NO.____

IN THE

Supreme Court of the United States

Charles Simonson,

Petitioner

-v-

Borough of Taylor and William Roche

Respondents

On Petition For Writ of Certiorari
To the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Third Circuit held that probable cause can be based solely on the statements of a victim and an alleged 1 ½ hour investigation that failed to include interviewing any witnesses. Simonson v. Borough of Taylor, 839 Fed. Appx. 735, 736 (3d Cir. 2020). In contrast, the Ninth and Seventh Circuits require more evidence than just a victim's statement to find probable cause to make an arrest. "In establishing probable cause, officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses." Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001).

Similarly, the Seventh Circuit requires "[a] police officer may not close her or his eyes to facts that would help clarify the circumstances of an arrest. Reasonable avenues of investigation must be pursued especially when, as here, it is unclear whether a crime had even taken place." BeVier v. Hucal, 806 F.2d 123, 128 (7th Cir. 1986).

Whether the court of appeals erred when it did not require independent corroboration of an estranged-divorcing wife's allegations

that her husband attempted to kill her before making a warrantless, non-judicial approved arrest when the allegations were five (5) days old?

PARTIES TO THE PROCEEDING

Petitioner is Charles Simonson. The respondents to the proceeding whose judgment is sought to be reviewed are the Borough of Taylor and William Roche.

STATEMENT OF RELATED PROCEEDINGS

- *Simonson v. Borough of Taylor, et al.*, 18-cv-2445, U.S. District Court for the Middle District of Pennsylvania. Judgment entered March 30, 2020.
- *Simonson v. Borough of Taylor, et al.*, 20-1896, U.S. Court of Appeals for the Third Circuit. Judgement entered December 28, 2020.
- *Simonson v. Borough of Taylor, et al.*, 20-1896, U.S. Court of Appeals for the Third Circuit. Order entered January 22, 2021.

TABLE OF CONTENTS

QUESTION PRESENTED..... i

PARTIES TO THE PROCEEDING..... iii

STATEMENT OF RELATED PROCEEDINGS iv

TABLE OF CONTENTS..... v

TABLE OF AUTHORITIES..... vii

PETITION FOR A WRIT OF CERTIORARI..... 1

OPINIONS BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISION INVOLVED..... 1

INTRODUCTION.....2

STATEMENT OF THE CASE..... 2

REASONS FOR GRANTING THE PETITION..... 11

I. THERE IS A CIRCUIT CONFLICT OVER THE QUESTION PRESENTED.....11

II. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING AND THIS PETITION PROVIDES A PERFECT OPPORTUNITY FOR THIS COURT TO RESOLVE THIS ISSUE..... 15

III. THE DECISION BELOW IS INCORRECT..... 17

CONCLUSION..... 19

APPENDIX

Opinion, U.S. Court of Appeals for the Third Circuit,
December 28, 2020……App. A 1-11

Memorandum Opinion, U.S. District Court for the Middle District
of Pennsylvania, March 30, 2020……App. B 1-38

Order, U.S. Court of Appeals for the Third Circuit,
January 22, 2021……App. C 1-2

TABLE OF AUTHORITIES

CASES

Arpin v. Santa Clara Valley Transp. Agency,
261 F.3d 912 (9th Cir. 2001)..... i,13

Bd. of Educ. v. Pico,
457 U.S. 853 (1982)..... 18

BeVier v. Hucal,
806 F.2d 123 (7th Cir. 1986)..... i,13

Golino v. New Haven,
950 F.2d 864 (2nd Cir. 1991)..... 15

Navarette v. California,
572 U.S. 393 (2014)..... 3

Restifo v. Restifo,
489 A.2d 196 (Pa. Super. 1985)..... 16

Sheik-Abdi v. McClellan,
37 F.3d 1240 (7th Cir. 1994)..... 14

Simonson v. Brough of Taylor,
839 Fed. Appx. 735 (3d Cir. 2020)..... i,12

Stokes v. Bd. of Educ.,
599 F.3d 617 (7th Cir. 2010)..... 14

United States v. Cutchin,
956 F.2d 1216 (D.C. Cir. 1992)..... 15

United States v. Elmore,
482 F.3d 172 (2nd Cir. 2007)..... 15

CONSTITUTION

U.S. Const. amend IV..... 2

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The decision of the court of appeals is reported at 839 Fed. Appx. 735 and is reprinted in the Appendix to the Petition (App. A, at 1-11). The court of appeals denied sur petition for rehearing on January 22, 2021. (App. C, at 1-2). The district court's opinion granting summary judgment to respondents is reported at 2020 U.S. Dist. LEXIS 54633 and reprinted at App. B, at 1-38.

JURISDICTION

The court of appeals issued its decision on December 28, 2020. (App. A, at 1-11). The court of appeals denied a petition for sur rehearing on January 22, 2021. (App. C, at 1-2). On March 19, 2020, this Court extended deadlines for filing a Petition for Writ of Certiorari to 150 days. This Court has jurisdiction under 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

"The Fourth Amendment provides: [1] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

INTRODUCTION

With the wave of injustice with wrongful police stops, investigations and prosecutions, the rules governing the arrest of people must ensure justice is render fairly, impartially and properly; and it starts with educating police officers on the proper rules and standards to assess whether a crime occurred, which begins when they make a criminal arrest. "Law enforcement agencies follow closely our [Supreme Court of the United States] judgments on matters such as this, and they will identify at once our new rule". Navarette v. California, 572 U.S. 393, 405 (2014).

