

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

RAYMOND J. CANNON : CIVIL ACTION  
 :  
 v. :  
 :  
 MONTGOMERY COUNTY, PA, et al. : NO. 96-CV-7405

MEMORANDUM ORDER

During a final pretrial conference with counsel it became apparent that in its order of June 29, 1998 the court inadvertently failed formally to dispose of § 1983 false imprisonment claims against defendants Nagy and Paciello. These claims were lumped together in one count with other claims against these and other defendants. At the request of both counsel, the court will now enter an order, consistent with its memorandum of June 29, 1998, resolving these technically pending claims.

For the reasons set forth in the court's memorandum of June 29, 1998 regarding the § 1983 false imprisonment claim against Officer Loughnane, if follows that plaintiff's detention did not result from an arrest without probable cause and he was not falsely imprisoned by any defendant. See Groman v. Township of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995) (arrest made with probable cause cannot be source of false imprisonment claim). Insofar as plaintiff suggests that Mr. Nagy or Officer Paciello may nevertheless be liable on a "failure to release" theory, he has presented no legal or factual support for such a claim.

Plaintiff suggests that Mr. Nagy may be liable for not acting on an entreaty from Mr. McGrory, plaintiff's attorney, made after plaintiff's arrest and detention by others and, from the only competent evidence of record on the point, about two hours before his scheduled court hearing. Even if Mr. McGrory had complained to Mr. Nagy about plaintiff's arrest, there is no basis to conclude that a court employee could have effected the release of a detainee arrested on a bench warrant for failure to appear and awaiting an imminent court hearing. Moreover, there is no competent evidence or even an allegation in the Complaint that Mr. McGrory complained to Mr. Nagy about the propriety of plaintiff's arrest and detention. No testimony or affidavit of Mr. McGrory was ever submitted as part of the summary judgment record. The only competent evidence of record on the point is the deposition testimony of Mr. Nagy that Mr. McGrory complained only about the delay by jail attendants in permitting plaintiff to obtain insulin for his diabetic condition.

Plaintiff suggests that Office Paciello may be held liable for failing to review the DRD file which would have shown plaintiff had been wrongly arrested. There is no competent evidence of record that Mr. Paciello had the DRD file in his possession when he interviewed plaintiff in the bullpen. Of course, there also is no basis to conclude that Mr. Paciello could have effected plaintiff's release prior to the scheduled court hearing even if he had access to a file with exculpatory information in it. Moreover, there was nothing in the DRD file

from which one could conclude that the failure to appear charge was unfounded. It is uncontroverted that the letter from Toby Dickman, Mrs. Cannon's counsel, which Mr. McGrory presented at the court hearing and which persuaded Judge Rossanese to withdraw the bench warrant, was not in the DRD file. Indeed, there is no affidavit from Ms. Dickman or any other competent evidence of record to show the letter was sent to the DRD on January 23, 1996 or at any other time.

It now appears that if Ms. Dickman or plaintiff's domestic relations attorney, Mark Dischell, had ensured the delivery to the DRD of a letter of the type presented at the court hearing, plaintiff may well have avoided arrest. Defendants, however, may not be blamed for counsel's failure to do so.

During the conference, plaintiff's counsel also advised the court that upon further consideration he had elected to dismiss the pending claims in Count IV for deliberate indifference to plaintiff's diabetic condition. Counsel followed up with written notification that the claims asserted in Count IV were dismissed with prejudice.

**ACCORDINGLY**, this                    day of July, 1998, consistent with the foregoing discussion and the court's memorandum of June 29, 1998, **IT IS HEREBY ORDERED** that **JUDGMENT is ENTERED** in the above action for defendants Nagy and Paciello and against plaintiff on the 42 U.S.C. § 1983 false imprisonment claims presented against said defendants; that consistent with

Fed. R. Civ. P. 41(a)(2), the claims asserted in Count IV of plaintiff's Complaint are **DISMISSED** with prejudice; and, that as all claims in this action have thus been resolved, the case is closed.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**