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

THOMAS J. SMITH	:	CIVIL ACTION
	:	
v.	:	
	:	
OFFICER CALLAHAN, OFFICER ERWIN, SERGEANT HAAG, LIEUTENANT MAXWELL, DETECTIVE MELLEN, and THE CITY OF PHILADELPHIA	:	NO. 97-3724

MEMORANDUM AND ORDER

HUTTON, J. March 17, 1999

Presently before the Court are Defendants' Motion for Summary Judgment (Docket No. 23) and Plaintiff Thomas Smith's Affidavit in Opposition to the Defendants' Motion for Summary Judgment (Docket No. 24). For the following reasons, the motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. On the night of May 31, 1996, the Plaintiff was in his home located on 6354 Reedland Street, Philadelphia. At 10:30pm, while sitting in his living room, the Plaintiff heard people banging on his neighbor's front door. Shortly thereafter, Plaintiff heard people banging on his front door. The Plaintiff opened his door to look outside. The Plaintiff was then physically assaulted by several people. At one point during the assault, one assailant punched the Plaintiff

sending him back into his living room. The Plaintiff, now bleeding from his nose and mouth, then shut his door.

The assailants began kicking the Plaintiff's front door in an attempt to gain access to his home. The Plaintiff retrieved a gun hidden in a telephone book. Plaintiff opened the door. Upon seeing the gun, the assailants ran away. The Plaintiff closed the door. Five minutes later, however, the Plaintiff heard more people at his door. Plaintiff again retrieved his gun and opened the door. The majority of people outside his door scattered. One person, however, remained. The Plaintiff conversed with this individual and told him to get off his property.

Several minutes later, Officer Callahan and Officer Erwin of the City of Philadelphia Police Department received a radio call that there was a man with a gun at 63rd and Reedland Streets. While driving to Plaintiff's home, two teenagers stopped the officers to assist them in identifying the Plaintiff. Another teenager, Joseph Reed, flagged down the police and told them that the man who pulled a gun on them was in 6354 Reedland Street.

The officers went to Plaintiff's home. The Plaintiff invited the officers inside. Officer Callahan asked the Plaintiff if he had any guns. Plaintiff responded that he did and consented to the officers taking his guns. The officers handcuffed the Plaintiff and took him to the 12th Police District station. At the station, the Plaintiff stated that he pulled the gun because people

were banging on his door. The officers placed the Plaintiff under arrest. Detective Mellen prepared the paper work for submission to the District Attorney's Office. Mellen included signed statements from the three teenagers that the Plaintiff pointed a gun at them. On December 11, 1996, the Plaintiff was found not guilty of six counts involving a weapon.

On May 22, 1997, the Plaintiff filed suit against the City of Philadelphia, the City of Philadelphia Police Department, Officer Callahan, Officer Erwin, and several other members of the Philadelphia Police Department and District Attorney's Office. The complaint alleges the following counts: (1) a violation of constitutional rights claim for compensatory damages - Count I; (2) a violation of constitutional rights claim for exemplary damages; (3) a violation of statutory civil rights claim for compensatory damages - Count III; (4) a violation of statutory civil rights claim for exemplary damages - Count IV; (5) a violation of constitutional rights claim for compensatory damages - Count V; (6) a conspiracy to violate civil rights claim for compensatory damages - Count VI; (7) an intentional infliction of emotional distress claim for compensatory damages - Count VII; (8) an intentional infliction of emotional distress claim for exemplary damages - Count X; (9) a respondeat superior liability claim for compensatory damages - Count XI; (10) a respondeat superior liability claim for exemplary damages - Count XII; (11) a negligence claim for

compensatory damages - Count XIII; (12) a negligence claim for exemplary damages - Count XIV; (13) a negligence/respondeat superior claim for compensatory damages - Count XV; (14) a negligent hiring, training and supervision claim for compensatory damages - Count XVI; (15) a malicious abuse of process, malicious prosecution, false arrest and false imprisonment claim for compensatory damages - Count XVII; and (16) a malicious abuse of process, malicious prosecution, false arrest and false imprisonment claim for exemplary damages - Count XVIII.[1]

On July 29, 1997, the parties agreed to the dismissal of Counts XIII, XIV, XV, and XVI by stipulation. In addition, on May 21, 1998, the Court dismissed the claims against the District Attorney Defendants, Counts XVII and XVIII, and all claims against the Philadelphia Police Department. On November 6, 1998, the remaining Defendants filed a motion for summary judgment. On December 4, 1998, the Plaintiff responded to the Defendants' motion for summary judgment with an affidavit.[2]

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file,

[1] The Plaintiff's complaint inexplicably jumps from Count VII to Count X. The complaint does not have Counts VIII and IX.

