

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ROBERT W. HAYNES,	:	
Plaintiff,	:	
	:	
v.	:	PRISONER
	:	Case No. 3:99CV2551(CFD)
	:	
CITY OF NEW LONDON, ¹ et al.,	:	
Defendants.	:	

RULING ON DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

The plaintiff, Robert W. Haynes (“Haynes”), filed this civil rights action under 42 U.S.C. § 1983 pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He alleges that defendants Kanaitis and Bergeson—who are New London police officers—illegally searched and arrested him on June 15, 1998, and that Kanaitis verbally abused and attempted to assault him at the police department after the arrest. In addition, Haynes alleges that defendant Kanaitis “stalked” and threatened him after June 15, 1998, and asserts related claims against defendants City Manager Brown and Police Chief Rinehart.

Pending is the defendants’ motion for summary judgment addressed to the claims against defendants Bergeson and Kanaitis arising from the June 15, 1998 incident only. For the reasons that follow, the defendants’ motion is denied.

Standard

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter

¹The named defendants are the City of New London, the New London Police Department, City Manager Richard M. Brown, Chief of Police Bruce Rinehart, Police Officer R. Kanaitis and Police Officer Todd Bergeson.

of law. See Rule 56(c), Fed. R. Civ. P.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). “A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no issue warrant judgment for the moving party as a matter of law.” Quinn v. Green Tree Credit Corp., 159 F.3d 759, 765 (2d Cir. 1998) (citation omitted). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991). See also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

Discussion

I. False Arrest Claim

On June 15, 1998, Haynes was arrested by Kanaitis and Bergeson for illegal possession of narcotics in violation of Conn. Gen. Stat. § 21a-279(a) and use of drug paraphernalia in violation of Conn. Gen. Stat. § 21a-267 on Washington Street in New London following a Terry stop.²

²See Terry v. Ohio, 392 U.S. 1 (1968).

The defendants first argue that the state court's finding that Haynes' arrest was supported by probable cause negates the false arrest claim. They also contend that because the two charges were not terminated in Haynes' favor, his false arrest claim is not cognizable. Claims for false arrest under the Fourth Amendment of the United States Constitution are cognizable under § 1983.

A conviction is conclusive proof of probable cause for an arrest. See Horton v. Town of Brookfield, No. Civ. A. 3:98CV1834, 2001 WL 263299, at *3 (D. Conn. Mar. 15, 2001) (Ruling on Motion for Summary Judgment and Motion to Dismiss). Thus, generally, “[a] person who thinks there is not even probable cause to believe that he committed the crime with which he is charged must pursue the case to an acquittal or unqualified dismissal.” Id. (quoting Roesch v. Otarola, 980 F.2d 850, 853 (2d Cir. 1992)). “A nolle is, except when limited by statute or rule of practice; see, e.g., General Statutes § 54-56b and Practice Book § 726; a unilateral act by a prosecutor, which ends the ‘pending proceedings without an acquittal and without placing the defendant in jeopardy.’” Cislo v. City of Shelton, 692 A.2d 1255, 1260 n.9 (Conn. 1997) (quoting State v. Lloyd, 440 A.2d 867, 868 (Conn. 1981)). However, there is some authority that a nolle can be a sufficient basis on which probable cause may be challenged. In See v. Gosselin, the Connecticut Supreme Court held with respect to a malicious prosecution claim, “It is not necessary that the accused should have been acquitted. It is sufficient if he was discharged without a trial under circumstances amounting to an abandonment of the prosecution without request or arrangement with him.” 48 A.2d 560, 561 (Conn. 1946).

