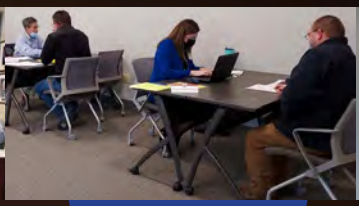

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NOVEMBER 19
2021

ERIE COUNTY LEGAL JOURNAL

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ERIE COUNTY LEGAL JOURNAL

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Anthony

PLEASE NOTE: NOTICES MUST BE RECEIVED AT THE ERIE COUNTY BAR ASSOCIATION OFFICE BY 3:00 P.M. THE FRIDAY PRECEDING THE DATE OF PUBLICATION.

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ERIE COUNTY BAR ASSOCIATION CALENDAR OF EVENTS AND SEMINARS

MONDAY, NOVEMBER 22, 2021
ECBA Board of Directors Meeting
Noon
ECBA Headquarters live (must RSVP) or via Zoom

MONDAY, NOVEMBER 22, 2021
Law Day Committee Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP) or via Zoom

TUESDAY, NOVEMBER 23, 2021
Solo/Small Firms Division Meeting
Noon
ECBA Headquarters live (must RSVP) or via Zoom

THURSDAY, NOVEMBER 25, 2021
Federal Courthouse closed

THURSDAY, NOVEMBER 25 AND FRIDAY, NOVEMBER 26, 2021
Thanksgiving Holiday
ECBA Office and Erie County Courthouse closed

TUESDAY, NOVEMBER 30, 2021
Diversity & Inclusion Section
Leadership Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

FRIDAY, DECEMBER 3, 2021
ADR Committee Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

TUESDAY, DECEMBER 7, 2021
Annual Admission Ceremonies
11:00 a.m. - Court of Common Pleas Ceremony (Courtroom H)
11:45 a.m. - lunch (Erie Club)
1:15 p.m. - Federal Ceremony (Courtroom A-280)

TUESDAY, DECEMBER 7, 2021
Estates & Trusts Section Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

THURSDAY, DECEMBER 9, 2021
ECBA Annual Membership Meeting
Bayfront Convention Center,
1 Sassafras Pier, Erie
Click link for details
https://www.eriebar.com/events/member-registration/1747

TUESDAY, DECEMBER 14, 2021
Live ECBA Lunch-n-Learn Seminar
Support Rules Update
Noon - 1:30 p.m.
The Will J. Schaaf & Mary B. Schaaf Education Center in-person or via Zoom
Click link for details
https://www.eriebar.com/events/public-registration/1748

Erie County Bar Association

@eriepabar

BOOKKEEPER POSITION AVAILABLE

Marsh Schaaf is seeking an experienced bookkeeper for a full-time position. Please email resume and cover letter to Steven George at sgeorge@marshlaw.com.

Nov. 19, 26 and Dec. 3

SAFENET - LEGAL DEPT - PFACS ATTORNEY

DUTIES:

Provide legal consultation/representation to victims of domestic violence in civil procedures.
Provide legal consultation to PFACS staff & meet with contract attorneys.
Participate in task forces and trainings, maintain CLE credits.

QUALIFICATIONS:

Juris Doctor Degree; experience in family law preferred; PA license to practice law and membership in ECBA required. Must demonstrate sensitivity to the complexity of domestic violence issues.

Applicants should submit resumes to: kbalzer@safeneterie.org

Oct. 29 and Nov. 5, 12, 19

Annual Senior Lawyers Division Holiday Lunch

Tuesday, December 14, 2021
Erie Club, 524 Peach Street,
Erie, Pennsylvania 16501

Cost: $25.00/Division Member

Buffet Menu:
Garden Salad, Rolls, Butter
Pan-Roasted Fillet of Salmon w/Tomato Basil Vinaigrette
Broiled Tenderloin Steak w/Bearnaise Sauce
Vegetable, Starch | Mini Creme Brulee | Beverage

RSVP by Tuesday, December 7, 2021

Register at:
https://www.eriebar.com/events/ecba-events/1749-annual-senior-lawyers-division-holiday-lunch

TROY CHILCOTT, Plaintiff
v.
CITY OF ERIE and CORPORAL SARAH SCHARDT, Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 1:20-CV-289
Re: Motion for summary judgment [15]
Motion for summary judgment [19]

MEMORANDUM OPINION

U.S. District Judge Susan Paradise Baxter

I. Relevant Procedural History

On July 26, 2019, Plaintiff Troy Chilcott ("Chilcott") was pulled over by Defendant Sarah Schardt ("Schardt"), a corporal with the City of Erie Police Department, who was responding to a radio dispatch concerning a disturbance in her vicinity that involved a weapon. Chilcot was arrested but the charges were later dismissed by the state court. Chilcott initiated this litigation on September 30, 2020. *See* ECF No. 1. He alleges claims against Schardt and the City for unlawful search and seizure (Count I) and false imprisonment (Count II) under the Fourth Amendment, and a *Monell* claim (Count III) based on the City's failure to train its police officers. *See id*. The parties decided to forego discovery and proceed directly to cross motions for summary judgment. *See* ECF No. 14. Defendants filed a motion for summary judgment. Chilcott has filed a motion for partial summary judgment on liability. The motions are now ripe for disposition.

