

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

AL-MALIK LUCAS	:	
Plaintiff	:	September Term, 2007
v.	:	
	:	No. 3310
CITY OF PHILADELPHIA,	:	
PHILADELPHIA POLICE DEPARTMENT,	:	
POLICE OFFICER JOSE ROMAN, #4035	:	
POLICE OFFICER RYAN MURPHY, #7298	:	
JOHN DOES 1-X	:	
Defendants	:	

RE: Al-Malik Lucas	:	SUPERIOR COURT
APPELLANT	:	1678 EDA 2011

OPINION TO THE HONORABLE
SUPERIOR COURT

MASSIAH-JACKSON, J.

Lucas Vs City Of Phila Etal-OPFLD



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Date: August *2nd*, 2011

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A. PROCEDURAL HISTORY and FACTUAL BACKGROUND

Looking at the record in a light most favorable to Plaintiff-Appellant: after being shot by Philadelphia Police in October, 2005, Mr. Al-Malik Lucas initiated this civil action in 2007. The Complaint alleges that Plaintiff-Lucas was shot multiple times with bullets discharged from firearms of Defendant-Police Officer Jose Roman and Defendant-Police Officer Ryan Murphy (Count II-Assault). As a result, the Plaintiff suffered serious and permanent injuries (Count I-Battery). The City of Philadelphia and the Philadelphia Police Department have also been named as defendants in this litigation.

In 2009, this civil case was placed in Deferred Status because Plaintiff-Lucas was incarcerated. On June 12, 2009, Mr. Lucas a/k/a Raymond Wright entered into a negotiated guilty plea and was sentenced for the underlying incident in this case at bar. Specifically, sentence was imposed at 5 to 10 years on Aggravated Assault on Police Officer Roman, to be served concurrently with 3½ to 7 years for Attempted Theft of Police Officer Roman's gun. Both of those sentences were to be served concurrently with a sentence of 12½ to 25 years for Attempted Murder in an unrelated shooting incident earlier in 2005.

In the Spring of 2011, this civil case was removed from Deferred Status by the Court of Common Pleas, Civil Division. On May 2, 2011, all of the defendants filed a Motion for Summary Judgment. This Court was assigned the Summary Judgment Motion on June 7, 2011. By Order dated June 7, 2011, this Court granted Summary Judgment. See, Court

Exhibit “A”, attached hereto. Plaintiff-Lucas promptly filed an Appeal to the Honorable Superior Court on June 17, 2011. On July 19, 2011, Plaintiff-Appellant filed a Concise Statement of Reason for Appeal. See, Court Exhibit “B”, attached hereto.

In accordance with Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure this Trial Court submits a brief opinion of the reasons for its Order -- addressing only the issues preserved for appellate review. This record is clear that Mr. Lucas’ trial counsel and appellate counsel have zealously, effectively and professionally represented their client’s legal affairs.

B. LEGAL DISCUSSION

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure provides that when the record contains insufficient evidence or facts to make out a prima facie cause of action, judgment may be granted as a matter of law. In order to defeat the motion, Mr. Lucas, the non-moving party, must come forth with evidence to demonstrate the facts essential to his cause of action. Ertel v. The Patriot-News Company, 674 A.2d 1038 (Pa. 1996) and cases cited therein. Summary judgment is an opportunity to assess the evidence and proof to determine “whether there is a need for trial.” 674 A.2d at 1042.

In Mr. Lucas’ litigation the facts are not in dispute, thus, the legal review consists of determining whether he has stated a cause of action. He has not.

On June 12, 2009, Mr. Lucas a/k/a Raymond Wright knowingly and voluntarily entered into a negotiated guilty plea to Aggravated Assault, graded as a felony of the first degree and to Attempted Theft graded as a felony of the third degree. Our Pennsylvania

Appellate Courts have held that the operative facts in a criminal conviction are admitted as conclusive facts in civil suits arising from the same event. See, Folino v. Young, 568 A.2d 171, 172-173, (Pa. 1990); Kravitz Estate, 211 A.2d 443, 448 (Pa. 1965).

Mr. Lucas admitted the following facts, Transcript of July 12, 2009, N.T. 9-13:

“. . . the incident of this case occurred on Sunday, October 2nd, 2005, at approximately 8:45 in the evening.

Police Officer Jose Roman, who is the complainant in this case, along with his partner, Police Officer Ryan Murphy, were assigned to the 12th District in plainclothes in an unmarked Ford Taurus.

At approximately 8:45 p.m., they were in the area of patrolling 72nd and Grays Avenue in Philadelphia which is an area that is a high-stolen car area.

As they were patrolling the area, they heard a car screech. They drove onto the block where they saw the defendant [**Al-Malik Lucas a/k/a Raymond Wright**] exiting a Chevrolet Caprice. The car was parked in the wrong direction in front of the apartment and next to a driveway that had parked cars in the driveway.