The defendants argue that the June 15, 1998 charges were nolle in connection with Haynes' sentencing on a more serious charge. They point to Haynes' statement in his deposition

that the State agreed to nolle the June 15, 1998 charges as part of a “plea agreement” following Haynes’ sentencing to twenty years’ imprisonment on a state conviction for felony assault. (See Doc. # 21, 9(c)1 Statement, Ex. A, Haynes Dep., at 102.) However, the sentencing for the assault charge occurred on December 9, 1998 and the nolles were entered on May 4, 1999. The transcript of the proceeding at which the charges were nolle reflects that the state intended to nolle the charges following the assault sentencing, (See Doc. #21, 9(c)1 Statement, Ex. I, Transcript of May 4, 1999, at 2), but the exact circumstances and intent behind the nolles are not entirely clear. First, while the plaintiff referenced a plea agreement, he was convicted of the assault after a jury trial rather than following a guilty plea, and thus the existence of a plea agreement is not apparent. Further, there is insufficient indication from the transcript that the state’s willingness to nolle the New London charges resulted from an agreement with Haynes concerning the disposition of the assault case. Accordingly, summary judgment is denied as to the false arrest claim.³

II. Excessive Force Claim

The court next considers the defendants’ arguments that Haynes’ excessive force claim must fail.

Because Haynes’ excessive force claim arises from his arrest, the claim must be considered under the Fourth, rather than the Eighth, Amendment. See Graham v. Conner, 490 U.S. 386, 395 (1989). To prevail on this claim, Haynes must show that the amount of force used was objectively unreasonable when judged from the perspective of a reasonable officer on the scene

³There is also an insufficient basis to grant summary judgment on the false arrest claim based on the probable cause reference at Haynes’ arraignment.

and in light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. Id. at 396-97; Lowth v. Town of Cheektowaga, 82 F.3d 563, 573 (2d Cir. 1996). In performing this analysis, the court considers “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.” Hemphill v. Schott, 141 F.3d 412, 417 (2d Cir. 1998); see also Graham, 490 U.S. at 396. It also “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” Graham, 490 at 396. A court may find that a constitutional violation has occurred even in the absence of “actual compensable injury.” Sampson v. City of Schenectady, 160 F. Supp. 2d 336, 350 n.17 (S.D.N.Y. 2001).

Haynes includes two excessive force claims in his complaint. First, he alleges that defendants Bergeson and Kanaitis threw him against the walls and foundations of buildings while searching his pockets during the Terry stop and consequent arrest. Haynes conceded at his deposition, however, that defendant Kanaitis did not touch him during the arrest and agreed that Bergeson touched him only for the limited purpose of patting him down and handcuffing him. (See Doc. # 21, Ex. A at 47.) Haynes also stated, however, that Bergeson pushed his chest against a wall while handcuffing him. (See Doc. # 21, Ex. A at 48.) While there is little evidence to support this excessive force claim, it is sufficient to raise a genuine issue of material fact, particularly in light of Haynes’ pro se status. Thus, the motion for summary judgment is denied as to the excessive force claim against defendant Bergeson.

In addition, Haynes claims that defendant Kanaitis attempted to assault him at the New

London Police Department. Haynes stated at his deposition that, after he had been brought to the police station, Kanaitis applied painful pressure to his wrist and pushed him into a wall. (See Doc. # 21, Ex. A at 66-67.) He also described the attempted assault as being held in a “very uncomfortable manner.” (Doc. # 21, Ex. A at 90.) When asked whether he sought medical treatment for his alleged injuries, Haynes responded: “No. It’s like this right here, man, if I went to the hospital for every time I got a scratch to tell you the truth, my woman hit harder than them.” (Doc. # 21, Ex. A at 80.) Haynes argues, however, that he suffers nightmares and emotional harm as a result of the alleged actions of defendant Kanaitis, and that he failed to obtain medical attention because his June 15, 1998 request to be taken to the hospital was ignored. While there is evidence that Haynes did not inform the state court judge the following morning that he was denied medical attention, the court concludes that Haynes has barely raised a genuine issue of material fact regarding the alleged use of excessive force by defendant Kanaitis. Accordingly, the defendants’ motion for summary judgment is denied as to the excessive force claim against defendant Kanaitis as well.

III. Unreasonable Search Claim

Finally, Haynes challenges the legality of the search conducted by defendant Bergeson.