II. Standard of Decision

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). Federal Rule of Civil Procedure 56(a) provides that summary judgment must be granted if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Under Rule 56, the district court must enter summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

A "party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Id*. at 323, *quoting* Fed. R. Civ. P. 56. In other words, the moving party has the initial burden of proving to the district court the lack of evidence supporting the non-moving party's claims. *Id*. at 330.

After the moving party has satisfied this low burden, the non-moving party must provide facts showing that there is a genuine issue for trial to avoid summary judgment. *Id*. at 324. The non-moving party must then oppose the motion, and in doing so "'may not rest upon the mere

allegations or denials of [its] pleadings' but, instead, 'must set forth specific facts showing that there is a genuine issue for trial. Bare assertions, conclusory allegations, or suspicions will not suffice.'" *Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 288–89 (3d Cir. 2018) *quoting D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 268–69 (3d Cir. 2014).

In reviewing a motion for summary judgment, the court must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Jutrowski*, 904 F.3d at 288, *citing Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Educ.*, 470 F.3d 535, 538 (3d Cir. 2006). The court may not "weigh the evidence" or "determine the truth of the matter." *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986). Instead, the court's role in reviewing the facts of the case is "to determine whether there is a genuine issue for trial." *Id*.

III. Factual Background

The following factual background is set forth pursuant to the standards detailed above. As required by Local Rule and by the undersigned's Practices and Procedures, both parties have filed Concise Statements of Material Facts in support of their respective motions for summary judgment. However, Defendants have not responded to Plaintiff's Concise Statement as required and so the unopposed statements are deemed admitted. *See infra*, footnote 4.

On July 26, 2019, at 8:33 p.m. Denise Henderson called 911 to report a disturbance in the 1900 block of East Eighth Street in the City of Erie. Ms. Henderson described overhearing an argument inside the home of a neighbor. She reported that

> "I'm calling from 1911 East Eighth Street, but I'm calling because at 1912 East Eighth Street there's some fight going on, and a man came out of the house with a pistol talking about 'you pistol whipped me' and walking down Bacon Street with a pistol."

Ms. Henderson related that she saw a man come out of the house and saw him put a black pistol in his pants. Three minutes later, the Erie Police Department dispatched officers to respond to the call. The initial radio dispatch indicated that the call was a "weapons call" and that there was a "male walking down the street waving a pistol" and that the subject male "got into a gray Ford F-150 northbound on Bacon." She described the truck as having shrubbery in the bed.

Based on her proximity, Corporal Schardt who was in uniform and driving a patrol car in the area responded to the call. A few minutes later, Schardt observed a vehicle matching the description provided by dispatch around 12th and Downing Streets. Schardt then turned around and took a position behind the truck now sitting at the intersection of 12th and Downing Streets. As the traffic light changed to green, Schardt activated her car's emergency red/blue lights and siren to conduct a traffic stop.

Plaintiff pulled his truck over into the grass. With her gun drawn, Corporal Schardt ordered him out of his vehicle. Other police officers arrived and placed Mr. Chilcott in handcuffs. Corporal Schardt was then dispatched to another call and she left the scene. Evidence found in Mr. Chilcott's vehicle formed the factual basis for his arrest and the filing of criminal charges. None of the criminal charges were based on Chilcott's conduct prior to the traffic stop.

As a result of his arrest, Chilcott was incarcerated for eight months which caused significant financial hardship for his family. Plaintiff alleges that during his incarceration, he lost his job. In order to make ends meet, his wife was forced to quit her job of seventeen years so that she could draw on her 401(k) retirement account to pay for a criminal defense attorney and to have funds for family and household expenses. The Chilcott's credit was ruined, vehicles including a camper and a truck were repossessed, and they defaulted on credit cards. They also lost their health insurance because Mrs. Chilcott had to quit her job in order to draw on her 401(k) account.

IV. The Motions for Summary Judgment

Defendant Schardt argues that she is entitled to summary judgment on the unlawful search claim and the false imprisonment claim because she had a reasonable suspicion to initiate the vehicle stop. She principally contends that the information provided to her and other officers regarding a disturbance involving a gun on a city street, together with a specific description of the suspect's vehicle provided her with a reasonable, articulable suspicion to detain Chilcott. Further, Defendants contend that even if Schardt is found to have violated Chilcott's constitutional rights, she is entitled to qualified immunity. The City contends that because of a *Monell* claim's derivative nature and because Schardt did not violate Plaintiff's constitutional rights, the *Monell* claim fails.

As to the Fourth Amendment claims, Chilcott contends Schardt did not have a reasonable suspicion to stop him. First, Chilcott points to the decision of the state court in his criminal prosecution which concluded that the record was devoid of facts from which Schardt could have formed a reasonable suspicion for the traffic stop. *See Commonwealth v. Chilcott*, 240 A.2d 202 (Pa. Super. Ct. Aug. 26, 2020). Second, and irrespective of the application of the state court decision, Chilcott contends that the information provided to Schardt from the police dispatcher was insufficient to create a reasonable suspicion. Lastly, Chilcott argues that Schardt is not entitled to qualified immunity. Concerning his *Monell* claim, Chilcott contends that he should be entitled to discovery as to the failure of the City to train its police officers.