STATEMENT OF THE CASE

Petitioner Charles Simonson brought this action under 42 U.S.C.S. § 1983 for constitutional claims of unlawful search and seizure, malicious prosecution, false arrest/false imprisonment, stigma-plus, defamation and false light. On November 7, 2018, Charles Simonson was arrested

after respondent Borough of Taylor learned that his estranged-divorcing wife claimed he attempted to kill her on November 2, 2018.

Respondents did not interview any witnesses, including possible neighbors, or even interview Charles Simonson before arresting him. (App. B, at 12). They relied completely on the statements made by his estranged divorcing-wife Loretta Simonson, which were five (5) days after the alleged events occurred and only 1 ½ hours after respondents learned of Loretta Simonson's allegations, which proved to be false since she was ultimately arrested for false statements. (App. B, at 8).

When respondent Borough of Taylor questioned Loretta Simonson, she initially denied that anything had occurred. (App. B, at 7). Only after pushing Loretta Simonson did she implicate her husband and state that he attempted to kill her five days earlier. (App. B, at 8). At the time of the attempted murder, Loretta Simonson did not even call the police and report the alleged killing or seek treatment. (App. B, at 8).

Respondent William Roche, the arresting officer, did not even interview Loretta Simonson to assess her credibility nor did he seek out any witness to collaborate her claims. (App. B, at 12). Without any investigation and only after 1 ½ hours after Loretta Simonson made

statements to respondent Borough of Taylor, respondent William Roche arrested Charles Simonson without a warrant. (App. B, at 12). At the time of the arrest, Charles Simonson denied that he attempted to kill his estranged-divorcing wife, which did not stop respondent William Roche from processing Charles Simonson. (App. B, at 12).

Loretta Simonson told police that Charles Simonson entered the house with a shotgun, said "die bitch" and shot at her in her bed. (App. B, at 8). Thereafter, Loretta Simonson jumped out of bed, ran down the stairs after Charles Simonson. (App. B, at 8). While running down the stairs Loretta Simonson turned on the lights and grabbed a frying pan. (App. B, at 8). Loretta Simonson said that Charles Simonson threw the shotgun in the red car and drove off. (App. B, at 8).

When Charles Simonson was arrested, respondents searched his grey Ford Focus that was at his job site without a warrant and the grey Ford Focus was not the red car that Loretta Simonson stated that Charles Simonson drove off in. (App. B, at 8). Charles Simonson's vehicle was transported and placed in an impound lot. (App. B, at 32).

On November 8, 2018, respondents arrested Loretta Simonson for making false statements and discharge of a firearm into occupied

structure and reckless endangering another person. (App. B, at 17). On April 25, 2019, Loretta Simonson pled guilty to Recklessly Endangering Another Person and False Identification to Law Enforcement Officer. (App. B, at 17).

The court of appeals decision granting summary judgment to respondents based on a conclusion that probable cause existed to arrest Charles Simonson based on his estranged-divorcing wife's statement she made just 1 ½ hours earlier and five (5) days old was incorrect and is in conflict with the Ninth and Seventh Circuits, which require collaboration of a victim's statement to establish probable cause before an arrest can be made. This petition provides the Court the perfect vehicle to resolve the conflict between the circuits related to what investigation is required before an arrest is made.

The petition should be granted.

A. Factual Background and Pre-Existing Legal Landscape

Petitioner, Charles Simonson, was arrested before probable cause was established for attempted murder based on the sole statement of his estranged-divorcing wife, Loretta Simonson. Respondent Borough of Taylor received a call from City of Scranton Police Department based on

a call from Loretta Simonson's physician, Dr. McCall, who claimed that Loretta Simonson told him that her estranged husband, Charles Simonson, had attempted to kill her five (5) days earlier and that he was going to kill Dr. McCall. (App. B, at 6).

Based on that information, respondent Borough of Taylor performed a welfare check on Loretta Simonson at the martial home in Taylor, Pennsylvania. (App. B., at 6). When first questioned her about her welfare and the alleged occurrence of a crime, Loretta Simonson denied that anything occurred. (App. B, at 7).

After questioning Loretta Simonson more, Loretta Simonson eventually took Taylor Police Chief Stephen Derenick up to her second-floor bedroom and showed what appeared to be a bullet hole in the bedroom wall. (App. B, at 7). Thereafter, Taylor Police Chief took Loretta Simonson to the police station for an interview. (App. B, at 7).

According to Loretta Simonson's statement, Charles Simonson entered the marital home at 3:00 am, said "die bitch" and shot at her while she was in bed on the second floor of the home, five (5) days earlier. (App. B, at 7). After the alleged gunshot bullet missed her, Loretta Simonson claimed that she got up and ran after Charles Simonson down

the stairs turning on the lights and then grabbed a frying pan. She stated that Charles Simonson gave her the middle finger, threw the shotgun in a running red car and drove off. (App. B, at 8). At the time of these alleged events, Loretta Simonson never called 911 or sought treatment at that time.

