

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MONTY CAZIER,

Plaintiff,

v.

Case Number 02-10224-BC
Honorable David M. Lawson

RICHARD TOFT, and ALAN JAMES RENZ,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF MAGISTRATE JUDGE
IN PART, GRANTING DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT IN PART ON FEDERAL CLAIMS, AND
DISMISSING STATE LAW CLAIMS WITHOUT PREJUDICE**

This matter is before the Court on the plaintiff's objections to Magistrate Judge Charles E. Binder's report recommending that the defendants' motions for summary judgment be granted. The plaintiff filed an action against two Saginaw, Michigan city police officers alleging that they unlawfully arrested him and used excessive force in the process. The arrest occurred when the police were called to a United States Post Office branch within the city to investigate a complaint from the local branch manager that the plaintiff refused to move away from the counter after he was refused further service.

The facts of the case are recited in detail in the magistrate judge's report, although the plaintiff contends in his objections that several particulars about altercation were omitted. The record indicates that the police were called by postal personnel when the plaintiff refused to move away from one of the two service windows at the post office branch. Defendant Toft arrived and asked the plaintiff to move away from the window to discuss his complaint. The plaintiff refused, and an altercation developed that rapidly escalated into a physical encounter, culminating in Officer

Toft and his later-arriving partner, defendant Alan Renz, forcibly taking the plaintiff to the ground and administering pepper spray to subdue and handcuff him. When Toft attempted to put the plaintiff into the back of his patrol vehicle, the plaintiff bit Toft on the finger and drew blood.

The defendant was tried in State court for disturbing the peace, resisting and obstructing a police officer, and assault and battery. After his first trial ended in a hung jury, he was acquitted at a second trial of disturbing the peace, and convicted of the other two crimes. His State court appeal is presently pending.

The magistrate judge concluded that the undisputed facts demonstrated that the officers had probable cause to arrest the plaintiff for disturbing the peace and therefore the plaintiff suffered no violation of a federal right redressable under 42 U.S.C. § 1983, his convictions for resisting arrest and assault precluded his Section 1983 claim for unlawful arrest under the rule of *Heck v. Humphrey*, 512 U.S. 477 (1994), and the officers were entitled to qualified immunity on the excessive force claim.

The plaintiff objects to the recommendation that the defendants' summary judgment motions be granted primarily on the ground that the magistrate engaged in impermissible fact finding in violation of Federal Rule of Civil Procedure 56(c) and failed to view the evidence in the light most favorable to the nonmoving party. Indeed, there are several factual disputes presented by the conflicting versions of the testimony of the plaintiff and others as to the manner in which the encounter between the plaintiff and the police escalated toward its unfortunate conclusion. However, after conducting a *de novo* review of the record, the Court is convinced that there is no *material* fact dispute that precludes the summary judgments in this case. Rather, the undisputed facts show that, given the information defendant Toft had received in his dispatch, his observations

upon arrival at the post office, the plaintiff's admitted refusal to move away from the customer window, and the plaintiff's ignoring the lawful instructions of the police officer, Toft had probable cause to effectuate an arrest for disturbing the peace. Therefore, the plaintiff cannot succeed on his Section 1983 claim on this ground.

The plaintiff disputes whether the post office window was open for business at the time, there in fact were customers in line behind him, and the extent of his resistance when Toft removed the pen from his hand. However, these facts are not material to the question of whether the arrest was illegal. A fact is "material" if its resolution affects the outcome of the lawsuit. *Lenning v. Commercial Union Ins. Co.*, 260 F.3d 574, 581 (6th Cir. 2001). "Materiality" is determined by the substantive law claim. *Boyd v. Baeppler*, 215 F.3d 594, 599 (6th Cir. 2000). An issue is "genuine" if a "reasonable jury could return a verdict for the nonmoving party." *Henson v. NASA*, 14 F.3d 1143, 1148 (6th Cir. 1994) (quoting *Anderson*, 477 U.S. at 248). Irrelevant or unnecessary factual disputes do not create genuine issues of material fact. *St. Francis Health Care Ctr. v. Shalala*, 205 F.3d 937, 943 (6th Cir. 2000). When the "record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," there is no genuine issue of material fact. *Simmons-Harris v. Zelman*, 234 F.3d 945, 951 (6th Cir. 2000). Thus a factual dispute which "is merely colorable or is not significantly probative" will not defeat a motion for summary judgment which is properly supported. *Kraft v. United States*, 991 F.2d 292, 296 (6th Cir. 1993); *see also Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. v. BVR Liquidating, Inc.*, 190 F.3d 768, 772 (6th Cir. 1999).