“The Fourth Amendment prohibits unreasonable searches and seizures by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” United States v. Arvizu, 122 S. Ct. 744, 75 (2002) (internal quotations omitted). When considering an alleged Fourth Amendment violation, the court must determine whether the actions of the police were “objectively reasonable.” The subjective intent of the specific officers involved is irrelevant. See Hudson v. New York City, 271 F.3d 62, 68 (2d Cir.

2001) (citations omitted.) In Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court held that a police officer may “briefly detain an individual for questioning if the officer has a reasonable suspicion ‘that criminal activity may be afoot.’” United States v. Colon, 250 F.3d 130, 134 (2d Cir. 2001)(citations omitted). In addition, the officer may frisk the individual for weapons if the officer has a reasonable belief that the individual is armed and dangerous. See id. “In determining whether there is reasonable suspicion under the totality of the circumstances, the court must evaluate those circumstances through the eyes of a reasonable and cautious police officer on the scene guided by his experience and training.” Id. (citations and internal quotations omitted). “A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.” Arvizu, 122 S. Ct. at 753.

In their Local Rule 9(c)(1) statement, the defendants state that it is undisputed that they were familiar with Haynes as a result of previous drug-related arrests, they observed Haynes in an area known to be frequented by drug dealers, an unidentified male gave them information suggesting that Haynes was attempting to sell him drugs, Haynes pulled his hands up into his jacket when they stopped him and Haynes appeared nervous and “fidgety” when he was questioned. While Haynes has not submitted a 9(c)(2) statement in response to this version of events, in his deposition of January 23, 2001, he clearly disputes all of these facts. (See Doc. #21, 9(c)1 Statement, Ex. A, Haynes Dep., at 32-38.) Ordinarily, when a motion for summary judgment is supported by documentary evidence and sworn affidavits, the nonmoving party must present “significant probative evidence to create a genuine issue of material fact.” Soto v. Meachum, Civ. No. B-90-270 (WWE), 1991 WL 218481, at *6 (D. Conn. Aug. 28, 1991). Given Haynes pro se status, however, as well as the fact that it is unlikely that he could produce

any other evidence to dispute the officers' version of events, the Court concludes that there is a genuine issue of material fact as to the legality of their search based on Haynes' deposition.

Accordingly, summary judgment is denied.

IV. Qualified Immunity

The defendants also argue that they are entitled to qualified immunity for Haynes' charge of false arrest. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "In general, public officials are entitled to qualified immunity if (1) their conduct does not violate clearly established constitutional rights, or (2) it was objectively reasonable for them to believe their acts did not violate those rights." Wyant v. Okst, 101 F.3d 845, 857 (2d Cir. 1996). The burden of raising and establishing the affirmative defense of qualified immunity, either in a motion for summary judgment or at trial, rests on the defendants. Lee v. Sandberg, 136 F.3d 94, 101 (2d Cir. 1997). "The right not to be arrested or prosecuted without probable cause has, of course, long been a clearly established constitutional right." Golino v. City of New Haven, 950 F.2d 864, 869 (2d Cir. 1991); see also Lee, 136 F.3d at 102. The Court recognizes that a determination of whether a defendant is entitled to qualified immunity, which is an entitlement not to stand trial or face the other burdens of litigation, "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, 121 S. Ct. 2151, 2155-56 (2001). However, given the disputed facts as to the nature of the charges, as well as the circumstances surrounding the arrest and the existence of probable cause, which are noted above, the Court is

unable to resolve the issue of qualified immunity at this time. Accordingly, the defendant's motion for summary judgment is denied on this ground as well.

Conclusion

The defendants' motion for summary judgment [Doc. #19] is DENIED. Further, given that the defendants have not addressed any claims against defendants City of New London, New London Police Department, City Manager Brown and Police Chief Rinehart or the stalking claim against defendant Kanaitis, the case remains pending as to those claims as well.

SO ORDERED this _____ day of May, 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE