IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PETER J. SHELLEM and	:	
JOYCE SHELLEM,	:	
Plaintiffs	:	
	:	
	:	**CIVIL ACTION NO. 1:CV-99-854**
v.	:	
	:	
JONATHAN MAYS, et al.,	:	
Defendants	:	

MEMORANDUM AND ORDER

Plaintiffs' civil rights action pursuant to 42 U.S.C. §1983 is before the Court on Defendants' motion for summary judgment. Defendants argue that this 1983 civil rights action must be dismissed on two bases: (1) that the undisputed facts do not demonstrate violation of a constitutional right, and (2) that even assuming that Plaintiffs have established violation of a protected right, Defendants are entitled to qualified immunity. The motion has been fully briefed and is ripe for disposition. For the reasons set forth below, Defendants' motion for summary judgment will be denied.

I. Background

Plaintiffs' Section 1983 claim is premised on the following facts with relevant factual disputes noted where applicable.

At approximately 1:00 a.m. on the morning of September 4, 1998, Plaintiffs were roused from the upstairs bedroom of their Gardners, Pennsylvania home by Troopers Mays, Hanlon, Yunk and McCombs of the Pennsylvania State Police. Plaintiffs were informed that police were investigating an auto accident, that they suspected that Plaintiff Peter Shellem was involved, and

that they needed to check Plaintiff for injuries. Mr. and Mrs. Shellem protested, but left their bed and followed the officers downstairs to the living room, where Plaintiff Peter Shellem was examined by paramedics. Plaintiff was questioned about the accident, and after he signed a waiver of further medical treatment, police and paramedics left the Shellem home.

Earlier that evening Troopers Mays and Hanlon had been dispatched to an accident scene one-half mile from the Shellem home. The complaining witness told them that at approximately 10:30 that evening a vehicle had left the roadway and damaged a concrete step and rail on the witness's property, and that the driver had left the scene without contacting anyone. The troopers observed damage to the step and rail and to a tree, gouge marks on the road and berm, and paint transfers on the metal stair rail and on the roadway. From this evidence, the troopers concluded that the vehicle involved had indeed left the roadway, struck the stair railing and tree, and that it then "rolled over."

The troopers found an auto rear view mirror, papers, and some compact disc recordings scattered near the accident scene. One paper was an envelope addressed to Peter Shellem. The troopers proceeded from the accident scene to the Shellem residence. There they observed what they described as "gouge marks" similar to those at the accident scene leading up the driveway to the Shellem garage.[1]

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[1]Defendants maintain that the envelope contained Plaintiffs' home address, while Plaintiffs claim it was addressed to Peter Shellem at his business, The Patriot News. Plaintiffs dispute the officers' testimony that they learned of Shellem's home address from the envelope and used the address and the gouge marks to locate Plaintiffs' home. Although these inconsistencies may bear on the issue of punitive damages if Plaintiffs are proven correct, these factual disputes do not bear on the legal determination now required by the Court. The parties do not dispute that several hours elapsed between the accident and the police entry into the Shellem home.

Troopers Mays and Hanlon knocked at the Shellems' front door several times with no answer, and then at the back door, again, with no answer. En route to the rear door of the house, the troopers observed a small dark round spot, less than an inch in diameter, on the porch steps.[2] The troopers contacted the Carlisle Barracks to obtain the Shellems' telephone number. When advised that the number was unlisted, they visited the Shellems' neighbors and obtained their telephone number. Officers at the Carlisle Barracks called the number, and advised troopers at the scene that they could get no answer.

Troopers Mays and Hanlon then went from window to window of Plaintiffs' home, shining a spotlight into each. They activated the overhead lights on the police cruiser and called out to Shellem through an open window, and then, on a bullhorn. There was no response.

