IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EARL WOODLEN, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-225 JJF
	:	
	:	
PLTWS JIMENEZ 705310, COUNTS 122, SGT. P. BURKE #17,	:	
	:	
Defendants.	:	

Earl Woodlen, Jr., Wilmington, Delaware.
Pro Se Plaintiff.

Rosamaria Tassone, Esquire, CITY OF WILMINGTON LAW DEPARTMENT, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

May 20, 2005
Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Defendants' Motion for Summary Judgment (D.I. 26). For the reasons discussed, the Court will (1) vacate its September 30, 2003, Order denying Defendants' motion (D.I. 35) and (2) grant Defendants' Motion.

INTRODUCTION

Plaintiff filed this section 1983 action against Defendants alleging violations of the Fourth and Fourteenth Amendments of the United States Constitution. (D.I. 12 at ¶ 1). Also, Plaintiff alleges that Defendants' actions constituted false arrest and malicious prosecution under Delaware state law. (D.I. 12 at ¶ 16).

On May 3, 1999, Defendant Officers Jimenez and Counts were on routine patrol when they observed Plaintiff Earl W. Woodlen, Jr., driving an older model vehicle with dealer tags. (D.I. 28, Tab 1 at ¶ 3). The Officers aver that, in their experience, the presence of dealer tags on an older vehicle often indicates that the vehicle had been stolen. (D.I. 28, Tab 1 at ¶ 3). Acting on such experience, Defendants pulled behind Plaintiff at an intersection. The Officers then observed Plaintiff exit his vehicle while the engine was still running, run to the sidewalk, pick up an object, and then run back to his car. (D.I. 28, Tab 1 at ¶ 2).

After returning to the vehicle, the Officers contend that they observed Plaintiff watching them in both his rear view and driver's side mirrors. (D.I. 28, Tab 1 at ¶ 2). Plaintiff then proceeded through the intersection and pulled to the curb. (D.I. 28, Tab 1 at ¶ 2). The Officers followed Plaintiff and pulled over to the curb on the opposite side of the street, across from Plaintiff's vehicle. (D.I. 28, Tab 1 at ¶ 4). Defendants contend that, upon seeing the Officers, Plaintiff pulled away from the curb and made a left turn onto an intersecting street. (D.I. 28, Tab 1 at ¶ 4). The Officers then continued to follow Plaintiff as he made another turn into a parking lot, drove through the lot, and turned right onto another street. (D.I. 28, Tab 1 at ¶ 4).

The Officers activated the emergency lights on their vehicle and again pulled behind Plaintiff. (D.I. 28, Tab 1 at ¶ 5). The Officers contend that Plaintiff exited his vehicle and approached them, shouting profanity. (D.I. 28, Tab 1 at ¶ 5). The Officers contend that they instructed Plaintiff to return to his car, but he refused and continued to shout and curse. (D.I. 28, Tab 1 ¶ 7). The Officers patted Plaintiff down and, after finding that he had no weapons, handcuffed him. (D.I. 28, Tab 1 at ¶ 8). The Officers then placed Plaintiff in the police vehicle while they waited for the Wilmington Police Department Data Center to determine whether the vehicle had been stolen. (D.I. 28, Tab 1

at ¶ 9). After determining that it had not been stolen, the Officers issued Plaintiff a parking ticket and a summons for disorderly conduct. (D.I. 28, Tab 1 at ¶ 11).

Later that day, Plaintiff filed a complaint with Defendant Sergeant Burke and with the Wilmington Police Department Office of Professional Standards ("OPS") regarding Defendants' conduct. (D.I. 28, Tab 3). Both Defendant Burke and the OPS concluded that there was no evidence of improper conduct by the Officers. (D.I. 28, Tab 3).

