

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

DOUGLAS GANCI,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 95-0262
	:	
BOROUGH OF JENKINTOWN, et al.,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

R.F. KELLY, J.

APRIL 14, 1998

Douglas Ganci ("Ganci"), proceeding pro se, has brought this civil rights action in connection with events leading up to and occurring after his arrest on December 30, 1992. After a partially successful appeal, the Defendants remaining in this action are the Borough of Jenkintown (the "Borough"), Ptl. Joseph M. Mongan ("Mongan"), Chief Robert Furlong ("Furlong"), Sgt. John Capresecco ("Capresecco"), Ptl. Gerard Wuillermin ("Wuillermin")(collectively the "Jenkintown Defendants"), and Kathryn Vance ("Vance"). Presently before the Court are two motions for Summary Judgment filed by Vance and the Jenkintown Defendants. For the reasons that follow, both motions will be denied.

**I. FACTS.**

On December 30, 1992, Ganci was arrested at the Jenkintown train station shortly after the police received a complaint of a prowler and a description from Vance, Ganci's former girlfriend. Ganci was charged with one count of reckless endangerment (18 Pa.C.S.A. § 2705), one count of loitering and

prowling at night (18 Pa.C.S.A. § 5506), one count of disorderly conduct (18 Pa.C.S.A. § 5503), and four counts of harassment (18 Pa.C.S.A. § 2709). A complaint issued and Ganci was transported to the Cheltenham Police Station where he was arraigned. Ganci was then transported and jailed at the Montgomery County Prison in Eagleville until 5:00 p.m. on December 31, 1992, when he was released on bail.

On January 7, 1993, Ganci entered into an agreement with two Jenkintown police officers. Under the terms of this agreement, the criminal charges against Ganci were held in abeyance for 90 days, with an understanding that they would then be dropped, if Ganci complied with the terms of a protection from abuse order entered on Vance's behalf, and signed a written statement releasing the Jenkintown Defendants from all liability stemming from Plaintiff's arrest. Ganci alleges that he signed this agreement under duress.

At the continuation hearing on April 28, 1993, the Jenkintown police officers refused to drop the charges because Ganci allegedly violated the terms of the protection from abuse order. See Ganci v. Borough of Jenkintown, No. 97-0262, 1996 WL 417107 at \*1 (E.D. Pa. July 22, 1996). Plaintiff was bound over for trial on three counts and "plead mute" to the charges. On November 29, 1993, a habeas corpus hearing was held in the Montgomery County Court of Common Pleas where the charges against Plaintiff were reduced to a single summary offense. On November 16, 1994, after 19 continuances, the case was finally dismissed.

## II. STANDARD.

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986). Defendants, as the moving parties, have the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, the nonmoving party should go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the nonmoving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81,83 (3d Cir. 1987).

In this case, Ganci has failed to respond to the Motion for Summary Judgment, however, this does not entitle the movant to judgment automatically. Anchorage Assocs. v. Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990). Rather, the Motion must be evaluated on the merits, and judgment entered in favor of the movant only if "appropriate." Id.; FED. R. CIV. PRO. 56(e). In other words, the Motion may be granted only if movant is entitled to "judgment as a matter of law." Anchorage Assocs., 922 F.2d at 175. As an additional precaution, after consideration of Ganci's pro se status and the fact that the

parties have engaged in little discovery, oral argument was held on April 9, 1998, in order to allow Ganci to respond to the Defendants' Motions.

### **III. DISCUSSION.**

Two claims remain in this action. Conspiracy to maliciously prosecute as to both Vance and the Jenkintown Defendants pursuant to 42 U.S.C. § 1983, and a state law malicious prosecution claim against the Jenkintown Defendants alone.

Section 1983 requires Ganci to show (1) that a person acting under color of state law (2) deprived him of a right privilege or immunity secured by the Constitution or federal law. 42 U.S.C. § 1983; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by, Daniels v. Williams, 474 U.S. 327 (1986); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). It is undisputed that the Jenkintown Defendants qualify as state actors for purposes of section 1983. Ganci seeks to extend liability under section 1983 to Vance by proving that she conspired with the Jenkintown Defendants. Dennis v. Sparks, 449 U.S. 24, 27 (1980). Ganci alleges the Jenkintown Defendants and Vance violated his right to be free from arrest except on probable cause. Thus, Ganci has made a prima facie showing of section 1983 liability.

Additionally, because Ganci is proceeding on a conspiracy theory, he must also prove "that there was 'a single plan, the essential nature and general scope of which [was] known

to each person who is to be held responsible for its consequences.'" Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979), rev'd in part on other grounds, 446 U.S. 754 (1980), cited with approval in, Melo v. Hafer, 912 F.2d 628, 638 n.11, (3d. Cir. 1990), aff'd, 502 U.S. 21 (1991). A conspiracy may be proven through circumstantial evidence alone and its existence is a question for the jury, as long as there is enough evidence to infer that the co-conspirators had a "'meeting of the minds' and thus reached an understanding to achieve the conspiracy's objectives." Melo, 912 F.2d at 638 n.11 (citing Adickes v. Kress & Co., 398 U.S. 144, 158-59 (1970)). Ganci has adduced sufficient evidence to proceed to trial on his conspiracy claim.

