v. Bertine, 479 U.S. 367, 371 (1987) (inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment); Michigan v. Thomas, 458 U.S. 259 (1982) (upholding warrantless inventory search of impounded car); South Dakota v. Opperman, 428 U.S. 364, 370 (1976) (inventory searches of automobiles are consistent with the Fourth Amendment).

Gresh has no claim for unlawful search and seizure of property.

### **False Arrest and False Imprisonment Relating to the Arrest of November 13, 2002**

Gresh contends that he did not possess drugs and paraphernalia found in his automobile because the police failed to place him behind the driver's seat; however, he does not contest that marijuana and drug paraphernalia were found in his automobile. The Exeter Township Police Department obtained a second valid arrest warrant because of the marijuana and drug paraphernalia found in Gresh's automobile. Therefore, Gresh has no claim for false arrest or false imprisonment because the arresting officers had a facially valid arrest warrant signed by an independent magistrate.

### **Malicious Prosecution**

Gresh alleges defendants maliciously prosecuted him in violation of the Fourth Amendment. To prevail in a Section 1983 action for malicious prosecution, a plaintiff must show: 1) the defendants initiated a criminal proceeding; 2) the criminal proceeding ended in the plaintiff's favor; 3) the proceeding was initiated without probable cause; 4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and 5) the plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir. 2003).

Gresh was charged with burglary after being arrested on October 24, 2002. The court has already determined the police had probable cause to arrest Gresh and the same evidence established probable cause to initiate criminal proceedings against him. Gresh was charged with drug possession as a result of his November 13, 2002 arrest. The discovery of marijuana and drug paraphernalia in Gresh's automobile established sufficient probable cause to initiate criminal proceedings against him. Neither criminal proceeding against Gresh was initiated

without probable cause and he has no claim for malicious prosecution.

### **Conspiracy**

Conspiracy under 42 U.S.C. § 1983 requires deprivation of a federally protected right. Gresh's amended complaint failed to allege a conspiracy. Therefore, Gresh has no claim for conspiracy.

### **Due Process Violations**

Gresh asserts his amended complaint establishes the claim of "violations of procedural and substantive due process." The amended complaint fails to specify how defendants allegedly violated the Fourteenth Amendment and the court finds no grounds to establish such an allegation.

### **Punitive Police Misconduct/Outrageous Governmental Misconduct**

Gresh alleges "punitive police misconduct/outrageous governmental misconduct." "Punitive police misconduct/outrageous governmental misconduct" is not a cognizable claim under 42 U.S.C. § 1983.

### **Conclusion:**

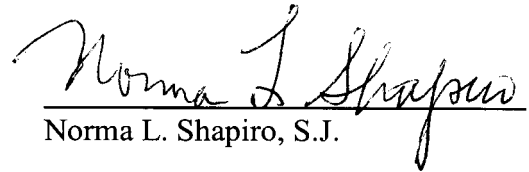
We have considered all other federal allegations and determined they are without merit. Defendants' motions to dismiss will be granted in favor of Adalberto Carrasquillo, Michael Godshall Jr., Michael Bailey III and Gregory Davis. Gresh's claim for infliction of emotional distress is not actionable under 42 U.S.C. § 1983 because it does not allege deprivation of a federally protected right. If Gresh brought this claim under state law, pendent jurisdiction may be declined where the federal claims are no longer viable. Shaffer v. Bd. of Sch. Directors of the

Albert Gallatin Area Sch. Dist., 730 F.2d 910, 912 (3d Cir. 1984). Therefore, Gresh's claims for infliction of emotional distress will be dismissed without prejudice. An appropriate order follows.





- 6) Plaintiff's claim for violations of the Due Process Clause of the Fourteenth Amendment are dismissed with prejudice.
- 7) Plaintiff's claim for "punitive police misconduct/outrageous governmental misconduct" is dismissed with prejudice.
- 8) Plaintiff's claim for infliction of emotional distress is dismissed without prejudice.

  
Norma L. Shapiro, S.J.

ENTERED

AUG 02 2005

CLERK OF COURT

*Stalovick*

*Gresh Bellman*

*Arson*