[2] The Plaintiff, who is represented by counsel, does not make any legal arguments in his opposition to the Defendants' motion. Rather, the Plaintiff only filed an affidavit summarizing the events surrounding his arrest.

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 party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

A. Section 1983 Civil Rights Claims

A plaintiff may bring a § 1983 action if a person acting under color of state law deprived him or her of rights, privileges, or immunities secured by the Constitution or laws of the United States.[3] See 42 U.S.C. § 1983 (1994); West v. Atkins, 487 U.S. 42, 48-49 (1988); Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). To establish a prima facie case under § 1983, a plaintiff must show: (1) the action occurred "under color of law" and (2) the action is a deprivation of a constitutional right or a federal statutory right. See Paratt v. Taylor, 451 U.S. 527, 535 (1981).

1. Claims Against Defendant City of Philadelphia

The United States Supreme Court has determined that a local governmental entity, such as a municipality, may be a "person" for purposes of § 1983. See Monell v. Department of

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[3]/ This section provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (1994).

Social Servs., 436 U.S. 658, 690 (1978). Although a local government may not be held liable based strictly on a theory of respondeat superior, it may be held liable where a governmental policy, practice, or custom causes the claimed injury. See id. at 690-94. Furthermore,

> [p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policy maker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the casual connection between the "policy" and the constitutional deprivation.

City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985) (footnotes omitted). In other words, if a plaintiff alleges unconstitutional behavior, he or she must demonstrate an "affirmative link" between the alleged police misconduct and the municipality's policy or custom. See Rizzo v. Goode, 423 U.S. 362, 371 (1976).

In this case, the Court is unable to decide this matter on the record before it. There is simply a lack of affidavits, depositions, and other properly considered evidence before the Court. Therefore, the Court will reserve judgment and await Rule 50 of the Federal Rules of Civil Procedure to determine whether

Plaintiff proved that customs of the City of Philadelphia led to the alleged § 1983 violations.

2. Claims Against Defendants Haag, Maxwell, and Mellen

To prevail in a civil rights suit against a supervisory official, a plaintiff may not predicate the defendants' liability solely on a theory of respondeat superior. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988); Hampton, 546 F.2d at 1082. Instead, he or she must demonstrate that the supervising defendants had personal involvement in the alleged wrongs. See Andrews v. City of Phila., 895 F.2d 1469, 1478 (3d Cir. 1990). This "necessary involvement can be shown in two ways, either 'through allegations of personal direction or of actual knowledge and acquiescence,' or through proof of direct [action] by the supervisor. The existence of an order or acquiescence leading to [the violation] must be pled and proven with appropriate specificity." Id. at 1478 (quoting Rode, 845 F.2d at 1207).

In this case, the Plaintiff claims that Defendants Haag and Maxwell violated his constitutional rights because they were responsible for the actions of the Philadelphia police officers who arrested him. Defendants Haag and Maxwell deny these accusations and assert that neither had personal knowledge that the Plaintiff suffered any alleged constitutional violations. Plaintiff also claims that Defendant Mellen violated his constitutional rights because he prepared the criminal complaint.

Again, a review of the record suggests that there is insufficient evidence to rule on this issue. The Plaintiff's affidavit fails to even mention any actions of Haag, Maxwell, or Mellen. Therefore, the Court will reserve judgment until trial as to whether Defendant Haag, Maxwell, or Mellen directly caused, knew of, or acquiesced to these alleged § 1983 violations.

3. Section 1983 Claims Against All Defendants

The Plaintiff's complaint alleges § 1983 claims for violation of his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The Eighth Amendment protections do not attach until after conviction and sentence. See Ingraham v. Wright, 430 U.S. 651, 671, n.40 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions."). Plaintiff was neither convicted or sentenced in this case. Accordingly, the Court grants summary judgment in favor of the Defendants to the extent that Plaintiff's § 1983 counts state an Eighth Amendment violation.

