

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SOUDANI ALEXIS,)
)
 Plaintiff,)
)
 v.) Civil Action No. 00-1018-SLR
)
 STATE OF DELAWARE, SEAFORD)
 DEPARTMENT OF POLICE, RICHARD)
 POUNSBERRY, and JASON STERNER,)
)
 Defendants.)

Soudani Alexis, Seaford, Delaware. Pro se.

Gregory E. Smith, Deputy Attorney General, State of Delaware
Department of Justice, Wilmington, Delaware. Counsel for
defendant State of Delaware.

Kevin J. Connors, Esquire, Wilmington, Delaware. Counsel for
defendants Seaford Department of Police, Richard Pounsberry,
and Jason Sterner.

MEMORANDUM OPINION

Dated: May 16, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Soudani Alexis filed a complaint December 4, 2000, against the above defendants alleging that he was falsely arrested, presumably in violation of 42 U.S.C. § 1983. (D.I. 1) Richard Pounsberry ("Pounsberry") is the Chief of the Seaford Department of Police ("the police") and Jason Sterner ("Sterner") is a Seaford police officer. Currently before the court are motions to dismiss filed by (1) the State of Delaware and (2) the police, Pounsberry, and Sterner. (D.I. 6, 14) For the reasons that follow, the court shall grant the State's motion and grant in part and deny in part the motion filed by the police, Pounsberry, and Sterner.

II. BACKGROUND

For purposes of this proceeding, the court accepts as true the following allegations: Plaintiff, a Haitian-American,¹ works two jobs at poultry plants in lower Delaware and Maryland. On or around December 29, 1999, plaintiff found a ticket on his car alleging that he had been involved in a hit and run accident. (D.I. 1, ¶ 1) The ticket instructed plaintiff to contact the police. (D.I. 1, ¶ 3) Plaintiff

¹The court understands the complaint to be a § 1983 action based on racial discrimination. In plaintiff's answering brief to the motions to dismiss, plaintiff contends that "I am Haitian, but I am, a U.S. Citizen I have my, GREEN CARD since '86, ." (D.I. 9 at 4)

contacted the police and denied any involvement in the accident. (D.I. 1, ¶ 5) Defendant Sterner went to plaintiff's home, interviewed plaintiff, and left telling plaintiff he would contact plaintiff later. (Id.)

Plaintiff then went to the scene of the alleged accident and spoke with the hit and run victim, Ms. Alexis.² (D.I. 1, ¶ 6) Plaintiff asked the victim whether she called the police and accused plaintiff of hitting her car. The victim told plaintiff that she called the police, but reported that someone other than the plaintiff hit her car and that she had an argument with the driver of the vehicle. (Id.)

Plaintiff called the police and left a message saying that he talked to the victim and the victim told plaintiff that he was not the person who hit her car. (D.I. 1, ¶ 7) The police did not return plaintiff's phone call. (D.I. 1, ¶ 8) One week later, plaintiff saw Sterner, denied involvement in the accident, and told Sterner about plaintiff's conversation with the victim. (D.I. 1, ¶ 10)

On February 22, 2000, Sterner came to plaintiff's home

²It is unclear from the record who "Ms. Alexis" is. The police report attached to the motion to dismiss filed by the police, Pounsberry, and Sterner lists an Alexis S. Allen as a witness to the hit and run, but lists Ralph Elsey Jr. as the owner of the car struck by the hit and run driver. (D.I. 14, Ex. B)

and arrested plaintiff in front of plaintiff's fiancée.³
(D.I. 1, ¶ 11) Plaintiff was taken to the Justice of the
Peace court where he entered a plea of not guilty. (D.I. 1, ¶
13) On May 16, 2000, the case against plaintiff was
dismissed. (D.I. 1, ¶ 15)

Plaintiff complains that his arrest was discriminatory
and otherwise unlawful. The State seeks to dismiss
plaintiff's complaint based on the Eleventh Amendment,
sovereign immunity, and lack of involvement on its part. The
police, Pounsberry and Sterner seek to dismiss the complaint
because it does not allege any misconduct on their parts.
Defendants Pounsberry and Sterner contend they are protected
by qualified immunity. To the extent that plaintiff bases his
claim upon the activities of Sterner, the police and
Pounsberry argue that respondeat superior is not a viable
theory of liability under § 1983.

III. STANDARD OF REVIEW

In deciding a motion to dismiss, a court primarily must
consider the allegations contained in the complaint, although
matters of public record, orders, items appearing in the
record of the case as well as exhibits attached to the

³Part of plaintiff's damages claim is based upon that fact
that his fiancée broke up with him upon seeing him being
arrested. (D.I. 9 at 8; D.I. 25 at 13)

complaint may also be taken into account. See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). 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). With these rules in mind, the court turns to an examination of the sufficiency of plaintiff's complaint.

IV. DISCUSSION

A. The State is Immune Under the Doctrine of Sovereign Immunity and Cannot be Held Vicariously Liable

The State asserts that it is shielded from liability pursuant to the doctrines of sovereign and Eleventh Amendment

immunity. The State argues that plaintiff fails to state a claim against the State upon which relief can be granted because it is not a "person" within the meaning of § 1983 and, thus, cannot be held liable based upon a theory of vicarious liability. The court agrees.

State officials are entitled to sovereign and Eleventh Amendment immunity for money damages in their official capacities. See Hafer v. Melo, 502 U.S. 21 (1991); Corey v. White, 457 U.S. 85 (1982); Harlow v. Fitzgerald, 457 U.S. 800 (1982); Edelman v. Jordan, 415 U.S. 651 (1974); Osprina v. Department of Corrections, State of Delaware, 749 F. Supp. 572 (D. Del. 1990). "[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Osprina, 749 F. Supp. at 577 (citing Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989)).

