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FILED

OCT 12 2013

CLERK

JOHN KELTY,

Plaintiff

v.

CITY OF LINWOOD POLICE
DEPARTMENT;
CITY OF LINWOOD; and
PATROLMAN JOSEPH L.SCIOLI,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

Docket Number
ATL-78-11

Civil Action

ORDER

THIS MATTER having been brought before the Court by A. Michael Barker, Esquire, of the Law Offices of Barker, Scott, Gelfand & James, attorneys for Defendants, the City of Linwood and Officer Gary Coslop, for an Order granting summary judgment in favor of the Defendants; and, the Court having reviewed the moving papers submitted by counsel and any opposition filed thereto; and, good cause having been shown;

It is on this 12th day of July 2013,
ORDERED and ADJUDGED that summary judgment be and hereby is
GRANTED in favor of the Defendants, the City of Linwood and Officer
Gary Coslop.

It is FURTHER ORDERED and ADJUDGED that a copy of this Order
shall be served upon all counsel within ten (10) days of receipt hereof.



J.S.C.

NELSON C. ROBINSON, J.S.C.



FILED

JUL 12 2013

NELSON C. JOHNSON

SUPERIOR COURT OF NEW JERSEY

NELSON C. JOHNSON, J.S.C.

1201 Bacharach Boulevard
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MEMORANDUM OF DECISION ON MOTION

Pursuant to Rule 1:6-2(f)

TO: Louis Barbone, Esq.
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Joseph Scioili*

RE: Kelty vs. City of Linwood Police
Department, et als.

DOCKET NO. ATL- L-78 – 11

NATURE OF MOTION(S): (1) Defendants City of Linwood and Officer Gary
Coslop’s Motion for Summary Judgment; (2)
Plaintiff Kelty’s Opposition

HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND ANY RESPONSE FILED, I HAVE
RULED ON THE ABOVE CAPTIONED REQUEST AS FOLLOWS:

Nature of Motion and Procedural Background

Presently before the Court is (1) Defendant City of Linwood ("Linwood") and Officer Gary Coslop's ("Coslop") Motion for Summary Judgment; (2) Scioili's Motion for Summary Judgment in which he joins with Linwood and Coslop's Motion; (3) Plaintiff John Kelty's Opposition thereto.

The Complaint in this Matter was filed on January 5, 2011. Discovery in this Matter concluded on April 15, 2013. A July 8, 2013 Trial date was adjourned by the Court in light of the aforementioned Motions.

Based upon the Court's review of the parties' submissions, the Court makes the following findings of fact:

Findings of Fact

1. On June 19, 2009, an altercation took place at 929 Oak Grove Avenue between Kelty and Kenneth Norris ("Norris"). (See, Defendant Linwood's Br., Exhibit 9, Deposition of Kelty, page 12, lines 12 – 19). During this altercation, Kelty stabbed Norris four times in the back with a seven-inch steak knife. (See, *Id.*, page 38, line 8 through page 39, line 1, page 40, lines 9 through 20).
2. After the aforementioned altercation, Kelty ran out of the house, called 9-1-1, and reported that he had been attacked in his home. (See, *Id.*, page 42, lines 24 through page 43 line 3; page 43, line 15 through page 43 line 23).
3. At his deposition, Scioili testified that he was the first officer to arrive at Kelty's residence. (See, Defendant Linwood's Br., Exhibit 11, Deposition of Scioili, page 9, line 23 through page 10, line 1). On approach, Kelty exited the residence and apprised Scioili that he had been in an altercation with Norris whereby he stabbed him. (*Id.*). Additionally, Kelty told Coslop of said altercation when he arrived on the scene. (See, *Id.*, Exhibit 10, Deposition of Coslop page 10, line 2 through page 10, line 12, page 15, line 23 through page 16, line 10).).
4. Both Scioili and Coslop testified at their respective depositions that they did not notice any defensive wounds on Kelty upon their interaction with him when they arrived on the scene. (See, Defendant Linwood's Br., Exhibit 11, Deposition of Scioili, page 22, line 10 through page 22, line 22; Exhibit 10, Deposition of Coslop, page 42, line 14 through page 43, line 7).
5. During his interaction with Kelty, Coslop testified that he heard voices from the back of the residence. At that point, Coslop maintains that he advised Kelty that he was

