

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO. 11-11997-JGD

MARIA BARBOSA, ET AL.,

Plaintiffs

v.

WILLIAM CONLON, ET AL.,

Defendants

DEFENDANTS' MEMORANDUM IN SUPPORT OF
MOTION TO SUPPLEMENT
SUMMARY JUDGMENT MEMORANDUM

I. PROCEDURAL BACKGROUND

On May 15, 2013, this Court heard oral argument on the Defendants' Motion for Summary Judgment. No decision has been issued on the Defendants' motion, as this Court took it under advisement after oral argument. At the same time, Plaintiffs' counsel voluntarily dismissed certain claims and Defendants.

Notwithstanding the dismissal of some claims and parties on May 15, 2013, remaining before the Court on Defendants' Motion is the Fourth Amendment excessive force claim pursuant to 42 USC Section 1983 by Plaintiffs Henriquetta and Angela Barbosa.

For the reasons expressed below, these claims brought by Plaintiffs Henriquetta and Angela Barbosa should be dismissed against the Defendants.

II. ARGUMENT

PLAINTIFFS HENRIQUETTA AND ANGELA BARBOSA'S FOURTH AMENDMENT EXCESSIVE FORCE CLAIM SHOULD BE DISMISSED BECAUSE THEY PLEADED TO SUFFICIENT FACTS REGARDING THEIR CRIMINAL CHARGES

Plaintiff Henriquetta Barbosa was arrested on November 16, 2008 and charged with the following: (1) assault and battery with a dangerous weapon; (2) disorderly conduct; (3) disturbing the peace; (4) interference with a police officer; and (5) resisting arrest. Plaintiff admitted to sufficient facts as to the charges of assault and battery with a dangerous weapon, disturbing the peace, interfering with a police officer and resisting arrest for which she received a six month continuance without a finding ("CWOFF").¹ The disorderly conduct charge was dismissed (Exhibit A).

Plaintiff Angela Barbosa was also arrested on November 16, 2008 and charged with the following: (1) assault and battery with a dangerous weapon; (2) interference with a police officer; (3) witness intimidation; (4) disorderly conduct; (5) inciting a riot; and (6) resisting arrest. She admitted to sufficient facts and received also received a CWOFF on the following charges: assault and battery with a dangerous weapon, interfering with a police officer and resisting arrest. The remaining charges were either dismissed or no probable cause was found (Exhibit B).

A Section 1983 claim for excessive force is not cognizable if its success would necessarily imply the invalidity of an underlying condition or sentence. Salcedo v. Town of Dudley, et al., 629 F.Supp. 86, 102 (D. Mass. 2009); see also Heck v. Humphrey, 512 U.S. 477 (1994). In Salcedo, the Court addressed the issue of first impression regarding

¹ Judgment entered March 15, 2010 with probation ending September 15, 2010.

whether or not an admission to sufficient facts and subsequent CWOFF had the same effect of a conviction or sentence and concluded that it did, noting:

The Court sees no reason why a plea of sufficient facts – which is a formal admission of a guilt in open court – should be treated any differently, even if the result is not a criminal conviction under state law.

Id.

Accordingly, to the extent that Plaintiffs Henriquetta and Angela Barbosa both admitted to sufficient facts on the issue of assault and battery with a deadly weapon, their claim for Fourth Amendment excessive force cannot be sustained and, therefore, must be dismissed.

III. CONCLUSION

For the reasons expressed above and in their previously argued Memorandum in Support of Summary Judgment, the Defendants request that their Motion for Summary Judgment be granted.

Defendants,
By their Attorney,

/s/Stephen C. Pfaff

Stephen C. Pfaff BBO# 553057
Louison, Costello, Condon & Pfaff
101 Summer Street
Boston, MA 02110
(617) 439-0305

CERTIFICATE OF SERVICE

I, Stephen C. Pfaff, hereby certify that on the 31st day of May, 2013, I served the foregoing electronically to the following:

Charles P. Kazarian, Esq.
Law Office of Charles P. Kazarian
160 State Street, Sixth Floor
Boston, MA 02109

/s/Stephen C. Pfaff

Stephen C. Pfaff