

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

RICHARD B. WISE, RICHARD B.  
WISE in the interest of ALYSA  
WISE, a minor child, LEONARD  
J. WISE, THERESA A. WISE, and  
THERESA M. DELILLO,  
Plaintiffs,

v.

CITY OF PHILADELPHIA,  
DETECTIVE THOMAS AUGUSTINE,  
DETECTIVE PAUL MUSI, DETECTIVE  
ANTHONY TOMAINO, DETECTIVE  
WILLIAM EGENLAUF, DETECTIVE  
EUGENE WYATT, AND DETECTIVE  
CHARLES BOYLE,  
Defendants.

Civil Action  
No.97-2651

Gawthrop, J.

July 31, 1998

**M E M O R A N D U M**

Before the court is a motion for summary judgment of defendants Detective Charles Boyle and Detective Eugene Wyatt to dismiss all claims against them. For the reasons given below, I shall grant their motion.

**I. Background**

The plaintiffs' claims against the moving defendants pertain to the arrest of Richard Wise by Detectives Wyatt and Boyle. The facts relevant to these defendants' actions are as follows. On

November 29, 1995, at approximately 1:00 o'clock a.m., Detectives Wyatt and Boyle arrived at the house of plaintiff Theresa Delillo, Richard Wise's aunt, where Richard Wise was staying. The detectives informed Richard Wise that there was an outstanding bench warrant for his arrest by the City of Philadelphia. The plaintiffs allege that they stated that the bench warrant had been satisfied, but the detectives did not check out this claim, and, instead, arrested Richard Wise and transported him to the police station where he made incriminating statements relating to a homicide under investigation.<sup>1</sup> Richard Wise was later charged, tried, and acquitted on the homicide charges in state court.

Plaintiffs brought this action pursuant to 42 U.S.C. § 1983, alleging violation of their constitutional rights guaranteed by the Fourth, Fifth, and Fourteenth Amendments. Plaintiffs also assert state law claims for intentional infliction of emotional distress. Detectives Wyatt and Boyle now move for summary judgment on all claims against them.

## **II. Standard of Review**

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with

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<sup>1</sup>In this action, Richard Wise also alleges police brutality and wrongful detention, but those claims are not asserted against the defendants who brought this motion.

the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Unless evidence in the record would permit a jury to return a verdict for the non-moving party, there are no issues for trial, and summary judgment becomes appropriate. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility determinations and must view facts and inferences in the light most favorable to the party opposing the motion. Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995). The party opposing the summary judgment motion must come forward with sufficient facts to show that there is a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

### **III. Discussion**

#### **A. Section 1983 Claims**

Counts VII and X of the plaintiffs' complaint allege violations of constitutional rights under 42 U.S.C. § 1983 for arrest without probable cause, intentional misrepresentation, and impermissible entry. These counts allege that Detectives Wyatt and Boyle arrested Richard Wise on November 29, 1995, despite protests that the bench warrant had been satisfied. However, this does not establish a violation of constitutional rights.

The United States Supreme Court has clearly established that an officer "executing an arrest warrant is not required by the constitution to investigate independently every claim of innocence." Baker v. McCollan, 443 U.S. 137, 145-46 (1979) (holding no violation of due process where plaintiff detained on facially valid warrant despite officer's mistaken arrest of plaintiff instead of brother); Mann v. Township of Hamilton, Civ. No. 90-3377, 1991 WL 87586, at \*2 (D.N.J. May 20, 1991) (holding that police officer who executes a facially valid arrest warrant does not have a "duty under the fourth amendment to investigate the validity of the warrant upon a protest by the arrestee that the warrant is invalid."). This is so even if the arrest was made pursuant to a bench warrant that was invalid at the time of arrest. See Mitchell v. Aluisi, 872 F.2d 577, 579 (4th Cir. 1989) (granting summary judgment for deputy sheriffs on civil rights claim where they made arrest pursuant to bench warrant that had been recalled, even though plaintiff informed them of status); Druckenmiller v. United States, 548 F. Supp. 193, 194-95 (E.D. Pa. 1982) ("[T]he law is 'clearly established' that law enforcement officers who effect an arrest pursuant to a facially valid arrest warrant are immune from suit alleging a constitutional deprivation.").

Here, however, plaintiffs argue that the defendants cannot rely on this reasoning because they knew or should have known

that the bench warrant was invalid. Specifically, they say that they showed the detectives correspondence from the court-appointed counsel for Richard Wise which allegedly confirmed that the bench warrant was satisfied. They contend that the defendants were merely using the bench warrant as a pretext for arresting Richard Wise for questioning in a homicide investigation unrelated to the bench warrant.

