

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 09, 2017

UNITED STATES DISTRICT COURT SEAN F. MCAVOY, CLERK
EASTERN DISTRICT OF WASHINGTON

ROY CHEESMAN,

No. 1:17-CV-03018-SMJ

Plaintiff,

**ORDER GRANTING
DEFENDANTS' SUMMARY
JUDGMENT**

v.

ELLENSBURG POLICE
DEPARTMENT and DALE MILLER,

Defendants.

I. INTRODUCTION

Plaintiff Roy Cheesman alleges that Defendants Ellensburg Police Department and Dale Miller have violated his rights by engaging in conspiracy, discrimination, making false reports, and malicious prosecution in numerous interactions with him over the last 15 years. Defendants move for summary judgment on all of Cheesman's claims, arguing several alternative grounds for dismissal. It is not necessary to address most of Defendants' arguments because Cheesman fails to present any cognizable claims supported by evidence or even plausible factual allegations. Accordingly, Defendants motion is granted.

1 **II. BACKGROUND**

2 Cheesman alleges that in 2005 he was locked inside his home and
3 interrogated by City of Ellensburg Police Officer Dale Miller. ECF No. 1-2 at 4.
4 Dale Miller (Defendant Miller) has been the Chief of the Ellensburg Police
5 Department since August 2006, but was not employed by the Ellensburg Police
6 Department in 2005. ECF No. 12 at 2. This 2005 incident was apparently
7 connected to a police investigation of allegations of domestic violence by
8 Cheesman’s wife. ECF No. 15-2 at 11–12.

9 Cheesman alleges that in 2007, two police officers came to his house and
10 questioned him about whether he made calls to a medical clinic, and then arrested
11 him.¹ ECF No. 1-2 at 5. He alleges that the officers did not advise him of his
12 *Miranda* rights, and that they threatened him that they would “get [Cheesman]
13 either way.” ECF No. 1-2 at 5. Cheesman was charged with unspecified offenses,
14 but was not convicted. ECF No. 1-2 at 5. He claims that he “was forced to admit
15 accusations and incidents that never happen[ed].” ECF No. 1-2 at 5.

16 Cheesman moved to Seattle in 2008. He claims that he made this move
17 because he was threatened by Defendant Miller. ECF No. 1-2 at 5.

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20 ¹ It is unclear from the record whether these allegations are connected to an investigation in January 2008 into alleged harassment and threats of violence Cheesman made to employees at Community Health of Central Washington. ECF No. 15-2 at 13–16.

1 Cheesman alleges that in March 2016, Defendant Miller called him at his
2 home and told him “not to go 400ft close [sic] to Legal Weed marijuana store,”
3 and “accused [him] of ransacking the Legal Weed Marijuana store business.” ECF
4 No. 1-2 at 5. Cheesman alleges he received additional warnings from Defendant
5 Miller not to “go to Charter business store,” and that employees at Habitat for
6 Humanity were complaining about him and not to “go there and start shooting.”
7 ECF No. 1-2 at 6. Cheesman further claims that Defendant Miller told employees
8 at Habitat for Humanity that Cheesman “threatened to come [sic] back and shoot.”
9 ECF No. 1-2 at 6. A police report indicates that Cheesman made threats to
10 employees at the Habitat for Humanity store, and that Ellensburg Police Officer
11 Andrew Larson called Cheesman and informed him that he was prohibited from
12 entering the Habitat for Humanity property. ECF No. 15-2 at 24–25. Cheesman
13 alleges that Defendant Miller refused to take his phone calls about these incidents.
14 ECF No. 1-2 at 6.

15 Cheesman alleges that in November 2016, Defendant Miller requested that
16 he fix a fence that a neighbor complained about, ECF No. 1-2 at 6. A police report
17 indicates that Ellensburg Police Officer Lucas Anderson was dispatched to
18 Cheesman’s property on a report from Cheesman’s neighbor that Cheesman had
19 taken down the fence between their properties and was attempting to replace it
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1 with upended pallets. ECF No. 15-2 at 28–29. Officer Anderson advised the
2 neighbor that this was a civil matter. ECF No. 15-3 at 29.

