

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

REGINALD C. CLARK, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 01-654-SLR  
 )  
 CHARLES CONDON and )  
 GERALD WINDISH, JR., )  
 Delaware State Troopers, )  
 )  
 Defendants. )

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Reginald C. Clark, Sussex Work Release Center, Georgetown  
Delaware. Pro se.

W. Michael Tupman, Esquire, Deputy Attorney General, Delaware  
Department of Justice, Dover, Delaware. Counsel for Defendants.

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**MEMORANDUM OPINION**

Dated: September 20, 2002  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On September 28, 2001, pro se plaintiff Reginald C. Clark filed a civil rights action pursuant to 42 U.S.C. § 1983, asserting that defendants Charles Condon and Gerald Windish, Jr. violated his Fourth and Eighth Amendment rights by using "excessive police force" when they arrested him on April 26, 2001. (D.I. 2) Plaintiff seeks compensation for injuries sustained in the amount of \$1.5 million. (Id.) Plaintiff also seeks compensation for future medical bills, mental anguish and pain and suffering. (Id.) The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Currently before the court are the parties' motions for summary judgment. (D.I. 16, 24) For the reasons discussed below, the court shall grant defendants' motion and deny plaintiff's motion.

**II. BACKGROUND**

According to plaintiff, on April 26, 2001, he was a passenger in a 1999 Ford Thunderbird that was parked in Pinetown, Delaware. (D.I. 16 at 2) A Delaware State Police car drove up, passed and turned around. (Id.) The driver of the Thunderbird, Laurel Houle, drove up the road and parked near a trailer. (Id.) The police car stopped behind the Thunderbird, defendant Condon got out and approached the car. (Id.) Defendant Condon asked the driver for identification which was produced and verified. (Id.) When defendant Condon asked plaintiff his name, plaintiff

replied "Charles Walker." (Id.) When asked for his date of birth, plaintiff states that he responded "6/28/65," although defendant Condon claims that plaintiff gave multiple, conflicting answers to the question. (Id.; D.I. 27 at 1) At this time, plaintiff states that he became fearful and defendant Condon noted that plaintiff appeared agitated. (D.I. 16 at 2; D.I. 27 at 2) Defendant Condon called for back-up. After back-up (defendant Windish) arrived, plaintiff was asked to get out of the car. (D.I. 16 at 2) Plaintiff's and defendants' descriptions of exactly what happened next differ, but all agree that once plaintiff got out of the car, he began running away. (Id.; D.I. 26 at 2; D.I. 27 at 2) Defendants pursued plaintiff and defendant Windish tackled him. (D.I. 16 at 2) A struggle ensued. (Id.) Details of the struggle differ. Plaintiff alleges he was beaten about his head, choked and kicked in his lower back. (Id.) Defendant Condon states he kept ordering plaintiff to stop resisting arrest, but that plaintiff continued to flail his arms, hitting him in the back and reaching for defendant Windish's duty belt and gun. (D.I. 27 at 2) All agree that plaintiff was sprayed with pepper spray. (D.I. 16 at 2) Defendant Windish received some of the pepper spray in his face and was forced to withdraw. (D.I. 26 at 2) Defendant Condon continued the struggle. (Id.) With the help of a third officer (Trooper First Class Larry Smith, who is not a party to the

litigation), plaintiff was handcuffed. (Id.) Defendants estimated plaintiff's weight was "at least 175 pounds." (Id.) Plaintiff refused decontamination for the pepper spray at the scene. (Id.) A search incident to the arrest produced a small clear container with what appeared to be crack cocaine and a small steel smoking pipe with a screen, all found in plaintiff's front left pants pocket. (D.I. 27 at 2-3) The suspected crack cocaine weighed approximately .12 grams and tested positive for cocaine at Troop 7. (Id.) Bruising to plaintiff's right eye and right side of his face were noted when plaintiff was examined at the Sussex Correctional Institute infirmary. (Id., Exs. 1, 2) Plaintiff's weight on the intake form was given as 191 pounds. (Id., Ex. 2) Plaintiff was not further treated and was placed in the general population. (Id.) Defendant Windish sustained a cut to his left eye and defendant Condon had a twisted ankle. (D.I. 26 at 3) On October 8, 2001, plaintiff pled guilty to drug possession and resisting arrest. (D.I. 27, Ex. 3)

### **III. STANDARD OF REVIEW**

A party is entitled to summary judgment only when the court concludes "that there is no genuine issue of material fact and that the 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 material issue of fact is in dispute. See Matsushita Elec. Indus.Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 n.

