

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, and the	:	
COUNTY OF YORK,	:	JURY TRIAL DEMANDED
Defendants.	:	

**PLAINTIFF CHRISTOPHER’S MOTION FOR PARTIAL
SUMMARY JUDGMENT TO DECLARE THAT THE ACTION AND
INACTION OF SHERIFF HOSE ALLEGED TO HAVE CAUSED THE
CONSTITUTIONAL VIOLATIONS IN THIS CASE REPRESENT THE
POLICY OF THE COUNTY OF YORK UNDER 42 U.S.C. §1983**

Pursuant to Federal Rule of Civil Procedure 56, plaintiff Raphael Christopher moves for partial summary judgment to declare that the action and inaction of Sheriff Hose alleged to have caused the constitutional violations in this case represent the policy of the County of York under 42 U.S.C. §1983. In support, Christopher states as follows:

A. Grounds for the Motion.

1. Local governmental entities like the County of York (County) are suable “persons” under Section 1983. However, under Section 1983 the County is not vicariously liable for the actions of all County employees. Instead, the County is liable only for the actions of its employees that represent “policy.” *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978).

2. Actions of individual County employees constitute “policy” under Section 1983 where the employee possesses final authority to establish County policy with respect to the actions in issue. *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *Beck v. City of Pittsburgh*, 89 F. 3d 966 (3rd Cir. 1996).

3. The identification of the official who has final authority for the County as to the action and inaction that is alleged to have caused the constitutional violations in this case is to be resolved by the trial judge before the case is submitted to the jury. *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989).

4. In Count III of the Complaint, plaintiff Christopher alleged that Sheriff Hose was liable for the violation of Christopher’s constitutional rights because of his following actions and inactions as the supervisor of defendant Deputy Sheriffs Nestlerode and Kerr:

a. Hose was deliberately indifferent with respect to his supervision of Nestlerode and Kerr as to the risk of racial profiling. (Complaint ¶35);

b. Hose was deliberately indifferent with respect to his training of Nestlerode and Kerr as to the risk of racial profiling. (Complaint ¶36);

c. Hose acquiesced in and ratified the actions of Nestlerode and Kerr in stopping Christopher without probable cause or reasonable suspicion and based upon his race. (Complaint ¶37).

5. Through discovery, plaintiff Christopher developed sufficient facts to establish that Sheriff Hose was a cause of the violation of Christopher's constitutional rights because:

a. Hose authorized his Deputies to violate the Constitution by making traffic stops and issuing citations beyond the power of Deputy Sheriffs;

b. Hose was deliberately indifferent to the risk that his Deputies would engage in racial profiling by:

i. Failing to promulgate policies designed to prevent Deputies from engaging in racial profiling when making traffic stops;

ii. Failing to train Deputies to avoid engaging in racial profiling when making traffic stops;

iii. Failing to monitor whether Deputies were engaging in racial profiling.

See Plaintiff's Brief in Opposition to Defendants' Kerr and Hose Motion for Summary Judgment at pp. 9-32.

6. On January 3, 2005, this Court granted Christopher's Motion to Amend the Complaint to add the County of York as a defendant. The liability of the County of York is based upon the claim that Sheriff Hose possesses final authority in the County of York a) to establish the policies, rules and procedures of the York County Sheriff's Department; and b) for the supervision and training of Deputies in the York County Sheriff's Department. *See* Second Amended Complaint, Count IV (¶¶40-42). A copy of the Second Amended Complaint is attached to this motion as Exhibit A.

7. There is no dispute of material fact that Sheriff Hose possesses final authority in the County of York a) to establish the policies, rules and procedures of the York County Sheriff's Department; and b) for the supervision and training of Deputies in the York County Sheriff's Department.

a. At his deposition, Sheriff Hose testified that he does have final authority for the County as to the training and supervision of Deputy Sheriffs as well as to the creation of relevant policies governing the conduct of Deputies in the

Sheriff's Department. Hose Dep. p. 17, L. 25 - p. 21, L. 2; p. 101, L. 19 - p.102, L. 4; p. 143, L. 21 - p. 144, L. 4. These excerpts from Sheriff Hose's Deposition are attached to this motion as Exhibit B.

