

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT LEONARD,)
)
 Plaintiff,)
)
 v.) Civil Action No. 96-426-SLR
)
 SCOTT COLLINS, Officer of)
 the Selbyville, Delaware)
 Police Department)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

On May 17, 1996, plaintiff filed this action pursuant to 42 U.S.C. § 1983 against defendant police officer Scott Collins of the Selbyville, Delaware Police Department, alleging that plaintiff's constitutional rights were violated when he was taken into "custody" without a "warrant or detainer." (D.I. 1) On August 10, 2000, the court denied defendant's motion to dismiss plaintiff's complaint. (D.I. 29) The court then issued a scheduling order requiring the parties to complete discovery by December 1, 2000, and to file dispositive motions by January 2, 2001. (D.I. 30) Plaintiff has allegedly failed to comply with the court's scheduling order and has not answered defendant's multiple requests for discovery.¹ (D.I. 31)

¹According to the docket, plaintiff has not filed any documents with the court since April 7, 1998. Defendant alleges that he sent letters to plaintiff on January 27, 2000, February

Currently before the court are defendant's motion for summary judgment (D.I. 32), and defendant's motion to compel discovery. (D.I. 31) The court has jurisdiction pursuant to 28 U.S.C. § 1331. For the following reasons, defendant's motion for summary judgment is granted, and defendant's motion to compel discovery is denied as moot.

II. BACKGROUND

On January 9, 1995, defendant was advised that a police officer from the State of Maryland had an arrest warrant for plaintiff.² (D.I. 33 at 4) Defendant went to plaintiff's workplace and explained to him that the State of Maryland had an arrest warrant for him. (Id.) Defendant asked plaintiff whether he wanted to voluntarily cooperate, and plaintiff agreed in the hope of obtaining favorable conditions. (Id.) Without arresting plaintiff and without the use of handcuffs, defendant transported plaintiff, who sat in the front of the vehicle, to the Selbyville Police Department. (D.I. 33 at 5) Plaintiff alleges that defendant then called the Ocean City, Maryland Police Department, informing them that he had plaintiff "in custody." (D.I. 1 at 3) Plaintiff was then driven, again without arrest and without

29, 2000, and September 25, 2000, requesting information in order to comply with the court's scheduling order. (D.I. 31) On March 6, 2001, defendant notified the court of plaintiff's apparent release from Eastern Correctional Institute. (D.I. 36)

²Defendant alleges that he knew plaintiff in high school, although they were not friends at the time and had no contact after graduation until the events at bar. (D.I. 33 at 4)

handcuffs, to the Delaware-Maryland state line. (D.I. 33 at 5)
At this time, a Maryland police officer, holding a valid arrest
warrant, arrested plaintiff. (Id. at 4)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, 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 judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63

F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

To state a claim under § 1983, a plaintiff must allege that a "person acting under color of state law" deprived him of a constitutionally protected right. Parratt v. Taylor, 451 U.S. 527, 535 (1981). "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" Barna v. City of Perth Amboy, 42 F.3d 809, 815 (3d Cir. 1994) (quoting West v. Atkins, 487 U.S. 42, 48 (1988)); accord Lloyd v. Jefferson, 53 F. Supp. 2d 643, 655 (D. Del. 1999). "'It is firmly established that a defendant in a section 1983 suit acts under color of state law when he abuses the position given to him by the State'" Id. (quoting West, 487 U.S.

at 49). In the case at bar, defendant does not dispute that he was acting in his official capacity when he transported plaintiff to the state line and, therefore, was a state actor for § 1983 purposes. (D.I. 24 at 1) Accordingly, the court's analysis will focus on whether plaintiff has established "a violation of a right secured by the Constitution and laws of the United States." West, 487 U.S. at 48.

The court notes that plaintiff does not specify which of his constitutional rights were violated by defendant. Reading plaintiff's complaint liberally, the court presumes that plaintiff is alleging that defendant violated his right to be free from unreasonable seizure as guaranteed by the Fourth Amendment. In order to state a Fourth Amendment claim for unreasonable seizure, plaintiff must show that a "seizure" occurred. The Supreme Court has concluded that a person is "seized" when government actors have "by means of physical force or show of authority . . . in some way restrained the liberty of a citizen." Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968).

"Whenever an officer restrains the freedom of a person to walk away, he has seized that person." Tennessee v. Garner, 471 U.S. 1, 7 (1985). However, a seizure that triggers Fourth Amendment protections occurs "only if, in view of the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554 (1980); see also Michigan v. Chesternut, 486 U.S. 567

(1988). Circumstances that might indicate seizure, even where the person did not attempt to leave, include the "threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." Mendenhall, 446 U.S. at 554 (citations omitted).

In the case at bar, plaintiff has failed to demonstrate a genuine issue of material fact as to whether he was seized by defendant in violation of the Fourth Amendment. Plaintiff voluntarily traveled with plaintiff to the Selbyville Police Department after defendant informed him of a pending arrest warrant in Maryland. Plaintiff was transported without handcuffs in the front seat of defendant's car. At no time did defendant arrest, threaten, or restrain plaintiff so that a reasonable person in plaintiff's position would believe that he was not free to leave. The court finds no basis to conclude that a reasonable jury will find that defendant seized plaintiff in violation of the Fourth Amendment.

V. CONCLUSION

Therefore, at Wilmington, this 21st day of May, 2001;

IT IS ORDERED that:

1. Defendant's motion for summary judgment (D.I. 32) is granted.

2. Defendant's motion to compel discovery (D.I. 31) is denied as moot.

3. The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendant.

United States District Judge