

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-3626

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DANIEL TYUS,  
Appellant  
vs.

CITY OF NEW KENSINGTON, a municipal corporation; RON ZELLERS, individually and in his official capacity as a police officer for the New Kensington Police Department; JOHN PECK, individually, and in his official capacity as District Attorney of Westmoreland County, Pennsylvania; LARRY KOENIG, Individually, and in his official capacity as Assistant District Attorney for Westmoreland County, Pennsylvania; PATRICK NOONAN, individually, and in his official capacity as Assistant District Attorney for Westmoreland County, Pennsylvania; WESTMORELAND COUNTY; WESTMORELAND COUNTY DISTRICT ATTORNEY'S OFFICE

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
(D.C. Civ. No. 04-cv-00138)  
District Judge: Honorable Arthur J. Schwab

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Submitted Under Third Circuit L.A.R. 34.1(a)  
May 16, 2006

Before: RENDELL, Van ANTWERPEN, and WEIS, Circuit Judges.

(Filed: May 19, 2006)

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OPINION

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WEIS, Circuit Judge.

As a retrial on first degree murder charges was about to begin, plaintiff Tyus pleaded *nolo contendere* to a charge of aggravated assault in connection with the death of Kevin Golden. Tyus was sentenced to time served and an additional term of probation. He then filed suit against state law enforcement officials alleging violation of his constitutional rights.

Because this opinion is not precedential, we will not review the factual background which is set out in the comprehensive memoranda of the District Court.

The District Court entered judgments in favor of all of the defendants in two Memorandum Opinions and Orders. Plaintiff has appealed the District Court's grant of summary judgment in favor of District Attorney John Peck, Assistant District Attorney Larry Koenig, the Office of the District Attorney, City of New Kensington, and Detective Ron Zellers.

Plaintiff raised three issues on appeal. First, he argued that the District Court erred when it concluded that Peck and Koenig were entitled to absolute prosecutorial immunity. Second, plaintiff contends that the District Court erred when it concluded that the underlying criminal proceedings did not terminate in his favor. Finally, he contends that the District Court erred when it concluded that he did not satisfy

the prerequisites for municipal and official liability.

Plaintiff contended that detective Zellers secured an arrest warrant based in part on a false statement in the affidavit. The District Court correctly found that the false arrest claim was not viable because the criminal proceeding did not terminate in favor of plaintiff; instead, plaintiff pleaded *nolo contendere* to the aggravated assault charge that arose out of the conduct set out in the arrest warrant initiated by detective Zellers.

Assistant District Attorney Koenig was entitled to absolute immunity because his conduct in preparation for the trials and during the trials themselves were within the scope of a prosecutor's legitimate duties. See Imbler v. Pachtman, 424 U.S. 409 (1976). The District Court properly analyzed the evidence supporting summary judgment in Koenig's favor.

Plaintiff failed to present evidence sufficient to defeat the motions for summary judgment filed on behalf of District Attorney Peck, his office and the City of New Kensington based on failure to train and supervise the conduct of the other defendants. Accordingly, judgment was entered in their favor as well.

Essentially for the reasons stated in the District Court's Memorandum Opinions, the Judgments of the District Court as to defendants Peck, Koenig, Zellers, the Office of the District Attorney and the City of New Kensington will be affirmed.