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

STEVEN D. CRAWFORD,	:	
Plaintiff	:	
	:	
	:	**CIVIL ACTION NO. 1:CV-03-693**
v.	:	
	:	**(Judge Kane)**
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA, COUNTY OF	:	
DAUPHIN, CITY OF HARRISBURG,	:	
JANICE ROADCAP,	:	
JOHN C. BALSHY, and ESTATE OF	:	
WALTON D. SIMPSON,	:	
Defendants	:	

MEMORANDUM AND ORDER

Before the Court are motions to dismiss filed by all Defendants. The motions have been fully briefed and oral argument was held on July 29, 2003. For the reasons discussed below, the Commonwealth will be dismissed from this action, the state law claims and punitive damage request will be dismissed as to Harrisburg and Dauphin County, and the remainder of the motions to dismiss will be denied.

I. Background

This action arises out of the events surrounding the investigation and trial of Plaintiff, Steven Crawford, for the 1970 murder of John Eddie Mitchell. In 1974, at the age of fourteen, Plaintiff was charged with the crime. He was found guilty by three different juries in 1974, 1977, and 1978, and was sentenced to life imprisonment. Plaintiff was released from prison after twenty-eight years, on July 16, 2002, upon the discovery of exculpatory evidence during the course of Plaintiff's habeas proceedings.

The named Defendants are the Commonwealth of Pennsylvania; Dauphin County ("the County"); the City of Harrisburg ("the City,") (together, "the municipal Defendants"); Janice Roadcap, a former chemist for the Pennsylvania State Police; John Balshy, a former corporal with the Pennsylvania State Police; and the Estate of Walton Simpson, the legal entity named on behalf of Simpson as a Sergeant of the City or a Detective of the County (Roadcap, Balshy, and Simpson will be collectively referred to as "the individual Defendants").

In the initial murder prosecution against Plaintiff, the Commonwealth based its case on palm prints lifted from the vehicle parked in the Crawford family garage where the victim's body was found. Expert analysis presented at trial suggested that three of the recovered palm prints matched Plaintiff's. Two of these prints contained blood particles which, according to a Pennsylvania State Police lab report and witness testimony at trial, were present only in the ridge areas of the print. This supported the prosecution's theory that the prints were left on the car after the murder as opposed to being present on the car when the crime occurred and later sprayed with blood, which would have been indicated by blood particles in both the ridge and valley areas.

In October of 2001, Plaintiff's habeas lawyer reviewed government documents that had been recovered from Simpson's discarded briefcase following his death, and discovered a copy of Chemist Roadcap's lab notes that was not consistent with the lab report or testimony offered at Plaintiff's criminal trials. The lab notes, attached to Plaintiff's complaint, show that the testing of the palm prints displayed blood particles in the valleys and the ridges of the prints, which is consistent with the defense theory that the prints were present on the car before being splattered with the victim's blood. (See Compl., ex. A). The references to the valleys in the lab notes

utilized in the criminal trial, however, are blacked out. Id. at ex. B. Both lab reports were signed by Roadcap and Balshy, and Plaintiff alleges that Simpson was present for the lab tests. The individual Defendants' testimony at trial was based on the altered lab reports, consistent with the prosecution's theory of the case. When presented with the potentially exculpatory evidence that was consistent with Crawford's defense, the government filed an application for permission to enter a nolle prosequi. The application was granted and Crawford was released from jail the same day.

Plaintiff subsequently brought this civil action pursuant to the Civil Rights Act, 42 U.S.C. §§ 1983, 1985, 1986, and state tort law for damages arising out of his twenty-eight year imprisonment. Plaintiff claims that he was deprived of his constitutional rights and that Defendants engaged in a racially-motivated conspiracy in violation of federal law. He has also brought state law claims of fraud, false imprisonment, conspiracy, and intentional infliction of emotional distress. Defendants have all filed motions to dismiss Plaintiff's complaint pursuant to Rule 12(b)(6), arguing that he has failed to state a claim upon which relief can be granted.

II. Standard of Review

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is properly granted when, taking all factual allegations and inferences as true, the moving party is entitled to judgment as a matter of law. Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The burden is on the moving party to show that no claim has been stated. Johnsrud v. Carter, 620 F.2d 29, 33 (3d Cir. 1980). "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). However, "a court need not

credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906, 908 (3d Cir. 1997). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Lake v. Arnold, 112 F.3d 682, 688 (3d Cir. 1997) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982)).

