

September 4, 2008 Written Decision of Trial Court

SUPERIOR COURT OF NEW JERSEY
HUDSON VICINAGE

CHAMBERS OF
MARY K. COSTELLO
JUDGE



Hudson County Administration Building
595 Newark Avenue
Jersey City, New Jersey 07306

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE COMMITTEE ON OPINIONS

September 4, 2008

Joel I. Rachmiel, Esq.
99 Morris Avenue
Springfield, New Jersey 07081

Christopher K. Harriott, Esq.
100 Hudson Street
Florio & Kenny, L.L.P.
P.O. Box 771
Hoboken, New Jersey 07030

Re: Martin v. Vera, et al
Docket Number: HUD-L-1957-07

Dear Counsel:

Procedural History

Plaintiff moves for partial summary judgment asserting that Defendants lacked probable cause to arrest him or enter his home. Defendants oppose and cross-move for summary judgment arguing that Defendants are protected under sovereign immunity.

Summary of Facts

000002

Plaintiff Gregory Martin (hereinafter "Martin") has alleged that he was falsely arrested in his Guttenberg, New Jersey home on September 18, 2006. Defendants Hoboken Police Officers, Det. William Vera, Det. Michael DePalma, and Detective Sergeant John Rodriguez allegedly falsely arrested Plaintiff through an illegal and improper search and seizure without probable cause. The arrest arose out of a complaint brought by Smitha Sriram, who reportedly told Detective Sergeant Sam Williams of the Hoboken Police Department that she was a victim of an Internet scam involving an individual named "Rodrigo Karolys" and his moving company, Gotham Express. Karolys allegedly stole more than \$10,000 worth of property from Sriram's home after he received \$750 to move the items in a U-Haul truck. Sriram provided a photograph and description of Karolys to the police. Upon seeing a circulated photograph of Karolys, a Guttenberg Police Officer informed Rodriguez that the sought-after individual resided in Guttenberg. Upon arriving at the residence, detectives purportedly observed that Plaintiff fit the photo description. The Plaintiff allegedly spoke with the detectives and offered what the detectives determined to be a limited amount of information. After some time Plaintiff decided to end the conversation with the detectives and close the door. Vera

000003

prevented the Plaintiff from closing the door by placing his foot in the door. To this point, the detectives conceded they went to the location "to investigate a theft." The detectives assert Plaintiff obstructed the law by his attempt to close the door, refusing to speak and attempting to flee. Subsequently, detectives arrested and handcuffed the Plaintiff.

STANDARD OF REVIEW ON SUMMARY JUDGMENT MOTIONS

Motions for summary judgment are made pursuant to Rule 4:46-1 et seq. A court should grant summary judgment when:

[T]he 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. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

R. 4:46-2(c).

This Rule requires a court to "deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates 'a genuine issue as to any material fact challenged.'" Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520, 542 (1995) (quoting R. 4:46-2). As such, a non-moving party will see their opposition fail if they merely rely on any fact in dispute

000004

which is in the totality immaterial or of an insubstantial nature. Id. at 530 (quoting Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954)) (citation omitted). The motion judge is required to view the facts in a light most favorable to the non-moving party. Parks v. Rogers, 176 N.J. 491, 494 (2003).

WHETHER PLAINTIFF IS ENTITLED TO PARTIAL SUMMARY JUDGMENT
ON LIABILITY

This case concerns the protections afforded by the Fourth Amendment to the United States Constitution and Article I of the New Jersey Constitution against warrantless search and seizure. As in all matters, federal law establishes only a floor of protection, and the states are left to establish their own enhanced protections if they so choose to do so. Indeed, "[t]he genius of federalism is that the fundamental rights of citizens are protected not only by the United States Constitution but also by the laws of each of the states." State v. Hempele, 120 N.J. 182, 196 (1990). In the field of criminal jurisprudence New Jersey has afforded its citizens more protection than that deemed provided by the United States Constitution. See State v. Cooke, 163 N.J. 657, 666 (2000) citing State v. Pierce, 136 N.J. 184, 209 (1994) (refusing

000005

to adopt blanket rule that would have permitted warrantless automobile searches incident to all arrests); (Hempele, supra, 120 N.J. at 195 (finding privacy interest in curbside garbage); State v. Novembrino, 105 N.J. 95, 145 (1987) (declining to find good-faith exception to exclusionary rule); (State v. Hunt, 91 N.J. 338, 348 (1982) (finding privacy interest in phone billing records); (State v. Johnson, 68 N.J. 349, 355 (1975) (finding heavy burden to show validity of non-custodial consent to search).

