

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

MICHAEL J. NATALIE,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
CLIFFORD L. BARNETT,	:	
	:	
Defendant.	:	NO. 97-1291

MEMORANDUM

Before me is plaintiff’s Motion for a New Trial (document number 17) filed pursuant to Federal Rule of Civil Procedure 59. For the following reasons, plaintiff’s Motion for a New Trial will be denied.

I. Background

On February 23, 1995, plaintiff, Michael J. Natalie, was arrested by Officer Clifford L. Barnett in Schuylkill Township, Pennsylvania following a motor vehicle stop. Plaintiff was arrested for operating his vehicle while under the influence of alcohol. During the arrest, plaintiff was handcuffed and placed in the rear seat of the police vehicle and transported to a nearby hospital for a blood-alcohol test.

Plaintiff brought the present civil rights action against Officer Barnett under 42 U.S.C. Section 1983 alleging that excessive force was used by Officer Barnett in connection with his arrest.¹ After a short jury trial, the jury returned a verdict in favor of defendant and judgment was

¹ Plaintiff also brought claims against Schuylkill Township, Theodore J. Ryan, Susan Newhart, Herman John, Bryan Walters, Raymond Mathis, and Brian Marshall, but voluntarily withdrew all claims against these parties before trial. Plaintiff’s wife, Laura M. Natalie, was originally named as a plaintiff, but voluntarily withdraw all of her claims before trial.

entered on January 29, 1998.

Plaintiff has moved the court to set aside the jury's verdict and to grant a new trial pursuant to Federal Rule of Civil Procedure 59 on two grounds.² First, plaintiff asserts that I erred in admitting a blood-alcohol test report conducted at a state authorized testing facility. Second, plaintiff contends that I erred in instructing the jury under both the Fourth and Fourteenth Amendments.

II. Standard of Review

The plaintiff has moved for a new trial pursuant to F.R.C.P. 59. "The decision to grant or deny a new trial is confided almost entirely to the discretion of the district court." Blancha v. Raymark Industries, 972 F.2d 507, 513 (3d Cir. 1992). Rule 59(a) of the Federal Rules of Civil Procedure provides for the granting of a new trial after a jury trial, but does not enumerate the grounds on which a new trial may be granted. To constitute proper grounds for granting a new trial, an error, defect, or other act must effect the substantial rights of the parties. Fed. R. Civ. P. 61. A court may order a new trial pursuant to Federal Rule of Civil Procedure 59 "if the jury verdict was against the weight of the evidence, if the size of the verdict was against the weight of the evidence, (i.e., if the jury's award was grossly excessive or inadequate), if counsel engaged in improper conduct that had a prejudicial effect upon the jury, or if the court committed a significant error of law to the prejudice of the moving party." Maylie v. National RR Passenger Corp., 791 F. Supp. 477, 480 (E.D. Pa. 1992), aff'd, 983 F.2d 1051 (3d Cir. 1992). A court must

² It should be noted that plaintiff has failed to order a full trial transcript as required by Local Rule of Civil Procedure 7(e). Although this would constitute grounds to dismiss plaintiff's post-trial motion, I will excuse plaintiff from this requirement and consider the merits of plaintiff's post-trial motion.

view the evidence in the light most favorable to the non-moving party. Keith v. Truck Stops Corp. of America, 909 F.2d 743, 745 (3d Cir. 1990).

III. Analysis

The first ground plaintiff raises in support of his Motion for a New Trial is that I erred in admitting during Officer Barnett's testimony the results of plaintiff's blood-alcohol test conducted by the Pennsylvania State Police in accordance with state law. Plaintiff argues that the test results were improperly admitted under Federal Rule of Evidence Rule 803(6), commonly referred to as the business records exception to the hearsay rule, because Officer Barnett was not a qualified witness for purposes of admitting the test results and that the test results were inadmissible hearsay.

I find no merit to plaintiff's argument that the blood alcohol test results were improperly admitted. Under Federal Rule of Evidence 803(6), the blood-alcohol test results were properly admitted into evidence without the presence of the actual technician(s) who performed the test. I admitted the test results under the business records exception because a blood-alcohol test is a basic and routine procedure as allowed by state law. The test is highly reliable and rises above mere opinion or conclusion to a level of medical fact.

Because of the overwhelming reliability inherent in blood-alcohol tests and the records of those tests, the cross-examination of the technician(s) who actually performed the test would be of no utility to plaintiff. It is this element of trustworthiness that serves in place the safeguards of confrontation and cross-examination usually afforded under the business records exception to the hearsay rule. There was no need to call before the jury each and every technician associated with the plaintiff's blood alcohol test to explain this routine and reliable procedure.

Although I have been unable to find any Third Circuit caselaw directly on point, other federal courts that have addressed this or similar issues are in agreement. See United States v. Frattini, 501 F.2d 1234 (2d Cir. 1974) (results of chemical analysis of controlled substances admissible as a business record); Kay v. United States, 255 F.2d 747 (4th Cir. 1958) (chemist's certificate to establish blood alcohol in appellant's blood admissible as a business record); United States v. Ware, 247 F.2d 698 (7th Cir. 1957) (results of chemical analysis of controlled substance admissible as a business record). Pennsylvania state courts are also in agreement. See Commonwealth v. Kravontka, 384 Pa.Super. 346, 558 A.2d 865 (1989); Commonwealth v. Seville, 266 Pa.Super. 587, 405 A.2d 1262 (1979).

