

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

JAMES E. STEPP, JR. : CIVIL ACTION
 :
 v. :
 :
 PATRICK MANGOLD & CHARLES CRAIG : NO. 94-2108

MEMORANDUM and ORDER

Norma L. Shapiro, J.

June 10, 1998

Plaintiff James Stepp ("Stepp"), alleging a violation of 42 U.S.C. § 1983, claims defendants Patrick Mangold ("Mangold"), a detective with the Philadelphia Police Department, and Charles Craig ("Craig"), a detective with the Lower Merion Police Department, "doctored" a confession and falsely prosecuted him for two bank robberies in Lower Merion and Bryn Mawr, Pennsylvania. Mangold and Craig have moved for summary judgment. For the reasons stated below, defendants' motions will be granted.

BACKGROUND

Stepp was apprehended and interrogated by Mangold in the 35th District police station on May 22, 1991 for the armed robbery of Claudine Davis ("Davis"). During the interrogation, Stepp admitted he robbed Davis of \$15 to \$20 and approximately 15 or 16 "caps" of crack cocaine. (Stepp Confession, attached as Ex. C to Mangold's Brief).¹ Stepp also confessed to committing

¹ Although Stepp was charged for this offense, the charges were subsequently dropped. (Dep. of James Stepp at 22-23, attached to Mangold's Brief ["Stepp Dep."]).

two bank robberies: the April 15, 1991 robbery of Meridian Bank in King of Prussia, Pennsylvania and the April 18, 1991 robbery of Germantown Savings Bank in Wyncote, Pennsylvania ["Germantown Savings Bank I"]. (Stepp Dep. at 23, 29; FBI Report at 1, attached as Ex. D to Craig's Brief; Compl. ¶ 5).²

Mangold prepared a written confession for Stepp to sign. Stepp read and signed the first two pages of the confession but refused to sign the last two pages because they referred to bank robberies other than the ones to which Stepp had confessed. Stepp informed Mangold of the error, but Mangold did not change the written confession; those pages remained unsigned. (Stepp Confession; Stepp Dep. at 32). Defendant Craig was not present during this interrogation. (Stepp Dep. 33-34).

Later that day, Stepp was interrogated in the 35th District by Special Agent John Schaefer ("Schaefer") of the Federal Bureau of Investigation ("FBI") and defendant Craig. Stepp confessed to robbing Meridian Bank and Germantown Savings Bank I and requested federal prosecution. Schaefer and Craig questioned Stepp concerning additional robberies occurring at the Germantown Savings Bank in Lower Merion, Pennsylvania ["Germantown Savings Bank II"], and Founders Bank in Bryn Mawr, Pennsylvania, on the dates mentioned in the unsigned pages of Stepp's confession to

² All citations to the Complaint refer to the Amended Complaint filed on June 15, 1994.

Mangold. Stepp informed Schaefer and Craig that he was not involved in the bank robberies in Lower Merion and Bryn Mawr. (Stepp Dep. at 34-35). Stepp was indicted by the United States for the Meridian Bank and Germantown Savings Bank I robberies only.³

Craig continued to investigate the Germantown Savings Bank II and Founders Bank robberies. Craig displayed an array of photographs, including one of Stepp, to Elizabeth Passalacqua ("Passalacqua") and Barbara Civitella ("Civitella"), employees of Founders Bank. They were unable to make an identification. (Craig Police Report, attached as Ex. E to Craig's Brief). Elizabeth Gomez ("Gomez"), the Founders Bank teller who gave the robber the money, moved to Michigan following the robbery. Craig arranged to send a photo array including Stepp's picture to FBI Special Agent Larry Hofmeister ("Hofmeister") in Traverse City, Michigan. Hofmeister showed the array to Gomez, who positively identified Stepp as the Founders Bank robber. (Id.). Hofmeister also showed Gomez a photograph of a black, leather shaving bag found in Stepp's possession. Gomez stated it looked similar to the bag the robber used to carry away the money. (Id.).

Stepp was then arrested for both the Germantown Savings Bank II and Founders Bank robberies. Stepp was tried for the

³ Stepp does not challenge his arrest or conviction for these robberies.