In State v. Pineiro, the Supreme Court reviewed the constitutionally permissible forms of police encounters with citizens. 181 N.J. 13, 20 (2004). The first discussed was a "field inquiry." With respect to that, the Court stated:

A "field inquiry" is the least intrusive encounter, and occurs when a police officer approaches an individual and asks "if [the person] is willing to answer some questions." [State v. Nishina, 175 N.J. 502, 510 (2003)] (citation and internal quotation marks omitted). A field inquiry is permissible so long as the questions "[are] not harassing, overbearing, or accusatory in nature." Ibid. "The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." [State v. Maryland, 167 N.J. 471, 483 (2001)] (quoting Florida v. Royer, 460 U.S. 491, 497-98, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229, 236 (1983)). Cf. Hiibel v. Sixth Judicial Dist. Court of Nev., 542 U.S. 177, 159 L. Ed. 2d 292, 124 S. Ct. 2451, (2004) (upholding state "stop and identify" statute requiring detainee to disclose

000006

his name to officer under suspicious circumstances).

Pineiro, at 20.

This court finds that the initial encounter between the detectives and Plaintiff was nothing more than a permissible "field inquiry." The detectives were present at the doorway solely for the purpose of determining whether or not Plaintiff was linked to the matter they were investigating. Plaintiff was unwilling to engage in any sort of comprehensive discussion with the detective on the matter and decided to close the door and end the encounter. The nature of this encounter changed however, especially with respect to the constitutionality of the officers' actions, when a foot was placed in the door by one of the detectives so as to prevent Plaintiff from closing his door. This action and the subsequent entry by the detectives into the Plaintiff's residence represented a violation of the Plaintiff's constitutional rights. In making this decision this court relies on the decision of the Appellate Division in State v. Rice, 251 N.J. Super. 136, 140 (App. Div. 1991). In Rice the Appellate Court held that mere suspicion cannot be transformed into probable cause simply because an individual bars entry by the police into her home. Id. at 140. In Rice, detectives

000007

received an anonymous tip that drugs were being sold from a residence. Following up on this, the detectives observed what they determined to be suspicious activity at the house and decided to knock on the door. When the door opened the officers identified themselves and an occupant attempted to close the door after someone shouted police. The officers pushed the door open and entered the house. The court held that no adverse inference could be drawn from the occupant's attempt to deny entry into his home and the officers' subsequent entry and search were impermissible. Such was the case here. Plaintiff's refusal to speak to the officers and his attempt to close the door did not convert any suspicion they may have had into probable cause. As such, their actions were impermissible.

WHETHER THE INDIVIDUAL OFFICER ARE ENTITLED SUMMARY JUDGMENT UNDER THE DOCTRINE OF "GOOD FAITH" IMMUNITY

The Defendant Police Officers have cross-moved for summary judgment on the grounds that they are immune from suit based on the application of the common law "good faith" qualified immunity.

The defense of qualified immunity is properly asserted by way of motion for summary judgment. Ryan v. Burlington County, 674 F. Supp. 464, 481 (D.N.J. 1987).

000008

In Harlow v. Fitzgerald, the United States Supreme Court discussed the doctrine of qualified immunity. 457 U.S. 800 (1982). There the Court stated

government 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.

Id. at 818. As such, a public employee need only show the "objective reasonableness of his conduct" in order to avail himself of the shield of "good faith" immunity and obtain summary judgment in his or her favor. Id. at 807.

Resolution of that question is determined by a two-part test "clearly established statutory or constitutional rights of which a reasonable person would have known," Harlow, 457 U.S. at 818; and "whether, as an objective matter, a reasonable public official would understand at the time he acted that what he was doing violated those clearly established rules." Ryan, 674 F. Supp. at 479.

The rules enumerated by the Pineiro decision were not first handed down by that court. Indeed, the nature of what constitutes a permissible police-citizen encounter has been judicially discussed as far back as Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). These constitutional rights could not be more clearly

000000

established. Furthermore, any reasonable public official, especially one acting in a law enforcement capacity, should be aware of whether his conduct would violate these clearly established rules. Indeed, the rule set forth in Rice, which this court so heavily relies upon, has been the prevailing law for several years. The court in Rice did not find the officers conduct to be protected by qualified immunity and the factual similarities between this matter and Rice do not lead this court to an opposite conclusion.

WHETHER DEFENDANT CITY OF HOBOKEN IS ENTITLED TO SUMMARY JUDGMENT

The City of Hoboken has also moved for summary judgment on the grounds that the Plaintiff cannot establish a prima facie claim under 42 U.S.C. § 1983 against the City Hoboken and/or the City of Hoboken Police Department.

There is no respondeat superior liability for government entities in § 1983 claims. Groman v. Township of Manalpan, 47 F.3d 628, 637 (3d Cir. 1995). Rather, pursuant to Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978), liability attaches against a government entity only "where the action which is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision

000010

officially adopted and promulgated by that body's officers." Id. at 691. The Court further observed that

"it is 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 that the government as an entity is responsible under § 1983"

Id. at 694. A government entity may incur liability under Section 1983 only when its policy or custom causes a particular constitutional violation. Id. at 694. A policy is created when a decision-maker with authority "issues an official proclamation, policy, or edict." Andrews v. City of Philadelphia, 895 F.2d, 1469, 1480 (3d Cir. 1990).