3 Cheesman alleges that in December 2016, a female police officer made a
4 false statement regarding a child abuse investigation, ECF No. 1-2 at 7. This
5 incident appears to be related to an investigation into alleged physical abuse of
6 Cheesmans’ five-year-old daughter, which was referred to the Kittitas County
7 Prosecutor. ECF No. 15-2 at 1–8.

8 Cheesman alleges that in January 2017, Defendant Miller drove by
9 Cheesman’s house after Cheesman made a non-emergency call “regarding
10 confidentiality in 911 buildings.” ECF No. 1-2 at 7.

11 Defendant Miller does not recall having any direct contact with Cheesman
12 or receiving any phone calls from Cheesman prior to the time he commenced this
13 lawsuit, and he denies refusing to take a call from Cheesman. ECF No. 12 at 3.
14 Chief Miller denies any involvement in the events described in Cheesman’s
15 complaint ECF No. 12 at 3.

16 Cheesman initially filed a claim in Kittitas County Superior Court in May
17 2016, and filed amended complaint in Kittitas County Superior Court on January
18 13, 2017. ECF No. 1-1, 1-2. He alleges claims of conspiracy, violation of civil
19 rights, discrimination, intentional infliction of emotional distress, filing a false
20 police report under Washington Revised Code (RCW) § 42.20.040, and malicious

1 prosecution under RCW § 9.62.010 against the Ellensburg Police Department and
2 Defendant Miller. ECF No. 1-2 at 7–8. Cheesman did not file a notice of claim for
3 damages with the City of Ellensburg. ECF No. 13 at 2.

4 Defendants removed this case to this court, ECF No. 1, and now move for
5 summary judgment on each of Cheesman’s claims, ECF No. 10.

6 III. SUMMARY JUDGMENT STANDARD

7 Summary judgment is appropriate if the “movant shows that there is no
8 genuine dispute as to any material fact and the movant is entitled to judgment as a
9 matter of law.” Fed. R. Civ. P. 56(a). Once a party has moved for summary
10 judgment, the opposing party must point to specific facts establishing that there is
11 a genuine dispute for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
12 the nonmoving party fails to make such a showing for any of the elements essential
13 to its case for which it bears the burden of proof, the trial court should grant the
14 summary judgment motion. *Id.* at 322. “When the moving party has carried its
15 burden under Rule [56(a)], its opponent must do more than simply show that there
16 is some metaphysical doubt as to the material facts. . . . [T]he nonmoving party must
17 come forward with ‘specific facts showing that there is a genuine issue for trial.’”
18 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)
19 (internal citation omitted). When considering a motion for summary judgment, the
20 Court does not weigh the evidence or assess credibility; instead, “the evidence of

1 the non-movant is to be believed, and all justifiable inferences are to be drawn in
2 his favor.” *Sgt. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). “In short,
3 what is required to defeat summary judgment is simply evidence ‘such that a
4 reasonable juror drawing all inferences in favor of the respondent could return a
5 verdict in the respondent’s favor.’” *Zetwick v. Cty. of Yolo*, 850 F.3d 436, 441 (9th
6 Cir. 2017) (quoting *Reza v. Pearce*, 806 F.3d 497, 505 (9th Cir. 2015)).

7 **IV. DISCUSSION**

8 Defendants raise numerous, alternative arguments for dismissal of
9 Cheesman’s claims, including that the Ellensburg Police Department is not an
10 party capable of being sued under 42 U.S.C. § 1983; Cheesman fails to state a
11 basis for municipal liability against the Department under *Monell v. Department*
12 *of Social Services of City of New York*, 436 U.S. 658, 691 (1978); Defendant
13 Miller is entitled to qualified immunity, and there is no evidence supporting the
14 claims against him; Cheesman’s claims are time barred; and Cheesman fails to
15 allege cognizable claims. ECF No. 10. It is unnecessary to address most of these
16 arguments because Cheesman’s claims are entirely unsupported.