After Loretta Simonson's statement was taken, Taylor Police Chief Stephen Derenick called respondent William Roche in and handed over the investigation to respondent William Roche with the signed statement of Loretta Simonson. (App. B, at 7). Respondent William Roche never interviewed Loretta Simonson to assess her credibility or the reliability of the statement she gave to Taylor Police. (App. B, at 7). Respondent William Roche never interviewed any neighbors or even talked to Jeanne Rosencrance, an advocate for the victim. (App. B, at 11, 7).

Without doing any investigation, respondent William Roche completed an NCIC sheet advising that Charles Simonson was to be arrested just 1 ½ hours after Taylor Borough Police reviewed the call from City of Scranton Police. (App. B, at 11). Thereafter, respondent William Roche went to Borough of Throop and arrested Charles Simonson after he left his work site and was waiting at the Borough of

Throop Police station, and respondent William Roche stated to Charles Simonson "so we meet again". (App. B, at 12).

Although Charles Simonson denied the accusations that he attempted to kill his wife and told respondent William Roche that he was nowhere near the martial home on the date the alleged crime occurred five (5) days earlier, respondent William Roche did not consider that information and continued to process Charles Simonson when he never even talked to the complaining witness, Loretta Simonson, or interviewed any independent witness. (App. B, at 12).

Respondent William Roche never had a conversation with First Assistant Lackawanna County District Attorney Judith Price, who was not a neutral independent magistrate, but rather an arm of the police. (Dkt. 40 at 15). Respondent William Roche never interviewed the District Attorney's office victim advocate, Jeanne Rosencrance, who Taylor Police believed was a psychologist; however, she was not nor was she even a licensed social worker. Her position with the District Attorney office was to act on behalf of the victim and not assess the victim's credibility or reliability. In fact, she was employed to believe the victim by the District Attorney's Office.

After Petitioner Charles Simonson was booked and bail was set at $850,000.00, which Charles Simonson could not afford, he was jailed. There was a news press conference about the arrest of Charles Simonson and his mug shot appeared on the local news. (App. B, at 34). Thereafter, a neighbor, Leilani Raguckas, came forward and disclosed to Taylor Police that Loretta Simonson told her the cat had knocked over the shotgun since she heard a shot. (Dkt. at 43-6). At that time, Loretta Simonson proceeded to offer the shotgun to Leilani Raguckas daughter's boyfriend, Bradley Albrecht, who took possession of the shotgun thereafter. (Dkt. at 43-6).

On November 8, 2018, the day after Charles Simonson was imprisoned and the neighbor came forward, respondent William Roche interviewed Loretta Simonson, and she recanted her statements and she was charged with false statements, discharge of a firearm in an occupied space and reckless endangering another. (App. B, at 17). Eventually, Loretta Simonson pled guilty to providing a false statement and recklessly endangering another person. (App. B, at 17).

Respondents' lawyers took 11 depositions, hired a non-retained hybrid fact/expert witness, who was First Assistant Lackawanna County

District Attorney Judith Price, the same person who was involved in a media story on the case, filed a Third-Party Complaint seeking to hold Loretta Simonson responsible for the false arrest of Charles Simonson. Nonetheless, the lower court granted summary judgment to respondents.

B. Decisions Below

1. Petitioner Charles Simonson filed a Complaint alleging violations of his Fourth Amendment rights based on the unlawful search, seizure and arrest on November 7, 2018. Respondents filed summary judgment and the district court granted respondents' motion. The district court concluded that respondents had probable cause to arrest Charles Simonson based solely on Loretta Simonson's statements related to the alleged events that occurred five (5) days earlier and her statement of why there was a hole in her bedroom wall. (App. B, at 27).

2. A panel of the Third Circuit affirmed.

The panel concluded that there was probable cause to arrest Petitioner Charles Simonson based solely on Loretta Simonson's statements and Loretta Simonson's version of events that drove the non-arresting police officers' observations to conclude that a shotgun was fired by Charles Simonson. (App. A, at 7).

3. The court of appeals denied a petition for rehearing. (App. C, at 1-2).

REASONS FOR GRANTING THE PETITION

The decision below shows a circuit conflict over the question presented that warrants this Court's review. The question of Fourth Amendment law presented here is also important and provides a perfect opportunity for this Court to resolve the question presented and provide law enforcement with guidance on probable cause. The decision below is incorrect since there were material factual disputes that could only be resolved by a jury.

I. THERE IS A CIRCUIT CONFLICT OVER THE QUESTION PRESENTED

The Third Circuit held that probable cause can be based solely on the statements of a victim and an alleged 1 ½ hour investigation that failed to include interviewing any witnesses or assessing the credibility and reliability of the victim-complainant since the arresting officer never spoke to the victim-complainant. Simonson v. Borough of Taylor, 839 Fed. Appx. 735, 736 (3d Cir. 2020).

In contrast, the Ninth Circuit requires more evidence than just a victim's statement to find probable cause to make an arrest. "In

establishing probable cause, officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses." Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001).

