

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

RICHARD ROANE, et al. : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, et al. : NO. 98-CV-4149

MEMORANDUM AND ORDER

J. M. KELLY, J.

APRIL 29, 1999

Presently before the Court is Defendants' motion for summary judgment. Defendants seek summary judgment on all of Plaintiffs' claims, but the Court finds summary judgment is appropriate only on Keesha Brothers' claims, one of Richard Roane's ("Roane") claims against Andrew Adams ("Adams") and Donald Yeager ("Yeager"), and Roane's claims against the City of Philadelphia. Defendants' motion is denied with respect to Roane's and Lori Brothers' remaining claims.

I. FACTS

On the evening of April 17, 1998, Lori Brothers, accompanied by her daughter Keesha Brothers and her son Richard Roane, Jr., picked up Roane from work in a car owned by Lori Brothers' uncle. They soon returned home, and, when getting out of the car, were approached by Yeager, a plainclothes police officer. Yeager asked Roane, who still was in the car placing a lock on the steering wheel, for his driver's license. Roane responded that Lori Brothers had his license, and she produced it to Yeager. She also gave her license to Yeager, told him her uncle owned the car, and provided Yeager with the car's temporary registration, bill of sale, and

insurance card.

Yeager approached the car because about two weeks earlier his partner, Adams, received information from a confidential informant that Roane was driving a stolen car exactly matching the one Yeager saw that evening. The informant said Roane had “re-VINed” the car, or altered the car’s VIN number, and was using a stolen license plate. When Yeager saw a car matching the description the informant gave Adams, he checked whether the car’s license plate was registered to Roane. It wasn’t, and so Yeager went to the car to investigate further.

Yeager learned little, if anything, to indicate the car was stolen after he asked for Roane’s and Brothers’ identification. He ran a search through the National Crime Information Center (“NCIC”) and learned the car had not been reported as stolen. He discovered that the license plate affixed to the car was registered to a different car, but this search also did not reveal that the car was stolen. He checked the VIN number on the car’s dashboard, but did not find it to have been altered. Yeager also ran Roane’s name through the police system, but learned only that there were no outstanding warrants for Roane’s arrest.

Yeager, joined by three to ten other police units, kept Lori Brothers at the scene while he conducted his investigation. She asked Yeager if she could take her children inside their home, but Yeager instead sent the children with Brothers and Roane’s friend. Based upon his investigation, Yeager concluded the car may have been “re-VINed.” He then handcuffed Roane and took him to the Central Detectives building. Yeager left Lori Brothers at the scene.

Roane arrived at the Central Detectives building at about 9:20 P.M., and around that time told a police officer he was a diabetic and would need an insulin shot in an hour or two. He was placed in a cell and given some orange juice. Lori Brothers nearly simultaneously arrived at the

Central Detectives building with her uncle, who brought documentation supporting his ownership of the car. Brothers also had Roane's insulin shot with her. She spoke with Adams forty-five minutes after her arrival and asked if she could give Roane his insulin, but Adams, uncertain that the substance actually was insulin, said he would not give it to Roane. Adams denies this conversation ever occurred. Adams removed Roane from his cell just after midnight and questioned him. In response to Roane's requests for medication, Adams told Roane he would try to speed up the process to get him released. In the interim, however, Adams fingerprinted Roane and ran those prints through a nationwide search. This search turned up nothing. Roane was released at 2:30 A.M.. He did not, however, take his insulin until he returned home.

Plaintiffs brought several civil rights claims against Yeager, Adams, and the City of Philadelphia, alleging Roane and Lori Brothers had been falsely arrested, the car searched illegally, Roane was illegally imprisoned, and Yeager and Adams were deliberately indifferent to Roane's serious medical needs. Plaintiffs alleged the City, too, was liable. The Court, soon after Plaintiffs filed suit, issued a Scheduling Order to which it attached its Standing Order. The Standing Order plainly requires litigants to file dispositive motions, like summary judgment motions, within seven days of the close of discovery. Defendants, then, were required to file this summary judgment motion by March 1, 1999. Compliance with this deadline, however, was too much to ask, and, like the City has done so often before this Court, it disregarded the Court's reasonable and minimal instruction and proceeded according to its own schedule. They filed their summary judgment motion on March 12. Plaintiffs, who managed to comply with the Court's Order, understandably object to this motion as untimely, but the Court finds the

inconvenience and disrespect that litigation with the City frequently brings does not amount to prejudice in this case. Plaintiffs' motion is denied.

II. DISCUSSION

A. The Summary Judgment Standard.

Summary judgment is appropriate if the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue of fact is genuine only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and the applicable substantive law determines what facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Finally, the nonmoving party, in this case Plaintiffs, are entitled to every favorable inference that can be drawn from the record. Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997).