V. Discussion and Analysis

Difficult constitutional issues are typically involved in cases where qualified immunity is in question.[1] "When qualified immunity is raised at the summary judgment stage, the Court's analysis of the merits of the claims for purposes of summary judgment essentially merges with its analysis of the existence of a deprivation of federal rights for the purposes of qualified immunity." *Deitrick v. Costa*, 2014 WL 268681, at *8 (M.D. Pa. 2014) *citing Gruenke v. Seip*, 225 F.3d 290, 299-300 (3d Cir. 2000). Accordingly, the Court will first address whether Chilcott's rights were violated, and, if so, then determine whether Schardt is entitled to qualified immunity.[2]

[1] To determine if an officer is entitled to qualified immunity, courts utilize a two-prong analysis. *Peroza-Benitez v. Smith*, 994 F.3d 157, 165 (3d Cir. Apr. 8, 2021). At the first prong, the court asks if the facts, "[t]aken in the light most favorable to the party asserting the injury, ... show the officer's conduct violated a constitutional right." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Second, the court must "ask whether the right was clearly established," *id.*, because "the contours of the right must be sufficiently clear such that the unlawfulness of the action [wa]s apparent in light of pre-existing law," *Dougherty v. School Dist. of Phila.*, 772 F.3d 979, 993 (3d Cir. 2014) (citation and internal quotation marks omitted).

[2] A court may analyze and address these two prongs in whichever order it finds most appropriate for the case. *Lozano v. New Jersey*, 9 F.4th 239 (3d Cir. 2021) *citing Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

A. The Fourth Amendment Claims against Corporal Schardt

The Fourth Amendment protects "[t]he rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. "What is reasonable depends upon all the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985). At Count I, Chilcott alleges that Schardt "had no legitimate basis to pull Mr. Chilcott over," thus challenging the constitutionality of Schardt's investigatory stop under the Fourth Amendment. *See* ECF No. 1, ¶¶ 46-55.

Generally, warrantless searches "are presumptively unreasonable…." *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006) *citing Katz v. United States*, 389 U.S. 347, 356-7 (1967). In *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968), the Supreme Court announced an exception to that general rule: "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (explaining *Terry* holding). *See also United States v. Lyons*, 2020 WL 429112, at *4 (W.D. Pa. 2020) ("A seizure under *Terry* is also known as an investigatory stop and requires that officers have reasonable articulable suspicion that criminal activity is afoot before they may restrain or detain a suspect."). Courts have held that "stopping a car and detaining its occupants is a seizure under the Fourth Amendment." *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995).

Such investigatory stops are permitted if a police officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Terry*, 392 U.S. at 21. In order to make the required showing of reasonable suspicion, "the officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *United States v. Ubiles*, 224 F.3d 213, 217 (3d Cir. 2000). The reasonableness of an officer's suspicions are fact-specific to the circumstances confronting the officer and "must be measured by what the officers knew before they conducted their search" and not what they found during or after the search. *Florida v. J.L.*, 529 U.S. 266, 271 (2000).

At Count II, Chilcott raises a false imprisonment claim, also under the Fourth Amendment. *See* ECF No. 1, ¶¶ 56-63. Here, Chilcott alleges that he endured eight months of unlawful detention, as occasioned by the unconstitutional search and seizure. *Id.*, ¶ 59. A claim for false imprisonment under § 1983 is based in the Fourth Amendment's guarantee against unreasonable seizures. *Garcia v. County of Bucks*, 155 F.Supp.2d 259, 265 (E.D. Pa. 2001). Therefore, where a claim that an officer lacked a reasonable suspicion to detain a person is sustained, a claim for false imprisonment may also be sustained. *See, e.g., Cost v. Borough of Dickson City*, 2020 WL 6083272, at *4 (M.D. Pa. Oct. 15, 2020), aff'd, 2021 WL 2255505 (3d Cir. June 3, 2021).

Accordingly, the lack of reasonable suspicion is an element of both claims. In other words, Chilcott must demonstrate that there was a lack of reasonable suspicion for the traffic stop to establish either of his legal claims against Corporal Schardt. And, conversely, if Corporal Schardt had reasonable suspicion to justify the traffic stop, both claims fail.

1. The state court decision lacks preclusive effect in this case.

Before turning to its own independent analysis, this Court must first resolve whether the state court rulings in Chilcott's criminal prosecution — finding a lack of reasonable suspicion —

have preclusive effect in this Section 1983 case. Chilcott seeks to use the state court decisions that Schardt lacked a reasonable suspicion for the traffic stop as determinative of the question for purposes of his § 1983 unlawful search and seizure and false imprisonment claims.