Trooper Mays then radioed his superior officer, Corporal Michael Hoffman, to notify him of his intent to enter the Shellem home. Mays removed the screen from a open window, and crawled through that window into the Shellems' home. He opened Plaintiffs' front door to Trooper Hanlon and admitted paramedics and Troopers Yunk and McCombs, who had been summoned by Mays to the scene to assist in entering the home. Troopers conducted a "sweep" of the downstairs rooms and opened the door to Plaintiffs' garage to inspect the damaged vehicle.

Troopers Mays, Hanlon, Yunk and McCombs then climbed the stairs to the Shellems' bedroom after calling out to them and hearing no answer. At least one trooper entered the bedroom with his service revolver drawn. Trooper Mays awakened Plaintiffs, advising them that the officers were investigating an accident in which they suspected Shellem had been injured.

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[2]The porch or deck on which the dark spot was observed is located at the rear of the home. In taking the most direct route from the garage to the house, one would not cross this porch.

Plaintiff Peter Shellem was directed to accompany the officers downstairs for a medical exam. [3]

II. Discussion

A. Legal Standard

Federal Rule of Civil Procedure 56 provides that summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A factual dispute is "material" if it might affect the outcome of the suit under the applicable law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "genuine" only if there is a sufficient evidentiary basis which would allow a reasonable fact-finder to return a verdict for the non-moving party. See id. at 249. The court must resolve all doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. See White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988).

Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in its complaint; instead, it must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (internal quotations omitted). Summary judgment should be granted where a party "fails

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[3]The Shellems maintain that they were ordered, not requested, to accompany police downstairs. Although the Complaint appears to allege constitutional violations occurring after the troopers entered the Shellem home, Defendants' Motion for Summary Judgment is directed only to the lawfulness of police conduct in entering the residence; accordingly, this factual dispute need not be resolved in this Court's determination of the pending motion.

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 at trial." Id.

B. Analysis

Defendants correctly note that under Seigert v. Gilley, 500 U.S. 226, 232 (1991), when a qualified immunity defense is raised, a Court first must determine whether the plaintiff has asserted a violation of a constitutional right at all. Only if that question is answered affirmatively need the Court determine whether the defendant is entitled to qualified immunity. Accordingly, Defendants first argue that they are entitled to summary judgment on Plaintiffs' claim because the undisputed facts demonstrate that the troopers did not violate the Fourth Amendment. Although Defendants characterize their argument as being that the undisputed facts demonstrate that the troopers did not violate the Fourth Amendment, the proper inquiry at this stage is whether Plaintiffs have asserted a constitutional violation, as opposed to whether Plaintiffs have demonstrated one. See Gruenke v. Seip, 2000 WL 1183064 at *4 (3d Cir. Aug. 21, 2000) (when a defendant claims qualified immunity, the first task is "to assess whether the Plaintiff's allegations are sufficient to establish the violation of a constitutional or statutory right at all").

As an initial matter, the law is clear that "[f]reedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment." Payton v. New York, 445 U.S. 573, 587 (1979) (quoting Dorman v. United States, 435 F.2d 385, 389 (D.C. Cir. 1970)). Accordingly, to enter a person's home, police officers ordinarily must first seek a warrant based on probable cause supported by oath and affirmation. Warrantless searches are presumptively unreasonable under the Fourth Amendment. See Payton, 445 U.S. at 586.

However, certain circumstances can excuse the warrant requirement. One of these

circumstances is exigent circumstances, the rationale claimed here. See Parkhurst v. Trapp, et al., 77 F.3d 707, 711 (3d Cir. 1996). The government bears the burden of proving that exigent circumstances existed. See id. "Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." Welsh v. Wisconsin, 466 U.S. 740, 750 (1984). Concern for the safety of others is a valid type of exigent circumstances. See Parkhurst, 77 F.3d at 711. However, to qualify as exigent, the officials must reasonably believe that someone is in imminent danger. See id.

Despite Defendants' argument to the contrary, the Court finds that Plaintiffs' allegations, if proven, are sufficient to establish a Fourth Amendment violation. Plaintiffs allege that Defendants entered their home without a warrant in the middle of the night, in a situation where no reasonable officer could have believed that exigent circumstances existed. If proven, Plaintiffs' allegations would certainly constitute a Fourth Amendment violation. Accordingly, the Court turns to an analysis of Defendants' qualified immunity defense.