To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint, and matters of public record. See 5A C. Wright & A. Miller, Federal Practice and Procedure § 1357, at 299 (2d ed. 1990). A court may treat a 12(b)(6) motion as one for summary judgment if matters outside the pleadings are considered. However, a court need not convert the 12(b)(6) motion to a motion for summary judgment to examine documents integral to or explicitly relied upon in the complaint. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

III. Discussion

A. Statute of Limitations

Defendants Dauphin County and Simpson argue that all of Plaintiff's claims are barred by the applicable statute of limitations. Defendants claim that the statute of limitations was not tolled by his imprisonment and that Plaintiff's cause of action accrued, at the latest, at the time of his conviction, because he knew he was innocent from the beginning. Plaintiff disputes these contentions and argues that his claims did not accrue until he discovered the exculpatory evidence and his conviction had been invalidated.

In § 1983 cases, federal courts apply the state personal injury statute of limitations,

Wilson v. Garcia, 471 U.S. 261, 276-80 (1985); 42 U.S.C. § 1988, which in this case is two years. Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir. 1985); 42 Pa. Cons. Stat. Ann. § 5524. The same is true for conspiracy claims under sections 1985 and 1986. Lake v. Arnold, 232 F.3d 360, 368 (3d Cir. 2000).

It is well established under Pennsylvania law that the statute of limitations does not begin to run until a plaintiff has discovered or, exercising reasonable diligence, should have discovered an injury and its cause. Beauty Time, Inc. v. VU Skin Sys., Inc., 118 F.3d 140, 144 (3d Cir. 1997). The statute is also tolled when "through fraud or concealment the defendant causes the plaintiff to relax his vigilance or deviate from the right of inquiry." Bohus v. Beloff, 950 F.2d 919, 925 (3d Cir. 1991) (quoting Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548, 556 (3d Cir.1985)). For this "fraudulent concealment" exception to apply, "there must be an affirmative and independent act of concealment that would divert or mislead the plaintiff from discovering the injury." Id. For example, a cause of action for fraud cannot accrue until the fraud has been discovered. Pickett v. Am. Ordnance Pres. Ass'n, 60 F. Supp. 2d 450, 454 (E.D. Pa. 1999); Rothman v. Fillette, 469 A.2d 543, 546 n.3 (Pa. 1983). Similarly, the statute of limitations for conspiracy is the same as that for the underlying action which forms the basis of the conspiracy, so it would not run in a case of fraudulent concealment. Kingston Coal Co. v. Felton Mining Co., 690 A.2d 284, 287, n.1 (Pa. Super. Ct. 1997).

Therefore, Plaintiff's claims could not have accrued until he discovered the exculpatory evidence of the unadulterated lab notes. See Smith v. Wambaugh, 887 F. Supp. 752, 758 (M.D. Pa. 1995) (action accrued after exculpatory evidence was discovered and after publication of article linking the defendant to the conspiracy).

Moreover, in Heck v. Humphrey, the Supreme Court held that 42 U.S.C. § 1983 does not provide a cause of action to recover monetary compensation for an allegedly unconstitutional conviction or imprisonment where recovery would necessarily imply the invalidity of an outstanding criminal conviction of a state court. 512 U.S. 477, 486-87 (1994). From the statute of limitations perspective, this means that "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." Id. at 489-90. Therefore, any of Plaintiff's federal civil rights claims that rely on the unconstitutionality of his conviction would not accrue until the time he was released from jail and all charges against him were dropped. See Smith v. Holtz, 87 F.3d 108, 113 (3d Cir. 1996) (plaintiff's civil rights action did not accrue pending second criminal prosecution, only when Pennsylvania Supreme Court dismissed charges). Accordingly, Dauphin County and Simpson's motion to dismiss on the basis of statute of limitations will be denied.

B. Claims Against the Commonwealth

The Commonwealth Defendant argues that because it is not a person under the federal civil rights statutes, those claims against it must be dismissed. This Court agrees. The statute provides a cause of action against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected" any person to the deprivation of any right protected by federal law or the United States Constitution. 42 U.S.C. § 1983. The Supreme Court has held that a state is not a person under § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Although there is no precedential ruling on point, courts are in agreement that the definition of "person" in sections 1985 and 1986 is the same as that in § 1983. See, e.g., Zombro v. Baltimore Police

Dep't, 868 F.2d 1364, 1370-71 (4th Cir. 1989); Rode v. Dellarciprete, 617 F. Supp. 721, 723 (M.D. Pa. 1985); see also Caldeira v. County of Kauai, 866 F.2d 1175, 1182 (9th Cir. 1989) (holding that a § 1985 claim cannot lie where a plaintiff has failed to state a cause of action under § 1983). Therefore, since the Supreme Court has unequivocally held that Plaintiff's action is precluded under the statute, Plaintiff's federal claims against the Commonwealth must be dismissed. See Will, 491 U.S. at 71 ("We hold that neither a State nor its officials acting in their official capacities are 'persons' under § 1983.").