Chilcott's civil rights case is based on a traffic stop that led to his arrest and prosecution for possession of firearms without a license, possession of drug paraphernalia, driving under the influence, and driving under a suspended license. None of these criminal charges were factually based on conduct that occurred prior to the vehicle stop, but instead are the result of evidence found in Chilcott's vehicle after it was stopped by police. Chilcott moved to suppress that evidence in state court. At a suppression hearing, the state trial court concluded Corporal Schardt did not have a reasonable suspicion to stop Chilcott's truck and, as a result, suppressed the evidence and dismissed the criminal charges against him. The Commonwealth appealed to the Pennsylvania Superior Court which affirmed the decision of the trial court, holding that Schardt's testimony during the suppression hearing

> … demonstrates convincingly that when Corporal Schardt effectuated the traffic stop *sub judice*, she could cite no articulable facts that established or described Chilcott's role in criminal activity or his imminent intent to perpetrate an offense, apart from his possession of a firearm. …
>
> In the absence of articulable, individualized suspicion that Chilcott engaged in criminal activity or was intent on committing an offense, the trial court correctly concluded that Chilcott's mere possession of a firearm did not raise valid grounds to support an investigative detention.

Commonwealth v. Chilcott, 240 A.3d 202, at *5 (Pa. Super. Aug. 26, 2020).

Chilcott contends that this Court must preclude Schardt from arguing in federal court that her traffic stop was constitutional. Schardt disagrees, arguing that she should be allowed to defend herself against the Fourth Amendment claims in federal court. She contends that the state courts' probable cause determinations cannot have preclusive effect in this later civil rights action because the state court judgment is not binding on the parties in this action. This Court agrees with Defendants.

Generally, defendants in a § 1983 action may raise a collateral estoppel defense when a plaintiff attempts to relitigate an issue decided adversely against him in a state criminal proceeding. *See Ingram v. Lupas*, 353 Fed. App'x 674, 676 (3d Cir. 2009) *citing Anela v. City of Wildwood*, 790 F.2d 1063, 1068 (3d Cir. 1986). The opposite, however, is not true. *See Smith v. Hanuska*, 2011 WL 995985, at *5 (M.D. Pa. 2011). A plaintiff's assertion that collateral estoppel bars a defendant in a § 1983 action from relitigating a Fourth Amendment issue decided adversely to the government in a criminal prosecution is without support in this jurisdiction. *See id.*

Collateral estoppel does not apply here because Schardt and the City were not parties to the criminal proceedings against Chilcott in the state courts. Nor were they in privity with the Commonwealth in those criminal proceedings. A defendant in a § 1983 action, sued in his or her individual capacity, is not considered to be in privity with the government in a prior criminal prosecution. *See Smith v. Holtz*, 210 F.3d 186, 199 n.18 (3d Cir. 2000)

citing Morgan v Gertz, 166 F.3d 1307, 1309 (10th Cir. 1999). S*ee also Tierney v. Davidson*, 133 F.3d 189, 195 (2d Cir. 1998) (state court's ruling suppressing evidence not entitled to preclusive effect in § 1983 action against police officers as officers were not parties to the criminal prosecution nor in privity with the state); 18A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice And Procedure 2d § 4458 (2002) ("A judgment against a government or one government official does not bind a different official in subsequent litigation that asserts a personal liability against the official[.]").

Based upon the foregoing, the Court finds that collateral estoppel does not automatically bar relitigation of the reasonable suspicion determination in this proceeding. *See, e.g., Zamichieli v. Andrews*, 2016 WL 8732421, at *6 (E.D. Pa. 2016). Therefore, the Court will make its own independent determination of whether Schardt's actions violated the Fourth Amendment.

2. Defendant Schardt had reasonable suspicion to stop Chilcott.

Under *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny, "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000) (citation and quotation marks omitted). "Reasonable, articulable suspicion is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence, and only a minimal level of objective justification is necessary for a *Terry* stop." *United States v. Delfin–Colina*, 464 F.3d 392, 396 (3d Cir. 2006) (citations and internal quotation marks omitted). *See also DeNinno v. Municipality of Penn Hills*, 269 Fed. Appx. 153, 158 (3d Cir. 2008). That is to say, this requirement is not particularly onerous: "reasonable, articulable suspicion is a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence,' and only a 'minimal level of objective justification' is necessary for a *Terry* stop." *Delfin-Colina*, 464 F.3d at 396, *quoting Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) and *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Still, "a police officer does have the initial burden of providing the 'specific, articulable facts' to justify a reasonable suspicion to believe than an individual has violated the … laws." *Id.* at 397. The court has to "consider whether the 'rational differences from those facts reasonably warrant [the] intrusion.'" I*d. quoting Terry*, 392 U.S. at 21. In the end, the court must "weigh 'the totality of the circumstances — the whole picture.'" *Id. quoting Sokolow*, 490 U.S. at 8. This is a highly factual inquiry. *See United States v. Goodrich*, 450 F.3d 552, 553 (3d Cir. 2006) (holding that the reasonable suspicion inquiry is highly fact-dependent in nature). As the Supreme Court has emphasized, "in the end we must ... slosh our way through the fact bound morass of 'reasonableness.'" *Scott v. Harris*, 550 U.S. 372, 383 (2007).

