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

SYREETA SEWARD	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	
	:	
Defendants.	:	**NO. 00-3563**

Reed, S.J. **April 11, 2002**

M E M O R A N D U M

Plaintiff Syreeta Seward ("Seward") brings this § 1983 action against the City of Philadelphia, the Philadelphia Police Department, former Philadelphia Police Commissioner John Timoney, and various John Doe Police Officers (collectively referred to as "defendants" or "the City"). Jurisdiction is proper pursuant to 28 U.S.C. § 1331, as this case arises under federal law. Presently before this Court is the motion of defendants for summary judgment (Document No. 24) pursuant to Federal Rule of Civil Procedure 56, and the response thereto. For the reasons which follow, the motion will be granted.

I. Background[1]

Seward asserts that in the early morning hours of July 16, 1998,[2] approximately eight

[1] The facts laid out in this opinion are based on the evidence of record viewed in the light most favorable to the plaintiff Syreeta Seward, the nonmoving party, as required when considering a motion for summary judgment. See Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

[2] In plaintiff's amended complaint, she alleges the date to be June 17, 1998, (Am. Compl. ¶ 12), which is more than two years prior to the complaint being filed. The original complaint alleges the date to be July 16, 1998. (Compl. ¶ 12.) Plaintiff testified at her deposition that she was unsure if the evening in question was in June or July. (Dep. at 18.) Plaintiff's attorney stated during the deposition that the date in the original complaint was accurate. (Id.) In plaintiff's response, she explains that the amended complaint is inaccurate. (Resp. at 1.) Counsel has not since amended the once amended complaint. Despite this failure, for the purpose of this motion, this Court will consider the date in question to be July 16, 1998.

police officers entered her home, located at 5509 Delancey Street in the city of Philadelphia, while she was sleeping. (Dep. at 21, 43.) They came into her bedroom, and three of the officers pointed guns in her face. (Id. at 21.) Seward was scared and shaking, and the police calmed her down. (Id..) They showed her a document which they claimed was a warrant, but Seward did not read it; nor did she ask for a copy of it. (Id. at 26.) The officers also showed her a picture of a man, who Seward believed was named Kevin Robins; she did not recognize the photograph and told officers that no one else lived there. (Id. at 21, 25.) The officers searched her home and left after approximately twenty minutes. (Id. at 23.) This Court is not aware of any testimony that the officers pointed guns at Seward during the entirety of the search. Seward did not ask for the names of any of the officers, but testified at her deposition that she recognized one to be Officer Reed, a male officer who she claimed to know from the neighborhood. (Id. at 23-24.) She also testified that she saw that the cars parked near her house were marked as being from the 18th police district. (Id. at 23.)

Seward further asserts that on April 26, 1999, at around 6:00 a.m., she heard banging on her front door. (Id. at 43.) She let approximately eight police officers enter her home. (Id. at 44.) She could not recall if Officer Reed was among the officers then present in her home. (Id. at 45.) It seems the officers were again looking for Kevin Robins, and Seward again informed them she did not know him. (Id..) As on July 16, 1998, the officers showed her what they presented as a warrant, (id. at 46-47), but it does not appear that she asked for a copy of the warrant. Seward also did not take down the names of any of these officers. The officers were in her home for less than five minutes. (Id. at 48-49.) There is no testimony that this Court is aware of that the officers ever pointed guns at Seward while in her home on April 26, 1999.

II. Legal Standard

In deciding a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, the "test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 250.

On a motion for summary judgment, the facts should be reviewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 176 (1962)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts," Matsushita, 475 U.S. at 586, and must produce more than a "mere scintilla" of evidence to demonstrate a genuine issue of material fact and avoid summary judgment, see Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. Analysis

As a preliminary matter, plaintiff may not bring suit against the Philadelphia Police Department; rather, all suits brought against a city department must be "in the name of the city of Philadelphia," which is already a party to this action. 53 P.S. § 16257. See also Griffith v.

Philadelphia Prison Sys., No. Civ. A. 99-6338, 2001 WL 876804, at *1 n.1 (E.D. Pa. May 18, 2001). I therefore conclude that summary judgment will be granted with respect to any claim asserted against the Philadelphia Police Department.

