

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

ANTOINE WILLIAMS : CIVIL ACTION
: :
v. : :
: :
DETECTIVE EDWARD KRSTOPA, : :
et al. : NO. 98-CV-1119

MEMORANDUM AND ORDER

J. M. KELLY, J.

DECEMBER 15, 1998

Presently before the Court is Defendants' Motion for Summary Judgment (Document No. 22). For the reasons that follow, Defendants' motion is granted.

I. FACTUAL BACKGROUND

On the afternoon of August 13, 1996, two men returned to a garage where they earlier participated in a game of craps and, brandishing handguns, demanded the remaining players' money. (Statement of Leon Harrington, dated 8/13/96.) One of those players, Lenny Guess, claimed he didn't have any money, and a robber shot him in the leg. Id. Several of Mr. Guess' colleagues filed complaints with the police, and Detectives Strollo, Kaiser, and Pelosi took their statements. The parties do not dispute that each of these detectives gave those statements to Detective Krystopa, who was the lead investigator on the case, and that none of those three detectives had any further involvement in the case. (Strollo Dep. at 58-59; Kaiser Dep. at 30-32, 39-40; Pelosi Dep. at 56.) There also is no dispute that one of the complainants, Leon Harrington, identified someone other than Plaintiff as the shooter. (Statement of Leon Harrington, dated 8/13/96.) Notwithstanding Mr. Harrington's statement, Detective Krystopa's investigation eventually led him to Plaintiff, who was arrested and charged with robbery,

aggravated assault, theft, and other offenses. Bail was set at \$100,000.00, which Plaintiff could not post, and he then awaited trial in prison.

At trial Plaintiff discovered he had not received all materials to which he was entitled under Brady v. Maryland, 373 U.S. 83 (1963). Philadelphia Police Department Directive 135 requires the assigned investigator to summarize all written interviews on the Investigation Report (Form 75-49). (Phila. Police Dept. Directive 135, at IV.D.1.) The assigned investigator then must attach the full written interviews (Form 75-483) to the Investigation Report. Id. Detective Krystopa, however, failed to attached the 75-483 forms to the Investigation Report, and his summary of Mr. Harrington's statement did not include the identification of the shooter. Detective Krystopa's failure came out during the course of testimony at Plaintiff's trial, and the court immediately declared a mistrial. Despite this revelation, the district attorney decided to prosecute Plaintiff again. Plaintiff eventually was acquitted on all charges.

From his bail hearing to the time he was acquitted, Plaintiff was incarcerated for 530 days, the bulk of which he spent in adult correction facilities although he was a minor.¹ A few months after his acquittal, he sued Detectives Strollo, Kaiser, Pelosi, and Krystopa, as well as former Police Commission Richard Neal and the City of Philadelphia, claiming he is entitled to recover damages under 28 U.S.C. §§ 1983, 1985, 1986, and 1988, as well as under common law principles. He claims the failure to provide the written interviews violated his rights under the

¹Plaintiff was kept in adult prisons under Pennsylvania's Juvenile Act, 42 Pa. Cons. Stat. Ann. §§ 6301-6365 (Supp. 1998) (amending 42 Pa. Cons. Stat. Ann. §§ 6301-6308 (West 1982)), under which certain minors charged with robbery, see id. § 6302(2)(ii)(D), may be tried as adults depending upon a variety of factors, see id. § 6322(a) (directing courts to consider factors stated in § 6355). The court's analysis in Plaintiff's case apparently led it to conclude Plaintiff should be tried as an adult.

Fifth, Sixth, Eighth, and Fourteenth Amendments and also constituted gross negligence.

Defendants now have moved for summary judgment on all counts.

II. DISCUSSION

A. Summary Judgment Standard

A court properly may grant a motion for summary judgment “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 a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party has the initial burden of showing it is entitled to summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this burden, the non-moving party must rebut the movant’s showing by pointing to portions of the record that demonstrate a genuine issue for trial exists. Id. at 324. The non-movant, then, must show the existence of evidence on which a reasonable jury could return a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). This evidence, however, may not be merely colorable or of insignificant probative value, id. at 249-50, and the non-movant cannot rely on unsupported allegations or mere suspicions to survive a summary judgment motion, Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1990); Tziatzios v. United States, 164 F.R.D. 410, 411-12 (E.D. Pa. 1996).