The key piece of information in this case was what the dispatcher told police officers: a suspect was "waving a pistol" while walking down a city street and then left the scene in a gray pick-up truck with a lot of shrubbery in the truck bed. The record reflects that an Erie Police Department radio dispatcher, upon receiving information from the 911 operator, sent out a call for officers to respond to a "weapons call" in the area of 1912 East Eighth Street where "there's a male walking down the street waving a pistol."[3] ECF No. 15-3, p. 2 (transcript of

[3] Neither party challenges the reliability of the 911 tip.

radio dispatch). The dispatcher further indicated that the subject "got into a gray Ford F-150 northbound on Bacon [Street]" and that the truck is "going to have some shrubs in the back of the F-150." *Id*.

That the suspect was "waving a pistol" was further confirmed by the bulletin generated to Erie police officers on their Computer Aided Dispatch system ("CAD"). According to the CAD report generated at 8:35 p.m., Schardt was notified of a "Priority 1/Weapons/ Firearms/MALE WALKING DOWN THE STREET WAIVING A PISTOL/WEAPONS INCIDENT." ECF No. 15-2, p. 1-2. This is the sum and substance, *i.e.*, the totality of the circumstances, presented to Schardt before she identified a "Chevy with shrubs in the back" and commenced her investigatory stop. *Id.*, p. 3.[4]

Weighing the totality of the circumstances, these facts satisfy the officer's need to "point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer's experience" in determining whether the officer had reasonable suspicion. That a suspect was waving or brandishing a gun has been found to provide police officers with reasonable suspicion sufficient to seize a person. Indeed, the Court of Appeals for the Third Circuit has held an investigatory stop to be reasonable when the officers were provided information including a car's make, model, and color, along with the race of the driver, and that a 911-caller had witnessed the driver brandishing a gun in public. *See United States v. Torres*, 2008 WL 2813035, at *1 (3d Cir. July 23, 2008). *See also McClendon v. Lewis*, 2005 WL 217026, at *5 (E.D. Pa. Jan. 27, 2005) (holding that police had reasonable suspicion to stop suspect after receiving information from a police radio broadcast reporting the description of a "male waving a gun.").

Chilcott argues that carrying a gun is not a crime in Pennsylvania and thus, cannot be the basis for reasonable suspicion to justify a stop. The United States Supreme Court has determined that, without more, a reasonable suspicion cannot arise from a tip that a person was carrying a gun. *See J.L.*, 529 U.S. at 268. *See also United States v. Valentine*, 232 F.3d 350, 355 (3d Cir. 2000) (holding "even if police officers have a reliable tip saying that someone is carrying a gun, that information alone will not provide enough evidence to support a *Terry* stop"). But this argument ignores the fact that the reports provided Schardt with more than just the information that the suspect was carrying a gun. Indeed, she received information which indicated that there was a disturbance at a residential address and that a suspect was "waving a pistol" while walking down the street after having been in a physical altercation. As the Supreme Court has noted, "[f]irearms are dangerous, and extraordinary dangers sometimes justify unusual precautions … *Terry's* rule … responds to this very concern." *J.L.*, 529 U.S. at 272. Corporal Schardt was not presented with information that someone was observed on the street merely carrying a weapon.

It is irrelevant to the legal determination here that the dispatcher may have incorrectly reported that the suspect was "waving a pistol." *See* ECF No. 24, p. 8. Nothing requires dispatchers or

[4] Corporal Schardt testified that she did not observe any violations of the Vehicle Code or witness any behavior that suggested Chilcott was engaged in criminal conduct while driving that otherwise would have justified the traffic stop. The sole basis for the stop was the information provided by the 911 caller as related to Schardt through the police dispatch radio and CAD on her patrol car's computer screen. These facts are deemed admitted pursuant to Local Rule 56 due to Defendants' failure to file a response to the opposing party's concise statements. These facts are also supported by the record before this Court as Schardt testified to as much at the suppression hearing. *See* ECF No. 15-5, pages 1-2.

police "to act with the calm deliberation associated with the judicial process." *Lyons*, 2020 WL 429112, at *12, *citing United States v. Torres*, 534 F.3d 207, 212 (3d Cir. 2008).

Thus, because Schardt had a reasonable suspicion based on articulable facts, she did not violate Chilcott's constitutional rights in conducting an investigatory stop of his vehicle. The existence of reasonable suspicion defeats both the unlawful search and seizure claim and the false imprisonment claim. Because no constitutional violation occurred, it is not necessary to discuss Schardt's qualified immunity argument. Summary judgment will be granted in favor of Corporal Schardt and against Chilcott in this regard.

B. The *Monell* Claim against the City of Erie

Chilcott brings a *Monell* claim against the City of Erie based on its failure to train its police officers. A *Monell* claim against a municipality will not lie where, as here, a plaintiff "suffered no constitutional injury at the hands of an individual police officer." *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

Because Corporal Schardt's conduct did not violate Chilcott's constitutional rights, the *Monell* claim against the City fails.

An appropriate Order follows this Memorandum Opinion.

ORDER

AND NOW, this 30th day of September 2021, for the reasons set forth in the accompanying Memorandum Opinion,

IT IS HEREBY ORDERED that Plaintiff's motion for summary judgment [ECF No. 19] is DENIED.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment [ECF No. 15] is GRANTED. Judgment is hereby entered in favor of Defendants and against Plaintiff as to all claims.