Plaintiff's complaint to the OPS contends that Plaintiff was driving that day to the state building to get free condoms to distribute to people on the street "so they won't get aids." Id. While driving close to the corner of Washington Street, Plaintiff contends that he saw a bottle in the middle of the street, stopped his car, picked up the bottle, and threw it in his car because he is a "hustler." (Plaintiff's Dep., D.I. 28, Tab 4 at 6). Plaintiff contends that when he was in the process of putting the bottle in his car he noticed the Officers. Id. He contends that, when the light at the intersection turned green, he pulled over to the right side of the street to park, but decided that, because he was close to a fire hydrant, he would turn into the parking lot of the state building. Id. at 6-7. When he could not find a parking space in that lot, he came back to Washington Street and parked on the left side of the street.

Id. Plaintiff contends that after he parked his car, he got out and started to walk towards the state building when the Officers stated, "[h]old it. Stop. Put your hands on the car." Id. at 7. Plaintiff contends that he was not belligerent to the Officers, but asked, "[w]hat's going on here?" Id. The Officers responded by handcuffing him. Id. Plaintiff also contends that he complained to the Officers that the handcuffs were too tight, but was told to "[s]hut up and get in the car." Id.

When Plaintiff got into the police car, the Officers asked him if they could search his car. Plaintiff consented. Id. at 8. Plaintiff contends that the Officers then inquired why he had cans and bottles in his car, to which he responded, "I pick up-I hustle. I pick up anything I can resell." Id. The Officers then released him and issued him a parking ticket and a disorderly conduct citation, both of which were later dismissed. (D.I. 34).

STANDARD OF REVIEW

In relevant part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In

determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the nonmoving party will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the

nonmoving on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

PARTIES' CONTENTIONS

Defendants first contend that Plaintiff has failed to state a claim under 42 U.S.C. § 1983. Specifically, Defendants contend that Plaintiff has not stated a claim for a Fourth Amendment violation because their stop and ensuing detention of Plaintiff met the reasonable suspicion standard enunciated by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1986). (D.I. 27 at 28). Additionally, Defendants contend that Plaintiff has failed to state a claim for malicious prosecution under section 1983 because there was no seizure, and the presence of probable cause negates the claim. (D.I. 27 at ¶ 21, 23). Second, Defendants contend that Plaintiff has not established a failure to train claim sufficient to hold Defendants liable in their official capacities. (D.I. 27 at 27). Third, Defendants contend that even if such a claim had been adequately pled, Defendants enjoy sovereign immunity in their official capacities, and therefore, are not subject to suit. (D.I. 27 at 28). Fourth, Defendants contend that Plaintiff has not established the requisite elements for his state law claims of malicious prosecution and false arrest. (D.I. 27 at 31). Finally,

Defendants contend that, even if Plaintiff did establish his state claims, the Defendants are entitled to immunity under the Municipal Tort Claims Act. (D.I. 27 at 31).

In response, Plaintiff argues that a reasonable jury could conclude that Defendants did not have reasonable suspicion to stop him, thereby violating his Fourth Amendment rights. (D.I. 34 at 14). Plaintiff also argues that Defendants acted with malice because they were not justified in stopping him and that he was falsely arrested. (D.I. 34 at 33-34). Finally, Plaintiff argues that Defendants are not entitled to immunity. (D.I. 34 at 35).

DISCUSSION

I. Plaintiff's section 1983 claims

To state a claim under 42 U.S.C. § 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 section 1983 action has 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) (citation omitted). In the instant case, there is no question that Officers Jimenez and Counts were acting in their official capacities when they stopped Plaintiff, and

that Defendant Burke was acting in his official capacity when he investigated Plaintiff's Complaint. Accordingly, the Court's analysis will focus on whether Plaintiff has established a prima facie case for each of his section 1983 claims sufficient to survive a summary judgment motion.

A. Whether Defendants are entitled to qualified immunity on Plaintiff's Fourth Amendment claims

"Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive." Saucier v. Katz, 533 U.S. 194, 201 (2001). Accordingly, the Court must analyze the Plaintiff's Fourth Amendment allegations in the context of the qualified immunity doctrine. See id.

A public official is entitled to qualified immunity if the official's conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Good v. Dauphin County Social Servs. for Children & Youth, 891 F.2d 1087, 1092 (3d Cir.1989). A court confronted with a claim of qualified immunity must consider, first, whether the facts alleged, when taken in the light most favorable to the party asserting the injury, show that the official's conduct violated a constitutional right. Saucier, 533 U.S. at 201. If not, the

inquiry ends, and the officer is entitled to qualified immunity. Id. at 201.