As they came around, they saw the defendant open the trunk and that there was no license tag on the vehicle.

Officer Roman got out of his partner's car and was wearing his identification around his neck and approached the defendant to investigate what they believed to be a stolen car because it has no tag.

As he approached the defendant and got his attention, he did at that point identify himself as a police officer. There was no registration either on the car. The car had its lights on, the motor was running. The defendant walked away from Police Officer Roman, went to the corner and then ran.

At that point, Police Officer Roman went in chase of the defendant. The defendant ran down the block through a yard, over a fence, which then led to a closed-in business, a mechanic business.

Officer Roman, as he was chasing Officer Murphy, was going around in a different direction in his car to cut off the defendant from a different direction. And when the defendant got to the fence, which is about a seven to ten foot fence, he went to scale the fence and Officer Roman got behind him and grabbed the defendant from the fence to bring him down, and as the defendant turned he grabbed Officer Roman's gun from his hip holster, and the gun got out and was removed from the holster. At that point, Officer Roman and the defendant struggled over the gun.

Officer Roman's service weapon is a nine millimeter Glock.

The struggle took place, where during the course of the struggle, the defendant and the police officer tried to get control of the gun. At one point the police officer was able to get his finger on the trigger and discharge his weapon hoping to clear, not to strike the defendant to get him off of him or convince him to let go.

The gunfire did not strike the defendant, nor did the defendant let go of the gun at that point.

A fight continued to control that weapon at which time the defendant bit Police Officer Roman's head [hand].

Police Officer Roman is approximately five foot eight and 160 pounds. The defendant at the time was substantially heavier and taller than Officer Roman.

They continued to fight. Officer Roman fell to the ground and was screaming, 'He's got my gun, he's got my gun.'

Officer Roman twisted his ankle, and the defendant continued to bite his hand.

Officer Murphy jumped over the fence, ordered the defendant to drop the gun, which he did not, and Officer Murphy shot the defendant three times at close range. And at that point the defendant and Officer Roman actually separated, one fell to the right and one fell to the left, and finally the gun was in the possession of Officer Roman.

Rescue was called. He was immediately transported, the defendant, to Pennsylvania University Hospital, along with Officer Roman. Officer Roman was treated for his cuts and bruises, as well as his sprained ankle.

The defendant was treated for his multiple gunshot wounds and remained in the hospital for a substantial period of time.”

With those conclusive facts in mind, the record in this civil law suit established as a matter of law that each of the named defendants are immune from liability. There are no genuine issues of fact in this litigation, per Rule 1035.2(1) of the Pennsylvania Rules of Civil Procedure.

City of Philadelphia

The Political Subdivision Tort Claims Act, at 42 Pa. C.S. §8541-8564, provides that the City is immune from liability for injuries caused by its employees. There are eight exceptions that allow liability to be imposed, however, none of those exceptions are applicable here. See, 42 Pa. C.S. §8542. The exceptions to the Tort Claims Act must be narrowly construed. Jones v. City of Philadelphia, 893 A.2d 835 (Pa. Commonwealth Ct. 2006).

Philadelphia Police Department

In City of Philadelphia v. Glim, 613 A.2d 613 (Pa. Commonwealth Ct. 1992), the Commonwealth Court held that the Department may not be sued as if it were a legal entity. It is not. All suits against any department of the City of Philadelphia must be brought in the name of the City. See, 53 Pa. C.S. §16257, 613 A.2d at 616.

Police Officer Jose Roman
Police Officer Ryan Murphy

In Plaintiff-Appellant's Complaint, he alleges, in pertinent part:

“13. While attempting to climb over a fence within the alley, Plaintiff was shot multiple times with bullets discharged from firearms by Defendants Roman and Murphy.

16. Defendants Roman and Murphy were under no threat of physical harm from Plaintiff when they fired at and struck Plaintiff with multiple bullets.”

Item 9 in the Concise Statement of Reasons for Appeal indicates: “. . . [Mr. Lucas'] pleading makes clear that he is charging Officer Ryan with using excessive force to effect an arrest.”

It is true that in certain situations a police officer may be held liable for assault and battery. **Under the particular circumstances here, however, the conclusive facts admitted to by Al-Malik Lucas in his guilty plea negate any exceptions to the immunity provided by the Tort Claims Act.**

Generally, an employee of the City of Philadelphia is immune from liability for acts committed within the scope of their duties. The immunity does not apply when the alleged misconduct was an intentional tort, i.e., willful misconduct. 42 Pa. C.S. §§8542, 8550. In

the underlying criminal case, Mr. Lucas' admissions establish that there are no genuine issues of fact relating to the police officers' use of force on October 2, 2005. Police Officer Roman and Police Officer Murphy are entitled to governmental immunity from liability in this litigation. See, Renk v. City of Pittsburgh, 641 A.2d 289 (Pa. 1994).

