

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

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THOMAS GREEN also known as	:	
THOMAS BROWN,	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	NO. 97-5745
	:	
COOPER HOSPITAL/UNIVERSITY	:	
MEDICAL CENTER, et al.,	:	
	:	
Defendants.	:	

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**MEMORANDUM**

ROBERT F. KELLY, J. December , 1997

Before this Court are Defendants' Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). This action arose out of the use of certain evidence at the criminal trial of Thomas Green for robbery. For the reasons that follow, Defendants' Motions will be granted.

**Background**

On December 2, 1994, Robert Hicks reported to Philadelphia Police that he had been robbed and shot by two males inside his Philadelphia check cashing agency. The perpetrators took Hicks's handgun and fled the scene. Hicks also told police that he had shot one of his assailants in the chest area. Approximately one hour later, a male who identified himself as "Thomas Brown" arrived at Cooper Hospital/University Medical Center ("Cooper") and reported that he had been shot while in Camden, New Jersey. Exploratory surgery was performed and Cooper subsequently discharged Brown.

On January 4, 1995, Philadelphia Police arrested Thomas

Green for illegal possession of a handgun. Police investigation determined that the handgun seized at the time of the arrest was the same handgun that had been stolen from Hicks during the robbery. On January 10, 1995, Police showed Hicks an array of photographs which included the photograph of Green. Hicks identified Green as one of the individuals who had robbed him and whom Hicks believed had been shot.

On February 13, 1995, Police arrested Green for the robbery and shooting of Hicks. Shortly thereafter, police observed a scar across Green's abdomen. Prior to Green's trial, police determined that shortly after Hicks had been robbed and shot, "Brown" had been treated at Cooper for a gunshot wound.

On June 24, 1996, at Green's trial for robbery and aggravated assault, members of the Cooper medical staff were called to testify and stated that they had treated "Brown" for a gunshot wound. Witnesses were unable to say whether "Brown" and Green were the same person. Green was convicted of robbery and sentenced to a term of five to ten years imprisonment.

Green filed a diversity action with this Court on September 27, 1996, against all but two of the Defendants named in this action. By Order dated June 26, 1997, this Court dismissed his claim with prejudice because Green failed to allege that he and "Brown" were the same person. See Green v. Cooper Med. Hosp., 968 F. Supp. 249 (E.D. Pa. 1997). An appeal of that Order is currently pending before the Third Circuit. Plaintiff filed this action on September 12, 1997, alleging virtually

identical claims to those in the previous case, but adding the Philadelphia Court of Common Pleas and Recordex Services, Inc., as Defendants.

The present action, like the previous one, is somewhat difficult to characterize. Jurisdiction is again based upon diversity of citizenship. The Plaintiff appears to base his claim upon an alleged violation of the physician-patient privilege. There are also allegations in the complaint that indicate that Plaintiff may have wanted to bring a 42 U.S.C. § 1983 ("Section 1983") claim against some of the Defendants. Defendants Cooper, Dr. Richard Burns, the City of Philadelphia ("City"), the Philadelphia Police Department, and the Court of Common Pleas have filed Motions to Dismiss.

#### **Standard**

A motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir.

1989). Dismissal is appropriate only when it clearly appears that the plaintiff has alleged no set of facts which, if proved, would entitle him or her to relief. Conley, 355 U.S. 41, 45-46 (1957); Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

### **Discussion**

Under the doctrine of res judicata, a party's claim is precluded when there has been: (1) a final judgment on the merits in a prior suit, (2) identity of parties, and (3) identity of causes of action. Arab African Int'l Bank v. Epstein, 10 F.3d 168, 171 (3d Cir. 1993).<sup>1</sup> "Dismissal with prejudice constitutes an adjudication of the merits as fully and completely as if the order had been entered after trial." Gambocz v. Yelencsics, 468 F.2d 837, 846 (3d Cir. 1972) (citing Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 327 (1955)).

In this case, Plaintiff's first action was for violating the physician-patient privilege. The Order of this Court dated June 26, 1997, specifically states that Plaintiff's claim is dismissed with prejudice. Thus, there was a final judgment on the merits of an identical cause of action. Further,

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<sup>1</sup>It should be noted that it is irrelevant whether Pennsylvania or New Jersey law applies to this diversity action, as both states have nearly identical definitions of res judicata. Compare Charlie Brown of Chatham, Inc., 495 A.2d 119, 127 (N.J. Super. 1985) (stating that the requirements are "a final judgment by a court or tribunal of competent jurisdiction, identity of issues, parties, cause of action and thing sued for") with Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995) (holding "[a]ny final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privies on the same cause of action").

the first action was brought against Defendants Cooper, Burns, the Philadelphia Police Department, and the City. Because these parties are identical, the doctrine of res judicata bars this action against these Defendants.

