

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TODD TRAFTON, et al.,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 98-0123-B
)	
PATRICK DEVLIN, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

This action arises from the arrest and subsequent prosecution of Plaintiffs Todd Trafton and Keith Trask ["PLAINTIFFS"] for "night hunting," a violation of 12 M.R.S.A. section 7406(5). Plaintiffs Donna Trask and Tammy Trafton assert claims for loss of consortium. Defendants are wardens with the Maine Warden Service. Plaintiffs allege Defendants withheld exculpatory evidence from the District Attorney's Office responsible for their prosecution, thereby prolonging the prosecution, and causing them to endure unnecessary expenses and mental anguish.

The matter is before the Court on Defendants' Motion for Summary Judgment on the issue of qualified immunity. Qualified immunity shields government officers "from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*,

483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable.'" *Id.* (quoting *Anderson*, 483 U.S. at 641). The inquiry regarding qualified immunity "takes place prior to trial, on motion for summary judgment . . . and requires no fact finding, only a ruling of law strictly for resolution by the court." *Id.* at 1373-74.

The qualified immunity inquiry has two prongs. In this case, Defendants challenge only the first prong; whether the right asserted by Plaintiffs was clearly established at the time of the contested events. *Id.* at 1373. The analysis requires that the Court not simply label the right alleged to have been violated as arising under the Constitution. The Court must go one step further and determine whether "[t]he contours of the right [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right," in other words, how the law would be applied to his or her actions *in this case*. *Anderson*, 483 U.S. at 640.

A careful reading of the parties' memoranda on this issue reveals a fundamental agreement. Specifically, at the time Plaintiffs were arrested in late November of 1995, it was clearly established law that a police officer had a duty to turn over

exculpatory evidence to the prosecutor, and that a failure to do so might amount to a violation of the arrestee's procedural due process rights. *Reid v. New Hampshire*, 56 F.3d 332, 341 (1st Cir. June 6, 1995); *Torres v. Superintendent of Police*, 893 F.2d 404, 410 (1st Cir. 1990).¹

Defendants' argument in support of their claim for qualified immunity is based upon the fact that Plaintiffs were not incarcerated at any time during the state prosecution. According to Defendants, they therefore did not suffer the deprivation of liberty necessary to establish a due process violation.² Although the Court agrees that a deprivation of liberty is a necessary element of Plaintiffs' due process claim, *Torres*, 893 F.3d at 410, the Court is not satisfied that it affects the analysis of Defendants' claim of qualified immunity. If it did, police officers could never know, at the moment they need to decide what to do with particular evidence, whether the constitution requires them to turn it over to the prosecutors.

¹ To the extent the First Circuit Court of Appeals had previously also analyzed the failure to produce exculpatory evidence as a *substantive* due process issue, *see, Torres v. Superintendent of Police*, 893 F.2d 404, 410 (1st Cir. 1990), that analysis was rejected by the U.S. Supreme Court in *Albright v. Oliver*, 510 U.S. 266 (1994). *See, Britton v. Maloney*, 981 F. Supp. 25, 33-37 (D. Mass. 1997) (discussing the viability of malicious prosecution claims under section 1983 after *Albright*).

² Even were Plaintiffs' claim to be analyzed under the Fourth Amendment's proscription against unreasonable seizures of the person, they would still be required to demonstrate a loss of liberty. *Eg., Singer v. Fulton County Sheriff*, 63 F.3d 110, 116 (2nd Cir. 1995).

Defendants' argument is better presented on a motion to dismiss, if the complaint contains all the necessary information, or on a motion for summary judgment if it does not. The Court makes no finding on this Motion whether Plaintiffs suffered the deprivation of liberty necessary to support their claim.³ The Court does conclude, however, that clearly established law at the time of Plaintiffs' arrest placed a duty upon Defendants to turn over any exculpatory evidence in their possession to the prosecutor. As reasonably competent officials, Defendants are expected to know of this responsibility. *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982). Whether the arrestee will ultimately have a cause of action may turn on the ultimate outcome of the criminal case, but this duty does not.

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Motion for Summary Judgment on the issue of qualified immunity be DENIED.

³ As Justice Ginsberg noted with respect to the Fourth Amendment requirement of a seizure:

A person facing serious criminal charges is hardly freed from the state's control upon his release from a police officer's physical grip. He is required to appear in court at the state's command. He is often subject, as in this case, to the condition that he seek formal permission from the court (at significant expense) before exercising what would otherwise be his unquestioned right to travel outside the jurisdiction. Pending prosecution, his employment prospects may be diminished severely, he may suffer reputational harm, and he will experience the financial and emotional strain of preparing a defense.

Albright v. Oliver, 510 U.S. 266, 278 (1994).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.