I now turn to the claims brought against the individual officers. Summary judgment is warranted where the plaintiff is unable to identify the accused officers. See Sharrar v. Felsing, 128 F.3d 810, 821 (3d Cir. 1997) (no evidentiary basis on which to hold defendants liable for excessive force if plaintiff is able only to recognize the defendant officers, but is unable to actually identify those officers who allegedly abused plaintiff); District Council 47, Am. Fed'n of State, County and Mun. Employees v. Bradley, 795 F.2d 310, 315 (3d Cir. 1986) (under Third Circuit case law, § 1983 plaintiff must identify the specific police officers responsible for the alleged constitutional violation); Anela v. City of Wildwood, 790 F.2d 1063, 1067-68 (3d Cir. 1986) (insufficient evidence demonstrated where § 1983 plaintiffs could merely show that six individual named defendants were on duty during alleged unconstitutional detention and confining of plaintiffs); Taylor v. Brockenbrough, No. Civ. A. 98-6419, 2001 WL 1632146, at *2 (E.D. Pa. Dec. 20, 2001) (summary judgment granted where neither plaintiff nor witness could identify precise officers responsible for alleged beating); Hill v. Algor, 85 F. Supp. 2d 391, 405 (D.N.J. 2000) (summary judgment granted where plaintiff failed to identify those officers who subjected him to excessive force); Perry v. Philadelphia Fraternal Order of Police, Civ. A. No. 87-4983, 1988 WL 5093, *1 (E.D. Pa. Jan. 20, 1988) (identification necessary to survive motion to dismiss); Alston v. Philadelphia Police Dep't, Civ. A. No. 87-8245, 1988 WL 2111, at *1 (E.D. Pa. Jan. 12, 1988) (same).

The only name brought forth by Seward is an Officer Reed of Police District 18.

However, according to the affidavit of Kevin Scanlon, who is employed in the personnel division of the Philadelphia Police Department, no individual with the last name of Reed, Ried, Reid or Read was employed by the 18th Police District between June 17, 1998 and April 26, 1999. (Def.'s Ex. C.) The patrol logs of the 18th District for the early morning shifts on the two days in question indicate that there was no police activity at 5509 Delancey Street. (Def.'s Ex. G.) Police telephone logs from January 1, 1998 to December 31, 1999 show that there were six telephone calls to plaintiff's residence: five concerned her ADT security alarm, and one concerned a report of a person screaming; none of these calls occurred on either morning at issue in this action. (Def.'s Ex. F.)

Plaintiff submits without any citation of legal authority that:[3] "The fact that Plaintiff is unable to identify all officers is an unnecessary burden to be placed on her. . . . [T]he fact that Plaintiff is unable to identify the individual officers is not dispositive." (Resp. at 2.) Plaintiff may well feel an unfair burden has been placed upon her. However, the law clearly requires that plaintiff be able to identify those officers against whom she wishes to bring suit. I note that plaintiff unfortunately failed to ask the names of the officers who, according to plaintiff's deposition testimony, apparently came to her home to execute a warrant. Seward further failed to ask for a copy of the warrant shown to her. I therefore conclude that plaintiff has failed to establish an evidentiary record sufficient to defeat the motion for summary judgment filed on behalf of the individual John Doe officers.

As to whether plaintiff can survive summary judgment with respect to any claim asserted against the City of Philadelphia, it is well established that under Monell and its progeny, in order

[3] In fact, plaintiff's response amounts to two and a half pages without a single case citation.

to recover against a municipality for a § 1983 claim, the plaintiff must establish a violation of rights caused by either a policy or custom of the municipality. See Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000) (per curium), cert denied, 531 U.S. 1072 (2001). "Policy is made when a decisionmaker possess[ing] final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict." Id. (alteration in original) (citations omitted). A custom consists of "practices of state officials . . . so permanent and well settled as to virtually constitute law." Id. (citations omitted). In order to recover in either situation, a plaintiff must demonstrate "that a policymaker was responsible either for the policy or, through acquiescence, for the custom." Kneipp v. Tedder, 95 F.3d 1199, 1212 (3d Cir. 1996). The policy maker, or "responsible decisionmaker," however, does not need to be "specifically identified by the plaintiff's evidence;" rather "'[p]ractices so permanent and well settled as to have the force of law are ascribable to municipal decisionmakers.'" Id. at 1213 (citing Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990)). Upon identifying a policy or custom, liability can be found by establishing that the policy or custom either facially violates a federal law or the municipality acted with "deliberate indifference as to its known or obvious consequences;" a showing of negligence is insufficient. Berg, 219 F.3d at 276 (citations omitted).