The Third Circuit has held that an officer who reasonably relies on the existence of a warrant for arrest is entitled to qualified immunity in a civil rights action brought against him for unlawful arrest. Capone v. Marinelli, 868 F.2d 102, 105-06 (3d Cir. 1989) (holding police officer who reasonably relied upon facially valid written bulletin indicating warrant for arrest existed was entitled to qualified immunity in civil rights action for unlawful arrest). The court must determine, as a matter of law, whether a defendant's "belief that a warrant or probable cause existed was reasonable." Sharrar v. Felsing, 128 F.3d 810, 828 (3d Cir. 1997) (citing Rogers v. Powell, 120 F.3d 446, 455-57 (3d Cir. 1997)). To make this determination, the court must examine the information possessed by the defendants when they relied on the warrant. Rogers, 120 F.3d at 455.

The defendants here contend that it was reasonable for them to believe the warrant valid because their supervisors informed them that Richard Wise was wanted on a bench warrant, before they

made the arrest. They say that they then verified the existence of the bench warrant by checking a pre-existing computer printout and confirming, via computer, that the bench warrant was still open and valid. To support their arguments, the defendants offer the sworn testimony of Detective Boyle from a suppression hearing in the state criminal trial.<sup>2</sup>

Detective Boyle avers that, because he had the pre-existing computer printout, he did not reprint the outstanding warrant, but merely made a visual check of its validity on the computer screen. Defendants cannot be held liable under § 1983 where they rely on a computerized record or a warrant which is inaccurate because of a clerical error. See Arizona v. Evans, 514 U.S. 1, 15-16 (1995) (finding, in context of exclusionary rule, there was "no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record" in which a clerical error caused to show outstanding

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<sup>2</sup>Plaintiffs point out that the outcome of the suppression hearing cannot be used for preclusive purposes. Because Richard Wise was acquitted in his criminal trial, he did not appeal the court's denial of his suppression motion challenging the validity of his arrest. See Glover v. Hunsicker, 604 F. Supp. 665, 666 (E.D. Pa. 1985). Under these circumstances, "the plaintiff was not afforded a 'full and fair opportunity' to litigate the issues raised in this civil rights action, and . . . collateral estoppel cannot be applied to bar the assertion of the plaintiff's constitutional rights in this Court." Id. (holding no preclusive effect where plaintiff did not have a right to an interlocutory appeal of the state court's denial of his motion to suppress). The defendants can, however, rely on the testimony given under oath at the hearing as they would other sworn testimony, such as a deposition.

misdemeanor warrant, despite warrant's having been quashed two weeks earlier); Fullard v. City of Philadelphia, No. Civ. A. 95-4949, 1996 WL 195388, at \*9-14 (E.D. Pa. Apr. 22, 1996) (holding no § 1983 liability for search where, because of clerical error, valid arrest warrant erroneously specified the plaintiffs' address rather than that of subject of warrant). Plaintiffs make much of the fact that the computer printout attached to the defendants' motion does not contain a date. Defs.' Ex. E. They question the efforts of the detectives to verify the validity of the warrant on the night of the arrest. I find, however, that the record supports the reasonableness of the detectives' belief that they could arrest Richard Wise on the bench warrant. Here, the detectives have presented testimony that they relied not only on the computer printout, but also on the orders of their supervisors that the warrant existed. "Arresting officers, like the defendants here, who reasonably rely upon information obtained from another law enforcement official regarding an arrest are entitled to qualified immunity should that information later be proved incorrect." Spiegel v. City of Chicago, 920 F. Supp. 891, 896 (N.D. Ill. 1996) (citation omitted); Rogers, 120 F.3d at 456 (affirming, in Third Circuit, grant of summary judgment for state trooper on ground that it was objectively reasonable for trooper to believe probable cause to arrest existed based on information from fellow officer). Given the

information provided by their supervisors and the recent computer printout showing an open bench warrant, I find it objectively reasonable for the detectives to have relied on the bench warrant in making the arrest. Accordingly, I shall grant summary judgment on the Section 1983 claims for false arrest.

That the plaintiffs allegedly showed the detectives a letter from court-appointed counsel to prove the invalidity of the bench warrant does not change this conclusion, as such a letter does not constitute an objectively reliable source. Oponski v. Michaels, No. Civ. A. 94-4462, 1995 WL 732811, at \*4 n.4 (E.D. Pa. Dec. 8, 1995) (noting "the police officers' knowledge must come from an objectively reliable source"). Were the law otherwise, any putative arrestee could deflect the grasp of the law simply by keeping such a self-serving letter on his person to give himself some sort of epistolary immunity.

