

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

KEITH L. FERRELL

PLAINTIFF

v.

CIVIL ACTION NO. 3:00CV-287-S

CITY OF RADCLIFF, KENTUCKY, et al.

DEFENDANTS

**MEMORANDUM OPINION**

This matter is before the court on the motion of the defendants, Ken Howard, Keith Bond, and John Simcoe, for summary judgment. These defendants<sup>1</sup> claim that they are entitled to judgment as a matter of law pursuant to the doctrine of absolute immunity. As discussed more fully below, we agree and will dismiss the plaintiff's claims with respect to these defendants.

**BACKGROUND**

With respect to these defendants, there is very little background that is essential for us to parse.<sup>2</sup> Essentially, the plaintiff alleges that he was arrested and charged with Assault in the Fourth Degree pursuant to Ky. Rev. Stat. Ann. §508.030. The plaintiff alleges that his arrest arose out of a reported domestic disturbance to which police responded. According to the plaintiff, these defendants, as the prosecuting attorneys for Hardin County, offered to dismiss the assault charges pending against the plaintiff if he would stipulate that the officers had sufficient probable cause to arrest the plaintiff. Believing that the police officers responsible for his arrest deprived him of his

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<sup>1</sup>The City of Radcliff, Kentucky and two members of the Radcliff Police Department, Lieutenant Sam Ennis and Chief Don Bloodworth, are also defendants in this matter. However, they have not joined in the motion presently before the court.

<sup>2</sup>As against the police officers and the City of Radcliff, Kentucky, the plaintiff alleges that several constitutionally protected privileges were denied in violation of 42 U.S.C. §1983. However, because neither the police officers nor the City of Radcliff are parties to this motion, we need not discuss those allegations. The plaintiff's Complaint does not allege that the moving defendants participated in any way in the investigation, detention, or arrest of the plaintiff.

constitutionally protected rights under color of law in violation of 42 U.S.C. §1983, the plaintiff refused the defendants' offer. The plaintiff alleges that by conditioning the dismissal of the assault charges against him upon a stipulation as to probable cause for his arrest, these defendants have violated 42 U.S.C. §1983.

### **STANDARD OF REVIEW**

A motion for summary judgment will be granted only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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.” Fed. R. Civ. P. 56(c). According to the Supreme Court, the standard is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202, (1986). Faced with a motion for summary judgment, the nonmovant must come forth with requisite proof to support its legal claim, particularly where the opposing party has had an opportunity to conduct discovery. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In the sixth circuit, “[t]he mere possibility of a factual dispute is not enough.” *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6<sup>th</sup> Cir. 1992) (quoting *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 863 (6<sup>th</sup> Cir. 1986)). “[T]his standard requires a court to make a preliminary assessment of the evidence, in order to decide whether the plaintiff’s evidence concerns a material issue and is more than de minimis.” *Hartsel v. Keys*, 87 F.3d 795, 799 (6<sup>th</sup> Cir. 1996).

### **DISCUSSION**

With this standard in mind, we turn to the defendants’ contention that they are entitled to absolute immunity with respect to the plaintiff’s allegations brought pursuant to 42 U.S.C. §1983 (“§1983”). The doctrine of absolute immunity shields a state prosecutor from §1983 liability “when he acts within the scope of his prosecutorial duties.” *Imbler v. Pachtman*, 424 U.S. 409, 420, 96

S.Ct. 984, 47 L.Ed.2d 128 (1976). When a prosecutor's actions are "intimately associated with the judicial phase of the criminal process," he or she enjoys absolute immunity from §1983 suits for damages. *Imbler* at 430.

The Supreme Court has taken a "functional approach" to determining whether to extend absolute immunity to prosecutors in various contexts. A state prosecutor is not entitled to absolute immunity merely because he or she is a state prosecutor. Rather, the functional analysis contemplated by the Court "focuses on the role of the prosecutor at the time he engages in the challenged conduct." *Grant v. Hollenbach*, 870 F.2d 1135, 1138 (6<sup>th</sup> Cir. 1989). The Court has noted that "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 273, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993). However, "[a] prosecutor's administrative duties and those investigatory functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity." *Id.* As the sixth circuit recently noted, "[t]he analytical key to prosecutorial immunity, therefore, is *advocacy*- whether the actions in question are those of an advocate." *Holloway v. Brush*, 220 F.3d 767, 775 (6<sup>th</sup> Cir. 2000).

This brief sketch of the well-developed doctrine of absolute immunity illustrates that these defendants are entitled to summary judgment in this matter. The plaintiff bases his §1983 claim against these defendants solely upon their alleged refusal to dismiss the assault charge filed against the plaintiff unless the plaintiff stipulated that the police had probable cause to arrest him. We believe that regardless of the defendants' alleged motive, their conduct, as alleged by the plaintiff, was "intimately associated with the judicial phase of the criminal process." *Imbler* at 430. *See also Farmer City State Bank*, 808 F.2d 1228, 1238 (7<sup>th</sup> Cir. 1986) (holding that "[t]his immunity shields the prosecutor even if he initiates charges maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence"). We believe that the defendants were clearly

acting as advocates on behalf of Hardin County and the Commonwealth of Kentucky when they attempted to negotiate the dismissal of the assault charges against the plaintiff. The affidavits of each of the defendants also support our conclusion that none were involved in the administrative or investigative aspects of the plaintiff's prosecution. These facts appear to be undisputed as the plaintiff has failed to rebut them with factual allegations of his own. *See U.S. v. Dusenbery*, 223 F.3d 422, 424 (6<sup>th</sup> Cir. 2000) (noting that "the party opposing a motion for summary judgment may not rest upon the mere allegations or denial of his pleading, but ... must set forth specific facts showing that there is a genuine issue for trial") (citations omitted). Therefore, based on both the legal doctrine of absolute immunity as it has been developed by both the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit, and the failure of the plaintiff to allege that the defendants acted as anything but advocates for the Commonwealth of Kentucky, the defendants' Motion for Summary Judgment will be granted.

### CONCLUSION

Because these defendants are clearly entitled to avail themselves of the doctrine of absolute immunity, their Motion for Summary Judgment will be granted. As a result, the plaintiff's Complaint, to the extent it asserts claims against these defendants, will be dismissed.

This \_\_\_\_ day of \_\_\_\_\_, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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**ORDER**

Motion having been made by the defendants, Ken Howard, Keith Bond, and John Simcoe, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the defendants' Motion for Summary Judgment is **GRANTED**. The plaintiff's Complaint, to the extent it asserts claims against these defendants is **DISMISSED WITH PREJUDICE**.

This \_\_\_\_ day of \_\_\_\_\_, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record