placing him in protective custody which entailed handcuffing Kelty and placing him in the back of a patrol vehicle. (See, Defendant Linwood's Br., Exhibit 10, Deposition of Coslop, page 27, line 5 through page 28, line 21). Furthermore, at his deposition, Coslop explained to Kelty that when he placed him in protective custody he was not under arrest, but he was not free to leave the scene. (See, Id., page 28 line 16 through page 29, line 5).

6. When the E.M.T. crew arrived, Coslop testified that he observed four stab wounds near Kenneth Norris' left shoulder as Kelty removed his shirt to be examined by emergency responders. (See, Id., page 36, line 22 through page 37, line 10).
7. Coslop further testified that he had probable cause to arrest Kelty because (1) he saw no defensive wounds on Kelty's person that would have been consistent with him protecting himself; (2) he saw four stab wounds on Norris; (3) Norris advised Coslop that Kelty stabbed him; (4) Kelty admitted that he stabbed Norris. (See, Defendant Linwood's Br., Coslop Deposition, page 42, line 14 through page 43, line 7; page 43 line 17 through page 44, line 7).
8. Kelty testified at his deposition that after his arrest and arraignment which occurred in the latter part of the evening of June 19, 2009, he was taken to the Atlantic County jail. He was subsequently released at 1 o'clock the next afternoon when Patricia Norris paid his \$2,500 bail. (See, Defendant Linwood's Br., Exhibit 9, Kelty Deposition, page 62, lines 10 - 17).
9. Furthermore, Kelty testified at his deposition that he does not have any facts to support the allegations of (1) poor supervision and training on the part of the Linwood Police Department of their Officers Scioli and Coslop; (2) inadequate screening of Coslop by the Linwood Police Department; (3) the Linwood Police Department has a policy/custom of allowing its officers to falsely arrest or maliciously prosecute its citizens. (See, Defendant Linwood's Br., Exhibit 9, Kelty Deposition, page 71, lines 9 - 23; page 72, lines 1 - 9; page 73, lines 1 - 16).
10. Distilled to its essence, the evening of June 19, 2009 was an exciting one and the atmosphere at 929 Oak Grove Avenue was highly charged. The only hard information these police officers had about the incident subsequent to speaking with Mr. Kelty was that the Plaintiff had been drinking, that a violent domestic quarrel had erupted, and that Plaintiff had stabbed Mr. Norris in the back four times. Not a pretty picture.

Parties' Contentions

A. Defendant City of Linwood and Officer Coslop's Motion for Summary Judgment

In support of their Motion for Summary Judgment, Linwood and Coslop (collectively "Defendants") advance the following contentions:

First, Defendants state that all of Kelty's claims can be defeated by establishing that there was adequate probable cause to arrest. In this regard, Defendants note that Kelty admitted to the responding officers that there had been an altercation and that he had stabbed Norris in the back.

Second, Defendants suggest in the alternative that even if there was not sufficient probable cause to arrest Kelty, the Defendant officers are nonetheless entitled to qualified immunity. This is because it would not have been clear to a reasonable officer, under the circumstances in the instant case, that there was insufficient probable cause for an arrest.

Third, Defendants contend that since the Defendant officers did not commit a constitutional violation, there can be no municipal liability under the New Jersey Civil Rights Act. Here, Defendants argue that because there was probable cause for Kelty's arrest it cannot be said that he suffered a constitutional deprivation.