Plaintiff's argument to the contrary is unpersuasive. Citing Lapides v. Board of Regents, 535 U.S. 613 (2002), Plaintiff argues that because the Commonwealth removed this action from state court to federal court, it has waived its right to assert a defense pursuant to Will. In Lapides, the Supreme Court held that a state waives its Eleventh Amendment immunity by invoking federal court jurisdiction in a case where a plaintiff could have brought his claim against the state in state court but the state defendant removed the case to federal court. Lapides v. Board of Regents, 535 U.S. 613, 617-18 (2002). By contrast, the Will Court found that a State is not included in the definition of "person" under § 1983 as a matter of statutory construction. See Will, 491 U.S. at 64-69 (discussing the common understanding of "person" and the lack of Congressional intent to abrogate the balance between states and federal government or include states in the definition). Because that case was originally brought in Michigan state court, the Court's holding could not have rested on immunity grounds, as "the Eleventh Amendment does not apply in state courts." Id. at 63-64 (citing Maine v. Thiboutot, 448 U.S. 1, 9 n.7 (1980)). Furthermore, the Lapides Court specifically limited its holding "to the context of state-law claims, in respect to which the State has explicitly waived immunity from state-court

proceedings." 535 U.S. at 617. Thus, its holding does not apply to § 1983 claims for money damages against a State, which "does not present a valid federal claim against the State." Id. at 617. Accordingly, the Commonwealth Defendant's motion to dismiss Counts I and II will be granted.

The Commonwealth also seeks dismissal of all state law claims against it on the basis of sovereign immunity. The Commonwealth enjoys sovereign immunity from all suits except in those cases where the General Assembly of Pennsylvania has specifically waived the immunity. See 1 Pa. C.S. § 2310. Immunity has been waived in only nine areas. See 42 Pa. C.S. § 8522. At oral argument, Plaintiff argued that the personal property exception to sovereign immunity applies to waive the Commonwealth's sovereign immunity in this case. See 42 Pa. C.S. § 8522(b)(3).[1] Plaintiff argues that his injuries arose out of the government's care, custody, and control of his palm prints and the lab reports.

However, the law is clear that the property exceptions only apply where the personal property itself caused the injury. See, e.g., Robinson v. Vaughn, No. 92-7048, 1993 WL 451495, at *11 (E.D. Pa. Nov. 1, 1993) (exception not applicable to seizure of cigarettes and television of state prisoner); Serrano v. Pennsylvania State Police, 568 A.2d 1006 (Pa. Commw. Ct. 1990) (criminal suspect failed to state a claim for injuries arising out of unlawful arrest and detention);

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[1]The statute provides liability for damages caused by:

> The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radioactive equipment, devices and materials.

42 Pa. C.S. § 8522(b)(3).

Laukaitis v. Bensalem Police Dept., 39 Pa. D. & C.3d 211 (Pa. Ct. Com. Pl. 1985) (finding no cause of action under this section for emotional distress arising out of confiscation of eyeglasses). Even if this Court could say that the palm prints were Plaintiff's personal property and that they are included in the exception, Plaintiff's complaint does not allege that his injuries were not caused by the palm prints themselves, but rather by concealment and perjured testimony. Accordingly, since Plaintiff's complaint does not allege any of the acts enumerated in the exceptions to sovereign immunity, the state law claims against the Commonwealth must be dismissed.[2] Therefore, the Commonwealth Defendant's motion to dismiss will be granted on all claims.

C. Immunity

1. Governmental Immunity

The City and County Defendants seek dismissal of all state law claims against them on the ground that the claims are barred by the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq. ("Tort Claims Act"). Plaintiff does not appear to contest this, but argues that the claims against the individuals are proper under an exception in the act for willful misconduct, 42 Pa. C.S.A. § 8550.

The Tort Claims Act provides local agencies with immunity for claims for monetary damages except in cases involving eight specific types of tortious conduct.[3] See 42 Pa. C.S.A.