Besides the Ninth Circuit, the Seventh Circuit also requires more than just a victim's recitation of what occurred to establish probable cause for an arrest. The Seventh Circuit has held, "[a] police officer may not close her or his eyes to facts that would help clarify the circumstances of an arrest. Reasonable avenues of investigation must be pursued especially when, as here, it is unclear whether a crime had even taken place." BeVier v. Hucal, 806 F.2d 123, 128 (7th Cir. 1986)(emphasis added).

"Although the police must be allowed some margin of error, a police officer evaluating a situation for probable cause must utilize the means at hand to minimize the risk of error. See 1 LaFave, Search & Seizure § 3.2, at 467. Because Hucal failed to avail himself of the opportunity to elicit further facts which would have indicated that the arrest should not have been made, the arrest of plaintiffs was without the

requisite probable cause." BeVier v. Hucal, 806 F.2d 123, 128 (7th Cir. 1986).

As the Seventh Circuit noted, "[i]n some situations, an officer may be required to conduct some investigation before making an arrest; in others, an officer may have probable cause for arrest without any need for investigation. Relevant factors include the information available to the officer, the gravity of the alleged crime, the danger of its imminent repetition, and the amount of time that has passed since the alleged crime." Stokes v. Bd. of Educ., 599 F.3d 617, 625 (7th Cir. 2010)(emphasis added).

"Where there is a lapse of time between the alleged lawbreaking and the arrest, as was the case in *Simmons* and *Gerald M.,* we find it more likely that some type of investigation--for example, the questioning of witnesses--will be appropriate." Sheik-Abdi v. McClellan, 37 F.3d 1240, 1247 (7th Cir. 1994)(emphasis added).

As the District of Columbia Circuit held, "[w]ithout such indicia of reliability the stop will be illegal unless the officers acting on the report have 'sufficiently corroborated [the report] to furnish reasonable suspicion that [the subject] was engaged in criminal activity' or had

been so engaged." United States v. Cutchin, 956 F.2d 1216, 1218 (D.C. Cir. 1992). "Reasonable suspicion requires more than an 'inchoate and unparticularized suspicion or hunch.' … Police 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion [on a citizen's liberty interest].'" United States v. Elmore, 482 F.3d 172, 178-179 (2nd Cir. 2007)(cleaned up).

"The right not to be arrested or prosecuted without probable cause has, of course, long been a clearly established constitutional right. Probable cause to arrest exists when the authorities have knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." Golino v. New Haven, 950 F.2d 864, 870 (2nd Cir. 1991).

Here, the divorcing wife was eventually arrested for false statements made to police that her husband, who was not living with her at the time, tried to kill her. There were no witnesses, evidence, or statements from independent sources that supported the estranged wife's version of events, which were five days old at the time the Taylor Police

began its 1 ½ hour investigation, which concluded with imprisoning a man for attempted murder and altering his life forever since his mug shot was blasted over the local media as a murderer.

A finding of probable cause must be supported by evidence independent of the victim, especially in this case since the victim-estranged wife had a motive to lie to gain an advantage in the divorce proceeding since once convicted and sentenced to more than two years, the estranged wife could be granted a divorce in her favor and spousal support. Restifo v. Restifo, 489 A.2d 196, 198 f.3 (Pa. Super. 1985).

Consequently, due to the decisional circuit conflict, this Court can resolve this issue and ensure citizens are not falsely arrested based on the sole word of an estranged-divorcing spouse, who has motive to lie, and in this case did in fact make a false statement.

II. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING AND THIS PETITION PROVIDES A PERFECT OPPORTUNITY FOR THIS COURT TO RESOLVE THIS ISSUE

Here, a man was imprisoned for attempted murder based on statements made by his estranged-divorcing wife that he arrived at the martial home five (5) days earlier, November 2, 2018, and shot at her

intending to kill her. Loretta Simonson never called the police on that day or sought treatment.

After receiving a call from Loretta Simonson's doctor about events that occurred five days before, the Taylor Police did a welfare check on Loretta Simonson. The welfare check ended in respondent William Roche arresting Charles Simonson for attempted murder 1 ½ hours after the Taylor Police learned of this alleged stale crime. Taylor Police did not even interview one neighbor or Charles Simonson before arresting him in such short time for attempting to kill his estranged-divorcing wife.

Eventually, Loretta Simonson was charged with the crime of falsification for lying and telling Taylor Police that Charles Simonson tried to kill her; however, had a neighbor not come forward after Charles Simonson was jailed and his arrest publicized, he would still be there today since no further investigation would have occurred.

Consequently, police officers have a duty to investigate a crime and find probable cause before charging someone with attempted murder and causing their life to spiral downward since imprisonment costs not only one's freedom, but also loss of employment and property. Therefore, a duty to investigate and substantiate a victim's allegations is the only

proper standard that must be required to ensure police officers do not falsely arrest innocent citizens.