B. Plaintiff’s Sixth and Eighth Amendment Claims

As an initial matter, Defendants’ motion for summary judgment will be granted with respect to Plaintiff’s Sixth and Eighth Amendment claims. Plaintiff claims that he is entitled to recover money damages because Defendants’ withholding of the full interview statements

prohibited him from conducting an effective cross-examination at the first proceeding, and therefore violated his Confrontation Clause rights. (Pl.’s Resp. To Defs.’ Mot. Summ. J., at 5-7.) The Confrontation Clause, however, provides only an opportunity for effective cross-examination, United States v. Conley, 92 F.3d 157, 169 (3d Cir. 1996) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986), cert. denied, 117 S. Ct. 1244 (1997)), and Plaintiff had this opportunity at the full trial. Therefore, Defendants’ motion for summary judgment is granted with respect to Plaintiff’s Sixth Amendment claim.

Plaintiff also argues the length of his incarceration was an excessive punishment needlessly imposed, as demonstrated by his acquittal. Plaintiff urges that the extent to which Defendants’ actions “constitute[] cruel and unusual punishment is a genuine issue of material fact and accordingly [is] inappropriate for adjudication on summary judgment.” (Pl.’s Resp. To Defs.’ Mot. Summ. J., at 8.) The Eighth Amendment’s Cruel and Unusual Punishment Clause, however, is invoked properly only after a defendant has been convicted of a crime at a trial where the prosecution complied with the defendant’s constitutional rights. Whitley v. Albers, 475 U.S. 312, 318-19 (1985) (quoting Ingraham v. Wright, 430 U.S. 651, 664, 671 n.40 (1977)). Plaintiff never was convicted, and therefore the Eighth Amendment is not applicable here. Further, accepting his allegations as true, Detective Krystopa’s failure to furnish the full witness statement violated Plaintiff’s due process rights, and under Whitley this violation precludes Plaintiff from maintaining an Eighth Amendment claim. Accordingly, Defendants’ motion for summary judgment is granted with respect to Plaintiff’s Eighth Amendment claim.

C. Plaintiff’s Claim Under 42 U.S.C. § 1983

Plaintiff bases his § 1983 claim on the alleged violation of his procedural due process

rights under Brady v. Maryland, 373 U.S. 83 (1963). It seems clear that a plaintiff can maintain an action under § 1983 by alleging a police officer or, in rare cases, a prosecutor violated his procedural due process rights under Brady. See, e.g., McMillan v. Johnson, 88 F.3d 1554, 1567 n.12 (11th Cir.) (involving police officers), amended, 101 F.3d 1363 (11th Cir. 1996), cert. denied, 117 S. Ct. 2514 (1997); Reid v. New Hampshire, 56 F.3d 332, 342 (1st Cir. 1995) (allowing § 1983 action to proceed against two police officers); Carter v. Burch, 34 F.3d 257, 263-64 (4th Cir. 1994) (involving police officer), cert. denied, 513 U.S. 1150 (1995); McDonald v. Illinois, 557 F.2d 596, 603 (7th Cir.) (involving police officers), cert. denied, 434 U.S. 966 (1977); Hilliard v. Williams, 516 F.2d 1344, 1349-50 (6th Cir. 1975) (involving a police officer and a prosecutor who encouraged deceptive and misleading testimony), cert. denied, 423 U.S. 1066 (1976). Equally clear is that a defendant's due process rights under Brady are violated when police officers or prosecutors withhold evidence that is exculpatory and material. Brady, 373 U.S. at 86-87; United States v. Perdomo, 929 F.2d 967, 971 (3d Cir. 1991). Finally, it is clear to the Court that Mr. Harrington's statement that someone other than Plaintiff was the shooter was exculpatory and material. See United States v. Starusko, 729 F.2d 256, 260 (3d Cir. 1984). The question in this case, then, is whether the prosecution withheld the evidence.