Germantown Savings Bank II robbery in April, 1993. (Stepp. Dep. at 37-38). He claims he was acquitted, (Compl. ¶ 13), but the case may have been dismissed after the bank teller involved in the robbery admitted at trial she could not identify Stepp. (Joseph Daly Letter, attached to Craig's Brief ["Daly Letter"]). Stepp does not base his lawsuit on his prosecution for the Germantown Savings Bank II robbery. (Stepp Dep. at 15-16, 41).

Stepp was tried for the Founders Bank robbery in December, 1993. At a pre-trial hearing, Stepp claims that Assistant District Attorney Karen Ricca ("Ricca") produced the unsigned pages of Stepp's purported confession to Mangold and moved for their admission in evidence. (Id. at 31). Stepp claims his attorney objected because the unsigned confession had not previously been identified or produced. (Compl. ¶ 15). Stepp also claims the court informed him that the unsigned confession would be introduced if Stepp took the stand in his own defense, and this prevented him from testifying. (Id. ¶¶ 18-19).

To substantiate this allegation, Stepp has offered one transcript page showing that Ricca attempted to introduce Mangold's "notes." Ricca stated that Craig and the FBI agents "never had this report," (Founders Bank Trial Transcript at 95, attached as Ex. G to Craig's Brief); Mangold handed it to Craig, who in turn handed it to Ricca. The court excluded the "notes" because they had not been provided to opposing counsel. (Id.).

Stepp has offered no evidence supporting his allegation that the court informed him the unsigned confession would be admissible if he testified at trial; Stepp did not make that allegation under oath in his deposition or by affidavit, as required by Federal Rule of Civil Procedure 56.

At Stepp's trial, Craig admitted on cross-examination that FBI fingerprint testing showed the fingerprints on the demand note given to the Founders Bank teller were not Stepp's. (Stepp. Dep. at 42). Craig also admitted that several witnesses were unable to identify Stepp in a photo array and had described the perpetrator as wearing different clothing or differing in appearance from Stepp. (Craig Trial Testimony at 75-86, attached as Ex. F to Craig's Brief). Craig admitted that no handwriting analysis compared the demand note with Stepp's handwriting and no analysis was performed on a hair sample taken from the teller's window. (Id. at 96). Stepp was convicted by Gomez's identification of Stepp as the robber and her belief that Stepp's leather bag was similar to the one the robber used.

The Lower Merion Police Department continued its investigation of the Founders Bank robbery. In 1995, after discovering new evidence that led to the identification and arrest of another suspect, Stepp's conviction was overturned. (Daly Letter). Stepp remains in prison for the two federal convictions.

DISCUSSION

I. Standard of Review

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

Rule 56(e) requires the presentation of evidence "as would be admissible" at trial. Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 327; see, e.g., J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1542 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991). The non-moving party cannot rest upon conclusory allegations and unsupported speculation. See Medina-Munoz v.

R.J. Reynolds Tobacco, 896 F.2d 5, 8 (1st Cir. 1990); Barnes Foundation v. Township of Lower Merion, 982 F. Supp. 970, 982 (E.D. Pa. 1997).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

II. Section 1983

To maintain a cause of action under 42 U.S.C. § 1983,⁴ a plaintiff must establish: 1) the alleged conduct was committed by a person acting under color of state law; and 2) the conduct deprived the plaintiff of rights, privileges or immunities

⁴ The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

secured by the Constitution or laws of the United States. See, e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3d Cir. 1985). Because both defendants are police officers clothed in the authority of the state, the state action requirement has been met. See Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982); Davidson v. O'Lone, 752 F.2d 817, 826 (3d Cir. 1984), aff'd, 474 U.S. 344 (1986).

Section 1983 is not a source of substantive rights; it only provides "a method for vindicating federal rights elsewhere conferred." Graham v. Connor, 490 U.S. 386, 393-94 (1989); see Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979). Section 1983 does not provide "a right to be free of injury wherever the State may be characterized as the tortfeasor." Paul v. Davis, 424 U.S. 693, 701 (1976). A plaintiff must show a deprivation of a federally protected right.

Stepp's Complaint does not specify the federal rights defendants allegedly violated, but his action is based on Mangold's fabrication of a confession to the Founders Bank robbery and Ricca's decision to offer in evidence his purported confession during the Founders Bank trial. Defendants' motions for summary judgment treat Stepp's action as one for either malicious prosecution or false arrest under § 1983. Stepp's response in opposition treats his claim as one for malicious prosecution. Because Stepp is proceeding pro se and his

pleadings must be construed liberally, see, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972); Micklus v. Carlson, 632 F.2d 227, 235 (3d Cir. 1980), the court will analyze Stepp's § 1983 cause of action under both legal theories as well as under general due process guarantees of a fair trial.

