

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

STEPHEN WHITE : CIVIL ACTION
: :
v. : :
: :
DET. DUNLEAVY, and :
CHIEF OF POLICE, CHELTENHAM :
TOWNSHIP POLICE DEPT. : NO. 97-3184

O R D E R - M E M O R A N D U M

AND NOW, this 13th day of January, 1998, upon defendants'¹ motion, which has not been responded to, this action is dismissed. Fed. R. Civ. P. 12(b)(6).

This § 1983 action is based on a warrantless car stop for a suspected burglary. According to plaintiff Stephen White's pro se complaint, he and his companion were stopped by the police because they are African-American - and not for probable cause.² See complaint, ¶¶ 13-14. Defendant Dunleavy conducted a warrantless search of the car and arrested plaintiff. See id. ¶ 12. Nevertheless, plaintiff, as he concedes in the complaint,

¹ The allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle him to relief. Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

² The motion to dismiss states that there was probable cause, see defendants' motion, ¶¶ 5-6, defendant Dunleavy having received information from a confidential informant that two African-Americans in a car resembling plaintiff's had committed a burglary in the area, see complaint ¶ 9. The motion relied exclusively on averments in the complaint.

pleaded guilty to the criminal charge and was sentenced in state court. See id. ¶ 14.

Plaintiff's constitutional theory appears to be that a Fourth Amendment violation occurred in the nature of a false arrest. Conceivably, despite his conviction, he is not foreclosed from asserting the illegality of his arrest. See Heck v. Humphrey, 512 U.S. 477, 487 n.7, 114 S. Ct. 2364, 2372 n.7, 129 L. Ed.2d 383 (1994) ("[A] suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction."). That claim, however, would be hard pressed to succeed. Even if probable cause were lacking at the time, it would be necessary to overcome the obstacles of exigent car-stop law, after-discovery of probable cause (not including the search), and the waiver effects of a guilty plea.³

But in addition to showing the constitutional deprivation, there must be proof of actual injury. See Memphis Community School Dist. v. Stachura, 477 U.S. 299, 308, 106 S. Ct. 2537, 2543, 91 L. Ed.2d 249 (1986); Bolden v. Southeastern Pennsylvania Transit Authority, 21 F.3d 29, 34 (3d Cir. 1994).

³ The interrelationship of § 1983 and common law torts and the effect of criminal conviction have produced an evolving and problematical area of civil rights law. Compare Williams v. Schario, 93 F.3d 527, 528-29 (8th Cir. 1996) (guilty plea bars § 1983 claim based on false arrest claim), and Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996) (same), with Simpson v. Rowan, 73 F.3d 134, 136 (7th Cir. 1995) (conviction does not bar § 1983 claim based on false arrest), cert. denied, ___ U.S. ___, 117 S. Ct. 104, 136 L. Ed.2d 58 (1996).

While plaintiff would undoubtedly maintain that racial animus itself is an actual injury, if a deprivation occurred it consisted of the Fourth Amendment seizure of plaintiff's person. Plaintiff's guilty plea admitted, as a matter of law, that cause existed for the car stop and concomitant search and his arrest. Regardless of the legality of those occurrences or the motivations of defendant Dunleavy, plaintiff, having confessed guilt, can not now say he sustained an unconstitutional injury. There was nothing illegal or unreasonable about the manner in which the police acted – as, for example, where an arrest involves excessive force. See Nelson v. Jashurek, 109 F.3d 142, 145-46 (3d Cir. 1997). Accordingly, this action may not go forward.⁴

Edmund V. Ludwig, J.

⁴ The complaint makes no actionable allegations against the Chief of Police.