Plaintiff also appears to attempt to state a claim under Section 1983. Plaintiff alleges that Defendants City, the Police Department, the Court of Common Pleas, and the District Attorney's Office violated his "civil rights under color of state law" and that the evidence used against him at trial "violated the Fourth Amendment of the United States Constitution to due process of law."<sup>2</sup> See Complaint at ¶¶ 37, 43. Aside from these broad assertions, there are no further allegations in the Complaint that would support a claim that the Plaintiff was deprived of any rights without due process of law.

Plaintiff's claim against the Philadelphia Court of Common Pleas is also barred by the Eleventh Amendment. Absent a state's consent, the Eleventh Amendment bars a suit in federal court that names the state as a defendant. Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978)). This bar applies to agencies and instrumentalities as well as to the state itself. Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977).

Pennsylvania's Constitution provides for a "unified

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<sup>2</sup>It is assumed that Plaintiff is referring to the Fourteenth Amendment as there is no Fourth Amendment due process right.

judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth court, courts of common pleas." PA. CONST. art. V, § 1. The Pennsylvania courts of common pleas are state entities, and are entitled to Eleventh Amendment immunity. Robinson v. Court of Common Pleas, 827 F. Supp. 1210, 1212 (E.D. Pa. 1993). Further, a state entity is not a "person" within the meaning of Section 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Therefore, whatever the theory of the Plaintiff's claim, the Court of Common Pleas is immune under the Eleventh Amendment.

In addition to being barred by the doctrine of res judicata, Plaintiff's claims against the City and the Police Department are also barred by Pennsylvania's Political Subdivision Tort Claims Act ("PSTCA"), 42 Pa. C.S. § 8541 et seq. The PSTCA limits tort actions against governmental units and employees. Tort actions are permitted only in eight enumerated circumstances, none of which is applicable here. See 42 Pa. C.S. § 8542. Thus, Pennsylvania's PSTCA does not permit this action against the City or the Police Department.

Even if this action were not precluded by res judicata, the Eleventh Amendment, and the PSTCA, Plaintiff's claim would still fail on the merits. Plaintiff bases his claim upon the alleged violation of N.J.S.A. 2A:84A-22.1 et seq. The statute referred to is a New Jersey Rule of Evidence related to the physician-patient privilege. The rule provides that "a person . . . has a privilege in a civil action or in a prosecution for a

crime . . . to refuse to disclose, and to prevent a witness from disclosing" confidential communications related to medical treatment. N.J.S.A. 2A:84A-22.2.

It is undisputed that the alleged wrongful disclosure of Plaintiff's medical information took place at Plaintiff's criminal trial in the Philadelphia Court of Common Pleas. As stated above, the physician-patient privilege statute cited is a Rule of Evidence, and there are no indications in the statute or in New Jersey case law that it creates an independent cause of action for its violation. Further, this New Jersey Rule of Evidence has no applicability in the Philadelphia Court of Common Pleas.<sup>3</sup>

#### **Conclusion**

This action is essentially identical to the one that was dismissed with prejudice by this Court on June 27, 1997. Plaintiff merely added additional Defendants and filed this action while his appeal of the previous case is pending. This action against the City, the Police Department, Cooper, and Burns is dismissed because it is barred by the doctrine of res judicata. The actions against the City and the Police Department are also barred by Pennsylvania's PSTCA. The action against the Court of Common Pleas is barred by the Eleventh Amendment. Further, even if this action were not barred for the above reasons, the Plaintiff's claim is without merit.

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<sup>3</sup>Pennsylvania's physician-patient privilege does not apply in criminal matters. See 42 Pa.C.S. § 5929.

An appropriate Order follows.

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Plaintiff,	:	
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COOPER HOSPITAL/UNIVERSITY	:	
MEDICAL CENTER, et al.,	:	
	:	
Defendants.	:	

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**ORDER**

AND NOW, this day of December, 1997, upon consideration of the Motions to Dismiss of Defendants Cooper Hospital/University Medical Center, Richard Burns, Philadelphia Police Department, Philadelphia Court of Common Pleas, and the City of Philadelphia, and all responses thereto, it is hereby ORDERED that:

1. The Defendants' Motion is GRANTED;
2. All claims against Cooper Hospital/University Medical Center, Richard Burns, Philadelphia Police Department, Philadelphia Court of Common Pleas, and the City of Philadelphia are DISMISSED WITH PREJUDICE;
3. The Clerk of Court is directed NOT to list this case as closed as there are claims against remaining Defendants.

BY THE COURT:

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Robert F. Kelly, J.