Defendants argue that, even if a Fourth Amendment violation occurred, they are entitled to qualified immunity because a reasonable officer would have believed their actions to be lawful under the circumstances. Or, in other words, defendants argue that a reasonable officer would have had a rational basis for believing that exigent circumstances existed, justifying their entry into the home.

The Third Circuit recently summarized the qualified immunity doctrine and analysis. Under this

doctrine, "government officials performing discretionary functions generally

> are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987); see also Acierno v. Cloutier, 40 F.3d 597, 616 (3d Cir. 1994) (en banc).
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> In determining whether defendants are entitled to claim qualified immunity, we engage in a three-part inquiry: (1) whether the plaintiffs alleged a violation of their constitutional rights; (2) whether the right alleged to have been violated was clearly established in the existing law at the time of the violation; and (3) whether a reasonable official knew or should have known that the alleged action violated the plaintiff's rights.

Rouse v. Plantier, 182 F.3d 192, 196-97 (3d Cir. 1999). In Hunter v. Bryant, 520 U.S. 224, 228 (1991), the Supreme Court stated that qualified immunity ordinarily is to be resolved by the court, not the jury.

Under both Supreme Court and Third Circuit precedent, the first two issues in the qualified immunity analysis, whether the plaintiffs alleged a violation of their constitutional rights and whether the right alleged to have been violated was clearly established in the existing law at the time of the violation, are legal questions for the court. See Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997).

In Sharrar the Third Circuit also indicated that the third issue, whether a reasonable official knew or should have known that the action alleged violated plaintiff's rights, will in all but the rarest of cases be decided by the court.

> We thus hold, following the Supreme Court's decision in Hunter, that in deciding whether defendant officers are entitled to qualified immunity it is not only the evidence of "clearly established law" that is for the court but also whether the actions of the officers were objectively reasonable. Only if the historical facts

> material to the latter issue are in dispute, as in Karnes,[4] will there be an issue for the jury. The reasonableness of the officers' beliefs or actions is not a jury question, as the Supreme Court explained in Hunter.

Id. at 828.

With respect to the first question in the qualified immunity analysis, whether the plaintiffs alleged a violation of constitutional rights, the Court's holding supra resolves this issue in the affirmative. The second issue, whether the right alleged to have been violated was clearly established in the existing law at the time of the violation, must similarly be resolved in the affirmative. The Third Circuit's decisions in Good v. Dauphin County, 891 F.2d 1087 (3d Cir. 1989) and Parkhurst v. Trapp, et al., 77 F.3d 707 (3d Cir. 1996), both of which deal with when exigent circumstances justify a warrantless entry into the home, were decided at least two years before the incident forming the basis of Plaintiffs' complaint, which occurred on September 4, 1998. Accordingly, Good and Parkhurst, decided several years before the alleged constitutional violation in the instant case, warrant the conclusion that Plaintiffs' Fourth Amendment rights were clearly established at the time of the alleged violation because, had the troopers applied the principles of Good and Parkhurst to the facts of this case, they would have been aware that only a rational belief in imminent danger justified a warrantless entry into the Shellem home.

Finally, with regard to the third inquiry, whether a reasonable official knew or should have known that the alleged action violated the plaintiffs' rights, resolution of this issue should

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[4] In Karnes v. Skrutski, 62 F.3d 485 (3d Cir. 1995), the Third Circuit reversed the district court's grant of judgment as a matter of law on the issue of qualified immunity. Plaintiff had alleged that defendant police officers unlawfully searched his vehicle following an investigatory stop. The Third Circuit held that because there was a genuine issue of material fact as to whether the officers in fact believed that certain "vegetable matter" seen on the floor of the car was or likely could have been marijuana, the issue of the officers' right to qualified immunity was an issue of fact for the jury.

be made by the Court, unless there is a dispute regarding material facts relevant to this issue, as was the case in Karnes. See Sharrar, 128 F.3d at 828.