The Clerk of Court is directed to close this case.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN THAT REGIONAL HOME HEALTH AND HOSPICE, a Pennsylvania nonprofit corporation (the "Corporation"), with a registered address of 232 West 25th Street, Erie, Pennsylvania, 16544 intends to withdraw from doing business in Pennsylvania and file Articles of Dissolution.

ALLEGHENY HEALTH NETWORK
Christopher A. Reinard, Esq.
120 Fifth Avenue, FAPHM 214A
Pittsburgh, PA 15222
Attorney for Regional Home Health and Hospice

Nov. 19

INCORPORATION NOTICE

Notice is hereby given that the Dylan Matz Foundation has been incorporated under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988, as amended.

Nov. 19

AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE
Clerk of Records
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division, of the Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, November 10, 2021** and confirmed Nisi.

December 22, 2021 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

2021	ESTATE	ACCOUNTANT	ATTORNEY
320	Joyceann Osterberg a/k/a Joyce Ann Osterberg a/k/a Joyce A. Osterberg a/k/a Joyce Osterberg	Patricia Anne Pavolko Executrix	Grant M. Yochim, Esq.
321	Nancy Jean Ostrowski a/k/a Nancy J. Ostrowski	Donelle K. Noble Administratrix	Craig A. Zonna, Esq.
322	Henry Wojtkielewicz a/k/a Henry Ward a/k/a Henry R. Wojtkielewicz a/k/a Henry R. Wojtkielewicz Ward	Melissa L. Larese, Esq. Executrix	Melissa L. Larese, Esq.
323	Mary Elizabeth Seneta a/k/a Mary Seneta	Jane Frawley Administratrix	Grant M. Yochim, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Nov. 19, 26

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

BEARD, DANNY R., SR., deceased
Late of Concord Township, Erie County, PA
Executor: Danny Ray Beard, Jr.
Attorney: Noah A. Erde, Esq., Cressman Erde Ferguson, LLC, 300 Arch Street, Meadville, PA 16335

BINGHAM, JOHN J., a/k/a JACK BINGHAM, deceased
Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Administratrix: Carol S. Bingham, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

BISHOP, DANIEL, a/k/a DANIEL R. BISHOP, deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Kendra H. Fitzgerald, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506
Attorney: Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

CHANEY, THOMAS LEE, deceased
Late of the City of Erie
Executrix: Kerrie F. Wasiulewski
Attorney: John Mizner, Esquire, 311 West Sixth Street, Erie, PA 16507

CHASE, LEONA M., deceased
Late of Erie County, PA
Executrix: Elizabeth Brew Walbridge
Attorney: Elizabeth Brew Walbridge, Esq., 4258 West Lake Road, Erie, PA

LEWIS, VICTOR L., a/k/a VICTOR LEWIS, deceased
Late of the Township of McKean, County of Erie, Commonwealth of Pennsylvania
Co-executrices: Debra J. Lewis, 6219 West Road, McKean, PA 16426 and Nancy L. Lewis, 9016 Neuburger Road, Fairview, PA 16415
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

MAJERIK, SALLY, deceased
Late of the Borough of Union City, County of Erie, Pennsylvania
Administratrix: Paula Johnson, c/o 502 Parade Street, Erie, PA 16507
Attorney: Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

MILLS, JOHN EDWARD, a/k/a JOHN E. MILLS, a/k/a JOHN MILLS, deceased
Late of the Township of North East, County of Erie, State of Pennsylvania
Co-executors: W. Tad Bowers and Susan Travis, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

PRINDLE, MARK ANTHONY, a/k/a MARK ANTHONY PRINDLE, JR., deceased
Late of the City of Erie, County of Erie, Commonwealth of PA
Administratrix: Sandra Prindle, c/o 102 East 4th Street, Erie, PA 16507
Attorney: Richard E. Filippi, Esquire, 102 East 4th Street, Erie, PA 16507

SAYRE, MICHAEL B., deceased
Late of Harborcreek Township, Erie County, Erie, PA
Administrator: Robert P. Sayre, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

SHUFESKY, EUGENE F., deceased
Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Donna Herder, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

STRONG, JOHN C., a/k/a JOHN CHARLES STRONG, deceased
Late of North East Borough, County of Erie and Commonwealth of Pennsylvania
Executrix: Elizabeth Brown, 6872 Garfield Avenue, Harborcreek, Pennsylvania 16421-1409
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SUNDBERG, WILDA L., a/k/a WILDA SUNDBERG, deceased
Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Sallee S. Rabenold, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Eugene C. Sundberg, Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

SECOND PUBLICATION

BENACCI, THERESA DeSANIT, a/k/a THERESA M. BENACCI, a/k/a THERESA BENACCI, deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Co-administrators: David A. Lossie and Paul E. Lossie, c/o Spero Law Office, 3213 West 26th Street, Erie, Pennsylvania 16506
Attorney: Joseph B. Spero, Esquire, Spero Law Office, 3213 West 26th Street, Erie, Pennsylvania 16506