If, however, a constitutional violation could be alleged when viewing the injured party's allegations favorably, the Court must next consider whether the right was clearly established. Id. For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). Knowledge of general concepts, however, are not enough. Rather, the inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition ...." Id. at 201-202. With this standard in mind, the Court will assess each of the potential Fourth Amendment violations alleged by Plaintiff.

1. The stop

With regard to the Officer's stop of Plaintiff, the Court must first consider whether the facts alleged, when taken in the light most favorable to Plaintiff, show that the Officers violated a constitutional right. The Court concludes that, if Plaintiff's allegations are true and the Officers conducted the Terry stop without reasonable suspicion, the Officers' conduct violated the Fourth Amendment. Thus, the Court turns to the question of whether Plaintiff's right was clearly established.

A police officer may conduct a brief investigatory stop based on a reasonable and articulable suspicion that a person has committed, is committing or is about to commit a crime. Terry v. Ohio, 392 U.S. 1 (1968). Reasonable suspicion "requires a showing considerably less than preponderance of the evidence ...." Illinois v. Wardlow, 528 U.S. 119, 675 (2000). Further, "reasonable suspicion does not require that the suspect's acts must always be themselves criminal. In many cases the Supreme Court has found reasonable suspicion based on acts capable of innocent explanation." U.S. v. Valentine, 232 F.3d 350, 356 (3d Cir. 2000).

Based on the totality of circumstances in this case, the Court concludes that it would not be clear to a reasonable officer that he or she lacked reasonable suspicion for a legal stop of Plaintiff. In the Court's view, several factors were present to the Officers indicating that criminal activity was occurring. First, the Officers observed that Plaintiff's car was older and yet displayed dealer tags, an indication that it may have been stolen. Second, the Officers noticed suspicious activity. For example, Plaintiff exited his car at an intersection, while his car was still running, and ran to pick up an object from the street. At other points, Plaintiff appeared to be watching the Officers and driving away each time the Officers approached him. Though none of these circumstances in

themselves are criminal offenses, taken together they were capable of leading a reasonable and experienced officer to conclude that he or she had reasonable suspicion to stop Plaintiff. Because Plaintiff's right to be free from an unlawful Terry stop was not clearly established in these circumstances, the Court concludes that qualified immunity shields Officer Counts and Jiminez from liability for their stop of Plaintiff.

2. The detainment

Concerning the Officers' detainment of Plaintiff, the Court's qualified immunity analysis must first consider whether the facts alleged, when taken in the light most favorable to Plaintiff, show a constitutional violation. The standard for determining whether a detainment was too long in duration to be justified as an investigatory stop is whether the defendants "diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly." U.S. v. Sharpe, 470 U.S. 675, 686 (1985). Here, Defendants contend that Plaintiff was detained only long enough for Defendants to verify that the car had not been stolen. Plaintiff's Answering Brief (D.I. 34) does not address this issue, and thus does not set forth specific facts showing a genuine factual issue for trial. As a result, the Court concludes that Plaintiff has not stated a viable Fourth Amendment claim based on his detention, and therefore, the Officers are entitled to qualified immunity on this issue.

3. Sergeant Burke's determination

Plaintiff also alleges that Sergeant Burke failed to properly investigate his complaint. Plaintiff, however, fails to point to any specific misconduct on Sergeant Burke's part. Absent further evidence, the Court must conclude that Sergeant Burke did not violate Plaintiff's clearly established constitutional rights. Thus, the Court will grant Sergeant Burke summary judgment on this claim.

