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

JANET JACKSON	:	**CIVIL ACTION**
	:	
v.	:	
	:	
MILLS, et al.	:	**NO. 96-CV-3751**

MEMORANDUM ORDER

Presently before the court is defendants' Motion in Limine to Preclude Plaintiff from Offering Any Evidence that She Was Not Guilty of Disorderly Conduct in this 42 U.S.C. § 1983 false arrest and excessive force case. Defendants contend that plaintiff should be precluded from offering any such evidence by "the doctrine of res judicata and collateral estoppel."

Plaintiff was arrested for the misdemeanor offense of disorderly conduct to which she pled not guilty at a preliminary hearing. Plaintiff later pled guilty to a summary offense of disorderly conduct and the misdemeanor charge was dismissed. The offense to which plaintiff pled guilty provides in pertinent part that:

> A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

See 18 Pa.C.S.A. § 5503(a)(4).

An offense under § 5503(a) is a misdemeanor "if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or

request to desist. Otherwise disorderly conduct is a summary offense." See 18 Pa.C.S.A. § 5503(b).

A federal court gives the same preclusive effect to a state court judgment that it would receive in the courts of the state in which it was rendered. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 (1982); Allegheny Int'l, Inc. v. Allegheny Ludlum Steel Corp., 40 F.3d 1416, 1429 (3d Cir. 1994).

The doctrine of res judicata is plainly inapplicable as the claim prosecuted by the commonwealth against plaintiff and her § 1983 claim are not the same causes of action. See Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 461 (3d Cir. 1996) (under Pennsylvania law res judicata bars "identical future action" between parties or those in privity). See also Vinson v. Campbell County Fiscal Court, 820 F.2d 194, 197 (6th Cir. 1987); Slayton v. Willingham, 726 F.2d 631, 633 (10th Cir. 1984).

Under Pennsylvania law, a conviction from a guilty plea conclusively establishes the operative or essential facts underlying the conviction. Di Joseph v. Vuotto, 1997 WL 369363, *2-3 (E.D. Pa. June 27, 1997). Where there is any doubt, a court must examine the record of the criminal proceedings or plea colloquy to determine what issues were necessarily encompassed. Id. at *3; Wheeler v. Nieves, 762 F. Supp. 617, 626 (D.N.J. 1991); State Farm Mut. Automobile Ins. Co. v. Rosenfield, 683 F.

Supp. 106, 108 (E.D. Pa. 1988); DiRocco v. Anderson, 1986 WL 12444, *5 (E.D. Pa. Nov. 3, 1986).[1]

Defendants do not contend that plaintiff's claim is barred per se by her guilty plea, but that she should be precluded from attempting to show that she was in fact not guilty of disorderly conduct.[2] Plaintiff states that she "does not intend to litigate or re-litigate her guilty plea" or deny that "she was guilty of creating a hazardous or offensive condition." She contends, however, that she should be able to show defendants lacked probable cause "to take her into physical custody" and that they used excessive force in doing so.[3] Plaintiff contends that the defendant officers "should have simply issued her a citation."

As noted, a misdemeanor disorderly conduct offense involves elements additional to those which constitute a summary disorderly conduct offense. Plaintiff's guilty plea to the

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[1]Plaintiff acknowledges in her submission that she pled guilty to a § 5503(a)(4) charge. No record has been provided, however, from which the court can discern the specific factual predicate for the plea or any admissions plaintiff may have made.

[2]Regardless of the state law regarding preclusion, a conviction of an offense for which a plaintiff was arrested generally bars a § 1983 false arrest claim. See Heck v. Humphrey, 114 S. Ct. 2364, 2372 n.6 (1994); Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996); Wells v. Bonner, 45 F.3d 90, 95 (5th Cir. 1995). Plaintiff, however, was not arrested for the literal offense to which she pled guilty.

[3]That an officer had probable cause to make an arrest or that the arrestee was convicted would, of course, not preclude a § 1983 excessive force claim. See Smithart, 79 F.3d at 953.

summary offense does not establish probable cause to arrest her for the misdemeanor offense.

Police officers ordinarily are required to charge a person with a summary offense by issuing a citation. See Pa. R. Crim. P. 52. An officer, however, may "in exceptional circumstances" arrest an individual for committing a summary offense. See Pa. R. Crim. P. 70 & cmt. Such circumstances include a display or imminent threat of violence and a risk of flight. Id. Evidence bearing on the presence or absence of such exigent circumstances could thus be relevant and admissible. There also is no basis for precluding evidence that the officers lacked probable cause to believe plaintiff was guilty of the misdemeanor offense of disorderly conduct for which she was arrested.[4]

ACCORDINGLY, this day of November, 1997, upon consideration of defendants' Motion in Limine to Preclude Plaintiff from Offering Evidence that She Was Not Guilty of Disorderly Conduct, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

[4]Issue preclusion aside, an attempt by a party to contradict any admissions which were the basis for a guilty plea and resulting conviction would implicate principles of judicial estoppel. See Ryan Operations, G.P.V. Santiam-Midwest Lumber Co., 81 F.3d 355, 358 (3d Cir. 1996); Scholes v. Lehmann, 56 F.3d 750, 762 (7th Cir. 1995).

JAY C. WALDMAN, J.