FELDMILLER, SHIRLEY E., a/k/a SHIRLEY FELDMILLER, deceased
Late of the Township of Conneaut, County of Erie, Commonwealth of Pennsylvania
Executor: James M. Feldmiller, 75 Market Street, Albion, PA 16401
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

HESS, CYNTHIA M., deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Karen Coleman, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

KUBANEY, JUDITH J., a/k/a JUDY KUBANEY, a/k/a JUDITH KUBANEY, deceased
Late of Fairview Township, Erie County, Pennsylvania
Executor: James M. Kubaney, c/o Thomas C. Hoffman II, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Thomas C. Hoffman II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

McVEY, LEE H., deceased
Late of Fairview Twp., Erie County, Pennsylvania
Executor: Jeffrey Lee McVey, c/o 213 E. State Street, Kennett Square, PA 19348
Attorney: Edward M. Foley, Esq., Brutscher Foley Milliner Land & Kelly, LLP, 213 E. State Street, Kennett Square, PA 19348

MOROSKY, WILLIAM PAUL, a/k/a WILLIAM P. MOROSKY, a/k/a WILLIAM MOROSKY, deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Keri A. Vercillo
Attorney: Craig A. Zonna, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

O'SULLIVAN, CAROL R., a/k/a CAROL ROSE O'SULLIVAN, deceased
Late of the Township of Amity, County of Erie and State of Pennsylvania
Executor: Daniel F. O'Sullivan, 45 Wheatmore Court, Springboro, OH 45066
Attorney: None

THIRD PUBLICATION

BRACE, BRETT A., deceased
Late of Waterford Borough, County of Erie and Commonwealth of Pennsylvania
Executor: Darrell L. Brace, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

DOBMEIER, GERARD J., deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-administrators: Patricia Seapker and Gerard F. Dobmeier, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

MALLON, CHRISTINE MARIE, a/k/a CHRISTINE M. MALLON, deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Jacqueline L. Mallon, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

NICK, RODGER E., a/k/a RODGER EVERETT NICK, a/k/a RODGER NICK, deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Ronald E. Nick, 11682 Route 97N, Lot 119, Waterford, PA 16441
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

PAYNE, ERIC T.,
deceased
Late of Summit Township, County of Erie, and State of Pennsylvania
Administratrix: Carrie A. Payne, 3755 Hamilton Road, Erie, PA 16510
Attorney: Tina Fryling, Esq., 4402 Peach Street, Suite 3, Erie, PA 16509

SAUERS-BAKER, BARBARA JEAN, a/k/a BARBARA J. SAUERS,
deceased
Late of the City of Erie, Erie County
Administrator: John W. Baker
Attorney: Rachel A. George, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

SMITH, MARGARET M., a/k/a MARGARET SMITH,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Judith A. Smith
Attorney: David R. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

VAN HORN, RICHARD H., a/k/a RICHARD VAN HORN,
deceased
Late of the City of Erie, Erie County
Executor: Stephen R. Van Horn
Attorney: Steven E. George, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

VOGEL, IRENE F.,
deceased
Late of the Borough of North East, County of Erie, Commonwealth of Pennsylvania
Executrix: Marylou Osborne, c/o Leigh Ann Orton, Esquire, Orton & Orton, 68 East Main Street, North East, PA 16428
Attorney: Leigh Ann Orton, Esquire, Orton & Orton, 68 East Main Street, North East, PA 16428

LIVE LUNCH-N-LEARN SEMINAR | ECBA ERIE COUNTY BAR ASSOCIATION

Support Rules Update

Tuesday, December 14, 2021

The Will J. Schaaf & Mary B. Schaaf Education Center at the ECBA,
429 West 6th Street, Erie, PA 16507 or **via Zoom**

Registration: 11:45 a.m.; **Seminar:** 12:00 - 1:30 p.m.

Cost: $70 ECBA Members (Judges & Attorneys) and their Non-attorney Staff; $90 Non-members

If attending in-person, a boxed lunch will be provided.

1.5 hours Substantive CLE credits

FOR MORE INFORMATION AND TO REGISTER, VISIT:
https://www.eriebar.com/events/public-registration/1748

MARK YOUR CALENDAR!

THURSDAY, DECEMBER 9, 2021

BAYRFRONT CONVENTION CENTER, 1 SASSAFRAS PIER, ERIE

The ECBA Annual Membership Meeting will be held in-person and via Zoom.

For the safety of all attendees and guests, masks are required.

2:30 P.M.
THE CONSTITUTIONAL PATHWAY TO BLACK LIVES MATTER
1 ETHICS CLE CREDIT, $47.00
Parris Jerome Baker, PhD, MSSA, Associate Professor, Gannon University & Director, Social Work, Mortuary Science, and Gerontology Programs
The impact and contributions of the U.S. Constitution on race relations in America and the appalling silence of good people (King, Jr., M. L., Letter from a Birmingham Jail. In Why We Can't Wait, 1964).