The plaintiffs also seek relief under Section 1983 for the alleged intentional misrepresentation by the defendants that there was a valid, outstanding bench warrant and for the entry into the home of Theresa Delillo. Having found that the detectives reasonably relied on the bench warrant, I shall grant summary judgment on these Section 1983 claims as well.<sup>3</sup>

Because I find that the detectives were reasonable in

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<sup>3</sup>Even if I had not so found, however, these claims by plaintiffs do not constitute an actionable violation of their federal constitutional rights.

relying on the bench warrant, it is unnecessary to reach defendants' other ground for summary judgment on the Section 1983 claims - that probable cause existed for the arrest. One does note that were that issue to be reached, it would probably be a task for the jury. See Losch v. Borough of Parkesburg, 736 F.2d 903, 909 (3d Cir. 1984) (citing Patzig v. O'Neil, 577 F.2d 841, 848 (3d Cir. 1978) (stating "the question of probable cause in a § 1983 damage suit is one for the jury").

**B. Intentional Infliction of Emotional Distress**

The defendants also argue that they are immune from liability for the state law claims under the Political Subdivision Tort Claims Act. 42 Pa. C.S.A. §§ 8541-8564. In an Order dated February 6, 1998, I found that the individual defendants named in the complaint were immune from liability on the plaintiffs' negligence claims under this Act and dismissed those claims accordingly. The defendants now claim that they are entitled to immunity on the claims for intentional infliction of emotional distress. However, under the Act, an employee is not immune if it is judicially determined that the act by the employee that caused the injury was "willful misconduct." 42 Pa. C.S.A. § 8550. The Pennsylvania Supreme Court has held that intentional torts may fall under the rubric of "willful misconduct." See, e.g., Renk v. City of Pittsburgh, 641 A.2d

289, 293-94 (1994) (holding claims of assault and battery and false imprisonment in the context of police misconduct might, but do not necessarily, constitute "willful misconduct" under § 8550). Thus, because the claims for intentional infliction of emotional distress are based on acts that might be willful misconduct, the defendants are not entitled to summary judgment on the ground of immunity. Heron v. City of Philadelphia, 987 F. Supp. 400, 405 (E.D. Pa. 1997) (holding genuine issue of material fact existed as to whether claims of intentional infliction of emotional distress, among others, asserted by arrestee against police officers and city police commissioner, were based on willful misconduct, and thus outside scope of immunity granted by Pennsylvania Political Subdivision Tort Claims Act). Even so, I find that the defendants are entitled to summary judgment on these claims because the conduct alleged, if true, is not so extreme and outrageous that it constitutes an intentional infliction of emotional distress.

Under Pennsylvania law, the tort of intentional infliction of emotional distress consists of extreme and outrageous conduct, undertaken either intentionally or recklessly, which causes severe emotional distress. See Williams v. Guzzardi, 875 F.2d 46, 52 (3d Cir. 1989) (citing Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265, 1273 (3d Cir. 1979)). "The Pennsylvania Supreme Court has enunciated an objective standard,

permitting recovery only 'where a reasonable person normally constituted would be unable to adequately cope with the mental stress engendered by the circumstances of the event.'

Mastromatteo v. Simock, 866 F. Supp. 853, 859 (E.D. Pa. 1994) (quoting Kazatsky v. King David Memorial Park, 527 A.2d 988, 993 (Pa. 1987)). In addition, to make out a claim, there must be objective proof supported by competent medical evidence that the plaintiffs actually suffered the claimed distress. Kazatsky, 527 A.2d at 995.

To recover under this tort, then, plaintiffs must demonstrate that a reasonable person would suffer severe emotional distress and also offer evidence that they did, in fact, suffer such distress. Although the plaintiffs allege generally that the defendants caused them "physical and emotional distress," they have not presented any evidence, medical or otherwise, to support their claims or to show the degree or severity of the alleged distress. Thus, they have not demonstrated that they have suffered severe emotional distress. Simmons v. Poltrone, No. Civ. A. 96-8659, 1997 WL 805093, at \*4-5 (E.D. Pa. Dec. 17, 1997).

Further, "[i]t is for the court to determine initially whether the defendant's conduct can be regarded as so extreme and outrageous as to permit recovery." Motheral v. Burkhart, 583 A.2d 1180, 1188 (Pa. Super. 1990) (citation omitted). In the

case at bar, the conduct attributed to the defendants was not of such a character. See, e.g., Motheral, 583 A.2d at 1188 (affirming dismissal of claim for intentional infliction of emotional distress where defendant allegedly lied to police and by doing so had plaintiff arrested and detained); Mastromatteo, 866 F. Supp. at 859 (holding that allegations that a police officer manufactured facts to support probable cause for an arrest warrant resulting in detention of plaintiff did not state a claim for intentional infliction of emotional distress); Simmons, 1997 WL 805093, at \*4-5 (same). Accordingly, summary judgment is granted in favor of defendants Wyatt and Boyle and against the plaintiffs on the claim for intentional infliction of emotional distress, Counts XVII and XX.

An order follows.

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O R D E R

AND NOW, this 31st day of July, 1998, Defendants' Motion for  
Summary Judgment (Doc. No. 24) is GRANTED.

BY THE COURT:

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Robert S. Gawthrop, III J.