C. CONCLUSION

For all of the reasons set forth above, this Court granted the defendants' Motion for Summary Judgment on June 7, 2011.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON

FILED

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Civil Administration

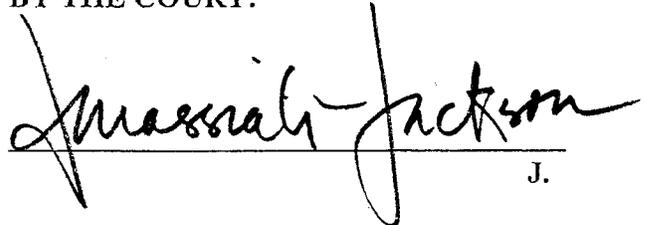
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ALMALIK LUCAS,	:	PHILADELPHIA COUNTY
Plaintiff,	:	COURT OF COMMON PLEAS
	:	
V.	:	
	:	
CITY OF PHILADELPHIA, ET AL.	:	SEPTEMBER TERM, 2007
	:	NO. 003310
Defendants.	:	

ORDER

AND NOW, this 7th day of June, 2011, upon consideration of the defendants', Police Officer Jose Roman, Police Officer Ryan Murphy, the City of Philadelphia and the City of Philadelphia Police Department's Motion for Summary Judgment, and any response thereto, it is hereby **ORDERED** and **DECREED** that the Motion is **GRANTED**. All of Plaintiff's claims against Police Officer Jose Roman, Police Officer Ryan Murphy, the City of Philadelphia and the City of Philadelphia Police Department are dismissed with prejudice.

BY THE COURT:


J.

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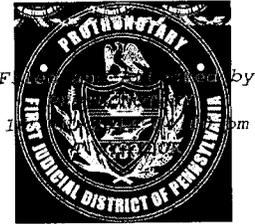
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Court Exhibit "A"

Case ID: 070903310

Control No.: 11050389



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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

ALMALIK LUCAS,
Plaintiff

: September Term, 2007

: No. 003310

v.

: File No.070903310

: Superior Court No. 1678 EDA
2011

CITY OF PHILADELPHIA,
PHILADELPHIA POLICE DEPARTMENT,
POLICE OFFICER Jose Roman #4035,
POLICE OFFICER Ryan Murphy # 7298,
And JOHN DOES # 1-X,
Defendants

:

:

CONCISE STATEMENT OF REASONS FOR APPEAL

Plaintiff Al-Malik Lucas (set forth in the caption without the hyphen) appealed in the above matter for the following reasons:

1. On Oct. 2, 2007, Plaintiff was shot by a Philadelphia Police Officer, Ryan Murphy, in the process of effecting an arrest for an assault on another officer, Jose Roman.
2. On June 12, 2009, Plaintiff pleaded guilty and was sentenced to 7-15 years for aggravated assault on Officer Roman, and for theft of his gun. All other charges were withdrawn, and the sentence was made to run concurrent with another sentence which had been imposed on him.
3. During almost the entire pendency of this suit, Plaintiff has been incarcerated in the Commonwealth's Correctional System, mostly at SCI Forest, a prison located near Erie, Pennsylvania.
4. Plaintiff had been shot three times at close range during his arrest, and is now confined to a wheelchair.
5. Plaintiff believed and averred that the shooting was maliciously motivated, and was not privileged or necessary to protect the life of any other person.
6. On March 13, 2009, Plaintiff's then attorney, Nino V. Tinari, Esq., requested that this case be placed in suspense, partly because Plaintiff's criminal charges were still pending, and partially because of the difficulty of communicating with Plaintiff. The case was placed in suspension.
7. On February 11, 2011, Mr. Tinari sent Judge Howland W. Abrahamson a letter, requesting that the matter be continued in suspense. Judge Abramson instead, apparently *sua sponte*, decided to remove the matter from suspense, and did so by order dated March 10, 2011. His order said that pre-trial motions were to be filed by May 2, 2011.
8. On May 2, Defendants filed a Motion for Summary Judgment. On June 2, Plaintiff filed a response. On June 7 the Motion was granted. This timely appeal followed.
9. Because of the time delay in getting mail or even telephone calls back and forth to SCI Forest, Plaintiff has been unable to submit an affidavit or deposition in support of his position. Nevertheless, his pleading makes clear that he is charging Officer Ryan with using excessive force to effect an arrest.

10. Defendants offered an affidavit of Officer Ryan as part of their summary Judgment motion, in which Officer Ryan contended that he was acting in self-defense and for the defense of Officer Roman, and not willfully or maliciously.
11. Under the so-called *Nanty-Glo* rule, summary judgment may not be granted where a party relies on a testimonial affidavit to establish the absence of a material fact.
12. In addition, because of the distances and time-lapses involved, Plaintiff has not had a meaningful opportunity to consult with counsel in preparing his defense to the motion for summary judgment.

Respectfully submitted,

/s/

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