As noted above, although factual disputes exist in this case, those disputes have no bearing on the issue now before the Court: whether a reasonable officer would have believed his actions to be lawful under the circumstances, or stated another way, whether a reasonable officer, possessed of the facts known to these officers, would have reasonably concluded that exigent circumstances justified his entry into the home.

Exigent circumstances excuse the warrant requirement only where police reasonably believe that entry into the home is necessary to protect life or address imminent danger. Police could not have reasonably feared the loss of life or threatened serious bodily injury so as to justify a warrantless home entry under the facts presented here. Certainly, evidence gathered at the accident scene suggested the possibility of severe property damage. Damage to the roadway and adjoining property support a conclusion that the car involved was badly damaged. However, even direct evidence of severe property damage does not reasonably lead to the conclusion that severe injury requiring emergency intervention resulted. This is especially so in light of other evidence available to officers. The witness reported that the driver got out of his vehicle, walked about, and then returned to his car, apparently without assistance, and drove from the scene. No injury to the driver was noted or reported. The driver then drove from the accident into the night, successfully negotiating his way to the Shellem property. The car, which evidence suggested was being driven on a flat tire (hence, the "gouge marks" from the rims), making it more difficult to steer, apparently was maneuvered into the Shellem driveway and then into the

garage, and the garage door closed and secured.[5] Under these circumstances, no reasonable officer would have concluded that the driver was seriously injured, and, several hours after the accident, in imminent danger absent police intervention.[6]

The troopers obtained no new information once they reached the Shellem home that make for exigent circumstances. A small dark spot, even if reasonably assumed to be blood, does not signal imminent danger. Similarly, repeated unsuccessful attempts by officers to get some response from inside the Shellem house would support any number of conclusions; among them that the Shellems were asleep, not at home, or not receptive to a 1:00 a.m. visit by police.

This court cannot, applying the standard for warrantless entry adopted by this circuit, see Parkhurst, 77 F.3d at 711, find that the evidence from the accident scene, coupled with the presence of a small round dark spot on the back porch (even if reasonably suspected to be blood) and the refusal of occupants to answer the door, creates exigent circumstances justifying a warrantless home entry. Were that the law, no citizen would ever be secure from the invasion of his home by police. A reasonable police officer possessed of the facts known to Troopers Mays and Hanlon would not have invaded the privacy of the Shellem residence, thus, qualified immunity is unavailable to these troopers.

Because the parties have not produced evidence related to the application of qualified immunity to Troopers Yunk and McCombs, this Court cannot rule on their entitlement to

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[5]Because this Court's assessment must be based on what was known to the officers at the time, the fact that Plaintiff Peter Shellem testified on deposition that it was his wife who returned the car to the garage that evening does not change the analysis here.

[6]Indeed, the troopers admit that on arriving at the Shellem household their purpose was to investigate an accident, not to render emergency assistance.

qualified immunity. The conduct of each individual officer must be separately assessed, see Grant v. City of Pittsburgh, 98 F.3d 116, 122 (3d Cir. 1996), and the liability of each will depend on what information was made known to them by the first troopers on the scene.

III. Order

Accordingly, for the reasons discussed in this memorandum, **IT IS ORDERED THAT:**

(1) Defendants' motion for summary judgment is DENIED.

(2) Troopers Mays and Hanlon are not entitled to qualified immunity with regard to the September 4, 1998 entry into the Shellem home.

(3) Within fifteen (15) days of the date of this order, Defendants are directed to file a brief and any supporting documentation relating to the entitlement of Troopers Yunk and McCombs to qualified immunity with regard to the September 4, 1998 entry into the Shellem home. Plaintiffs shall respond in accordance with the Local Rules of this Court.

(4) Plaintiffs are granted fifteen (15) days from the date of this order to move for summary judgment.

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Yvette Kane
United States District Judge

Dated: October 17, 2000.

FILED: 10/17/00