III. THE DECISION BELOW IS INCORRECT

This Court's review is also warranted because the decision below is wrong. As this Court has held, "[b]ut that evidence at most creates a genuine issue of material fact on the critical question of the credibility of petitioners' justifications for their decision: On that issue, it simply cannot be said that there is no genuine issue as to any material fact." Bd. of Educ. v. Pico, 457 U.S. 853, 875 (1982).

As noted by the Second Circuit, a jury could disbelieve police officers' testimony. "In any event, as to this allegedly uncontroverted fact and the only other remaining observation by Trooper West that Gatling does not explicitly deny in her testimony — namely, that her pupils were constricted — a jury could, if it found that Trooper West lied about (or exaggerated) her poor performance on the field sobriety tests based upon the totality of the evidence, also could discredit his testimony regarding her dilated pupils and her following too closely to another car. … In short, construing the evidence most favorably to Gatling, a rational jury could find that there was no probable cause for Gatling's arrest or her

prosecution." Gatling v. West, 2021 U.S. App. LEXIS 9837, *10-11 (2nd Cir. 2021)(cleaned up).

Consequently, there were issues of material fact in dispute as to whether Loretta Simonson, the sole complaining-witness, was reliable for respondent William Roche, who never interviewed her, to believe that Charles Simonson had committed the crime of attempted murder. Therefore, this petition should be granted to ensure this does not happen again and provide instruction to law enforcement on the importance of collaborating the statements of a divorcing victim before arresting a spouse for attempted murder.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: June 18, 2021

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1896

CHARLES SIMONSON,
Appellant

v.

BOROUGH OF TAYLOR; WILLIAM ROCHE

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-18-cv-02445)
District Judge: Honorable Malachy E. Mannion

Submitted under Third Circuit L.A.R. 34.1(a)
December 15, 2020

Before: GREENAWAY, JR., SHWARTZ, and FUENTES, Circuit Judges.

(Filed: December 28, 2020)

OPINION*

SHWARTZ, Circuit Judge.

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

Plaintiff Charles Simonson brought claims under 42 U.S.C. § 1983 against Defendants Sergeant William Roche and the Borough of Taylor arising from his arrest and the seizure of his car. Because probable cause supported Simonson's arrest and the vehicle's impoundment, the District Court properly granted summary judgment for Defendants, and we will affirm.

I

A

Loretta Simonson told her doctor that Simonson, her estranged husband, attempted to shoot her. Based on this information, the Taylor Borough Police Department went to her home to conduct a welfare check. Loretta initially denied that a shooting occurred, but then told the police that Simonson had entered the home several days earlier, shouted "die bitch," fired at her head with a shotgun, ran outside, threw the gun into his car, and drove away. App. 135. Loretta explained that the bullet struck the wall above the bed and pellets struck her head. The officers observed an apparent bullet hole in the bedroom wall and an injury to Loretta's nose.

At the police station, Loretta prepared a written statement detailing the event. In addition, a trauma psychologist interviewed Loretta and told law enforcement that Loretta showed signs of being a domestic violence victim.

The Police Chief assigned Sergeant Roche to present these facts to the First Assistant District Attorney, who approved charging Simonson with: attempted homicide, 18 Pa. Cons. Stat. § 901(a); aggravated assault, 18 Pa. Cons. Stat. § 2702(a)(1); discharge of a firearm into an occupied structure, 18 Pa. Cons. Stat. § 2707.1(a); possession of a

weapon for an unlawful purpose, 18 Pa. Cons. Stat. § 907(b); prohibited use of an offensive weapon, 18 Pa. Cons. Stat. § 908(a); terroristic threats with intent to terrorize another, 18 Pa. Cons. Stat. § 2706(a)(1); recklessly endangering another person, 18 Pa. Cons. Stat. § 2705; and simple assault, 18 Pa. Cons. Stat. § 2701(a)(1). The affidavit in support of the charges did not mention that Loretta initially told the officers that nothing happened.

Law enforcement from Throop Township arrested Simonson.[1] Sergeant Roche met Simonson at the Throop jail, remarked "so we meet again,"[2] App. 636, handcuffed him, and transported him to the Taylor Borough Police Department. Law enforcement also seized Simonson's car pending a warrant to search it for evidence. The Police Chief also held a press conference to announce the arrest, which was then reported in the news. Simonson maintained his innocence throughout the process.

The next day, Loretta's neighbor Leilani Raguckas told the officers that she heard a gunshot on the date on which Loretta claimed Simonson shot at her, but that Loretta later told Raguckas that her cat knocked the gun over and it discharged, and that Loretta gave the shotgun to Raguckas's daughter's boyfriend. As a result of this new information, law enforcement re-interviewed Loretta. During the interview, she admitted that on the night of the purported incident, Simonson was not at her house and she

[1] Simonson was arrested without a warrant under Pennsylvania law. See 18 Pa. Cons. Stat. § 2711(a) ("A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated" enumerated crimes, including aggravated assault, "against a family or household member.").

[2] Sergeant Roche had arrested Simonson in August 2018 for a domestic incident.

accidentally fired the shotgun. Simonson was then released from prison, his car was returned to him, and the charges were dismissed.