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[2]Because the Court disposes of these claims on immunity grounds, it need not reach the Commonwealth's alternative argument that its employees acted outside the scope of their employment.

[3]The act defines "local agency" as "[a] government unit other than the Commonwealth government." 42 Pa. C.S. § 8501.

§§ 8541 and 8542(b). Plaintiff argues that the personal property exception to governmental immunity applies in this case. See 42 Pa. C.S. § 8542(b)(2).[4] However, it is clear from the statute that recovery is limited to property losses only, 42 Pa. C.S. § 8542(b)(2), and in any case, for the same the reasons discussed above, the personal property exception does not apply to Plaintiff's claims.

Furthermore, while the Torts Claim Act provides a cause of action for instances of government employee misconduct, 42 Pa. C.S. § 8550, the governmental agencies themselves still cannot be held liable under this exception. See 42 Pa. C.S. § 8542(a)(2). Since Plaintiff's complaint does not allege any of the acts enumerated in the exceptions to the governmental immunity enjoyed by the City and County Defendants, any state law claims against those entities must be dismissed.

2. Judicial and Testimonial Immunity

Defendants Roadcap and Balshy move to dismiss Plaintiff's § 1983 claims against them, arguing that they are entitled to testimonial immunity on those claims.[5] The parties agree that

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[4]The Tort Claims Act provides that immunity is waived for the following:

> The care, custody or control of personal property of others in the possession or control of the local agency. The only losses for which damages shall be recoverable under this paragraph are those property losses suffered with respect to the personal property in the possession or control of the local agency.

42 Pa. C.S. § 8542(b)(2).

[5]Balshy has not moved to dismiss Plaintiff's §§ 1985 and 1986 claims on immunity grounds, and while Roadcap purports to do so, she offers no support for the extension of § 1983 immunities to the other civil rights statutes. In fact, Supreme Court precedent indicates that since liability under §§ 1985 and 1986 is not limited to officials acting under color of law, official immunities are not applicable. See Briscoe, 460 U.S. at 336-37 (discussing legislative history of 1871 Act and noting that the remedies created to prevent Klu Klux Klan members from offering perjured testimony, now codified at § 1985(3), differ from § 1983 "in essential respects" so that Congress did not intend to abrogate common law witness immunity in § 1983 actions).

absolute immunity applies to protect Roadcap and Balshy from liability for their false testimony. (See Doc. No. 30 at 25-26). However, Plaintiff's allegations of misconduct by these officers also raises the important question of whether testimonial immunity extends to protect these officers for their conduct before the judicial proceedings occurred. To address this question, this Court must look to the conduct in question, and not the harm the conduct caused. Buckley v. Fitzsimmons, 509 U.S. 259, 271 (1993). The official seeking immunity bears the burden of proving that immunity is justified for the function in question. Hafer v. Melo, 502 U.S. 21, 28-29 (citing Burns v. Reed, 500 U.S. 478, 486- 487 (1991)); see also Butz v. Economou, 438 U.S. 478, 506 (1978) (officers seeking exemption from liability "must bear the burden of showing that public policy requires an exemption of that scope"). On a 12(b)(6) motion, the Court looks only to the complaint to see whether the facts alleged, if proven by Plaintiff, would support a denial of immunity. Kulwicki v. Dawson, 969 F.2d 1454, 1462 (3d Cir. 1992) (citing Robb v. City of Philadelphia, 733 F.2d 286 (3d Cir. 1984)).[6]

Here, Plaintiff alleges that in addition to the individuals falsely testifying against him (Doc. No .1, Compl., ¶¶ 36, 38), on November 29, 1972, Roadcap conducted testing of the prints (Id. ¶ 40), both Roadcap and Balshy attested to the lab results (Id. ¶ 42), and then altered the lab

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Precedent discussing immunity for conspiracy appears to apply only to § 1983 claims and is not extended to allegations of conspiracy made pursuant to §§ 1985 or 1986. See McArdle v. Tronetti, 961 F.2d 1083, 1085 (3d Cir. 1992) (holding that where immunity arises for acts in the judicial process, it also arises for conspiracy to do those acts under § 1983). The Court notes that Defendant Roadcap has not satisfied her burden of showing the need for an exemption to liability. See Butz v. Economou, 438 U.S. 478, 506 (1978).

