

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOZELL HANNAH,)
)
 Plaintiff,)
)
 v.) Civ. No. 01-312-SLR
)
 CITY OF DOVER; PFC PAUL)
 KUNTZI; PFC DAVID GIST;)
 and PFC HARVEY JAKSCH,)
)
 Defendants.)

Mozell Hannah, Dover, Delaware. Pro se.

Nicholas H. Rodriguez, Esquire and William W. Pepper, Sr., Esquire of Schmittinger and Rodriguez, Dover, Delaware and Kevin J. Connors, Esquire of Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware. Counsel for Defendant City of Dover.

Gregory A. Morris, Esquire of Liguori, Morris & Redding, Dover, Delaware, Nicholas H. Rodriguez, Esquire and William W. Pepper, Sr., Esquire of Schmittinger and Rodriguez, Dover, Delaware and Kevin J. Connors, Esquire of Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware. Counsel for Defendants Kuntzi, Gist and Jaksch.

MEMORANDUM OPINION

Dated: March 30, 2005
Wilmington, Delaware


ROBINSON, Chief Judge

I. INTRODUCTION

On May 22, 2001, plaintiff Mozell Hannah, on behalf of the estate of Reginald L. Hannah, and four other individuals filed this action under 42 U.S.C. § 1983 alleging violations of the Fourth and Fourteenth Amendments. (D.I. 1) On October 24, 2001, an amended complaint was filed to add a claim on behalf of plaintiff personally. (D.I. 24)

On October 22, 2002, the court granted defendants' motion to dismiss with respect to all of the plaintiffs, except Ms. Hannah. (D.I. 46) On April 30, 2003, defendants filed a motion for summary judgment that was denied without prejudice to renew after the close of discovery. (D.I. 94) Pending before the court are defendants' renewed motions for summary judgment. (D.I. 153, 156)

The court has jurisdiction over this suit pursuant to 28 U.S.C. § 1331. For the reasons stated, defendants' motions for summary judgment are granted.

II. BACKGROUND¹

On March 9, 2001, Corporal Robert Bishop, a Delaware State Trooper, observed a vehicle, driven by Glyn Matthews, signal to turn left but then turn right. (D.I. 155 at A-1) Corporal

¹Plaintiff does not provide any evidentiary support for her assertions. Therefore, the record before the court, after the close of discovery, includes the affidavits and deposition transcript submitted by defendants.

Bishop followed the vehicle until it pulled into a residential driveway on Lotus Drive in Dover, Delaware. (Id.) Mr. Matthews got out of the car and walked toward the front door of the residence. (Id. at A-2) Corporal Bishop called Mr. Matthews over and administered the typical sobriety tests, including a Breathalyzer. (Id. at A-2, A-12) Mr. Matthews failed the sobriety tests and the Breathalyzer showed he had a blood alcohol level of 1.0, which was the legal limit. (Id. at A-2, A-12) Corporal Bishop handcuffed Mr. Matthews, put him in the back of his trooper vehicle and agreed to drive Reginald Hannah, a passenger in Mr. Matthews car, home. (Id. at A-11) Both Mr. Matthews and Mr. Hannah were in the back seat of Corporal Bishop's trooper vehicle. (Id.) Corporal Bishop drove Mr. Matthews and Mr. Hannah to Capital Green in Dover. (Id. at A-3) Once in the development, Mr. Hannah grabbed Mr. Matthews by the neck and sweater and threatened him. (Id.) Corporal Bishop stopped the car and tried to get Mr. Hannah out of the back seat, but Mr. Hannah tried to kick him when he opened the passenger door. (Id. at A-4) Corporal Bishop went around to the other side of the vehicle and tried to pull Mr. Hannah out, but, each time, Mr Hannah tried to kick him. (Id.) After three or four attempts, Corporal Bishop called for back-up. (Id.)

The Dover Police Department called defendants Gist, Kuntzi and Jaksch, all Dover police officers, to Capital Green to aid

Corporal Bishop. (A-14) Upon their arrival, Mr. Hannah was told to release Mr. Matthews. Mr. Hannah then charged at the officers. (Id. at A-6) The officers struggled with Mr. Hannah and got him on the ground. (Id. at A-6 to A-8, A-15) Once on the ground, the officers tried to handcuff him, but he kept pulling his hands away. (Id.) The officers sprayed him with Capstun and finally handcuffed him. (Id.; Id. at A-24)

At some point, Corporal Owen, a Delaware State Trooper, arrived on the scene. (Id. at A-24) Mr. Hannah was placed in the back of Corporal Owen's vehicle. (Id. at A-8) Defendant Jaksch replaced his handcuffs with those of Corporal Owen. (Id. at A-24) Subsequently, Mr. Hannah began making "throw up" noises, while slumped over his knees. (Id. at A-9) Defendant Bishop pulled him up so if he got sick it would not be in Corporal Owen's vehicle, but Mr. Hannah just slumped back over. (Id.) At this point, Corporal Bishop and Corporal Owen decided Mr. Hannah needed medical attention and took him to the hospital. (Id.) There is no dispute that Mr. Hannah died at the hospital that morning.

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) (emphasis added). 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. CITY OF DOVER'S MOTION FOR SUMMARY JUDGMENT

A municipality, such as defendant City of Dover, cannot be vicariously liable for the constitutional violations of its employees. See Monell v. Dep't of Social Serv., 436 U.S. 658, 690-91 (1978). To establish municipal liability, a plaintiff must prove that the municipality itself supported the alleged violation of rights. Id. Thus, defendant City of Dover can only be held liable when "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." Id. at 694.