10 (1986). Once the moving party has carried its initial burden, the nonmoving party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). "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. Federal Kemper Life Assur. Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995). If the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he 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). The mere existence of some evidence in support of the party 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 factual issue. See Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 249 (1986). This court, however, must "view all 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); Pacitti v. Macy's, 193 F.3d 766, 772 (3d Cir. 1999).

#### IV. DISCUSSION

##### A. Fourth Amendment Claim<sup>1</sup>

Plaintiff alleges that defendants' use of excessive force during his arrest was a violation of his Fourth Amendment rights. The Fourth Amendment and its "reasonableness" standard should be used to analyze all claims which allege that law enforcement officers have used excessive force in the course of an arrest of a free citizen. Graham v. Connor, 490 U.S. 386, 395 (1989). The Fourth Amendment's reasonableness standard is "not capable of precise definition or mechanical application." Id. at 396 (quoting Bell v. Wolfish, 441 U.S. 520, 559 (1979)). The reasonableness test requires careful analysis of the "facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to officer safety and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)). Police officers are permitted to use a reasonable amount of force to effect an arrest; the degree of force is dictated by the suspect's behavior. See id. The reasonableness of force used "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20

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<sup>1</sup>The court rejects defendants' argument that plaintiff's Fourth Amendment claim is a collateral attack on the lawfulness of his arrest and, therefore, improper. Plaintiff is not contesting the validity of his arrest, but merely seeking damages for the allegedly excessive force used to effect the arrest.

vision of hindsight." Id. (citing Terry v. Ohio, 392 U.S. 1, 20-22 (1968)). The question to be answered is "whether the officers' actions were 'objectively reasonable' in light of the specific facts and circumstances confronting them [at that particular moment, regardless] of their underlying intent or motivation." Id. at 397 (citing Scott v. United States, 436 U.S. 128, 137-139 (1978)); see also Terry, 392 U.S. at 21. "An officer with evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Id.

The court finds that plaintiff has not presented sufficient evidence from which a reasonable juror could conclude that defendants' use of force during plaintiff's arrest was not objectively reasonable. First, when exiting the car, plaintiff immediately began running away. Therefore, one could reasonably conclude that plaintiff was resisting arrest and attempting to evade arrest by flight. Second, after plaintiff had been tackled by defendant Windish, he continued to struggle, requiring defendant Windish and later defendant Condon and Officer Smith to use increasing amounts of force to effect the arrest. Although plaintiff was injured during the struggle, defendants were also injured, indicating that plaintiff continued his resistance to the arrest beyond his initial flight. The court concludes that

plaintiff has failed to create a genuine issue of material fact as to whether defendants' actions were unreasonable and in violation of plaintiff's Fourth Amendment rights.

**B. Eighth Amendment Claim**

The Eighth Amendment protections against cruel and unusual punishment "do not apply until 'after conviction and sentence.'" Graham, 490 U.S. at 392 n.6. Since the alleged excessive force occurred during plaintiff's arrest, there is no Eighth Amendment claim applicable here.

**C. Qualified Immunity**

Because the court shall grant summary judgment in favor of defendants on both of plaintiff's claims, it is unnecessary to address defendants' qualified immunity arguments.

**V. CONCLUSION**

For the reasons stated, the court shall grant defendants' motion for summary judgment and deny plaintiff's motion for summary judgment. An appropriate order shall issue.

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Defendants. )

**ORDER**

At Wilmington this 20th day of September, 2002,  
consistent with the memorandum opinion issued this date;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 24)  
is granted.
2. Plaintiff's motion for summary judgment (D.I. 16)  
is denied.
3. The Clerk of Court is directed to enter judgment  
in favor of defendants and against plaintiff.

Sue L. Robinson  
United States District Judge