B

Simonson filed a complaint against Defendants under 42 U.S.C. § 1983 alleging: (1) Roche engaged in (a) an unlawful search and seizure of his person under the Fourth and Fourteenth Amendments, (b) malicious prosecution under the Fourth Amendment, (c) false arrest and false imprisonment under the Fourth Amendment, and (d) assault and battery; (2) the Borough of Taylor inadequately trained and supervised the officers in violation of Simonson's constitutional rights; and (3) both Defendants engaged in (a) a stigma-plus violation of due process, (b) an unlawful search and seizure of Simonson's car under the Fourth Amendment, and (c) false light and defamation.

After discovery, Defendants moved for summary judgment. The District Court granted the motion, concluding that (1) Simonson's Fourth Amendment claims against Roche for unlawful search and seizure, malicious prosecution, and false arrest and imprisonment failed because the charges were supported by probable cause; (2) Simonson's due process claim failed because he was not deprived of an additional right or interest; (3) Simonson's municipal liability claim failed because no individual municipal employee violated his Constitutional rights; and (4) Simonson's Fourth Amendment claim regarding his car's impoundment failed because probable cause existed to seize the car to look for the shotgun allegedly used to shoot at Loretta. Simonson v. Borough of Taylor, No. 3:18-2445, 2020 WL 1505572, at *10, *12, *14 (M.D. Pa. Mar. 30, 2020). The Court declined to exercise supplemental jurisdiction over

the state law claims and dismissed them without prejudice.[3] Id. at *14. Simonson appeals.

II[4]

To state a claim for relief under § 1983, "a plaintiff must demonstrate the defendant, acting under color of state law, deprived him or her of a right secured by the Constitution or the laws of the United States." Kaucher v. Cnty. of Bucks, 455 F.3d 418, 423 (3d Cir. 2006). Accordingly, to evaluate Simonson's claims in the context of a motion for summary judgment, we must determine whether there are disputed issues of material fact that, if found for Simonson, would show he was deprived of a constitutional right. See id. As explained below, Simonson has not shown that Defendants violated his rights.

A

Simonson brings three Fourth Amendment claims against Roche: unlawful search and seizure, malicious prosecution, and false arrest and imprisonment. All three claims require Simonson to establish that Roche lacked probable cause to believe that Simonson committed a crime. See James v. City of Wilkes-Barre, 700 F.3d 675, 680 (3d Cir. 2012) ("To state a claim for false arrest under the Fourth Amendment, a plaintiff must

[3] Simonson does not challenge the dismissal of his Fourteenth Amendment claims under the "more-specific provision rule," Simonson, 2020 WL 1505572, at *7 (citing Albright v. Oliver, 510 U.S. 266, 273 (1994)), or his state law claims.

[4] The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1343(a), and 1367. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's order granting summary judgment. Andrews v. Scuilli, 853 F.3d 690, 696 (3d Cir. 2017). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

establish . . . that the arrest was made without probable cause."); Zimmerman v. Corbett, 873 F.3d 414, 418 (3d Cir. 2017) ("To prevail on [a] malicious prosecution claim under § 1983, [a plaintiff] must establish that . . . the defendant[s] initiated the proceeding without probable cause." (third alteration in original) (citation omitted)); Paff v. Kaltenbach, 204 F.3d 425, 435 (3d Cir. 2000) ("The Fourth Amendment prohibits a police officer from arresting a citizen without probable cause."). Because these claims "hinge on probable cause, the constitutional violation question in this case turns on whether a reasonable officer could have believed that probable cause existed to arrest the plaintiff at that time." Andrews v. Scuilli, 853 F.3d 690, 697 (3d Cir. 2017) (citations and internal quotation marks omitted).

Probable cause exists if, "at the moment the arrest was made[,] . . . the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense." Wright v. City of Philadelphia, 409 F.3d 595, 602 (3d Cir. 2005) (alterations in original) (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)). Probable cause "does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt," Zimmerman, 873 F.3d at 418 (quoting Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995)), or "that officers correctly resolve conflicting evidence or that their determinations of credibility, were, in retrospect, accurate," Dempsey v. Bucknell Univ., 834 F.3d 457, 467 (3d Cir. 2016) (citation omitted). We cannot, however, "exclude from the probable cause analysis unfavorable

facts an officer otherwise would have been able to consider."[5] Andrews, 853 F.3d at 698 (citation omitted). "Instead, we view all such facts and assess whether any reasonable jury could conclude that those facts, considered in their totality in the light most favorable to the nonmoving party, did not demonstrate a 'fair probability' that a crime occurred." Id. (citation omitted).

"Whether any particular set of facts suggest that an arrest is justified by probable cause requires an examination of the elements of the crime at issue." Wright, 409 F.3d at 602. Simonson was charged with, among other things, aggravated assault. Under Pennsylvania law, "[a] person is guilty of aggravated assault if he . . . attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life." 18 Pa. Cons. Stat. § 2702(a)(1). Aggravated assault requires a degree of culpability that "considers and then disregards the threat necessarily posed to human life by the offending conduct" and "the offensive act must be performed under circumstances which almost assure that injury or death will ensue." Commonwealth v. O'Hanlon, 653 A.2d 616, 618 (Pa. 1995) (emphasis omitted).