[6]This Court did not consider anything outside the pleadings in reaching this decision, despite the attempt to supplement the record on issues not relevant to the immunity determination.

results by obliterating exculpatory references (Id. ¶¶ 44, 45), that Roadcap misrepresented the findings in her lab report (Id. ¶ 46), and that Balshy and Roadcap conspired to suppress exculpatory evidence and to conceal Roadcap's falsehoods (Id. ¶¶ 57-58). It is further alleged that the conspiracy enabled an expert to testify that the lab results implicated Crawford (Id. ¶ 37) and led to the Commonwealth's failure to produce favorable evidence (Id. ¶ 48, 59, 62), and that Roadcap and Balshy furthered the conspiracy to convict Crawford at two additional trials (Id. ¶ 66).

Defendants argue that they are immune from liability for all of these acts because in Briscoe v. LaHue, the Supreme Court established a broad grant of immunity based on historical precepts to "all persons– governmental or otherwise– who [are] integral parts of the judicial process." 460 U.S. 325, 335 (1983). In Briscoe, this included perjured testimony of police officers, offered in support of a conviction. Id. at 335-36. However, Briscoe does not encompass the conduct at issue here. The complaint alleges perjured testimony by police officers at trial, as in Briscoe, but it also alleges conspiracy, fabrication, and concealment of evidence which occurred years before Plaintiff was arrested or tried. See Buckley, 509 U.S. at 273-75. The policy underlying the Briscoe decision, that the truth-finding process is served by granting absolute immunity to witnesses and "freeing the judicial process from the harassment and intimidation associated with litigation," Burns v. Reed, 500 U.S. 478, 494 (1991), does not support a finding by this Court that Roadcap and Balshy are absolutely immune from liability for altering material evidence, concealing exculpatory evidence, and conspiring to do so, when these actions were taken well before the initiation of the judicial process. See Briscoe, 460 U.S. at 332-33.

Since Briscoe, the Supreme Court has considered the application of immunity to pre-judicial conduct and has been cautious in extending immunity. See, e.g., Burns v. Reed, 500 U.S. 478 (1991) (no immunity for prosecutor giving legal advice to police); Malley v. Briggs, 475 U.S. 335, 340 (1986) (no absolute immunity for police officer for causing unconstitutional arrest by proffering affidavit that failed to establish probable cause). This is so because there is no provision for absolute immunity in the Civil Rights Act. Section 1983 provides a cause of action against "every person" who, under color of law, subjects another person to a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983 (emphasis added).

The Supreme Court has interpreted § 1983 to include the common law immunities of 1871, the year the statute was originally enacted, reasoning that Congress did not intend to abrogate historical immunities. Pierson v. Ray, 386 U.S. 547, 554 (1967). Thus, the Court has found immunity, for example, for government attorneys initiating prosecutions, Imbler v. Pachtman, 424 U.S. 409, 417 (1976), and witnesses giving testimony at trial. Briscoe v. LaHue, 460 U.S. 325, 335 (1983). A grant of immunity from suit under § 1983 is "predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." Imbler, 424 U.S. at 421. In this historical context, absolute immunity has been granted sparingly. Buckley, 509 U.S. at 269.

The presumption is that officials are given qualified rather than absolute immunity. Id. at 273-74. To determine whether the challenged conduct falls within this narrow classification entitled to absolute immunity, the Court has employed a functional analysis which focuses on "the nature of the function performed, not the identity of the actor who performed it." Kalina v.

Fletcher, 522 U.S. 118, 127 (1997) (citation omitted). Accordingly, the Supreme Court has held that actions of a law enforcement officer to obtain an arrest warrant were not functionally entitled to absolute immunity, noting that "complaining witnesses were not absolutely immune at common law." Malley v. Briggs, 475 U.S. 335, 340 (1986). The Malley Court found that police officers were adequately protected by the doctrine of qualified immunity, such that the extension of absolute immunity was unnecessary. Id. at 341. There is no basis for distinguishing the conduct challenged here from that in Malley. The temporal relationship of Officers Balshy and Roadcap's actions is even further removed from judicial proceedings than in Malley. 475 U.S. 335. This Court cannot accord police officers absolute immunity for acts that undermine rather than further the justice system merely because the police officers later testify in a judicial proceeding. See Buckley, 509 U.S. at 275-76. The acts alleged here were unquestionably investigative or administrative and not testimonial in function. See id.; Burns, 500 U.S. at 494.

