

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

RAPHAEL CHRISTOPHER,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:04-CV-977
	:	(Judge Conner)
FREDERICK NESTLERODE,	:	
MATTHEW KERR AND	:	Electronically Filed
WILLIAM HOSE, in their	:	
individual capacities,	:	JURY TRIAL DEMANDED
Defendants.	:	

**PLAINTIFF CHRISTOPHER’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, plaintiff Raphael Christopher moves for partial summary judgment against defendants Nestlerode, Kerr and Hose. As more fully-stated in the accompanying Brief in Support of Christopher’s Motion for Partial Summary Judgment, the grounds for the motion are as follows.

A. Deputy Sheriffs lack the power to make traffic stops that do not constitute a breach of the peace.

1. Deputy Sheriffs in Pennsylvania have no statutory power to make traffic stops. Deputy Sheriffs in Pennsylvania derive their power to make traffic

stops for violation of the Motor Vehicle Code from their residual common law power set forth in the decision of the Pennsylvania Supreme Court in *Commonwealth v. Leet*, 641 A.2d 299 (Pa. 1994). *Leet* limits Deputy Sheriffs' power to make traffic stops to violations of the Motor Vehicle Code that amount to a breach of the peace.

2. Sheriff Hose authorized Deputies in the York County Sheriff's Department to make traffic stops and to issue citations for any and all violations of the Motor Vehicle Code, including violations that do not constitute a breach of the peace.

3. Sheriff Hose authorized defendant Nestlerode to train York County Deputies on enforcing provisions of the Motor Vehicle Code. Nestlerode trained Deputies to make traffic stops and to issue citations for any and all violations of the Motor Vehicle Code, including violations that do not constitute a breach of the peace.

4. Deputy Sheriffs in York County make traffic stops and issue citations for any and all provisions of the Motor Vehicle Code, including violations that do not constitute a breach of the peace.

5. On August 5, 2003, defendants Nestlerode and Kerr stopped and issued a citation to Christopher for an alleged violation of 75 Pa.C.S. §3361, driving

at an unreasonable speed under the conditions. Defendants did not cite Christopher for careless driving, reckless driving, or any other traffic offense that includes an element of risk of harm to third persons or their property. Because violations of Section 3361 by driving at an unreasonable speed do not constitute a breach of the peace, Nestlerode and Kerr had no power to stop Christopher.

6. Nestlerode and Kerr also issued Christopher a citation for failing to notify PennDOT of his change of address within fifteen days in violation of 75 Pa.C.S. §1515. This violation also does not constitute a breach of the peace. The citation in Paragraph 5 and the citation in Paragraph 6 are attached and incorporated herein as Exhibit 01.

7. Therefore, Nestlerode and Kerr seized Christopher without any power to stop Christopher and to issue him the citations.

8. By authorizing and engaging in a traffic stop without any power, defendants caused Christopher to be subjected to an unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

B. Nestlerode and Kerr did not track Christopher's speed for the 3/10 of a mile required to establish reasonable suspicion or probable cause under 75 Pa.C.S. §3361.

9. Under the Pennsylvania Supreme Court's decision in *Commonwealth*

*v. Whitmyer*, 668 A.2d 1113 (Pa. 1995), police officers do not have reasonable suspicion or probable cause to stop a car for driving at an unreasonable speed in violation of 75 Pa.C.S. §3361 unless they have observed the car for 3/10 of a mile.

10. Defendants Nestlerode and Kerr did not observe Christopher's car for 3/10 of a mile before activating their overhead emergency lights. Instead, Nestlerode and Kerr decided to stop Christopher and activated their emergency lights immediately upon seeing Christopher pass their car.

11. By deciding to stop Christopher immediately upon seeing him pass their car, Nestlerode and Kerr did not observe Christopher's car for a sufficient period to establish reasonable suspicion or probable cause that he was driving at an unreasonable speed in violation of 75 Pa.C.S. §3361.

12. By stopping Christopher without reasonable suspicion or probable cause, Nestlerode and Kerr violated Christopher's right to be free from an unreasonable search and seizure under the Fourth and Fourteenth Amendments to the United States Constitution.

C. Relief Sought

13. Christopher moves this Court to enter judgment against defendants Nestlerode and Kerr as to liability on Count I of the Complaint. The damages to be awarded on Count I would be decided by the jury at trial.

14. Christopher moves this Court to enter judgment against defendant Hose on Count III as to the portion of that Count imposing supervisory liability for the violation of Christopher's right to be free from unreasonable searches and seizures. The damages to be awarded for this violation would be decided by the jury at trial. In addition, the portion of Count III seeking to impose supervisory liability for the violation of Christopher's right to the equal protection of law would be decided by the jury at trial because there are disputed issues of material fact as to this aspect of Count III.

Respectfully submitted,

s/ Gary S. Gildin

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF NONCONCURRENCE**

Pursuant to Local Rule 7.1, Gary S. Gildin certifies that on December 7, 2004, he sought concurrence in the foregoing Motion for Partial Summary Judgment from Crystal Williamson, Esq., one of the attorneys for defendants. Ms. Williamson did not concur in this motion.

*s/ Gary S. Gildin* \_\_\_\_\_

Gary S. Gildin, Esq.

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CERTIFICATE OF SERVICE

I certify that on December 16, 2004, I filed the foregoing document using the Court's ECF system and that the following is an ECF user such that he will receive service automatically:

David L. Schwalm, Esq.  
Thomas, Thomas & Hafer, LLP  
Attorneys for Defendants

*s/Paula K. Knudsen*

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Paula K. Knudsen