A. Malicious Prosecution

To state a prima facie case for malicious prosecution under § 1983, the plaintiff must establish "the elements of the common law tort as it has developed over time." Hilfirty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996); see Lee v. Mihalich, 847 F.2d 66, 70 (3d Cir. 1988). Under Pennsylvania law, a plaintiff alleging malicious prosecution must establish: 1) defendants initiated a criminal proceeding; 2) the criminal proceeding ended in plaintiff's favor; 3) defendants initiated the proceeding without probable cause; and 4) defendants acted "maliciously or for a purpose other than bringing the plaintiff to justice." Hilfirty, 91 F.3d at 579; see Haefner v. Burkey, 626 A.2d 519, 521 (Pa. 1993). It is clear that his criminal prosecution for the Founders Bank robbery ended in Stepp's favor when the state court overturned his conviction after the police department uncovered evidence clearing Stepp. See Haefner, 626 A.2d at 521.

1. Mangold

Under Pennsylvania law, criminal proceedings can be initiated by: 1) filing an affidavit of probable cause with a

written complaint; or 2) an arrest without a warrant, when appropriate. See Pa. R. Crim. P. 101; Pennsylvania v. Streater, 619 A.2d 1070, 1072 (Pa. Super.), appeal discontinued, 627 A.2d 731 (Pa. 1993).

Mangold did not initiate criminal proceedings against Stepp for the Founders Bank robbery. Mangold was investigating the Philadelphia robbery of Davis, to which Stepp confessed. Mangold had no authority to arrest Stepp for a suburban bank robbery occurring beyond the limit of his jurisdiction. Mangold neither arrested Stepp nor filed a criminal complaint against him for the Founders Bank robbery.

Mangold did prepare a confession referring to robberies that Stepp had not committed. But Stepp himself has testified that Craig was not present when Mangold prepared the incorrect confession. Craig was unaware of the unsigned confession when Mangold first referred the matter to Craig. (Stepp Dep. at 34). Stepp admits that Mangold handed the unsigned confession to Craig during the Founders Bank trial, after the criminal proceedings had been initiated. (Compl. ¶ 16; Founders Bank Trial Transcript at 95). There is no evidence the unsigned confession prepared by Mangold caused the Montgomery County officials to initiate the Founders Bank prosecution. There is no evidence Mangold directly or indirectly initiated the criminal prosecution for the Founders Bank robbery; summary judgment will be granted in favor of

Mangold on Stepp's § 1983 malicious prosecution claim.

2. Craig

After Gomez identified Stepp in a photo array, Craig prepared an affidavit of probable cause and a written complaint against Stepp. There was an initiation of criminal proceedings against Stepp. See Pa. R. Crim. P. 101; Streater, 619 A.2d at 1072.

At the time Craig filed the criminal complaint against Stepp, there was conflicting evidence of Stepp's guilt. The fingerprints on the demand note handed to the Founders Bank teller did not match Stepp's fingerprints. Several witnesses were unable to identify Stepp as the perpetrator of the robbery. Stepp denied any responsibility for the crime, even though he readily confessed to the Davis, Germantown Savings Bank I and Meridian Bank robberies. However, Gomez, the Founders Bank teller who handed the robber the money, positively identified Stepp as the bank robber. Gomez also thought a black, leather bag found in Stepp's possession resembled the robber's bag.

The existence of probable cause is a question of law for the court. See Simpson v. Montgomery Ward, 46 A.2d 674, 676 (Pa. 1946); Bruch v. Clark, 507 A.2d 854, 856 (Pa. Super. 1986). Whether an officer had probable cause to believe an individual committed an offense is an objective test, based on the facts available to the officer at the moment of arrest. See Barna v.

City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994). Probable cause does not mean actual guilt. "One is justified in launching a criminal prosecution if the facts convince him, as a reasonable, honest and intelligent human being, that the suspected person is guilty of a criminal offense." Bruch, 507 A.2d at 856.

