

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-10068-RWZ

CLIFFORD MONTROND AND ESTELLE MONTROND

v.

CITY OF BROCKTON, et al.

MEMORANDUM OF DECISION

February 10, 2005

ZOBEL, D.J.

Brockton Police Officer David Alexis claimed being shot by Clifford Montrond. The City of Brockton Police Department conducted an investigation with limited assistance by Officer Richard Gambino from the Town of Abington Police Department and obtained a warrant for plaintiff's arrest at the home of his mother, Estelle Montrond. Plaintiff was incarcerated for several days before investigators confirmed his alibi, and Officer Alexis confessed to fabricating the entire story. Subsequently, plaintiff filed the instant suit against the City of Brockton, Officer Alexis, the Brockton Chief of Police, several Brockton officers who were involved in the investigation leading to plaintiff's arrest, Officer Gambino, the Town of Abington, and the Chief of Police.

Officer Gambino joined the investigation when a confidential informant (the "CI") told him that he overheard an individual bragging about having shot Officer Alexis, and the CI made a positive identification of plaintiff as the individual. Officer Gambino alerted the defendant Brockton officers to this information prior to their obtaining the

arrest warrant, and he arrived on the scene of plaintiff's arrest. Plaintiff's complaint names Officer Gambino in the following three counts: Count I, regarding violations of plaintiff's rights as guaranteed by the Fourth and Fourteenth Amendments and Article Fourteen of the federal and state Constitutions, respectively; Count II, regarding plaintiff's rights to due process as guaranteed by the Fourth, Fifth and Fourteenth Amendments and Articles One and Ten of the federal and state Constitutions, respectively; and Count VI, regarding common law tortious conduct including malicious prosecution, false arrest, false imprisonment, slander and infliction of emotional distress. Officer Gambino, the Town of Abington, and the Chief of Police now move for summary judgment on all claims against them.

The purpose of a summary judgment motion "is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues." Lujan v. National Wildlife Federation, 497 U.S. 871, 888-889 (1990). "In order to survive the 'swing of the summary judgment axe,' the nonmoving party must produce evidence on which a reasonable finder of fact, under the appropriate proof burden, could base a verdict for it; if that party cannot produce such evidence, the motion must be granted." Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 94 (1st Cir. 1996).

With respect to Counts I and II, plaintiff argues that Officer Gambino violated his constitutional rights by participating in the improper application for an arrest warrant and the use of excessive force to arrest him. Officer Gambino disputes the latter

accusation by noting in his affidavit that he did not arrive on the scene of plaintiff's arrest until after plaintiff was already in custody. Plaintiff asserts otherwise but fails to identify any actual conflicting evidence. Officer Gambino disputes the first accusation by explaining in his affidavit that while he provided CI statements about plaintiff to the Brockton Police Department, he remained uninvolved in the deliberations of whether to seek, and the resulting application for, the arrest warrant. Additionally, Officer Gambino states in his affidavit that he had no reason to suspect the reliability of the CI, as he had provided accurate data to Officer Gambino in prior investigations. Plaintiff does not contest these factual assertions but, instead, simply recommends a negative inference be drawn from Officer Gambino's collaboration with an unidentified informant. Plaintiff also baldly denies the entirety of Officer Gambino's account without citing a single piece of conflicting evidence. Although plaintiff suggests the CI may be called as a witness during trial, he has not produced an affidavit by the CI or other admissible evidence indicating that the CI will testify to contradictory information. Accordingly, the motion for summary judgment as to Counts I and II is allowed, and subsidiary arguments raised regarding Officer Gambino's claim for qualified immunity need not be addressed.

In dispute of the tort violations named in Count VI, Officer Gambino again cites his lack of involvement in the activities leading to the arrest warrant and the arrest itself, as discussed in his affidavit. He also notes the lack of any evidence that he published defamatory information or engaged in other potentially slanderous conduct. Plaintiff offers no such evidence and makes no showing of factual support for any of the

assertions in Count VI, instead simply denying Officer Gambino's account.

Accordingly, Officer Gambino's motion for summary judgment (# 49 on the docket) is allowed. The motion of the Town of Abington and the Chief of Police are allowed (# 51 on the docket) as the record is devoid of any evidence of their responsibility.

DATE

/s/ Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE