

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

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COSTEL MATEIUC,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 97-1849
	:	
H. RYAN HUTCHINSON,	:	
et al.,	:	
	:	
Defendants.	:	

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**MEMORANDUM**

ROBERT F. KELLY, J.

MAY 14, 1998

The Plaintiff has filed a Motion for Reconsideration of this Court's January 7, 1998 Memorandum and Order granting summary judgment in favor of the Defendants. This case involves claims resulting from the arrest of the Plaintiff for driving under the influence and related offenses. For the reasons that follow, the Plaintiff's Motion will be denied.

**Background**

On March 4, 1995, Defendant Hutchinson (then a Pennsylvania State Trooper) was monitoring traffic along the Schuylkill Expressway when he observed a 1985 Mercury Grand Marquis driven by the Plaintiff. Despite the fact that it was approximately 5:30 P.M., overcast, and raining, the Plaintiff was not using his headlights. His right turn signal was activated for an extended period of time although he was in the right lane and was not intending to turn right.

Hutchinson made a traffic stop and called Defendant Palya (also a Pennsylvania State Trooper) to assist him. While standing next to the Plaintiff's car, Hutchinson observed a 15-gallon jug of wine in the front passenger seat. Hutchinson also noticed an odor of alcohol. In response to Hutchinson's request for his license and registration, the Plaintiff produced the wrong registration.<sup>1</sup> Hutchinson then requested that the Plaintiff step out of the car and asked him to perform three field sobriety tests. Based on his belief that the Plaintiff was under the influence to a degree that made it unsafe for him to drive, Hutchinson requested that the Plaintiff submit to a blood test.

Hutchinson transported the Plaintiff to a hospital to have blood drawn. The Plaintiff refused to sign a hospital consent form, although he claims to have orally given permission for the test. The Defendants considered this a refusal to take the test. Hutchinson then transported the Plaintiff to the state police barracks. Within an hour, the Plaintiff's wife and friend arrived to drive him home.

A criminal complaint was filed on March 8, 1995, charging the Plaintiff with driving under the influence and related traffic offenses. On May 5, at a preliminary hearing, a

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<sup>1</sup>Hutchinson also requested to see the Plaintiff's insurance card, but the Plaintiff was unable to provide one as his car was uninsured.

magistrate found that a prima facie case was established for the charges. The Montgomery County District Attorney's Office filed a criminal information on July 11, 1995. On October 23, 1995, at the conclusion of a hearing on a motion to quash the information, the Plaintiff completed an application for admission into the Accelerated Rehabilitative Disposition ("ARD") program. His application was approved on November 21, 1995. The Plaintiff then declined to enter into the ARD program. After numerous continuances (several of which were at the Plaintiff's request), the District Attorney requested and was granted a nolle prosequi in the criminal case on September 16, 1996. On March 14, 1997, the Plaintiff filed his complaint in the instant action, alleging violations of 42 U.S.C. § 1983 ("section 1983") and 42 U.S.C. § 1985(3), as well as state law claims for malicious prosecution.

By Memorandum and Order dated January 7, 1998, this Court granted Defendant's Motions for Summary Judgment based in part upon the determination that a nolle prosequi after entry into ARD was not a favorable disposition for purposes of a claim of malicious prosecution.<sup>2</sup> The Plaintiff filed this Motion

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<sup>2</sup>In the Plaintiff's Memorandum of Law and Proposed Order in opposition to summary judgment, he conceded his state law claims and his claims under 42 U.S.C. § 1985(3). In the January 7 Memorandum and Order, this Court determined that all of the Plaintiff's section 1983 claims were barred by the statute of limitations except for his malicious prosecution claim, a finding that the Plaintiff does not challenge in this Motion. See Mateiuc v. Hutchinson, No. 97-1849, 1998 WL 42306, at \*2 (E.D. Pa. Jan. 7, 1998).

claiming that he never entered into ARD and that the Court's January 7 Memorandum was based upon a mistake of fact.

### **Standard**

The Plaintiff's Motion is for reconsideration of an entry of summary judgment. Summary judgment is appropriate if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for the motion and 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, 323 (1986). The non-moving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. Summary Judgment will not be granted "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In this case, the Plaintiff, as the nonmoving party, is entitled to have all reasonable inferences drawn in his favor. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991).

### **Discussion**

In this Motion, the Plaintiff contends that because he

never entered the ARD program, the entry of a nolle prosequi was not as a result of a compromise with the District Attorney and, therefore, it was a favorable disposition for purposes of a section 1983 malicious prosecution claim.<sup>3</sup> While the Plaintiff's contention in this Motion would create an issue of material fact under some circumstances, in this case there are alternative reasons to grant summary judgment. For these reasons, the issue of whether the underlying criminal case terminated in favor of the Plaintiff is irrelevant.

The Plaintiff's only remaining claim is for malicious prosecution under section 1983.<sup>4</sup> The Supreme Court has held that there is no Fourteenth Amendment due process right to be free from malicious prosecution. See Albright v. Oliver, 510 U.S. 266 (1994). The Court did not, however, foreclose the possibility that a plaintiff could bring a section 1983 malicious prosecution action under the Fourth Amendment. Id. at 275. Thus, the Plaintiff's section 1983 malicious prosecution claim is based

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<sup>3</sup>It must be noted that the Plaintiff's Motion for Reconsideration has been filed only as to claims against Hutchinson. For reasons not entirely clear to this Court, the Plaintiff has decided not to pursue his claims against Palya, despite the fact that the basis upon which he seeks reconsideration would apply to Palya just as it does to Hutchinson. Regardless of the strategy being employed by the Plaintiff, the reasons set forth in this Memorandum for granting summary judgment apply to the claims against Palya as well.

