

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DENISE MANUEL and LOTTIE ANN)	
MANUEL, Individually and In Their)	
Capacities As Co-Administratrices)	
and Personal Representatives of)	
the Estate of Clifford Tyrone)	
Manuel, III, Deceased,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 01-509-SLR
)	
THE CITY OF SEAFORD, DANIEL B.)	
SHORT, RICHARD POUNSBERRY,)	
RICHARD PEREZ and KENNETH)	
MISCIEWICZ,)	
)	
Defendants.)	

MEMORANDUM ORDER

I. INTRODUCTION

On July 27, 2001, plaintiffs Denise Manuel and Lottie Ann Manuel filed this action against defendants City of Seaford, Mayor Daniel Short, Chief of Police Richard Pounsberry and Police Officers Richard Perez and Kenneth Misciewicz alleging civil rights violations and wrongful death and survival claims arising out of the shooting death of Clifford Tyrone Manuel, III. (D.I. 1) Currently before the court is defendants' motion to dismiss plaintiff's complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 5) For the following reasons, defendants' motion to dismiss is denied.

II. BACKGROUND

The following recitation of events is based upon the allegations set forth in plaintiffs' complaint.¹ On August 2, 1999, Mr. Manuel, an African-American male, was riding a bike in Seaford, Delaware. (D.I. 1) Officers Perez and Misciewicz stopped and questioned Mr. Manuel, allegedly because of his race, "pursuant to a pattern, custom and policy that the Mayor and Chief of Police knew existed and allowed to exist as part of a greater policy of harassment of African-Americans." (Id.) Mr. Manuel did not give Officers Perez and Misciewicz his proper name and, as a result, the officers attempted to arrest him. (Id.) Mr. Manuel fled, and Officer Perez fired his service revolver at Mr. Manuel, striking him in the upper right buttocks with the second shot. (Id.) Mr. Manuel fell to the ground, and was placed under arrest and handcuffed with his arms behind his back. (Id.) Plaintiffs allege that the officers failed to ascertain the severity of Mr. Manuel's gunshot wound, which precluded Mr. Manuel from receiving immediate medical care. (Id.) Mr. Manuel died on August 3, 1999. (Id.)

¹The Delaware Attorney General's office conducted an independent investigation into this incident. (D.I. 6, Ex. B) Defendants' brief relies on facts from the Attorney General's report which do not appear in plaintiffs' complaint.

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

Defendants claim that the use of force by Officers Perez and Misciewicz was justified, and that defendants are otherwise immune from liability. In making these arguments, however, defendants erroneously rely on facts from the Attorney General's report of the incident, which are outside plaintiffs' complaint. Because the court is required to accept as true all material allegations of the complaint when evaluating a motion to dismiss,

the court finds that plaintiffs have sufficiently stated claims from which relief may be granted. Furthermore, defendants' claims of immunity are premature at this stage of the proceedings.

V. CONCLUSION

Therefore, at Wilmington this 9th day of January, 2002;

IT IS ORDERED that defendants' motion to dismiss (D.I. 5) is denied.

United States District Judge