1. A Municipal Policy

A municipal policy can be established when a "'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict." Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990) (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)). A "policymaker" is the person who, under state law, has "final, unreviewable discretion to make a decision or take an action." Andrews, 895 F.2d at 1481. In other words, "when an official's discretionary decisions are constrained by

policies not of that official's making, those policies, rather than the [official's] departures from them, are the act of the municipality." City of St. Louis v. Praprotnik, 485 U.S. 112, 142 (1988).

In some cases, duty specific training can constitute a "policy" and inadequate training can lead to municipal liability. See City of Canton v. Harris, 489 U.S. 378, 390 (1989). A municipality is liable for inadequate training when its policymakers are deliberately indifferent to the need for training. See City of Canton, 489 U.S. at 390. Policymakers are deliberately indifferent when, "in light of the duties assigned to specific officers . . . the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." City of Canton, 489 U.S. at 390. For example, because policymakers have armed officers with firearms, "the need to train officers in the constitutional limitations of the use of deadly force . . . can be said to be 'so obvious,' that failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." Id. at 390 n.10.

In this case plaintiff has failed to carry her burden of proving that defendant City of Dover had a policy of racial

discrimination or of using excessive force to effect an arrest. There is also no evidence to support a finding that the Dover police officers were improperly or inadequately trained by the City of Dover. There is no indication that the circumstances under which Mr. Hannah died were so foreseeable as to be considered obvious to the City of Dover policymakers; therefore, without evidence that the policymakers knew about such incidents and disregarded them, choosing not to train Dover police officers adequately, it cannot be said that the City was deliberately indifferent to constitutional rights.

2. A Custom

A custom is a course of conduct, "though not authorized by law, . . . '[that is] so permanent and well settled' as to virtually constitute law." Andrews, 895 F.2d at 1480 (citing Monell, 436 U.S. at 690)). There is no evidence that the City of Dover has a custom of racial discrimination or permitting its police officers to use excessive force when arresting someone.²

Therefore, defendant City of Dover's motion for summary judgment is granted.

²Plaintiff argues that the State of Delaware has a policy or custom of racial discrimination because it participated in the slave trade. (D.I. 157) The State of Delaware, however, is not a party to this case and defendant City of Dover cannot be held liable for the policies or customs of the State.

V. DEFENDANTS' KUNTZI, GIST AND JAKSCH MOTION FOR SUMMARY JUDGMENT

The Supreme Court has held that "all claims that law enforcement officers have used excessive force . . . in the course of [an arrest] of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." Graham v. Connor, 490 U.S. 386, 395 (1989). This is an objective standard that requires consideration of the facts and circumstances of the incident at issue, including the "severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. at 396. The Third Circuit also considers whether there is a

possibility that the persons subject to police action are violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time.

Kopec v. Tate, 361 F.3d 772, 776-77 (3d Cir. 2004).

Consideration of these factors must not include "the 20/20 vision of hindsight" because it must allow "for the fact that police officers are often forced to make split - second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." Graham, 490 U.S. at 396-97.

At the time defendants Gist, Kuntzi and Jaksch ("defendant police officers") arrived at the scene, they knew that they faced an altercation between a State Trooper and a civilian, circumstances that had prompted the State Trooper to call for back-up. In addition, the State Trooper was trying to protect someone he had arrested from the civilian. There is no evidence that defendants knew Mr. Hannah was not armed; because Corporal Bishop had called for back-up, however, it was not unreasonable for them to conclude Mr. Hannah was violent. Upon arriving at the scene, defendant police officers struggled with Mr. Hannah in an effort to handcuff him, all the time urging him to stop resisting. At some point they sprayed Mr. Hannah with Capstun to get his hands behind his back.

There is no evidence of record that the defendant police officers used an unreasonable amount of force under the circumstances. There is also no evidence of record that Mr. Hannah showed signs of physical injury until he was in the back of Corporal Owen's vehicle, at which point the State Troopers took him to the hospital. There is no evidence of record to indicate that the officers delayed Mr. Hannah's medical treatment, ignored any visible injury to Mr. Hannah, or ignored Mr. Hannah's request for medical attention.

It is tragic that Mr. Hannah died. Under the circumstances of this case, however, the court cannot reason backwards from

that fact to conclude that the defendant police officers used excessive force. To do so would impermissibly use hindsight and undermine the objective aspect of the Supreme Court's standard. Therefore, defendant police officers' motion for summary judgment is granted.

V. CONCLUSION

For the reasons stated, defendant City of Dover's motion for summary judgment (D.I. 153) is granted and defendant police officers' motion for summary judgment is granted. (D.I. 156) An order consistent with the memorandum opinion shall issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

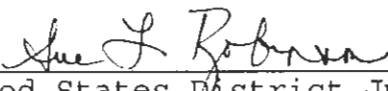
MOZELL HANNAH,)
)
 Plaintiff,)
)
 v.) Civ. No. 01-312-SLR
)
 CITY OF DOVER; PFC PAUL)
 KUNTZI; PFC DAVID GIST;)
 and PFC HARVEY JAKSCH,)
)
 Defendants.)

O R D E R

At Wilmington this ~~30th~~ day of March, 2005, consistent with
the memorandum opinion issued this same date;

IT IS ORDERED that:

1. Defendant City of Dover's motion for summary judgment (D.I. 153) is granted.
2. Defendants' Paul Kuntzi, David Gist and Harvey Jaksch motion for summary judgment (D.I. 156) is granted.
3. The Clerk of Court is directed to enter judgment in favor of defendants and against plaintiff.



United States District Judge