Craig had evidence that the teller who delivered the money to the bank robber identified Stepp as the perpetrator. Although other witnesses were unable to identify Stepp, she had the closest contact with the robber and thought it was Stepp. Craig's belief that Stepp was the Founders bank robber was not an unreasonable or unintelligent conclusion. At trial, the jury found the same evidence sufficiently persuasive to convict Stepp, even though it was later determined that he was innocent. Stepp claims that Craig should have known he was not the Founders Bank robber because the FBI and United States Attorney's Office declined to prosecute him for the Founders Bank robbery, but that alone does not make Craig's decision to file a criminal complaint unreasonable or lacking in probable cause.

Stepp claims that Craig's decision to initiate criminal proceedings was based on "dishonesty" and "deception." But if the defendant had probable cause to initiate the criminal prosecution, his motive for doing so, "malicious or otherwise, is immaterial." De Salle v. Penn Central Transportation Co., 398

A.2d 680, 683, (Pa. Super. 1979); see Simpson, 46 A.2d at 677. Summary judgment will be granted in favor of Craig on Stepp's malicious prosecution claim.

B. False Arrest

"The proper inquiry in a section 1983 claim based on false arrest ... is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense."

Dowling v. City of Phila., 855 F.2d 136, 141 (3d Cir. 1988); see Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995).

When there is probable cause for an arrest and the officer has not acted in violation of the Fourth Amendment, there is no substantive due process violation, even if the arrested individual is actually innocent. See Ruehman v. Sheahan, 34 F.3d 525, 528 (7th Cir. 1994).

"The Constitution does not guarantee that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted-- indeed, for every suspect released." Baker v. McCollan, 443 U.S. 137, 145 (1979). "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." Patterson v. New York, 432 U.S. 197, 208 (1977). "Just as medical malpractice does not become a constitutional violation merely because the victim is a prisoner,

... false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official." Baker, 443 U.S. at 146.

1. Mangold

Mangold did not arrest Stepp for the Founders Bank robbery; he simply informed Craig that Stepp was in custody for an unrelated street robbery. Mangold did prepare an erroneous confession for Stepp, which Stepp refused to sign. Stepp admits Mangold delivered the confession to Craig during the Founders Bank trial after Craig had arrested Stepp for the robbery. Mangold was not involved in the arrest of Stepp for the Founders Bank robbery, so he is not liable for false arrest under § 1983. Summary judgment will be granted in favor of Mangold on this claim.

2. Craig

Craig arrested Stepp for the Founders Bank robbery. Craig is liable under § 1983 only if he had no probable cause to make that arrest. See Dowling, 855 F.2d at 141; Groman, 47 F.3d at 634. Craig had probable cause to arrest Stepp for the Founders Bank robbery, so summary judgment will be granted on Stepp's action for false arrest against Craig.

C. Due Process Right to a Fair Trial

A defendant has a due process right to a fair trial. Governmental agents may not manufacture evidence and offer it

against a criminal defendant. "When a police officer creates false information ... and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages under 42 U.S.C. § 1983." Riciutti v. New York City Transit Auth., 124 F.3d 123, 130 (2d Cir. 1997); see Smith v. Springer, 859 F.2d 31, 34 (7th Cir. 1988).

No arrest, no matter how lawful or objectively reasonable, gives an arresting officer or his fellow officers license to deliberately manufacture false evidence against an arrestee. To hold that police officers, having lawfully arrested a suspect, are then free to fabricate false confessions at will, would make a mockery of the notion that Americans enjoy the protection of due process of the law and fundamental justice. Like a prosecutor's knowing use of false evidence to obtain a tainted conviction, a police officer's fabrication and forwarding to prosecutors of known false evidence works an unacceptable corruption of the truth-seeking function of the trial process.

Riciutti, 124 F.3d at 130.

1. Mangold

There is evidence of record that Mangold drafted a false confession to robberies for which Stepp had not confessed. Stepp informed Mangold of the error and refused to sign the confession. Mangold declined to correct the confession and instead offered it to Craig and Ricca during the Founders Bank trial. When offering the confession to Craig and Ricca, Mangold presumably knew that the confession was fabricated. Therefore, Mangold's use of the

false confession violated Stepp's due process rights. See Riciutti, 124 F.3d at 130.

The issue is whether Mangold's delivery of the confession to Craig and Ricca caused Stepp any injury. According to the portion of the Founders Bank transcript submitted by Stepp, the state court excluded the unsigned confession from evidence because it was not disclosed in a timely manner. Other than his allegation in the Complaint, Stepp has offered no evidence that the state court threatened to permit the use of the unsigned confession if Stepp testified on his own behalf; Stepp did not so state under oath at his deposition or submit other evidence "as would be admissible at trial." Fed. R. Civ. P. 56(e).

