1999 WL 417364
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Peso CHAVEZ, et al., Plaintiffs,
v.
ILLINOIS STATE POLICE, et al., Defendants.

No. 94 C 5307. | June 4, 1999.

Opinion

REPORT AND RECOMMENDATION

BOBRICK, Magistrate J.

***1** Before the court is the motion of defendants Illinois State Police, *et al.,* for summary judgment on the claims of plaintiff Joseph Gomez.

I. *BACKGROUND*

This is another installment in an action the plaintiffs originally filed in August of 1994. Plaintiffs' claim is, essentially, that the Illinois State Police maintain a practice of detaining and searching African–American and Hispanic motorists solely on the basis of race and without legally sufficient cause or justification. The claim presently at issue is that of Joseph Gomez, an Hispanic motorist stopped and searched on two occasions by Illinois State Trooper Ryan Tone. The defendants now move for summary judgment on Gomez's Equal Protection claim and for qualified immunity on Gomez's "freedom of movement" claims based on a ruling Judge Manning entered six months ago.

I. *FACTS*

When considering a motion for summary judgment, we rely on the parties' Local Rule 12 submissions.[1] Here, both sides have submitted Local Rule 12 statements. Defendants' statement of facts is simply that:

> Gomez raises claims regarding two incidents: a stop, detention, and search occurring on March 21, 1994 at approximately 11:30 p.m. on 7 th Street in Moline, Illinois; and a stop occurring on February 27, 1995, at approximately 3:50 a.m. on Illinois Highway 92 toward the intersection of 55 th Street in Moline, Illinois. In each case the officer making the traffic stop was Trooper Ryan Tone.
>
> In neither stop ... is Gomez able to identify a similarly situated white motorist who was driving on the roadways during the relevant periods, or was treated differently from plaintiff.

(*Defendants' Statement of Undisputed Facts,* ¶¶ 8–9). Gomez disagrees with the second paragraph, and adds his own statement of facts pursuant to Local Rule 12(n)(3)(b). This statement consists mostly of a 39–paragraph narrative of the two stops at issue here. None of the facts in Gomez's narrative are mentioned in his *Memorandum in Opposition to Defendants' Motion.* If they are not significant enough to address in his memorandum, it is difficult to see how they would meet Rule 12(n)(3)(b)'s definition of "additional facts that require the denial of summary judgment." In two other paragraphs, Gomez reintroduces the statistical analyses of Martin Shapiro. (*Plaintiffs' Statement of Additional Facts("Pl.St ."),* ¶¶ 42–43). Mr. Shapiro's statistical analysis has already been found wanting in the context of Equal Protection claims on two occasions by two different judicial officers. We need not revisit them here.[2]

That leaves us with the only salient points among Gomez's additional facts. As a result of the stop on March 21, 1994, Trooper Tone gave Gomez a warning for running a red light. The next time Trooper Tone issued a warning ticket for the same offense was to a white, non-Hispanic female. (*Pl.St.,* ¶ 45). As a result of the stop on February 27, 1995, Trooper Tone issued Gomez a warning ticket for a broken tail light or damaged bumper. The next time Trooper Tone wrote such a warning ticket was to a white, non-Hispanic male. (*Pl.St.,* ¶ 47). According to Illinois State Police policy, a trooper must complete a field report every time he searches a vehicle. (*Pl.St.,* ¶ 40). Trooper Tone did not complete a field report for either of his stops of white individuals. (*Pl.St.,* ¶ 42–43). For the purposes of this motion, then, we assume neither of their vehicles were searched.

II. *ANALYSIS*

***2** The standards governing summary judgment proceedings are familiar; the Seventh Circuit discussed them in *Santaella v. Metropolitan Life Ins. Co.,* 123 F.3d 456 (7th Cir.1997):

> In a summary judgment action, the moving party shoulders the initial burden of production. It must identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. When the movant satisfies that burden, the nonmovant must set forth specific facts showing there is a genuine issue for trial. If no genuine issue of material fact exists, the sole question is whether the moving party is entitled to judgment as a matter of law.

Santaella, 123 F.3d at 456 (citations and quotations omitted).