Under section 1983, a malicious prosecution action may only be brought under the Fourth, as opposed to the Fourteenth, Amendment of the United States Constitution. Albright v. Oliver, 510 U.S. 266, 270 n.4 (1994)(plurality opinion), reh'g denied, 510 U.S. 1215 (1994). In addition to proving the elements of the common law tort of malicious prosecution, to prevail under section 1983, a plaintiff must also show "some deprivation of liberty that rises to the level of a Fourth Amendment 'seizure.'" Torres v. McLaughlin, 966 F.Supp. 1353, 1361 n.7 (E.D. Pa. 1997); Taylor v. City of Philadelphia, No. 96-740, 1998 WL 151802 at \* 8 (E.D. Pa. Ap. 1, 1998). It is beyond dispute that Ganci's arrest and detention amount to a "seizure" cognizable under the Fourth Amendment.

The elements of the common law tort of malicious

prosecution are: "(1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; and, (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice." Hilfirty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996)(citing Haefner v. Burkey, 626 A.2d 519, 521 (Pa. 1993)). The key element in dispute is the existence of probable cause.

Ganci contends that Vance and the Jenkintown Defendants conspired to lure him onto Vance's property in order to have him arrested. As evidence of this Ganci points to the written statement Vance gave to the police at the time of his arrest. Specifically, Vance wrote that on July 29, 1992, she met with Wuillermin at the Jenkintown police station and told him about her history with Ganci. Wuillermin explained to her that Ganci "didn't have to actually hurt her before she could get help" in the form of a protection from abuse order. Vance wrote "From this point on I knew the police had an extra eye on me . . . and prayed that he would either come onto my property so he could be arrested or give up."

Ganci alleges that Vance left him a message inviting him over for "holiday greetings" on December 30, 1992. Ganci plans to call a witness to testify that he heard this message. Under oath at the preliminary hearing, Vance testified that she did not invite Ganci to her home. The Jenkintown Defendants argue that they had probable cause to arrest Ganci based on

Vance's complaint. The issue of probable cause is essential to both of Ganci's claims. Because there are genuine issues of fact in dispute regarding whether or not there was probable cause to arrest Ganci, both Motions for Summary Judgment are denied.

As to the Borough of Jenkintown, Ganci must make an additional showing because liability under section 1983 cannot be imposed against a municipality for the conduct of its employees based on the doctrine of respondeat superior. Monell v. Department of Social Servs. of the City of New York, 436 U.S. 658, 691 (1978); Beck v. City of Philadelphia, 89 F.3d 966, 971 (3d Cir. 1996), cert. denied, \_\_\_ U.S. \_\_\_, 117 S.Ct. 1086 (1997). In order to hold the Borough liable, Ganci must prove (1) the existence of a "policy" or a "custom" of the Borough; (2) that the "policy" or "custom" was administered by a "policymaker" with "deliberate indifference" to the rights of the public; and (3) proximate causation between the administration of the "policy" or "custom" and the violation of Ganci's rights. Board of County Commissioners of Bryan County, Okl. v. Brown, \_\_\_ U.S. \_\_\_, 117 S.Ct. 1382, 1388 (1997); Beck, 89 F.3d at 971.

Ganci alleges that the Borough is liable for failing to train and supervise its police officers and that this failure resulted in his arrest without probable cause. Failure to train and supervise can form the basis for liability under section 1983 if the municipality's failure "amounts to deliberate indifference to the rights of persons with whom the police come into contact." Kneipp v. Tedder, 95 F.3d 119, 1213 (3d Cir. 1996)(citing City of

Canton v. Harris, 489 U.S. 378, 388 (1989)); Beck, 89 F.3d at 972 (same). Further, it must be shown "that the deficiency in training actually caused the police officers' indifference" to Ganci's rights. Kneipp, 95 F.3d at 1212. Finally, Ganci must show a "policymaker was responsible either for the policy or, through acquiescence, for the custom." Id.

Ganci vaguely testified that Chief Furlong "knew what was going on" and admitted this to a friend of his who called the Jenkintown Police Department on the night of his arrest. (Ganci Dep. at 152-53.) Further, Ganci claims that Mongan also told him that Chief Furlong "knew what was going on." (Id. at 153-55.) Despite the potential inadmissibility of this evidence, Ganci's claim against the Borough may proceed to trial. An Order follows.

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BOROUGH OF JENKINTOWN, et al.,	:	
	:	
Defendants.	:	

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ORDER

AND NOW, this 14th day of April, 1998, upon consideration of the Defendants' Motions for Summary Judgment, it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

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Robert F. Kelly, J.