Furthermore, as in Malley, 475 U.S. 335, there is no judicial oversight or other checks over the conduct alleged. See Burns, 500 U.S. at 496; Kulwicki, 969 F.2d at 1463 Plaintiff was afforded no protections at his criminal trial to uncover the allegedly perjured testimony and the basis for it, and no rebuttal evidence was available to him. The testimony was based on fabricated evidence over which the Commonwealth had complete control such that no amount of cross-examination would uncover the exculpatory evidence or the conspiracy to conceal it. See Palma, 53 F. Supp. 2d at 766.

Although the United States Court of Appeals for the Third Circuit has never addressed the precise conduct at issue here, its holdings suggest that Defendants' broad view of testimonial immunity is erroneous. In Kulwicki v. Dawson, the Third Circuit declined to extend

prosecutorial immunity to protect a district attorney who manufactured evidence. 969 F.2d 1454 (3d Cir. 1992). Likewise, the Supreme Court held that there was no prosecutorial immunity for a government attorney who withheld exculpatory evidence and fabricated evidence. Buckley v. Fitzsimmons, 509 U.S. 259 (1993). This Court can find no basis to extend testimonial immunity to police officers over the same conduct which courts have declined to afford prosecutorial immunity. See id. at 273-74. (denying absolute immunity where the act at issue would be entitled to only qualified immunity if performed by another).

Therefore, this Court finds that the Plaintiff has alleged a set of facts that supports the denial of immunity. See Kulwicki, 969 F.2d at 1462. Accordingly, Defendants' motion to dismiss on the basis of testimonial immunity will be denied. For the same reasons, Defendants' motion to dismiss the state law claims on the basis of judicial immunity afforded under Pennsylvania law will be denied. See Post v. Mendel, 507 A.2d 351 (Pa. 1986).

D. Section 1983 Claims Against Municipalities

The City and County Defendants argue that Plaintiff's § 1983 claim must be dismissed, as Plaintiff is basing his theory of liability on respondeat superior and has not alleged a defective municipal policy or custom. Plaintiff argues that he has properly pled his claim.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). In Monell v. Department of Social Services of New York, the Supreme Court concluded that Congress intended § 1983 to apply to municipalities and other local government units. 436 U.S. 658, 690-91 (1978). However, municipal liability cannot be based on a

respondeat superior theory. Id. at 691. "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Id. at 694. Inadequate police training may serve as the basis for § 1983 liability where the "failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." City of Canton v. Harris, 489 U.S. 378, 388-89 (1989). The Canton Court observed that failure to train may amount to deliberate indifference where the need for more or different training is obvious, and inadequacy very likely to result in violation of constitutional rights. Id. at 389. For example, if the police often violate citizens' rights, a need for further training might be obvious. Id. at 390, n.10; see also Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (deliberate indifference may be established where harm occurred on numerous previous occasions and officials failed to respond appropriately, or where risk of harm is great and obvious).

At trial, Plaintiff must show that policymakers for the municipalities authorized policies that led to the civil rights violations or "permitted practices that were so permanent and well settled as to establish acquiescence." Baker v. Monroe Township, 50 F.3d 1186, 1191 (3d Cir. 1995) (citing Simmons v. City of Philadelphia, 947 F.2d 1042, 1064 (3d Cir. 1991)). However, on motion to dismiss, the claim may only be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In the context of a § 1983 claim if the complaint, a plaintiff may be entitled to relief if he "sufficiently alleges deprivation of any right secured by the Constitution." Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002). A complaint alleges

sufficient facts if it is adequate to put the Defendants on notice of the essential elements of Plaintiff's cause of action. Langford v. City of Atlantic City, 235 F.3d 845, 857 (3d Cir. 2000). The notice pleading standard of Federal Rule of Civil Procedure 8(a) requires only that a complaint contain a short and plain statement showing a right to relief, "not a detailed recitation of the proof that will in the end establish such a right." Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 564 (3d Cir. 2002).

Here, Plaintiff has alleged that the City and County lacked sufficient safeguards to prevent the concealment of exculpatory evidence, fabrication of evidence, and false testimony; failed to train their employees to prevent such conduct; failed to properly supervise the employees, which created an environment where such misconduct was tolerated and encouraged; and failed to take action when confronted with a pattern of misconduct, which the governmental entities condoned and encouraged (Doc. No. 1 at ¶¶ 67-70). At this stage in the litigation, that is all that Plaintiff must allege, and he has done so with sufficient specificity to put the Defendants on notice of the claims against them. See Fed. R. Civ. P. 8(a). Accordingly, Defendants motion to dismiss will be denied on this ground.