B. Lori Brothers' and Keesha Brothers' § 1983 Claims.

Defendants first challenge the standing of Plaintiffs Lori and Keesha Brothers. Defendants argue these two plaintiffs have no individual causes of action and are attempting to assert only Roane's rights under § 1983. Plaintiffs admit that Keesha Brothers does not have standing, but claim Lori Brothers has brought an action on her own behalf, which the Court notes can be found in the Complaint. At any rate, Plaintiffs argue Yeager violated her Fourth Amendment rights when, in the presence of as many as ten police cars, he asked her for her identification and then did not allow her to take her children inside their home. Further, they claim, the police searched her entire car, including the trunk, and this search constitutes another Fourth Amendment violation. Lori Brothers, therefore, alleges two Fourth Amendment

violations: that she was seized unlawfully and that her car was searched illegally.¹

Defendants have not specifically argued they did not violate Ms. Brothers' Fourth Amendment rights, but the Court will apply the arguments they offer regarding Roane's claims to those of Ms. Brothers. Defendants argue they had probable cause to arrest because a confidential informant provided them with information that Roane was driving a "re-VINed" burgundy Oldsmobile with a Pennsylvania license plate "BNB-9815"; Yeager saw Roane get out of a car matching that description; the car's license plate did not match the car; and neither the car nor license plate was registered to Roane or Brothers. Plaintiffs counter this in two ways. First, they claim there is an issue whether the informant even exists, based upon the fact that police directives require the police to keep a file on every informant, and no such file exists in this case. Further, Plaintiffs argue Defendants have failed to demonstrate the informant was reliable, and never corroborated any of his information. Second, Plaintiffs argue Defendants learned nothing at the scene that would support probable cause. The NCIC search showed the car had not been reported stolen; the VIN number had not been altered; contrary to the informant's tip, Brothers, not Roane, drove the car; and Brothers told Yeager the car was her uncle's, and produced the bill of sale, the temporary registration, and insurance card as proof.

The issue of whether Yeager violated Lori Brothers' Fourth Amendment rights revolves around whether Yeager had probable cause to seize Brothers and search her entire car. Probable cause is present when such facts and circumstances exist that a prudent person would believe the

¹Defendants' argument solely is limited to challenging the standing of Lori Brothers, but because they dispute that Brothers was seized, Defs.' Mem. Supp. Summ. J. at 5, the Court will analyze Defendants' motion as if they also claimed they never violated her Fourth Amendment rights.

defendant committed a crime or was in the process of doing so. Sharrar, 128 F.3d at 817-18.

Whether probable cause existed usually is a question for the jury, but a court may resolve it on summary judgment when there are no genuine issues of material fact and no credibility conflicts exist. Id. (quoting Deary v. Three Un-Named Police Officers, 746 F.2d 185, 192 (3d Cir. 1984)).

The arguments raised by Plaintiffs show there are several genuine issues of material fact, the most substantial of which regards the existence of probable cause. Preliminarily, the record shows a genuine issue of material fact exists regarding whether Brothers was seized at all. Further, assuming she was seized, there is a genuine issue of material fact whether a prudent person in Yeager's position would have thought Brothers committed a crime. A jury reasonably could conclude the information compiled at the scene was substantial enough to overwhelm the informant's tip. A jury also reasonably could conclude the informant was not reliable or that he never existed.² Indeed, Defendants' attempt to rebut this last issue with Adams' testimony creates a credibility conflict that the Court cannot appropriately resolve.

Further, the record reveals genuine issues of material fact surrounding Brothers' illegal search claim. If a jury decides the police searched the car and its trunk and Brothers drove the car, a jury reasonably could conclude the search also was not supported by probable cause. Summary judgment on Ms. Brothers' claims therefore is inappropriate.

C. Roane's False Arrest and False Imprisonment Claims.

²Even if Yeager's seizure of Brothers ultimately is nothing more than an investigatory stop, which Defendants have not argued, the issues surrounding the informant potentially undermine Defendants' use of the informant as a basis for reasonable suspicion justifying the stop. Because Defendants have not made this argument, however, the Court will not address it further.

Defendants also seek summary judgment on Roane's false arrest and false imprisonment claims. They graciously admit, but only for the purposes of this motion, that Yeager and Adams arrested Roane when they led Roane from the scene in handcuffs,³ but claim Yeager and Adams had probable cause to make this arrest and, in any event, they enjoy qualified immunity. The qualified immunity defense is available only if a reasonable police officer could have believed his conduct was lawful, in view of the information he then possessed and the clearly established applicable law. *Id.* at 826. It is the court's obligation at this stage of the litigation to determine whether a defendant may avail himself of this immunity. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991).