<sup>4</sup>The Plaintiff's Motion for Reconsideration addresses only his section 1983 malicious prosecution claim.

upon the Fourth Amendment right to be free from unreasonable seizure of the person. See Singer v. Fulton County Sheriff, 63 F.3d 110, 116 (2d Cir. 1995), cert. denied, 517 U.S. 1189 (1996).

In order to state a prima facie case for section 1983 malicious prosecution, a plaintiff must first establish the elements of the common law tort: (1) the defendant initiated a criminal proceeding, (2) without probable cause, (3) with malice, and (4) the proceedings were terminated in favor of the plaintiff. Hilfirty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996). Additionally, because this is a section 1983 claim based upon the Fourth Amendment, a plaintiff must "show some deprivation of liberty consistent with the concept of 'seizure.'" Singer, 63 F.3d at 116; Gallo v. City of Philadelphia, 975 F. Supp. 723, 727 (E.D. Pa. 1997); Torres v. McLaughlin, 966 F. Supp. 1353, 1361 n.7 (E.D. Pa. 1997).

The common-law cause of action for malicious prosecution permits damages for confinement imposed pursuant to legal process. Heck v. Humphrey, 512 U.S. 477, 484 (1994). Therefore, any seizure violating the Fourth Amendment in a section 1983 malicious prosecution action must be pursuant to legal process. See Calero-Colon v. Betancourt-Lebron, 68 F.3d 1, 4 (1st Cir. 1995); Singer, 63 F.3d at 117. "Legal process" is ordinarily in the form of a warrant or a subsequent arraignment, in which case any post-arraignment seizure could be the basis for

a claim. Torres v. McLaughlin, No. 96-5865, 1996 WL 680274, at \*3 (E.D. Pa. Nov. 21, 1996). Thus, an unlawful arrest pursuant to a warrant could be the basis for a malicious prosecution claim. Calero-Colon, 68 F.3d at 4. A wrongful warrantless arrest, in contrast, could result in a claim for false arrest, but could not support a claim for malicious prosecution. Id.

In Singer, the plaintiff was arrested without a warrant, arraigned, and released on his own recognizance the same day. Singer, 63 F.3d at 113. The court, addressing his section 1983 malicious prosecution claim, noted that "Singer's arrest cannot serve as the predicate deprivation of liberty because it occurred prior to his arraignment and without a warrant, and therefore was not 'pursuant to legal process.'" Id. at 117 (citations omitted). In order to pursue a section 1983 malicious prosecution claim, the court held that the plaintiff "must show some post-arraignment deprivation of liberty that rises to the level of a constitutional violation." Id.

In this case, the Plaintiff was arrested following a traffic stop on March 4, 1995. Thus, his arrest was not pursuant to a warrant. He was released within one hour after being taken to the state police barracks. Four days later, a criminal complaint was filed charging the Plaintiff with various offenses. He was never incarcerated or otherwise held in custody after the complaint was filed. Consequently, there was no Fourth Amendment

seizure that was pursuant to legal process. Therefore, the Plaintiff cannot prevail on a section 1983 claim for malicious prosecution.<sup>5</sup>

Even if the Plaintiff could meet the Fourth Amendment seizure requirement, he is unable to establish that Hutchinson lacked probable cause. Probable cause is knowledge of facts and circumstances that would convince a reasonable, honest person that the suspected person is guilty of a criminal offense. Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993). The question of probable cause in a section 1983 action is generally one for the jury. Deary v. Three Un-Named Police Officers, 746 F.2d 185, 190 (3d Cir. 1984). But where the uncontroverted facts could not lead reasonable person to find that probable cause was lacking, the Court may decide the issue. Id. at 192; Huffaker v. Bucks County Dist. Attorney's Office, 758 F. Supp. 287, 291 (E.D. Pa. 1991).

It is undisputed in this case that the Plaintiff was driving at dusk without his headlights on while it was raining and overcast. (Def. Hutchinson's Mot. for Summ. J. Ex. 1, Dep. of Costel Mateiuc, at 40-41.) The Plaintiff's right turn signal was on although there was no exit approaching. (Id. at 45.)

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<sup>5</sup>It is important to note that any possible claim that the Plaintiff might have had for false arrest was barred by the statute of limitations. See Mateiuc, 1998 WL 42306, at \*2. Further, the Plaintiff did not oppose summary judgment on his state-law malicious prosecution claims. See supra note 2.

When Hutchinson stopped the Plaintiff, the Plaintiff produced the registration card for another car. (Id. at 46-47.) The Plaintiff was not wearing his seat belt. (Id. at 76.) Further, there was a strong odor of alcohol coming either from the Plaintiff or from the fifteen gallon jug of wine sitting next to him on the passenger seat. (Id. at 76-77.) Based upon these undisputed facts, no reasonable jury could find that there was an absence of probable cause to charge the Plaintiff. See Huffaker, 758 F. Supp. at 291 (finding that based upon uncontroverted facts of record, no reasonable person could find police officer lacked probable cause to charge plaintiff).

In summary, the Plaintiff cannot maintain a section 1983 malicious prosecution claim. The Plaintiff was never deprived of liberty pursuant to legal process. Further, even if the Plaintiff could meet the Fourth Amendment seizure requirement, no reasonable person could find that the Defendants lacked probable cause to charge him.

An appropriate Order follows.

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Defendants.	:	

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**ORDER**

AND NOW, this 14th day of May, 1998, upon consideration of Plaintiff's Motion for Reconsideration of this Court's January 7, 1998 Memorandum and Order, and all responses thereto, it is hereby ORDERED that Plaintiff's Motion is DENIED.

BY THE COURT:

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Robert F. Kelly, J.