Likewise, the Court agrees with the magistrate judge's analysis of the excessive force claim, at least with respect to the question of qualified immunity. "The concern of the immunity inquiry is

to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense." *Saucier v. Katz*, 533 U.S. 194, 205 (2001).

In this case, the plaintiff does not dispute that he resisted the arrest; his contest is whether the officer had a right to arrest him in the first place. He also disputes the merits of the charges against him, but that matter was resolved in the State criminal proceedings. As for the excessive force claim, however, the magistrate judge's recommendation does not depend on which version of the facts one might accept. *See Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 900 (6th Cir. 2004).

The plaintiff does not claim that the officer's actions constituted gratuitous violence or that the use of pepper spray violated department directives. Under even the plaintiff's version of the facts, the Court believes that the plaintiff has not offered sufficient evidence to prove that what the officers did was objectively unreasonable in light of the clearly established constitutional rights. *See Feathers v. Aey*, 319 F.3d 843, 848 (6th Cir.2003).

Finally, the plaintiff asserts that the Court should not grant summary judgment against him on his claim that his arrest for resisting arrest and assault were illegal while his State appeal is pending. The magistrate judge concluded that the claim should be dismissed because the plaintiff cannot show that his state prosecution ended favorably to him, as required by *Heck v. Humphrey*.

The Supreme Court has specifically held that when a convicted person seeks damages in a Section 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence. *Heck*, 512 U.S. at 487. If it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence already has been invalidated. *Ibid*. The fact that the conviction is pending on appeal means that the plaintiff cannot make the requisite showing, at least not yet. However, the Supreme Court has suggested that abstention may be proper under such circumstances. Citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), the Court in *Heck* wrote, “if a state criminal defendant brings a federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings.” *Heck*, 512 U.S. at 487 n. 8. The Sixth Circuit has held that a Section 1983 claim does not accrue under such circumstances until the State appeal process has concluded. *Shamaeizadeh v. Cunigan*, 182 F.3d 391, 399 (6th Cir. 1999). Consequently, the plaintiff’s claim for unlawful arrest on his resisting arrest and assault charges is premature, and rather than granting summary judgment that part of his claim should be dismissed without prejudice.

The magistrate judge also recommended that the Court decline to exercise jurisdiction over the plaintiff’s pendent State law claims, and they should be dismissed without prejudice. Title 28, Section 1367 provides:

- (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if-
 - (1) the claim raises a novel or complex issue of State law,
 - (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
 - (3) the district court has dismissed all claims over which it has original jurisdiction,or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). When a plaintiff's federal claims have been dismissed for want of jurisdiction, all other state-law claims must be dismissed. *See Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1255 (6th Cir. 1996). However, if the federal claims were dismissed on the merits, the question of whether to retain jurisdiction over the state-law claims rests within the Court's discretion. *Blakely v. United States*, 276 F.3d 853, 860 (6th Cir. 2002). Thus, pursuant to Section 1367(c), the Court has the discretion to decline to exercise supplemental jurisdiction over state law claims in this case. *Weeks v. Portage County Executive Offices*, 235 F.3d 275, 279 (6th Cir. 2000). There is no good reason for this Court to retain jurisdiction in this case and to engage in the endeavor of determining and applying state law when there are no federal claims remaining in this Court; the discovery is complete, and the state court need only determine any further dispositive motions and, if appropriate, try the case, applying the appropriate state evidentiary laws. Moreover, the plaintiff's remaining federal claim will be dismissed without prejudice and he must abide the State appellate court decision before determining whether it can be refiled.

The Court, therefore, will adopt the magistrate judge's recommendation in part.

Accordingly, it is **ORDERED** that the magistrate judge's Report and Recommendation is **ADOPTED IN PART AND REJECTED IN PART**.

It is further **ORDERED** that the defendants' motions for summary judgment [dkt #s 31, 32] are **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that the plaintiff's claims under 42 U.S.C. § 1983 as to his illegal arrest for disorderly person and excessive force are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the plaintiff's federal claim for illegal arrest, for assault and resisting and obstructing a police officer, and all his State law claims, are **DISMISSED WITHOUT PREJUDICE**.

/s/
DAVID M. LAWSON
United States District Judge

Dated: November 23, 2004

Copies sent to: Monty Cazier
Kenneth G. Galica, Esquire
Mark E. Donnelly, Esquire
Magistrate Judge Charles E. Binder