Viewing the record in the light most favorable to Seward, the evidence shows that on two occasions police officers, using guns, unsuccessfully attempted to execute a warrant at Seward's home. In the first instance, the officers left her home after approximately twenty minutes and in the second instance, Seward opened the door for the officers, who proceeded to leave her home after less than five minutes. Seward has not adduced a single piece of evidence that the warrant was invalid. Rather, plaintiff merely asserts that she "disagrees with defense counsel that the

search warrant gave Police the authority to enter the Plaintiff's home." (Resp. at 2.) Plaintiff fails to provide this Court with any cases which could conceivably support the notion that police officers are not allowed to enter a home when the police have a warrant to do so. This Court cannot assume that because plaintiff testified that she did not know the person sought in the warrant, that the warrant was invalid. Cf. Torres v. United States, 200 F.3d 179, 185 (3d Cir. 1999) (acknowledging that under Michigan v. Summers, 452 U.S. 692, 705, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981) officers may restrain persons present during the execution of a search warrant).

More to the point, however, Seward does not frame her response to address a particular custom or policy of the City which violates the Constitution, as required under § 1983. Seward fails to cite to any evidence in the record which would, for instance, indicate a policy of inadequate training in executing warrants, see, e.g., Brown v. Muhlenberg Tp., 269 F.3d 205, 215 (3d Cir. 2001) (explaining failure to train standard under § 1983), or would indicate that former Philadelphia Police Commissioner John Timoney ("Commissioner Timoney"), as a final decisionmaker, authorized the unconstitutional execution of a warrant, valid or invalid, see e.g., Keenan v. City of Philadelphia, 983 F.2d 459 (3d Cir. 1992) (recognizing that § 1983 liability may be premised on 'single instance' of misconduct by a policymaking city official). Succinctly put, plaintiff fails to articulate a policy or custom of the municipality which either facially violates a federal law or is carried out in a manner that shows deliberate indifference as to its clear consequences. This failure is fatal to her § 1983 claim against the City.

The only evidence upon which plaintiff expressly relies in her response is the two so-called "witness statements" of Cheryl Jones ("Jones"), who appears to be Seward's neighbor.

(Pl.'s Exs. A and B.) These statements are not signed under penalty of perjury as required by Rule 56 pursuant to 28 U.S.C. § 1746; thus technically, the statements cannot even be considered by this Court. Nonetheless, while Jones purports to verify that the police searched Seward's residence on the two days in question, these statements do not raise a genuine issue for trial with respect to plaintiff's burden of establishing that the City has a policy or custom which violates the constitution. I therefore conclude that the City of Philadelphia is entitled to judgment as a matter of law.

Finally, while Commissioner Timoney is named as a defendant in this suit, there is nothing in the record which indicates he had any direct involvement with the incidents that occurred on either July 16, 1998 or April 26, 1999, nor is there any evidence in the record that he is responsible for establishing an unconstitutional policy or custom. I therefore conclude that summary judgment will be granted in his favor.

III. Conclusion

Plaintiff has failed to meet her burden of demonstrating that a genuine issue of material fact exists, and I therefore will grant the motion for summary judgment. An appropriate Order follows.

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O R D E R

AND NOW, this 11th day of April, 2002, upon consideration of the motion of defendants the City of Philadelphia, the Philadelphia Police Department, Philadelphia Police Commissioner John Timoney, and various John Doe Police Officers for summary judgment (Document No. 24), pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as the response thereto, and having concluded for the reasons set forth in the foregoing memorandum that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law, it is hereby **ORDERED** that the motion is **GRANTED**.

JUDGMENT is hereby **ENTERED** in favor City of Philadelphia, the Philadelphia Police Department, Philadelphia Police Commissioner John Timoney, and various John Doe Police Officers and against Syreeta Seward.

This is a final order.

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LOWELL A. REED, JR., S.J.