The Court will not grant summary judgment on Roane's false arrest and false imprisonment claims. First, with respect to Defendants' assertion that Roane's arrest was supported by probable cause, the Court will reject this argument for the same reasons it stated when addressing Ms. Brothers' claims. Second, regarding the qualified immunity defense, the Court finds Yeager and Adams could not reasonably believe, in light of clearly established Fourth Amendment jurisprudence, their arrest of Roane was supported by probable cause. Their informant, assuming he exists, told them the car had been re-VINed, but their examination of the car showed the VIN number was intact. There was no evidence the car was stolen, based upon both the NCIC search and Ms. Brothers' ability to produce the reasonable explanation that her uncle lent them the car, which she corroborated with the bill of sale, temporary registration, and insurance card. These developments effectively negated the informant's tip and eroded whatever

³Defendants state Yeager merely place handcuffs "gently" around Roane's wrists and took him from the scene to the Central Detectives building, (Defs.' Mem. Supp. Summ. J. at 4-5 & n.2), apparently as some sort of attempt to claim Roane consented to go with Yeager.

basis for probable cause that tip established. Yeager and Adams' belief that probable cause existed, therefore, was not objectively reasonable and they may not avail themselves of the qualified immunity defense. Cf. Rogers v. Powell, 120 F.3d 446, 455-56 (3d Cir. 1997) (finding police officer who relied on uncorroborated statements did not have an objectively reasonable belief that probable cause existed).

D. Roane's Claim of Deliberate Indifference to Serious Medical Needs.

Defendants also move for summary judgment on Roane's claims that Yeager and Adams were deliberately indifferent to his serious medical need of insulin for his diabetes. They claim Yeager departed company with Roane at 9:35 P.M., before Roane began to feel ill, and therefore Yeager never was indifferent. Defendants also argue that Adams was not deliberately indifferent because Adams attempted to expedite Roane's release. Further, Defendants state it never was obvious to Adams that Roane actually needed medical attention and allege, as proof his condition was not serious, that Roane did not take his insulin until after he returned home.

The Court finds Defendants Yeager and Adams are entitled to summary judgment on these claims. To avoid summary judgment, Roane must have created a record showing Yeager and Adams were deliberately indifferent to Roane's serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 106 & n.14 (1976). Among the factors a court may consider in determining whether a medical need was a serious one is what effect indifference visited on the detainee. See Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988). If the effect of a failure to treat was "substantial and unnecessary suffering, injury, or death," Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991), the detainee has shown a serious medical condition.

In this case, there is no need to speculate as to what effect indifference had on Roane: he weakly and generally claims he was affected from diabetic symptoms for one and one-half days. (Pls.' Pretrial Mem. at 3-4.) This vague allegation hardly rises to the level necessary to prove a serious medical need for Eighth or Fourteenth Amendment purposes. The Court will grant Defendants' motion with respect to these claims.

E. Roane's Claims against the City of Philadelphia.

Defendants finally seek summary judgment on Roane's municipal liability claims. Defendants argue Roane has failed to develop a record demonstrating the policies or customs required to make the City liable under Monell v. New York City Department of Social Services, 436 U.S. 658 (1978). Plaintiffs agree that there is no developed record, and refer to a request for production of documents that sought City guidelines for taking care of prisoners with diabetes. The fact that the City never produced a guideline specifically addressing diabetic prisoners or detainees, Plaintiffs argue, means the City does not have a policy, which itself, their logic goes, is a policy.

The Court does not find Plaintiffs' argument persuasive. The absence of a diabetic prisoner policy in no way translates to a policy of withholding insulin or other treatment from diabetic prisoners or detainees. Without a record showing some policy or custom of withholding medical treatment, see Robinson v. City of Pittsburgh, 120 F.3d 1286, 1295-96 (3d Cir. 1997), and without some proof of causation, see Kneipp v. Tedder, 95 F.3d 1199, 1212 (3d Cir. 1996), the Court finds the City is entitled to judgment as a matter of law.

An Order follows.

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ORDER

AND NOW, this 29th day of April, 1999, upon consideration of Defendants' motion for Summary Judgment (Document No. 15), and Plaintiffs' response thereto, it is hereby

ORDERED:

1. Summary judgment is entered in favor of Defendants the City of Philadelphia, Donald Yeager, and Andrew Adams and against Plaintiff Keesha Brothers;
2. Defendants' motion for summary judgment on Lori Brothers' false arrest and illegal search claims is **DENIED**;
3. Defendants' motion for summary judgment on Richard Roane's false arrest and false imprisonment claims is **DENIED**;
4. Defendants' motion for summary judgment on Richard Roane's deliberate indifference claims is **GRANTED**; and
5. Summary judgment is entered in favor of Defendant the City of Philadelphia and against Plaintiffs Lori Brothers and Richard Roane.

BY THE COURT:

JAMES MCGIRR KELLY, J.