B. Malicious Prosecution

Plaintiff's Complaint alleges violations of the Fourth and Fourteenth Amendment of the United States Constitution. Concerning the Fourteenth Amendment, the Supreme Court has stated that "a claim of malicious prosecution under section 1983 ... must be based on a provision of the Bill of Rights providing 'an explicit textual source of constitutional protection.'" Albright v. Oliver, 510 U.S. 266, 272 (1994) (citations and internal quotation marks omitted). Consequently, a malicious prosecution claim under section 1983 may be based on procedural due process under the Fourteenth Amendment, but not on substantive due process. See Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 792 (3d Cir. 2000) (citing Albright v. Oliver, 510 U.S. 266 (1994)). In this case, Plaintiff does not allege that he was deprived of any procedural rights. Instead, Plaintiff alleges that he was deprived of substantive rights under the

Fourteenth Amendment. Because the Fourteenth Amendment cannot form a basis for Plaintiff's section 1983 malicious prosecution claim, the Court will evaluate Plaintiff's claim under the Fourth Amendment.

To establish a prima facie case for a section 1983 malicious prosecution claim under the Fourth Amendment, a plaintiff must establish both the common law elements of the tort and "some deprivation of liberty that rises to the level of a Fourth Amendment 'seizure' ...." Torres v. McLaughlin, 163 F.3d 169, 175 (3d Cir. 1998); Gallo v. City of Philadelphia, 161 F.3d 217, 221 (3d Cir. 1998). In Delaware, a plaintiff must allege the following common law elements:

> (1) prior institution or continuation of some regular judicial proceedings against plaintiff in this action;
> (2) such former proceedings must have been by, or at the instance of the defendant in this action;
> (3) the former proceedings must have terminated in favor of the plaintiff herein;
> (4) there must have been malice in instituting the former proceedings;
> (5) there must have been a lack of probable cause for the institution of the former proceedings;
> (6) there must have been injury or damage to plaintiff from the former proceedings.

Wiers v. Barnes, 925 F. Supp. 1079, 1093 (D. Del. 1996) (citing Megenhardt v. Nolan, 583 A.2d 660 (Del. 1990); Stidham v. Diamond State Brewery, 21 A.2d 283, 285 (Del. Super. Ct. 1941)).

In this case, Plaintiff can show that Defendants initiated a criminal proceeding: the disorderly conduct summons and the parking ticket. Likewise, Plaintiff can demonstrate that the

proceeding ended in his favor because both charges were dismissed. However, the Court finds that the Plaintiff has failed to demonstrate the fourth element of malice needed for a common law malicious prosecution claim. To withstand a motion for summary judgment, a plaintiff must point to more than conclusory allegations to demonstrate malicious intent on the part of the defendants. Felkner v. Christine, 796 F. Supp. 135, 142 (M.D. Pa. 1992). Plaintiff makes one allegation to support his malicious prosecution claim, namely, that Defendants "act[ed] malicious[ly]" by issuing him tickets for disorderly conduct and illegal parking because the tickets were "an afterthought because they knew they were wrong in stopping me." (D.I. 34 at ¶ 21). Because conclusory allegations are not sufficient to demonstrate malicious intent, the Court will grant Defendants' motion for summary judgment as to Plaintiff's malicious prosecution claim.

II. State Law Claims

Plaintiff brings his state law claims pursuant to the supplemental jurisdiction statute, 28 U.S.C. § 1367 (2002). Where federal claims are dismissed, the dismissal of the supplemental state claims is within the discretion of the Court. See Jones v. Seaford, 661 F. Supp. 864, 876-77 (D. Del. 1987). The Supreme Court in United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966), urges dismissal of state law claims if federal claims are dismissed prior to trial. Thus, because the Court has

granted summary judgment as to Plaintiff's federal claims, it declines to exercise supplemental jurisdiction as to his state claims, and therefore, his state claims will also be dismissed.

An appropriate order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EARL WOODLEN, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-225 JJF
	:	
	:	
PLTWS JIMENEZ 705310, COUNTS 122, SGT. P. BURKE #17,	:	
	:	
Defendants.	:	

ORDER

NOW THEREFORE, For The Reasons discussed in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED this 20 day of May 2005, that

1) The Court's September 30, 2003, Order denying Defendants' Motion For Summary Judgment (D.I. 35) is **VACATED** and

2) Defendants' Motion For Summary Judgment (D.I. 26) is **GRANTED**.

UNITED STATES DISTRICT JUDGE