Even if Stepp were discouraged from testifying in his own behalf because he feared the false confession would be used to impeach his credibility, it is by no means clear he would have been acquitted had he taken the stand in his own defense. The jury found Gomez credible and believed her notwithstanding other evidence that pointed to Stepp's innocence. Because Stepp has offered no evidence supporting his claim that he was actually harmed by Mangold's delivery of the unsigned confession during the Founders Bank trial, summary judgment will be granted in favor of Mangold on this claim. See id. (Adverse party "may not rest upon the mere allegations or denials of the adverse party's pleading.").

2. Craig

Section 1983 liability must be based on a defendant's personal involvement in the unlawful activity; the plaintiff must have evidence of a defendant's personal involvement in the challenged conduct. See Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976). "Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Stepp has admitted that Craig was not present when Stepp informed Mangold he would not sign the confession pages referring to additional robberies. (Stepp Dep. at 33-34). Stepp also admits that Craig did not acquire the fabricated confession until Mangold delivered it to him during the Founders Bank trial, at which point Craig handed it to Ricca. (Founders Bank Trial Transcript at 95; Compl. ¶ 16). Because Craig was not involved in creating the false confession and had no role in its use other than to hand it to the assistant district attorney during trial, he cannot be liable under § 1983. Summary judgment will be granted in favor of Craig on this claim.

D. Conspiracy

Stepp's Amended Complaint alleges collusion between Mangold

and Craig; the court interprets that allegation as one of conspiracy between the defendants. "While the existence of a conspiracy otherwise may supply the element of state action and expand the scope of liability through the concept of imputation, § 1983 does not provide a cause of action per se for conspiracy to deprive one of a constitutional right. Without an actual deprivation, there can be no liability under § 1983." Defeo v. Sill, 810 F. Supp. 648, 658 (E.D. Pa. 1993); see Mody v. City of Hoboken, 959 F.2d 461, 466 (3d Cir. 1992); Gladden v. Kemper, No. 94-1876, 1997 WL 438844, at *7 (E.D. Pa. July 30, 1997); Ashford v. Skiles, 837 F. Supp. 108, 115 (E.D. Pa. 1993). Conspiracy may be actionable under Pennsylvania law, but Stepp has not established the deprivation of any cognizable federal right; his generalized allegations of conspiracy are insufficient to maintain a § 1983 cause of action.⁵

CONCLUSION

It is unfortunate that Stepp was convicted of a bank robbery for which he was innocent. "It is doubtless a hardship for plaintiff, an innocent man, to be subjected to arrest and

⁵ Craig also argues he is entitled to qualified immunity. A court reaches the issue of qualified immunity only after determining the plaintiff has alleged a violation of a federal right. See Siegert v. Gilley, 500 U.S. 226, 232 (1991); Pro v. Donatucci, 81 F.3d 1283, 1287 (3d Cir. 1996). Stepp has not established a violation of any federal right, so the court need not determine whether Craig is entitled to qualified immunity for his actions.

imprisonment. But that is an inevitable occasional result of living in a civilized and orderly community. Some concession to public interests, and some sacrifice of individual rights, are part of the foundation on which society is supported." Simpson, 46 A.2d at 681; see Madison v. Pennsylvania R.R. Co., 23 A. 764, 765 (1892). Mangold's committing to writing something Stepp did not say and refused to sign is reprehensible, but it did not cause Stepp's erroneous conviction for the Founders Bank robbery. While Stepp's erroneous conviction is highly regrettable, neither Mangold nor Craig are liable under § 1983 for that error.

An appropriate Order follows.

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ORDER

AND NOW, this 10th day of June, 1998, upon consideration of defendant Patrick Mangold's ("Mangold") and defendant Charles Craig's ("Craig") motions for summary judgment, plaintiff James E. Stepp, Jr's ("Stepp") responses thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Defendant Mangold's motion for summary judgment is **GRANTED**. Judgment is **ENTERED** in favor of defendant Mangold.
2. Defendant Craig's motion for summary judgment is **GRANTED**. Judgment is **ENTERED** in favor of defendant Craig.
3. The Clerk of Court is directed to mark this action **CLOSED**.

Norma L. Shapiro, J.