Here, the only "new" issue the parties present is whether plaintiffs have finally, successfully presented evidence to support an Equal Protection claim. Much of Gomez's response memorandum is taken up rehashing the same arguments already presented and rejected on the Equal Protection issue and the qualified immunity question. This Magistrate Judge and Judge Manning have already spent a significant amount of time and effort addressing and rejecting these contentions (*Report and Recommendation of July 10, 1997,* at 15–21, 26–29; *Chavez v. Illinois State Police,* 27 F.Supp.2d 1053, 1066–69, 1070–71 (N.D.Ill.1998). Accordingly, we see no need to duplicate those efforts. The question remains: can plaintiffs show that they were treated differently than similarly situated white individuals?

Accordingly, we consider the evidence now before the court of similarly situated white individuals who were treated differently that Gomez. The defendants lodge two arguments against this evidence. The first is procedural. The plaintiffs have already admitted that they could not identify any similarly situated white motorists on the two days in question. (*Defendants' Reply Memorandum,* at 2–3 *citing Defendants' Memorandum of Law; Ex. A,* ¶¶ 1, 5, 23, 31, 35–36). Thus, defendants argue that the court cannot consider the new evidence presented here.

While Fed.R.Civ.P. 36(b) does provide that "[a]ny matter admitted under this rule is conclusively established unless the court permits withdrawal or amendment of the admission," we note that the admissions under consideration were limited to the same days Trooper Tone stopped Gomez. In this regard, defendants put too fine a point on "similarly situated." There is nothing in any of the case law we have reviewed to suggest that, in a case such as this, Gomez would have to find similarly situated individuals who were stopped on the very same day he was. Defendants submit nothing that would convince us otherwise. "Similarly" situated does not mean "identically" situated. *See, e.g. Hiatt v. Rockwell Intern. Corp.,* 26 F.3d 761, 770 (7th Cir.1994) (distinguishing "similar" from "identical" in employment discrimination context).

***3** It does, however, mean "comparably" situated. *Cf. Ibarra v. Martin,* 143 F.3d 286, 292 (7th Cir.1998) (employment discrimination context); *Fuka v. Thomson Consumer Electronics,* 82 F.3d 1397, 1405 (7th Cir.1996) (employment discrimination context). There is nothing to suggest that the two white individuals Trooper Tone stopped were similarly situated to Gomez. Evidence Gomez himself submits shows that, prior to requesting consent to search Gomez's vehicle, Trooper Tone knew that Gomez had an arrest record that included a drug offense. (*Pl.St., Ex. 9).* There is no evidence that the two white individuals presented Trooper Tone with a similar law enforcement situation. Accordingly, we cannot find that Gomez has presented evidence to create a genuine issue as to whether he was treated differently than similarly situated white individuals.

III. *CONCLUSION*

For the foregoing reasons, it is hereby recommended that defendants' motion for partial summary judgment be GRANTED as to the Equal Protection and freedom of movement claims of Joseph Gomez.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn,* 474 U.S. 140 (1985); *The Provident Bank v. Manor Steel Corp.,* 882 F.2d 258 (7th Cir.1989).

Footnotes

1 Under Local Rule 12, a party moving for summary judgment must file a:

> statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law ... The statement ... shall consist of short numbered paragraphs, including with each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set

forward in the paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

Local Rule 12(M)(3). The party opposing the motion must then file:

a concise response to the movant's statement that shall contain:

(a) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and

(b) a statement consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.

Local Rule 12(N)(3). The district court, with the approval of the Seventh Circuit, has long enforced the requirements of these rules. *Huff v. UARCO, Inc.,* 122 F.3d 374, 382 (7th Cir.1997).

2 One problem plaintiffs seem to have that prompts them to dwell on their statistical evidence, is that they presume there is no legitimate explanation for state troopers stopping more Hispanics than whites, or for searching more Hispanics than whites. As cases like *U.S. v. Armstrong,* 517 U.S. 456, 469, 116 S.Ct. 1480, 1488–89 (1996) have indicated, Equal Protection claims cannot be based on unproven presumptions.