b. Plaintiff deposed the three York County Commissioners--Steve Chronister, Lori Mitrick and Douglas Kilgore. Each of the Commissioners was read verbatim the text of paragraph 42 of the Second Amended Complaint as follows: "Hose possesses final authority in the County of York to establish the policies, rules and procedures of the York County Sheriff's Department." Each Commissioner admitted, without qualification, that the allegation in paragraph 42 was true.¹ Each of the Commissioners also was read verbatim the text of paragraph 43 of the Second Amended Complaint as follows: "Hose also possesses final authority in the County of York for the supervision and training of the Deputies in the York County Sheriff's Department." Each Commissioner admitted, without qualification, that the allegation in paragraph 43 was true.

c. In its Answer to these same allegations, the County stated that "[a]lthough Sheriff Hose has the final authority to establish certain policies, rules and procedures, that authority is limited to the extent that such policies, rules and

¹At the time of the filing of this motion the depositions have not been transcribed. Plaintiff will provide citations to the transcripts once they become available.

procedures are not inconsistent with and do not violate union bargaining agreements and the York County Code.” Answer to Amended Complaint, ¶¶42 and 43. The Answer to the Second Amended Complaint is attached to this motion as Exhibit C. However, the alleged qualification to Hose’s final authority proved non-existent. In the County’s Response to Plaintiff’s First Request for Production of Documents (Response to RFP), attached to this motion as Exhibit D, the County admitted that there were no union bargaining agreements relating to the Sheriff’s Department or Deputy Sheriffs in effect as of August of 2003 when Christopher was stopped. Response to RFP, Supplemental Request 1 at p.10. The County further admitted that there are no provisions in the York County Code that limit the authority of Sheriff Hose to establish policies, rules and procedures. Response to RFP, Supplemental Request 2 at p. 10. Finally, the County also admitted that there are no provisions of the York County Code that are inconsistent with or violated by policies, rules and procedures promulgated by Sheriff Hose. Response to RFP, Supplemental Request 3 at p.10.

d. In response to the Plaintiff’s First Request for Production of Documents to the County of York, the County produced an Organizational Chart for the County of York, attached to this motion as Exhibit E. According to the Organizational Chart, no County employee or entity supervises, approves or

reviews the actions of Sheriff Hose.

e. Consistent with the Organizational Chart, at their depositions Commissioners Chronister and Mitrick admitted that Sheriff Hose is accountable only to the voters of the County.

f. In their Response to RFP, the County produced no documents relating to any review or supervision of Sheriff Hose by any County entity or employee with respect to a) his establishing policies, rules and procedures of the York County Sheriff's Department, or b) his supervision and training of the Deputies in the York County Sheriff's Department.

8. Therefore the action and inaction of Sheriff Hose alleged to have caused the constitutional violations in this case represent the policy of the County of York under 42 U.S.C. §1983. *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989); *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *Beck v. City of Pittsburgh*, 89 F. 3d 966 (3rd Cir. 1996).

B. Relief Sought

9. Christopher requests that this Court enter summary judgment declaring that the action and inaction of Sheriff Hose alleged to have caused the constitutional

violations in this case represent the policy of the County of York under 42 U.S.C. §1983. The consequence of the Court's ruling is that if Sheriff Hose's action or inaction is found to be a cause of the violation of Christopher's constitutional rights under Count III, the County would be liable under Count IV of the Second Amended Complaint.²

Respectfully submitted,

s/ Gary S. Gildin

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²The only two differences between the liability of Sheriff Hose under Count III and the liability of the County under Count IV are a) the County may not assert qualified immunity. *Owen v. City of Independence*, 445 U.S. 622 (1980); and b) the County is not liable for punitive damages (which in any event plaintiff has not sought against the County under paragraph 44 (D) of the Second Amended Complaint). *City of Newport v. Fact Concerts*, 453 U.S. 247 (1981).

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF NONCONCURRENCE

Pursuant to Local Rule 7.1, Gary S. Gildin certifies that on April 4, 2005 he sought concurrence in the foregoing Motion for Partial Summary Judgment to Declare that the Action and Inaction of Sheriff Hose Alleged to Have Caused the Constitutional Violations in this Case Represent the Policy of the County of York under 42 U.S.C. §1983 from David Schwalm, Esq., one of the attorneys for defendants. Mr. Schwalm did not concur in this motion.

s/ Gary S. Gildin _____

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