E. Civil Rights Conspiracy Claims

All Defendants argue that Plaintiff's claims pursuant to 42 U.S.C. § 1985 should be dismissed for insufficient pleading or because a corporation cannot conspire with its own officers. Defendants argue that because the § 1985 claim should fail, the § 1986 claim must also fail.

Section 1985(3) provides a cause of action for a civil rights plaintiff where: "(1) two or more persons conspire to deprive any person of the equal protection of the law; (2) one or more

of the conspirators performs or causes to be performed any overt act in furtherance of the conspiracy; and (3) that overt act injures the plaintiff in his person or property or deprives the plaintiff of any right or privilege of a citizen of the United States." Barnes Found. v. Township of Lower Merion, 242 F.3d 151, 162 (3d Cir. 2001) (citations omitted). Section 1985(3) does not include a requirement that the conspirators act "under color of state law," as required in § 1983 actions. Griffin v. Breckenridge, 403 U.S. 88 (1971); Barnes Found., 242 F.3d at 162. A conspiracy claim based upon this section "requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals." Robinson v. McCorkle, 462 F.2d 111, 113 (3d Cir. 1972).

Plaintiff has alleged here that the individual Defendants "maliciously conspired, for the purpose of depriving . . . [him], an African-American, of equal protection under the law . . . ." (Compl. ¶ 93). He has further alleged that the conspiracy to alter and conceal the exculpatory evidence and to testify falsely was racially motivated. Id. at ¶¶ 94-95. Plaintiff alleges that the municipal Defendants were part of the conspiracy insofar as they condoned and encouraged a pattern of racially-motivated misconduct, including the actions that led to Plaintiff's constitutional injuries. Id. at ¶¶ 96-100; see also id. at ¶¶ 45, 58, 66, 70, 87.

Defendants Roadcap and Balshy argue that because Plaintiff has not produced evidence of a class-based animus that fueled the alleged conspiracy, his claims must be dismissed. However, on motion to dismiss, the Court reviews the sufficiency of the complaint, without any additional evidence, to determine "whether the claimant is entitled to offer evidence to support his claims." Helstoski v. Goldstein, 552 F.2d 564, 565 (3d Cir. 1977). Plaintiff's complaint presents sufficient factual detail and states all statutory elements for a § 1985(3) claim. It

therefore adequately alleges a conspiracy for purposes of a Rule 12(b)(6) motion. See Novotny v. Great Am. Fed. Sav. & Loan Ass'n, 584 F.2d 1235, 1257, n.111 (3d Cir. 1978) (complaint was adequate where it alleged that the individual defendants "embarked upon and pursued a course of conduct the effect of which was to deny equal employment rights," that the "course of conduct constitutes an ongoing discrimination," and that the plaintiff was injured "as a result of the conspiracy by the individual defendants"), vacated on other grounds, 442 U.S. 366 (1979); Bethel v. Jendoco Construction Corp., 570 F.2d 1168, 1173 (3d Cir. 1978) (Plaintiff alleged civil rights claim "with sufficient concreteness" to survive motion to dismiss). Therefore, Defendants' motion to dismiss the conspiracy claims on the basis of insufficient pleading will be denied.

The City and County Defendants further argue that because an agency cannot conspire with its own officials, the intracorporate conspiracy doctrine precludes Plaintiff's claims against them. The intracorporate conspiracy doctrine is premised on the idea that a corporation or governmental entity cannot conspire with its own employee, since the actions of the employee can be considered those of the entity itself, and an entity cannot conspire with itself. Heffernan v. Hunter, 189 F.3d 405, 413 (3d Cir. 1999). The Court of Appeals for the Third Circuit has found that the doctrine does not apply to conspiracies among employees of the same corporation, Novotny, 584 F.2d at 1258, or where an employee is acting in a personal capacity. Robison v. Canterbury Village, Inc., 848 F.2d 424, 431 (3d Cir. 1988) ("A section 1985(3) conspiracy between a corporation and one of its officers may be maintained if the officer is acting in a personal, as opposed to official, capacity, or if independent third parties are alleged to have joined the conspiracy."). Other courts have found exceptions to the doctrine where there is a continuous pattern of discrimination or where employees acted within the scope of employment

but were motivated by a personal discriminatory animus. See Heffernan, 189 F.3d at 412-13 (discussing exceptions); Rackin v. Univ. of Pennsylvania, 386 F. Supp. 992, 1005 (E.D. Pa. 1974) (doctrine inapplicable where entity engaged in "many continuing instances" of discriminatory activity), abrogated on state action grounds by Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).