3:30 P.M. - BREAK

3:45 P.M.
AVOIDING LEGAL MALPRACTICE: STEPS YOU CAN TAKE TO MINIMIZE YOUR RISKS
1 ETHICS CLE CREDIT, $47.00
Scott R. Eberle, Esq., Burns White LLC
This program features information on a variety of issues that have been identified as common areas where attorneys can be exposed to liability or malpractice claims and focuses on steps to take to avoid, or at least mitigate, potential claims. The program will provide the perspective of a risk manager, addressing some of the scenarios attorneys may encounter as we move toward a post-COVID environment. Engagement letters, remote work, cloud computing and cybersecurity are among the chief topics. Attend and get tips on steps you can take to cover your practice and be prepared if a claim is asserted against you or your firm. *Attorneys who are insured through the Pennsylvania Bar Association Insurance Program, advised and administered by USI Affinity, have the ability to earn up to a 7.5% discount on their malpractice insurance by attending.*

4:45 P.M. - COCKTAIL BREAK

5:30 P.M.
2021 ECBA ANNUAL MEMBERSHIP MEETING
Nicholas R. Pagliari, Esq., ECBA Board President
Agenda with additional speakers to come.

6:30 P.M.
ECBA MEMBERSHIP APPRECIATION COCKTAIL RECEPTION
Compliments of the Erie County Bar Association!

All Annual Meeting attendees will receive a themed gift of appreciation the day of the event.

REGISTER AT:
HTTPS://WWW.ERIEBAR.COM/EVENTS/PUBLIC-REGISTRATION/1747

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

GRANT T. MILLER..... (office) 814-878-5817
Deputy Attorney General ..... (mobile) 814-240-8845
Insurance Fraud Section / Medicaid Fraud Control Section
Office of the Attorney General of Pennsylvania
4801 Atlantic Avenue
Erie, PA 16506 ..... *grmiller@attorneygeneral.gov*

DENISE C. PEKELNICKY.....814-347-5593
Law Office of Denise C. Pekelnicky.....(f) 814-347-5267
93 West Main Street
North East, PA 16428.....*denise@dcplawoffice.com*

JUSTIN J. SMITH 814-602-8725
The Travis Law Firm, P.C.
100 State Street, Suite 210
Erie, PA 16507 .....*jsmith@thetravislawfirm.net*

WEEKLY WRAP-UP

November 19, 2021

EEOC, DOL and NLRB announce joint initiative to protect workers from retaliation for exercising their rights in the workplace - On November 10, 2021, three federal agencies tasked with enforcing workplace laws announced a joint initiative to combat retaliation in the workplace. As a refresher, the EEOC protects a worker's right under Title VII and other non-discrimination laws to enjoy a workplace free from harassment and discrimination. The DOL enforces federal labor standards per the Fair Labor Standards Act, as well as health and safety regulations through OSHA. The NLRB generally protects a worker's right to organize to improve working conditions, among other rights guaranteed by National Labor Relations Act. Read more ... https://www.natlawreview.com/article/eeoc-dol-and-nlrb-announce-joint-initiative-to-protect-workers-retaliation

Viewers see pretrial process and mock trial in lawyer's new show - Houston personal injury lawyer McDonald "Don" Worley has a new 12-episode show on Discovery ID that uses "bits and pieces" of real cases to show viewers the pretrial investigation process. The show is called Power of Attorney: Don Worley. While the cases aren't entirely real, the people who appear in the series are "real investigators, real lawyers, real experts," Worley told the *Houston Chronicle*. The show begins with Worley meeting a lawyer who needs money and help investigating a lawsuit. A mock trial follows the case investigation, "where Worley and his team learn everything they need to know to either win the case, or settle for big bucks," the press release said. Read more ... https://www.abajournal.com/news/article/viewers-see-pretrial-process-and-mock-trial-in-lawyers-new-show-on-discovery-id

Oh, snap! - Snap Inc., the creator of messaging app Snapchat, and its top officers were slapped with a securities class action Thursday in California Central District Court. The suit, filed by Rosen Law Firm, accuses the defendants of misleading investors about the impact Apple's recently updated data privacy features for the iPhone would have on Snap's advertising business. Counsel have not yet appeared for the defendants. The case is 2:21-cv-08892, *Black v. Snap Inc. et al.*

10 tips for law firm management during the holidays - Even though the Holidays are a time of cheer, law firm management during the holidays can cause more stress than usual. The holidays come every year and yet, many law firms find themselves scrambling to manage staff, time off and client communication. This is why it's important to have a plan in place for how law firms will manage their practices during the holiday season. By following these 10 tips for law firm management during the holidays, lawyers and staff will be able to enjoy the season without letting anything fall through the cracks or lose momentum. Read more ... https://www.natlawreview.com/article/10-tips-law-firm-management-during-holidays

BUSINESS PARTNERS

LAWPAY:
https://lawpay.com/member-programs/erie-county-bar

Velocity Network:
https://www.velocity.net/

NFP Structured Settlements:
https://nfpstructures.com/pdf/nfp-brochure.pdf

Northwest Bank:
https://www.northwest.bank/

Maloney, Reed, Scarpitti & Co.:
https://www.maloneyreedscarpittiandco.com/

Thomson Reuters:
https://www.thomsonreuters.com/en.html

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