

SUMMARY MEMORANDUM OPINION; NOT INTENDED FOR PUBLICATION.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA****ROBERT CORBETT**

Plaintiff,

v.

GLENN SMITH

Defendant.

Civil Action No. 9-cv-1334 (RLW)

MEMORANDUM OPINION

Plaintiff Robert Corbett asserts four claims in his complaint: violation of his constitutional rights, pursuant to 42 U.S.C. § 1983, to be free from illegal seizure and/or the use of excessive force by law enforcement, common law assault, common law battery and common law false imprisonment. Defendant Glenn Smith has moved for summary judgment on all four counts. For the reasons set forth below, the Court denies the motion for summary judgment.

The party seeking summary judgment bears the initial burden of demonstrating that no genuine issues of material fact exist. *See* Fed. R. Civ. P. 56.

In ruling on a motion for summary judgment, the court must draw all justifiable inferences in the nonmoving party's favor and accept the nonmoving party's evidence as true. *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505. A nonmoving party, however, must establish more than "the mere existence of a scintilla of evidence" in support of its position. *Id.* at 252, 106 S.Ct. 2505. . . .

[T]he nonmoving party may not rely solely on allegations or conclusory statements. *Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999); *Harding v. Gray*, 9 F.3d 150, 154 (D.C. Cir. 1993). Rather, the nonmoving party must present specific facts that would enable a reasonable jury to find in its favor.

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Greene, 164 F.3d at 675. If the evidence “is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249–50, 106 S.Ct. 2505 (internal citations omitted).

Felton v. Haris Design & Const. Co., 417 F. Supp. 2d 17, 20-21 (D.D.C. 2006).

Glenn Smith, who was on duty as a police officer for the Prince George’s County Police Department during the events in question, raises the defense of qualified immunity as grounds for summary judgment on the Section 1983 claim. In order to defeat the defense motion for summary judgment based on the qualified immunity defense to his Section 1983 claim, Plaintiff must prove: 1) that Officer Smith’s conduct violated his constitutional rights, 2) that the constitutional right was clearly established at the time of Officer Smith’s conduct, and 3) that Officer Smith’s conduct was such that an objectively reasonable official would not have believed such conduct to be lawful. *See, e.g., Mohammed v. Rumsfeld*, --- F.3d ---, 2011 WL 2462851, at *5-6 (D.C. Cir. 2011); *Bame v. Dillard*, 637 F.3d 380, 384 (D.C. Cir. 2011).

Defendant is not entitled to summary judgment on the illegal seizure theory of the Section 1983 claim. In the light most favorable to the non-movant (Plaintiff), the evidence shows that on May 2, 2008, Officer Smith detained a group of at least three African American males who were standing outside an apartment building, and that Plaintiff was among this group that was detained. Prior to the detention, Officer Smith was aware of a report, which was several days (perhaps as much as a month) old, that three African American males had carjacked an ATV in the vicinity. While on patrol on May 2, Smith saw an ATV that matched the description of the carjacked vehicle being ridden by an African American male. Officer Smith activated his lights and siren, but the ATV fled and Officer Smith lost sight of the vehicle. Some minutes later, he saw the ATV again, driven by a different African American male, and he followed the ATV to an apartment complex parking lot. Officer Smith observed the second ATV rider stop

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and get off the vehicle near where the group of men that included the Plaintiff was standing. Smith then observed the second ATV rider walk in the direction of the group and enter an apartment building. At this point, the first rider (who had previously fled Officer Smith) came from the area near where the group including Plaintiff was standing and got back onto the ATV, fleeing the area. Officer Smith called for backup, retrieved an assault rifle from his trunk, approached the group of three or more African American men that included Plaintiff, and ordered everyone to the ground.