Here, no such official policy exists, and no such policy could be said to come into existence when the detectives were given permission by Sergeant Rodriguez to bring the Plaintiff down to the station house. In the context of departmental hierarchy, Sergeant Rodriguez can hardly be said to be the official policy maker of the police department. Furthermore, Plaintiff has not brought any evidence which would demonstrate that the detectives' actions here represent the official policy of the department. Therefore, summary judgment is granted in favor of the department.

CONCLUSION

000011

TOTAL P.15

For the foregoing reasons, Plaintiff's motion for summary judgment with respect to the officers only is granted. Defendant's cross-motion for summary judgment is denied except with respect to the government entities.

An Order consistent with this opinion is attached hereto.

Very truly yours,

Mary K. Costello
MARY K. COSTELLO, J.S.C.

000012

RELEASE

THIS RELEASE dated April 17, 2009, is given

BY the Releasor, **GREGG MARTIN**, referred to as "I,"

TO : DET. WILLIAM VERA, DET. MICHAEL DEPALMA, DET/SGT JOHN RODRIGUEZ and THE CITY OF HOBOKEN POLICE DEPARTMENT, referred to as "You,"

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **RELEASE.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims: any and all claims for payment arising out of an incident occurring on or about **September 18, 2006** being the subject of a law suit filed in the Superior Court of New Jersey, Law Division, Hudson County under Docket No. HUD-L-1957-07.

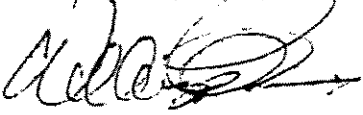
2. **PAYMENT.** I have been paid a total of **\$125,000.00** in full payment for making this Release. I agree that I will not seek anything further including any other payment from you. This payment includes all costs and attorney fees under the fee shifting provision of the Federal and State Civil Rights Acts. All outstanding liens, to the extent required to be paid in accordance with law, will be satisfied out of the proceeds of the within settlement.

3. **WHO IS BOUND.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **SIGNATURES.** I understand and agree to the terms of this Release.

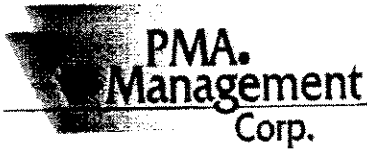
Mr. Gregg Martin (S.)
GREGG MARTIN

Sworn to and Subscribed before me
this 17th day of April, 2009.



(Notary)

WILLIAM J. PICCA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 20, 2010



A member of The PMA Insurance Group

FAX COVER SHEET

Sent via Fax
Number of pages: 3

To: Mr. John Paff
Fax number: 908-325-0129

From, Craig W. Folkert, AIC
PMA Management Corporation
330 Fellowship Road, Suite 200
Mt. Laurel, NJ 08054

856-727-3017 Phone
856-727-3186 Fax

Attached please find your original Government Records Request Form and the Civil Action Order of Dismissal in the matter of Gregg Martin.

Please contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink that reads 'C W Folkert'. The signature is written in a cursive, slightly slanted style.

forms/orders/court staff dismiss ord

Prepared and filed by the court.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO. HUD-L-1957-07

Gregg Martin
Plaintiff(s),

CIVIL ACTION
ORDER OF DISMISSAL

v.
William Vera
Defendant(s).

FILED

MAY - 6 2009

The court is advised that the above captioned case

✓ has been settled and thus should be dismissed.

PETER F. BARISO, JR., P.J.Cv.

_____ is to be voluntarily dismissed.

Accordingly, it is SO ORDERED. Unless specifically indicated below, all claims by and between all parties are hereby dismissed and the court docket will be closed. A copy of this order has been given/sent to the party so advising the court, and that party is directed to serve a copy of this order on all interested parties within 7 days of the date hereof.

DATE: 5-6-09

[Signature]
PETER F. BARISO, P.J.Cv.

FOR COURT USE ONLY - USE SEPARATE ORDER FOR EACH DOCKET NUMBER

1. Name of person advising court: Christopher Harfio

2. Represents which party: DF

3. Is this a settlement and/or dismissal of all pending claims? YES ✓ NO _____
If "no," then specifically indicate which claims remain "open." OPEN CLAIMS:

4. Name of the person taking above information: [Signature]

5. A copy of this order has been given/mailed to: Flores



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

July 10, 2009

Craig W. Folkert, AIC
PMA Management Corporation
330 Fellowship Road, Suite 200
Mt. Laurel, NJ 08054 *(via fax only to 856-727-3186)*

RE: Gregg Martin v. Det. William Vera, et al,
Superior Court Docket No. HUD-L-1957-07.

Dear Mr. Folkert:

I am in receipt of your fax of this morning. I am not interested in the Order of Dismissal you sent me because it doesn't include the terms of and the amount of the settlement. Would you please fax me the actual settlement agreement?

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

John Paff

FAX COVER SHEET

TO	Craig W. Folkert
COMPANY	PMA Management
FAX NUMBER	+1-8567273186
FROM	John Paff
DATE	08/03/09 16:15
RE	OPRA request

COVER MESSAGE

Mr. Folkert:

In follow up to my voicemail today, attached is a copy of my July 10, 2009 letter to you.

Thank you.

John Paff