To the extent that plaintiff alleges that the State has supervisory responsibility over any of the other defendants, plaintiff's complaint fails to show sufficient involvement by the State. Even if the State has a supervisory role in relation to the other defendants, plaintiff failed to allege that the State played an affirmative role in the deprivation of constitutional rights. Chincello v. Fenton, 805 F.2d 126,

133 (3d Cir. 1986). An affirmative role cannot be established by a failure to act. Id.

In the case at bar, the plaintiff does not seek injunctive relief, nor does he seek money damages against any state official in his individual capacity. Furthermore, plaintiff failed to allege how the State or any of its officials played an affirmative role in the deprivation of plaintiff's constitutional rights. Thus, the court grants the State's motion to dismiss.

B. The Police and Pounsberry Cannot be Held Vicariously Liable

Plaintiff's complaint makes no allegations of wrongdoing by either the police or Pounsberry. With respect to Pounsberry, the complaint only mentions him in the caption. In a subsequently filed "Motion to Clear up 'Unconstitutional Delay(s),' " plaintiff describes Pounsberry as the "boss of Jason Sterner" who approved of Sterner's hiring and failed to fire Sterner before the alleged false arrest. (D.I. 25 at 12) Plaintiff argues that Pounsberry is vicariously liable for the actions of Sterner. (Id.)

Section 1983 liability claims cannot be premised on a theory of respondeat superior. Durmer v. O'Carroll, 991 F.2d 64, 69 n.14 (3d Cir. 1993). In order to hold the police or Pounsberry liable, plaintiff would have to show that the

police and/or any individual officers in their official capacity had an established "policy" or "custom" that resulted in the constitutional tort at issue. Monell v. Dept. of Soc. Servs., 436 U.S. 658, 690-91 (1978). Plaintiff's complaint lacks any allegations concerning a police policy or custom that resulted in the alleged false arrest. Therefore, the complaint must be dismissed against Pounsberry and Sterner to the extent they are being sued in their official capacities. To the extent plaintiff's claims against the police and Pounsberry are based upon respondeat superior, they are likewise dismissed.

C. A Decision on Sterner's Claim of Qualified Immunity is Premature at This Time

Sterner is a "person" within the meaning of § 1983. See Monell, 436 U.S. at 691-94. As a police officer, however, Sterner presumptively enjoys qualified immunity for actions taken within the scope of his discretionary authority. See Pierson v. Ray, 386 U.S. 547 (1967). Nevertheless, this immunity is not absolute because of the public's interest in deterring government officials from unreasonably invading or violating individual rights. See Anderson v. Creighton, 483 U.S. 635, 639 (1987).

Whether qualified immunity exists is a question of law for the court. See Orsatti v. New Jersey State Police, 71

F.3d 480, 483 (3d Cir. 1995). A jury, however, should decide any disputed factual issues relevant to that determination. See Karnes v. Skrutski, 62 F.3d 485, 491-92 (3d Cir. 1995); Wiers v. Barnes, 925 F. Supp. 1079, 1086 (D. Del. 1996). The United States Supreme Court has set forth the test for qualified immunity in Harlow v. Fitzgerald, 457 U.S. 800 (1982). In Harlow, the Court ruled that government officials performing discretionary functions generally enjoy qualified immunity from liability unless their actions violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Id. at 818.

The constitutional right allegedly violated by Sterner was plaintiff's right to not be arrested absent a showing of probable cause. In support of his motion to dismiss, Sterner attached an accident report prepared by Sterner. (D.I. 14, Ex. B) The report reflects that plaintiff was charged with leaving the scene of an accident, failure to report an accident, and inattentive driving. The charges were based upon the observations of a witness named Willy F. Brown at the Royal Farms parking lot in Seaford, Delaware.⁴ According to the report, Brown witnessed a car strike a parked car and then

⁴No specific statements are attributed to the second witness, Alexis S. Allen.

leave the scene. Brown told Sterner the license plate number of the car and then told Sterner that the hit and run suspect was parked at King and Market streets. Sterner "gained the suspect's address"⁵ and went to plaintiff's home where he observed fresh damage on "the suspect's" car. Sterner spoke to the plaintiff who first admitted then denied being at Royal Farms on the day of the accident. The report concludes by saying that "traffic warrants are being obtained for the suspect's arrest." Sterner argues that his conduct was objectively reasonable based upon the observation of the witness as recorded on the police report.

If Sterner's conduct were objectively reasonable, then he is entitled to qualified immunity. When a police officer makes a hit and run arrest based on eye witness testimony and physical evidence of involvement in the accident, such an arrest will generally be reasonable absent extraordinary circumstances. However, gleaning all the facts in favor of the plaintiff, the court is not prepared to dismiss the complaint against Sterner.

First, the court declines to consider the police report in connection with the motion to dismiss. Even if the court

⁵According to the report, the owner of the car observed by Brown is Charles Leontes. It is unclear how Sterner associated plaintiff with the hit and run car.

were to consider the police report, the report itself raises issues of fact, e.g., the conflicting eye witness testimony and the missing connection between Mr. Leontes' car and the plaintiff. Therefore, taking the allegations of the complaint as true, plaintiff has sufficiently alleged a violation of § 1983 by Sterner. Consequently, Sterner's motion to dismiss is denied. An appropriate order shall issue.