17 Cheesman first alleges conspiracy to violate unspecified civil rights. ECF
18 No. 1-2 at 7. “A civil conspiracy is a combination of two or more persons who, by
19 some concerted action, intend to accomplish some unlawful objective for the
20 purpose of harming another which results in damage.” *Lacy v. Maricopa Cty.*, 693

1 F.3d 896, 935 (9th Cir. 2012) (en banc) (quoting *Gilbrook v. City of Westminster*,
2 177 F.3d 839, 856–57 (9th Cir. 1999) (en banc)). Cheesman fails to allege any
3 concerted action or unlawful purpose.

4 Second, Cheesman alleges discrimination in violation of “42 U.S.C. 2000a,
5 1983, 1985(3), and 18 U.S.C. § 241 of Civil Rights Act of 1964.” ECF No. 1-2 at
6 7. 42 U.S.C. § 2000a prohibits discrimination in places of public accommodation
7 on the grounds of race, color, religion, or national origin. Importantly, the statute
8 does not prohibit barring a person from entering an establishment where he has
9 threatened employees. Cheesman has not alleged or presented any facts
10 supporting that he was discriminated against or barred from any public
11 establishment on the basis of race, color, religion or national origin. 42 U.S.C.
12 § 1983 does not create any substantive rights, it simply creates a cause of action
13 for deprivation of certain rights. 42 U.S.C. § 1985 prohibits certain conspiracies to
14 interfere with civil rights. As discussed, Cheesman has not alleged any basis for
15 conspiracy in this case. 18 U.S.C. § 241 imposes criminal penalties for conspiracy
16 to interfere with the exercise of Constitutional rights or privileges. It does not
17 create any civil cause of action, and, in any case, Cheesman fails to allege a
18 conspiracy.

19 Third, Cheesman alleges intentional infliction of emotional distress. ECF
20 No. 1-2 at 8. To establish a claim of intentional infliction of emotional distress a

1 plaintiff must show that “(1) he or she suffered severe emotional distress; (2) the
2 emotional distress was inflicted intentionally or recklessly, but not negligently; (3)
3 the conduct complained of was outrageous and extreme; and (4) he or she
4 personally was the subject of the outrageous conduct.” *Grange Ins. Ass’n v.*
5 *Roberts*, 320 P.3d 77, 86 (Wash. App. 2013). Conduct meets this standard only
6 when it is so outrageous and extreme “as to go beyond all possible bounds of
7 decency, and to be regarded as atrocious, and utterly intolerable in a civilized
8 community.” *Id.* Cheesman has not alleged or provided facts suggesting reckless,
9 outrageous and extreme conduct by the Ellensburg Police Department or
10 Defendant Miller.

11 Finally, Cheesman alleges that police officers made false reports in
12 violation of RCW § 42.20.040, and engaged in malicious prosecution under RCW
13 § 9.62.010. These criminal statutes do not provide any private cause of action and
14 therefore provide no basis for Cheesman’s claims. Further, Cheesman has
15 presented no facts to support that any police report concerning him contains false
16 statements or that the Defendants maliciously caused Cheesman to be arrested or
17 prosecuted for a crime of which he was innocent.

18 Drawing all inferences from the record in favor of Cheesman, no reasonable
19 juror could find in his favor on any of his claims.

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V. CONCLUSION

For the reasons discussed, **IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment, **ECF No. 10**, is **GRANTED.**

2. The Clerk's Office is directed to **ENTER JUDGMENT** consistent with this order in Defendants' favor, and to **CLOSE** this case.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel and pro se Plaintiff.

DATED this 9th day of November 2017.



SALVADOR MENDOZA, JR.
United States District Judge