Plaintiff also argues that the prejudice to him in admitting evidence of his blood alcohol content clearly outweighed the probative value of this evidence. I find no merit whatsoever to this argument. During his testimony, plaintiff testified that he drank a full pint of vodka a short time prior to being stopped for driving under the influence at approximately 10:30 a.m.. Plaintiff plead guilty to operating a motor vehicle under the influence of alcohol, and admitted at trial that his blood-alcohol level exceeded the legal limit of .10 percent. What he sought to have excluded at trial was the test results that established his blood alcohol content was .40 percent, or four times the legal limit.

Plaintiff testified as to his actions during the arrest and his ability to recall the events that occurred during this time period. Evidence of plaintiff's blood alcohol content was clearly relevant and highly probative for impeachment purposes and on the issue of whether the officer used excessive force during his arrest. Plaintiff's level of intoxication was directly relevant to his conduct and mental state during the time of his arrest. It was also highly probative of plaintiff's

ability to accurately recall and testify to the events that took place during his arrest.

The second argument plaintiff asserts in support of his Motion for a New Trial is that I erred in instructing the jury under both the Fourth and Fourteenth Amendments. Under Section 1983, a plaintiff must establish that a defendant, under color of state law, deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States.

Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970).³ Section 1983, however, does not create any substantive rights itself and in all cases brought pursuant to Section 1983 a determination must be made as to which constitutional right or rights a plaintiff may have been deprived.

Albright v. Oliver, 510 U.S. 266 (1994).

The key determination in this case was which of plaintiff's constitutionally protected rights may have been violated and what instructions to give the jury. This determination was complicated by the fact that plaintiff alleged that defendant used excessive force at several different times while Officer Barnett had him in custody. Plaintiff claimed that excessive force was used during the motor vehicle stop when he was first hand-cuffed and while he remained hand-cuffed as he was being transported to the hospital. Plaintiff also alleged that excessive force was used after he had been arrested and was being removed from the police vehicle at the hospital and being taken into the hospital for blood-alcohol testing.

Claims that a law enforcement officer has used excessive force during an arrest, investigatory stop, or other "seizure" are analyzed under the Fourth Amendment objective reasonableness standard. Graham v. Connor, 490 U.S. 386 (1989). The Due Process Clause of

³ The defendant did not dispute that he acted under color of state law as a police officer. The only issue at trial was whether plaintiff was deprived of any constitutionally protected rights.

the Fourteenth Amendment, however, protects pretrial detainee from excessive force. Brown v. Borough of Chambersburg, 903 F.2d 274 (3d Cir. 1990). Although a pretrial detainee is defined as a person charged but not yet convicted of a crime, the Supreme Court has not yet spoken as to the dichotomy of when an arrest ends and pretrial detention begins. Bell v. Wolfish, 441 U.S. 520 (1979).

The Supreme Court's holding in Albright v. Oliver, 510 U.S. 266 (1994) also fails to shed any additional light on the issue of when arrest ends and pretrial detention begins. In Oliver, plaintiff surrendered to police after learning that a warrant had been issued for his arrest. The plaintiff brought a Section 1983 action alleging that his substantive due process right to be free from prosecution except for probable cause under the Fourteenth Amendment had been violated. The Court affirmed the dismissal of the petitioner's action holding that petitioner failed to allege a violation of his Fourth Amendment rights "notwithstanding the fact that his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment." Id. at 812 (citations omitted).

Although Oliver appears to answer the question of whether the Fourth Amendment continues to provide protection beyond the point where arrest ends and pretrial detention begins, the Court's holding fails to set forth any guidance on determining when this transition actually occurs. There is also no caselaw in the Third Circuit which sheds any additional light on the question of when an arrest ends and pretrial detention begins.

Determining plaintiff's status at the time the excessive force was allegedly exerted in this case and determining which constitutional right plaintiff may have been deprived was an extremely difficult task because of the uncertainty in the law of when arrest ends and pretrial

detention begins. This issue was further complicated because plaintiff alleged that excessive force was used at several different times and places during the time from the motor vehicle stop until the point at which he was released from police custody. I instructed the jury on both the Fourth and Fourteenth Amendments and also submitted special interrogatories to the jury. There is no contention that the charge as to the law under the Fourth Amendment was incorrect. The jury found against plaintiff separately under both the Fourth and Fourteenth Amendments. Even if the Fourteenth Amendment charge should not have been given, it was, at most, harmless error and certainly did not confuse the jury. Because of the uncertainty in the law, the nature of plaintiff's claims, and the evidence presented at trial, it was entirely proper to instruct the jury on the law under both the Fourth and Fourteenth Amendments.

IV. Conclusion

For the reasons set forth above, plaintiff's Motion for a New Trial will be denied.

An appropriate order follows.

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Defendant.	:	
	:	

Order

For the reasons set forth in the accompanying Memorandum, it is hereby **ORDERED** that plaintiff, Michael J. Natalie's, Motion for a New Trial (document number 17) is **DENIED**.

By the Court,

Donald W. VanArtsdalen, S.J.

DATED: April 2, 1998