Here, Plaintiff has alleged that three individuals, two of whom were employees of the Pennsylvania State Police and one of whom was an employee of either the City or the County, conspired with each other and their employers to deprive Plaintiff of equal protection of the law due to his race. Because the individual actors were employed by different governmental entities, and it is alleged that more than one entity was involved, the doctrine does not apply. See Johnston v. Baker, 445 F.2d 424, 427 (3d Cir. 1971) (where at least one party to conspiracy was not an employee and there was evidence that some of the conspirators may have acted out of personal motives, the intracorporate conspiracy doctrine did not apply). Furthermore, it is possible that the individual Defendants acted out of personal motives. See Robinson, 848 F.2d at 431. Accordingly, the municipal Defendants' motion to dismiss Count II of Plaintiff's complaint on the basis of the intracorporate conspiracy doctrine will be denied.

F. Particularity of Fraud Claim

Defendant Balshy asserts that Plaintiff's fraud claim must be dismissed as it was not pled with sufficient particularity as required by the Federal Rules of Civil Procedure. Rule 9(b) states: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Fed. R. Civ. P. 9(b). Plaintiff has detailed the circumstances surrounding

the testing for blood in the palm prints and subsequent alteration of lab notes with great particularity. He alleged specific involvement of particular Defendants and demonstrated the importance of the original lab findings as compared to the fraudulent report. Balshy has not identified what further particularity would be required and the Court can find none. Therefore, Defendant Balshy's motion to dismiss will be denied on this ground.

G. Punitive Damages

It is established, and Plaintiff concedes, that punitive damages are not available under the civil rights statutes against a municipality. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981); see also Bolden v. SEPTA, 953 F.2d 807, 830-31 (3d Cir. 1991) (immunizing regional transit authority from punitive damages under § 1983). Since the City of Harrisburg and Dauphin County are municipalities, punitive damages are not available against those entities under §§ 1983, 1985, or 1986.

Furthermore, as a general rule under state law, punitive damages are not available against a municipality unless specifically authorized by statute, since such awards are against "sound public policy" and burden taxpayers who are not responsible for the wrongdoing. City of Newport, 453 U.S. at 261-63. This is true under Pennsylvania common law. Feingold v. SEPTA, 517 A.2d 1270 (Pa. 1986); Westmoreland County Indus. Dev. Auth. v. Allegheny County Bd. of Prop. Assessment, 723 A.2d 1084, 1087 (Pa. Commw. Ct. 1999). Plaintiff has not pointed to any contrary statutory authority providing for punitive damages for his state law claims. Therefore, any punitive damages claims against the City and County based upon Pennsylvania law must be dismissed.

IV. ORDER

AND NOW, this 12th day of September, 2003, for the reasons discussed above, **IT IS HEREBY ORDERED THAT** the pending motions to dismiss are disposed of as follows:

1. The Commonwealth of Pennsylvania's motion to dismiss (Doc. No. 8) is **GRANTED**.

2. Dauphin County and Estate of Walton D. Simpson's motion to dismiss (Doc. No. 6) is **GRANTED** in part as follows: (a) the state law tort claims (Counts III-VI) are **DISMISSED** due to governmental immunity; (b) any claims for punitive damages against the County are **DISMISSED**. The remainder of the motion to dismiss is **DENIED**.

3. The City of Harrisburg's motion to dismiss (Doc. No. 7) is **GRANTED** in part as follows: (a) the state law tort claims (Counts III-VI) are **DISMISSED** due to governmental immunity; and (b) any claims for punitive damages against the City are **DISMISSED**. The remainder of the motion to dismiss is **DENIED**.

4. Janice Roadcap's motion to dismiss (Doc. No. 16) is **DENIED**.

5. John C. Balshy's motion to dismiss (Doc. No. 28) is **DENIED**.

IT IS FURTHER ORDERED THAT the stay issued by this Court on June 9, 2003 is **LIFTED**. The parties shall proceed with discovery in this case.

IT IS FURTHER ORDERED THAT a scheduling conference will be held by telephone on Wednesday, September 24, 2003, at 11:00 a.m. to set a date for the trial of this matter. Plaintiff's counsel shall initiate the conference call. The parties may, if they wish, file an amended joint case management plan on or before September 19, 2003.

s/ Yvette Kane
Yvette Kane
United State District Judge

Filed: September 12, 2003