Turning to the remaining § 1983 claims under the Fourth, Fifth, Sixth, and Fourteenth Amendments, the Court is uncertain what claims the Plaintiff brings in his complaint. The complaint appears to state a § 1983 claim for false arrest, false imprisonment, and conspiracy under the Fourth Amendment. Furthermore, it is entirely unclear what § 1983 claims the

Plaintiff brings under the Fifth and Sixth Amendments. In any event, as discussed above, the Court finds that the record is incomplete on these claims. Therefore, because both parties failed to present a complete record on these issues, the Court reserves judgment on Plaintiff's § 1983 claims under the Fourth, Fifth, Sixth, and Fourteenth Amendments until trial.

B. Pendent State Law Tort Claims

There are two remaining state tort claims that must be addressed. First, the Plaintiff alleges an intentional infliction of emotional distress claim. Second, the Plaintiff alleges that the City is liable for the actions of its employees under respondeat superior.

1. Intentional Infliction of Emotional Distress

The Supreme Court of Pennsylvania has not explicitly recognized the tort of intentional infliction of emotion distress. However, lower Pennsylvania courts have allowed plaintiffs to proceed "where the conduct in question is so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Rinehimer v. Luzerne County Comm. College, 539 A.2d 1298, 1305 (Pa. Super. 1996) (internal quotation omitted). To prevail on a claim of intentional infliction of emotional distress, a plaintiff must prove that: (1)

the defendant engaged in conduct that was extreme and outrageous; (2) it must have been intentional or reckless; (3) it must cause emotional distress; and (4) that distress must be severe. See Olender v. Township of Bensalem, No. CIV.A.96-8117, 1999 WL 13578, at *15 (E.D. Pa. Jan. 5, 1999).

The Plaintiff fails, as a matter of law, to state a claim for intentional infliction of emotional distress. In the Plaintiff's deposition, he conceded that the officers were "very nice" to him. See Pl.'s Dep. at 43. Moreover, the arrest and trial, even though Plaintiff was eventually found "not guilty" of the charges against him, do not support a claim for intentional infliction of emotional distress. See Olender, 1999 WL 13578, at *15. Accordingly, the Court grants summary judgment in favor of the Defendants on these counts.

2. Respondeat Superior

The Court also grants summary judgment on the respondeat superior counts, Count XI and XII, for three reasons. First, the City cannot be liable for § 1983 violations based upon respondeat superior. See Monell, 436 U.S. at 690. Second, all other counts which the City could be held liable under the respondeat superior theory have been dismissed by this Court or by the parties. Third and finally, under the Pennsylvania Political Subdivision Tort Claim Act ("PSTCA"), a local government and its employees are generally immune from civil liability for state law tort claims.

See 42 Pa. Cons. Stat. Ann. §§ 8541, 8545, & 8556 (West 1982). Section 8550 of the PSTCA permits recovery for intentional torts in actions where a governmental employee "caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct . . . ." 42 Pa. Cons. Stat. Ann. § 8550. Under this provision, the immunity of the governmental employee that caused the injury is eliminated. See, e.g., Cooper, 810 F. Supp. at 626 n.8 (citations omitted) ("Section 8550 denies immunity to employees of local agencies for their intentional torts"). The Plaintiff failed to put forth affirmative proof that the Defendants committed these torts with willful misconduct. Accordingly, the Court grants summary judgment in favor of Defendants and against Plaintiff on these respondeat superior counts.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of March, 1999, upon consideration of Defendants' Motion for Summary Judgment and Plaintiff's Affidavit in Opposition to the Defendants Motion for Summary Judgment, IT IS HEREBY ORDERED that the Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that:

(1) Counts I-VI are **DISMISSED WITH PREJUDICE** to the extent that these counts state a claim under the Eighth Amendment;

(2) Counts VII, X, XI, and XII are **DISMISSED WITH PREJUDICE**; and

(3) The only remaining counts in Plaintiff's complaint are Counts I-VI to the extent that these counts state a claim under the Fourth, Fifth, Sixth, and Fourteenth Amendments.

BY THE COURT:

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HERBERT J. HUTTON, J.