Officer Smith contends that, upon these facts, he is entitled to summary judgment on the basis of qualified immunity because there was reasonable, articulable suspicion that Plaintiff may have been one of the three African American males who participated in the carjacking of the ATV. Officer Smith asserts that it was reasonable for him to believe that this was in the fact the carjacked ATV, that the two African American men who had ridden may have been two of the carjackers, and that one of the African American men in the group standing outside the apartment building was the third carjacker, given the proximity and potential association of this group of men to the two ATV riders. The Court disagrees. Even assuming it was reasonable for Officer Smith to conclude that the ATV he observed was the same ATV that was the subject of the carjacking report, and that it was reasonable for Officer Smith to conclude that the two men riding the ATV may have participated in the crime, the Court is still left with the fact that the only description that Officer Smith recalled from the crime report was of “three African American males” who were all armed with handguns. Thus, Officer Smith had only the vaguest of descriptions for the three carjackers, and there was no particularized, individualized suspicion that Plaintiff was the third carjacker. Matching the description by being an African American male is simply not enough. *See, e.g., In re K.P.*, 951 A.2d 793 (D.C. 2008) (no reasonable

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suspicion to stop a group of juveniles based on crime report that a juvenile, who was part of a group, had threatened the complainant, where “the police lacked the necessary particularized suspicion that this group of juveniles had been the one from which an individual emerged to threaten” the complainant); *In re T.L.L.*, 729 A.2d 334 (D.C. 1999) (no reasonable suspicion where two of a group of about five or ten suspects were detained about an hour after the robbery at a location four blocks from scene of a crime, where suspects matched a description which could have fit many or most young black males). Thus, there is evidence to support a claim that Officer Smith violated a clearly established right of the Plaintiff to be free of unreasonable seizure.

In this case, the lack of reasonable, articulable suspicion is even more plain because, by Officer Smith’s own admission, the report of the crime was “several days” old. Indeed, Officer Smith testified that he did not know exactly when the report of the crime was made, and that the report could have been “two weeks or more, three weeks, a month” prior to the detention. Under these circumstances, the Court rules that Officer Smith has failed to meet his burden of proving that an objectively reasonable police officer would have believed it was lawful to detain this entire group of men, including Plaintiff, based on the vague and generalized description from a stale, several-day-old (perhaps a month old) report of “three African American males” involved in a carjacking. *See Matter of A.S.*, 614 A.2d 534, (D.C. 1992) (court finds no reasonable articulable suspicion to stop three youths, given very generalized description that fit many youths in the area and lapse of time between lookout and detention, noting that “associational” and “locational” taints have been rejected as legitimate grounds for creating suspicion).

With respect to the excessive force claim under Section 1983, summary judgment for the defense is clearly not appropriate. Taking the facts in the light most favorable to the Plaintiff,

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Officer Smith stomped on the back of Plaintiff's head, causing his head to smash into the ground, even though Plaintiff had complied with the officer's instructions to lay face down on the ground. Verified Complaint ¶¶ 10-14. If proven, those actions violated clearly established constitutional rights against the use of excessive force, and there can be no reasonable contention that an objectively reasonable police officer would have believed such conduct to be lawful. *See, e.g., Johnson v. District of Columbia*, 528 F.3d 969 (D.C. Cir. 2008) (where there was factual dispute as to whether police officer repeatedly kicked plaintiff in the groin after he had surrendered and was down on the ground, officer was not entitled to summary judgment on qualified immunity defense on excessive force claim); *DeGraff v. District of Columbia*, 120 F.3d 298, 301-02 (D.C. Cir. 1997) (denying summary judgment on excessive force claim where "[w]hat can be said at this time is that based solely on [plaintiff's] version of the facts, it would be hard to justify [the police officers'] actions").

With respect to the common law assault and battery claims, the Defendant raises the "qualified privilege" defense, and he asserts that the analysis is essentially the same as for the qualified immunity defense to the Section 1983 excessive force claim. For the same reasons that the Court denied summary judgment on the Section 1983 claim as stated immediately above, the Court denies the motion for summary judgment as to the assault and battery claims.

Finally, the Defendant moves for summary judgment on the common law false imprisonment claim, asserting that either the detention was legally justified, or even if not, that Officer Smith believed in good faith that the detention was legally justified and that such a belief was objectively reasonable. However, as shown above in the discussion of the Section 1983 claim for illegal seizure, Officer Smith has failed to demonstrate through the undisputed facts that the seizure of Plaintiff was justified by particularized, reasonable articulable suspicion; nor

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has he shown that it was objectively reasonable for him to believe that the detention was legally justified.

Thus, for the foregoing reasons, the motion for summary judgment is denied.

SO ORDERED.

July 14, 2011

/s/

Robert L. Wilkins
United States District Judge