Fourth, Defendants aver assuming *arguendo*, that Kelty suffered a constitutional violation; there is still no basis for liability against Linwood because Kelty has failed to bring forth evidence to support a constitutional claim. Specifically, Defendants point to Kelty's deposition testimony whereby he admitted that: (1) he has no facts to support the allegation that Defendant Officers Scioili and/or Coslop were poorly trained by the Linwood Police Department resulted in his arrest of June 19, 2009; (2) he has no facts to support the allegation that poor supervision of the Defendant Officers by the Linwood Police Department resulted in his arrest of June 19, 2009; (3) he has no facts to support the allegation that the Linwood Police Department failed to adequately screen Defendant Officers before they were hired; and (4) he has no facts to support the allegation that Linwood has a policy and/or custom of allowing its officers to falsely arrest or maliciously prosecute its citizens. Therefore, it is the position of the moving Defendants that all of Kelty's claims must be dismissed with prejudice.

Officer Scioili has filed a Motion joining in the above application in its entirety.

B. Plaintiff John Kelty's Opposition

By way of Opposition, Kelty makes the following contentions:

First, Kelty states that the totality of the circumstances show that genuine issues of material fact exist as to whether Defendants had probable cause or whether a reasonable officer would have known that no probable cause existed for an arrest and subsequent criminal charge. Specifically, Kelty suggests that at the time he was arrested and charged on municipal complaints there was simply no evidence from which probable cause could be found. What is more, it is the position of Kelty that neither Defendant Officers had any specific information regarding the altercation before deciding to charge him. Simply, Kelty maintains that the Defendant Officers arrested and charged him without any meaningful review of the evidence, which obviously showed that he committed no crime.

Second, Kelty avers that the totality of the circumstances show that genuine issues of material fact exist as to whether Defendants are entitled to qualified immunity. Here, it is the position of Kelty that the question presented in the present matter is whether a reasonable police officer could have concluded that he did anything other than defend himself from a much larger, violent and intoxicated person based upon the totality of the circumstances.

Third, Kelty argues that the totality of the circumstances show that genuine issues of material fact exist as to whether Linwood was deliberately indifferent to Kelty's right to be free from unreasonable seizure and malicious prosecution. In this regard, Kelty states that a reasonable fact finder could conclude that an officer in Coslop's position – as a veteran law enforcement official – should have at the very least know how to conduct an investigation involving a case of self – defense. What is more, Kelty maintains that a reasonable fact finder could further conclude that the unreasonable seizure in the instant Matter was due to Linwood's failure to properly train its police officers. Here, Kelty suggests that Linwood's failure to train its officers in how to conduct a self – defense investigation amounted to deliberate indifference to his right to be free from unreasonable seizures and malicious prosecution.

Discussion

A. Summary Judgment Standard

Rule 4:46-2 provides that Summary Judgment is appropriate where "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 challenged and that the moving party is entitled to a judgment or order as a matter of law." All inferences of doubt are drawn against the movant and in favor of the opponent of the motion. See Brill vs. Guardian Life Ins. Co., 142 N.J. 520 (1985).

In deciding a Summary Judgment motion, the trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540. To determine that, the trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. If there is "a single, unavoidable resolution of the alleged disputed issue of fact," then the issue is not "genuine." Ibid. The thrust of Brill is that "when the evidence 'is so one-sided that one party must prevail as a matter of law,' . . . the trial court should not hesitate to grant summary judgment." Ibid.

In addition to Brill, the Court receives guidance from Anderson vs. Liberty Lobby, Inc., 477 U.S. 242 (1986) and Celotex Corp. vs. Catrett, 477 U.S. 317 (1986), both of which cite Improvement Co. vs. Munson, 14 Wall 442, 448 (1872). In Anderson, 477 U.S. at 451, our Supreme Court quoted Munson and admonished trial judges that,

. . . before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon which the onus of proof is imposed.