The issue is one of timing. If Plaintiff had been convicted and then discovered Detective Krystopa failed to attach Mr. Harrington's statement, the Court readily could conclude Brady had been violated and Plaintiff's conviction was tainted. The discovery of Mr. Harrington's statement, however, occurred before Plaintiff's trial concluded, and he ultimately had full advantage of all materials required under Brady.

Defendants urge the Court to follow Christman v. Hanrahan, 500 F.2d 65 (7th Cir.), cert.

denied, 419 U.S. 1050 (1974), a case that is nearly on all fours with the one here. The plaintiff in Christman brought a § 1983 action against the police and prosecutors who previously tried him on murder charges. Id. at 66. During trial, defense counsel learned that the prosecution had concealed exculpatory information, and counsel then presented that information to the jury. Id. The jury acquitted Christman in ten minutes. Id. Despite the prosecution's "egregious conduct," the court of appeals found the defendants could not be liable under § 1983 because Christman's due process right under Brady had not been violated. Id. Rather, the court found Christman ultimately received a fair trial, which it believed was the right the Court sought to uphold in Brady. Id. at 68. Mere prosecutorial misconduct, the court stated, was not enough to serve as a factual basis for a § 1983 action. Id.

The Third Circuit largely has followed the Christman court's reasoning. In Starusko, the court held,

Brady "is not a discovery rule, but a rule of fairness and minimum prosecutorial obligation." There can be no violation of Brady unless the government's nondisclosure infringes the defendant's fair trial right. To constitute a Brady violation, the nondisclosure must do more than impede the defendant's ability to prepare for trial; it must adversely affect the court's ability to reach a just conclusion, to the prejudice of the defendant. "No denial of due process occurs if Brady material is disclosed in time for its effective use at trial."

Starusko, 729 F.2d at 262 (citations omitted).

No court of appeals has rejected the reasoning found in Christman and Starusko, probably because this reasoning is entirely consistent with the Supreme Court's own emphasis on the fairness of the proceeding under Brady. "The principle . . . is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused." Brady, 373 U.S. at 87. Indeed, even when the prosecution has withheld evidence the conviction will be sustained so

long as the trial was a fair one. “The question is not whether the defendant would more likely than not have received a different verdict than with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” Kyles v. Whitley, 514 U.S. 419, 434 (1995).

Plaintiff ultimately did receive a fair trial because Mr. Harrington’s statement was uncovered in time for its effective use at trial. Moreover, the trial court was able to reach a just conclusion: it declared a mistrial when testimony showed Plaintiff had not received the witness statements, and held a full trial at which Plaintiff, then in possession of the statements, was acquitted. Plaintiff certainly was incarcerated for a great deal of time, and Detective Krystopa’s failure to attach the witness statements was inexcusable, but justice finally did prevail and Plaintiff received a fair trial and a verdict worthy of confidence. The Court therefore concludes that because Plaintiff learned of the exculpatory evidence before his trial concluded, and had the opportunity to use that evidence at trial, that evidence was not withheld, and no Brady violation occurred. Defendants’ motion for summary judgment on Plaintiff’s § 1983 claim is granted.

D. Plaintiff’s Claims Under 42 U.S.C. §§ 1985, 1986, 1988

Plaintiff also claims Defendants conspired to deprive him of his equal protection rights and has sued Defendants under 42 U.S.C. § 1985. Plaintiff claims Defendants conspired to withhold the witness statements discussed above, and offers several statements of detectives in which they seem to admit that entire detective divisions have policies of not producing full witness statements. (Pl.’s Resp. To Defs.’ Mot. Summ. J., at 17-18.) Plaintiff also argues that the particular facts of his case show a conspiracy exists under § 1985. “Four white detectives acting as judge, jury and executioner to deny Antoine Williams of the same protections whites

receive clearly demonstrates an invidious, racially discriminatory purpose for purposes of section 1985.” Id. at 18.

To prevail on his § 1985 claim, Plaintiff must show a conspiracy exists for the purpose of directly or indirectly depriving him or a class of persons equal protection of the law or equal privileges and immunities under the law, and that an act in furtherance of the conspiracy has occurred where he was injured in person or property or was deprived of a right or privilege of a United States citizen. See United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 828-29 (1983). Although the issue of whether a conspiracy exists usually should not be decided on summary judgment, see Gant v. Aliquippa Borough, 612 F. Supp. 1139, 1142 (W.D. Pa. 1985), summary judgment is granted properly where the plaintiff has totally failed to produce any evidence that a conspiracy existed, Hahn v. Sargent, 523 F.2d 461, 464 (1st Cir. 1975), cert. denied, 425 U.S. 904 (1976); Chicago Miracle Temple Church v. Fox, 901 F. Supp. 1333, 1348 (N.D. Ill. 1995).

Plaintiff’s case is one in which summary judgment is appropriate. Plaintiff has failed to produce any evidence whatsoever to show a conspiracy existed against him or any class of persons. In fact, if Plaintiff’s claim that a division or department wide policy existed to withhold witness statements is accepted as true, that evidence would tend to prove the detectives who carried out such a policy acted in a non-discriminatory, non-selective way; under those facts, witness statements are withheld universally, not from, for instance, people of color. Further, Plaintiff has not produced any evidence showing that the fact that four white detectives worked on his case was anything other than a coincidence. Plaintiff certainly has not offered any evidence that these detectives worked on his case as part of a conspiracy. Mere allegations and

suspicions cannot withstand summary judgment, see Williams, 891 F.2d at 460, and therefore Defendants' motion is granted with respect to Plaintiff's § 1985 and § 1986 claims. Further, because Defendants' motion with respect to Plaintiff's § 1983, § 1985, and § 1986 claims is granted, Defendants' motion for summary judgment on Plaintiff's § 1988 claim also is granted.

E. Plaintiff's Gross Negligence Claim

Plaintiff's final claim against Defendants is that Defendants were grossly negligent when they failed to disclose the witness statements to Plaintiff earlier than they did. Defendants argue that this claim is barred by the Political Subdivision Tort Claims Act ("Tort Claims Act"), 42 Pa. Cons. Stat. Ann. §§ 8541-8564 (West 1982 & Supp. 1998), and the Court agrees with this position. Under the Tort Claims Act, the City of Philadelphia may be found liable for the negligence of its employees only in eight very limited circumstances, id. § 8542(b); see also Moser v. Bascelli, 865 F. Supp. 249, 253 (E.D. Pa. 1994), and none of those exceptions apply in this case. The City's employees also are covered under the Tort Claims Act, see 42 Pa. Cons. Stat. Ann. § 8545, and Plaintiff's gross negligence claim cannot be construed as pleading that an exception to this immunity applies, see id. § 8550. Accordingly, Defendants' motion for summary judgment on Plaintiff's gross negligence claim is granted.

III. CONCLUSION

Although Plaintiff suffered through a lengthy incarceration and was not initially given all witness statements taken in his case, he ultimately received all information to which he was entitled under Brady. Plaintiff therefore has not suffered any constitutional harm, whether under the Fifth, Sixth, Eighth, or Fourteenth Amendments, that would enable him to recover damages under § 1983. Further, Plaintiff has utterly failed to establish any evidence that shows

Defendants engaged in a conspiracy to deprive him or anyone else of other Fourteenth Amendment rights. Finally, Defendants are immune from Plaintiff's common law claim against them. Summary judgment therefore is appropriate on all counts, and Defendants' motion is granted in its entirety.

An Order follows.

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

ANTOINE WILLIAMS : CIVIL ACTION
 :
v. :
 :
DETECTIVE EDWARD KRYSSTOPA, :
et al. : NO. 98-CV-1119

ORDER

AND NOW, this 15th day of December, 1998, in consideration of Defendants' Motion for Summary Judgment (Doc. No. 22), and Plaintiff's response thereto, it is hereby **ORDERED**:

1. Defendants' motion is **GRANTED**;
2. Judgment is entered in favor of Detective Edward Krystopa, Detective Kaiser, Detective Pelosi, Detective Strollo, Commissioner Richard Neal, and the City of Philadelphia, and against Antoine Williams; and
3. The case is now closed.

BY THE COURT:

JAMES McGIRR KELLY, J.