Based on Loretta's statements and the police officers' observations at her home, there was probable cause to believe that Simonson "attempt[ed] to cause serious bodily

[5] "While it is axiomatic that at the summary judgment stage, we view the facts in the light most favorable to the nonmoving party, it does not follow that we exclude from the probable cause analysis unfavorable facts an officer otherwise would have been able to consider." Dempsey, 834 F.3d at 468. "Thus, where the question is one of probable cause, the summary judgment standard must tolerate conflicting evidence to the extent it is permitted by the probable cause standard." Id.

injury" to Loretta, 18 Pa. Cons. Stat. § 2702(a)(1), that Simonson "disregard[ed] the threat . . . posed to [Loretta's] life" by shooting at her, and that his act of shooting at Loretta "almost assure[d] that injury or death [would] ensue," O'Hanlon, 653 A.2d at 618. The affidavit of probable cause stated that: (1) the Taylor Police Department received a request for a welfare check because Loretta told her doctor that Simonson fired a shotgun at her; (2) Loretta told the officers that Simonson said, "die bitch," then fired one blast toward her in bed; (3) the officers observed evidence consistent with the discharge of a firearm inside the bedroom; and (4) the officers observed an injury to Loretta's nose. App. 149. Therefore, the affidavit contained facts providing a basis for a reasonable person to believe that Simonson attempted to cause serious bodily injury to Loretta, disregarded the threat to her life, and almost assured that injury or death would ensue.

None of the facts that Simonson identified undermine the existence of probable cause. That Loretta did not report the incident for five days and initially denied that anything occurred does not detract from what the officers saw or their actions based on the details she provided.[6] Because probable cause existed to arrest Simonson for aggravated assault, he cannot establish that he was unlawfully seized, maliciously

[6] When the Police Chief assigned Roche to present the case to the District Attorney, he knew that Loretta had met with a trauma psychologist who found Lorretta's behavior consistent with a domestic violence victim. In addition, the First Assistant District Attorney who approved the charges knew that many domestic violence victims "are afraid to report domestic violence" because they fear "retribution," App. 343. Thus, law enforcement understood Loretta's delayed report and initial denial as a common reaction of a domestic violence victim.

prosecuted, or falsely arrested and imprisoned. Accordingly, he cannot show that Roche's conduct violated the Fourth Amendment, and the District Court thus properly dismissed the § 1983 claim against him.[7]

B

The District Court also correctly granted summary judgment for Defendants on Simonson's due process claim. Simonson contends that his reputation was harmed following news stories about his arrest, and that the harm constituted a due process violation. However, "reputation alone is not an interest protected by the Due Process Clause." Dee v. Borough of Dumore, 549 F.3d 225, 233 (3d Cir. 2008) (emphasis

[7] Because all of Simonson's crimes were simultaneously charged and arose from the same incident, we need not individually analyze the probable cause for the remaining offenses. See Wright, 409 F.3d at 604 ("Even though our discussion of probable cause was limited to [one of many charges], it disposes of [plaintiff's remaining Fourth Amendment claims] with respect to all of the charges brought against her."); see also Johnson v. Knorr, 477 F.3d 75, 84 (3d Cir. 2007) ("[T]here is a distinction on the one hand between a simultaneous arrest on multiple charges where, in a sense the significance of the charges for which there was not probable cause for arrest is limited as the plaintiff in the ensuing civil action could have been lawfully arrested and thus seized on at least one charge and, on the other hand, prosecution for multiple charges where the additional charges for which probable cause is absent almost surely will place an additional burden on the defendant.").

In any event, there is probable cause for all the charges. As discussed above, based on Loretta's statements and their observations, the officers had evidence that Simonson attempted to cause serious harm to Loretta by firing a shotgun toward her, see 18 Pa. Cons. Stat. §§ 901(a) (criminal attempt), 2701(a)(1) (simple assault), 2705 (recklessly endangering another person); the bullet struck the bedroom wall, see id. § 2707.1(a) (discharge of a firearm into an occupied structure); Simonson possessed a shotgun and intended to use it to injure Loretta, see id. §§ 907(b) (possession of a firearm with intent to employ it criminally), 908(a) (prohibited use of offensive weapons by making repairs to, selling, using, or possessing an offensive weapon); and Simonson threatened Loretta by pointing a shotgun at her and saying, "die bitch," App. 149; see 18 Pa. Cons. Stat. § 2706(a)(1) (commission of a crime of violence with intent to terrorize another).

omitted) (citations omitted). Rather, "to make out a due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to his reputation plus deprivation of some additional right or interest" guaranteed by the Constitution or state law. Id. at 233-34 (emphasis omitted) (citation omitted); see also Clark v. Township. of Falls, 890 F.2d 611, 619 (3d Cir. 1989) ("[D]efamation is actionable under 42 U.S.C. § 1983 only if it occurs in the course of or is accompanied by a change or extinguishment of a right or status guaranteed by state law or the Constitution.").

Simonson argues that because there was no probable cause for his arrest, he established the "plus" factor. As explained above, however, the officers had probable cause to arrest, prosecute, and imprison Simonson. Accordingly, he failed to "show a . . . deprivation of some additional right or interest." Dee, 549 F.3d at 233-34. Thus, Defendants were entitled to summary judgment on Simonson's stigma-plus due process claim.