B. Probable Cause Standard

Police-citizen encounters generally occur at three distinct levels, a field inquiry, an investigatory stop and an arrest. Of those three intrusions, the most demanding constitutional standard is reserved for an "arrest," which requires a showing of probable cause, based upon the

totality of the circumstances. State v. Nishina, 175 N.J. 502, 510 -11 (2003). In State v. O'Neal, 190 N.J. 601, 612 (2007), the Court described the probable cause standard as follows:

The probable cause standard is a well-grounded suspicion that a crime has been or is being committed. Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed. The substance of all the definitions of probable cause is a reasonable ground for belief of guilt. Id. at 612.

Simply, in determining whether there is probable cause to arrest, the police must consider the totality of the circumstances. Ibid.

C. Malicious Prosecution Standard

Although related to a false arrest claim, the elements a plaintiff must demonstrate to establish a § 1983 action for malicious prosecution are distinct. To prevail in a malicious prosecution action under section 1983, a plaintiff must show that: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Dibella v. Borough of Beachwood, 407 F.3d 599, 601 (3rd Cir. 2005).

Analysis and Conclusion

Police officers are our nation's social sanitary workers; they clean up messy situations created by citizens. Unseemly circumstances involving people behaving poorly are routine fare for them. Police officers are required to have a skill set like no other public servant: everything from psychology, sociology, medicine and dispute resolution, to physical prowess, mastery of weapons, investigative expertise, and knowledge of the law. They are required to make decisions entailing keen analysis and a high order of judgment – often times at the risk of their personal safety and that of others –within seconds. Then, lawyers, judges and jurors have hours and days to scrutinize every fact that went into their decision-making process. While the Defendant police officers here had ample time to evaluate the circumstances here, the Court is satisfied they acted reasonably with the facts available to them.

The Court's inquiry into this matter must first address whether or not there was probable cause to arrest Mr. Kelty. In reviewing the deposition transcripts of Kelty and Officers Scioili and Coslop, the totality of the circumstances during the early evening of June 19, 2009 overwhelmingly leads an objective observer to find a "well - grounded suspicion that a crime [had] been...committed." O'Neal, 190 N.J. at 612. Here, there are more than enough facts which support this determination.

First, Mr. Kelty advised both Scioili and Coslop that he had been involved in a physical altercation where he injured Norris with a knife. Second, Norris confirmed that it had been Kelty who had stabbed him. Third, Coslop testified at his deposition that when the ambulance crew was examining Norris, he observed what appeared to be stab wounds in his back – which corroborated what Kelty and Norris had previously told him about the underlying altercation.

It is true that "probable cause eludes precise definition", State v. Sullivan, 169 N.J. 204, 210 (2001), nonetheless, as the facts are presented here, on the evening of June 19, 2009, there existed "more than a mere suspicion of guilt", State v. Basil, 202 N.J. 570, 585 (2010) as to whether or not Kelty had stabbed Norris.

Next, the Court must consider whether or not Mr. Kelty has a viable claim for malicious prosecution. In analyzing this aspect of the present application, it is without question that (1) the Linwood initiated a criminal proceeding against Kelty and (2) said proceeding resulted in an acquittal of Kelty on the grounds of self – defense. However, the facts do not exist to support a finding by the Court that the criminal proceedings against Mr. Kelty were initiated without probable cause. As discussed above and in examining the factual record in light of the totality of the circumstances, probable cause *did exist* to effectuate an arrest upon Kelty. Because the Court can conclude the existence of probable cause from the factual record, it need not determine: (1) whether or not Linwood acted maliciously and (2) whether or not Kelty suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. Dibella, 407 F.3d at 601.

Accordingly, Linwood and Coslop's Motion for Summary Judgment is GRANTED. Additionally, Scioili's Cross – Motion for Summary Judgment is also GRANTED. An appropriate Order has been entered. Conformed copies accompany this Memorandum of Decision.

Nelson C. Johnson

NELSON C. JOHNSON, J.S.C.

Date of Decision: 7-12-13