C

Simonson's claim that Defendants unlawfully seized and impounded his vehicle without a warrant or probable cause also fails. The automobile exception to the warrant requirement permits law enforcement to search and seize a vehicle without a warrant if there is "probable cause to believe that the vehicle contains evidence of a crime." United States v. Donahue, 764 F.3d 293, 299-300 (3d Cir. 2014) (citation omitted).

The officers here had probable cause to believe that Simonson's car contained evidence of a crime. They seized Simonson's vehicle after Loretta told them that, after Simonson shot at Loretta and exited their home, he "thr[e]w the shotgun in a red car" and

"drove off." App. 769. Loretta's statement, corroborated by the bullet hole in the wall near her bed, established probable cause to believe that the shotgun could still be in Simonson's car. Accordingly, the District Court properly concluded that probable cause supported the vehicle's seizure and impoundment, and thus no Fourth Amendment violation occurred.[8]

III

For the foregoing reasons, we will affirm the District Court's order granting summary judgment for Defendants.

[8] Simonson waived his municipal liability claim because he failed to raise it on appeal. United States v. Pelullo, 399 F.3d 197, 222 (3d Cir. 2005). Even if Simonson did not waive the claim, it would fail because he did not establish a constitutional deprivation. Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 791 (3d Cir. 2000).

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES SIMONSON,	:	
Plaintiff	:	**CIVIL ACTION NO. 3:18-2445**
v.	:	**(JUDGE MANNION)**
BOROUGH OF TAYLOR and WILLIAM ROCHE,	:	
Defendants	:	

MEMORANDUM

Pending before the court is a motion for summary judgment, pursuant to Fed.R.Civ.P. 56, filed by defendants Borough of Taylor and William Roche (collectively "defendants"), (Doc. 38), with respect to the amended complaint, (Doc. 15), of plaintiff Charles Simonson. Plaintiff basically claims that defendants falsely arrested and imprisoned him and, maliciously prosecuted him without probable cause in violation of his 4th and 14th Amendment rights. Plaintiff alleges that the Borough violated his constitutional rights by failing to establish and maintain a policy to train and supervise Roche and its police officers on how to properly determine if probable cause exists to arrest citizens and to seize their vehicles. Plaintiff brings his constitutional claims under 42 U.S.C. §1983. In their motion, defendants argue that they are entitled to summary judgment on all of plaintiff's 4th Amendment claims since

there was sufficient probable cause to arrest plaintiff after his estranged wife, Loretta Simonson ("Loretta"), told police that plaintiff tried to kill her by firing a shotgun at her while she slept. Plaintiff's wife also told police that plaintiff threatened her and that she was fearful he might come back to their house. Thus, defendants contend that they cannot be held liable based on the undisputed facts regarding plaintiff's arrest and prosecution since they reasonably relied upon Loretta's allegations, along with corroborating physical evidence obtained in their investigation, that plaintiff tried to shoot her and that she was in imminent danger, despite the fact that her allegations were later found to be false. Despite the unfortunate circumstances that befell the plaintiff, his multi-count complaint against the defendants, in light of the undisputed facts, is patently frivolous. It is extremely difficult to comprehend how an experienced attorney could file a case such as this, in good faith. As such, the court will **GRANT** the defendants' motion for summary judgment with respect to plaintiff's constitutional claims. The court will decline to exercise its supplemental jurisdiction over plaintiff's remaining state law claims and they will be **DISMISSED WITHOUT PREJUDICE**.

I. BACKGROUND[1]

In his amended complaint filed on May 30, 2019, (Doc. 15), plaintiff raises the following constitutional claims under §1983 against Roche: unlawful seizure and search of his person in violation of his 4th and 14th Amendment rights, Count I; malicious prosecution, Count II[2]; and false arrest and false imprisonment, Count III. In Count IV, plaintiff raises a 14th Amendment stigma plus due process claim against Roche and the Borough of Taylor. Plaintiff also raises state law claims against both defendants in Count V for false light and defamation. In Count VI, plaintiff asserts a state law claim for assault and battery against Roche. In Count VII, plaintiff raises a municipal liability claim against the Borough of Taylor under Monell v. Dep't. of Soc. Servs., 436 U.S. 658, 694 (1978), for failure to adequately train and supervise Roche with respect to probable cause. Finally, in Count VIII, plaintiff raises an unlawful seizure and search claim against both defendants regarding his vehicle in violation of his 4th and 14th Amendment rights.

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[1]Since the court stated the background of this case in its December 10, 2020 Memorandum, (Doc. 36), it will not fully repeat it herein.

[2] In Counts II and III, plaintiff also raises a state law malicious prosecution claim and state law false arrest/imprisonment claims against Roche.

Plaintiff basically alleges that Roche arrested him on November 7, 2018, for discharging a shotgun at his wife Loretta without conducting a proper and thorough investigation before filing the charges against him, and that the Borough of Taylor failed to properly train and supervise Roche.

As relief in his amended complaint, plaintiff seeks compensatory and punitive damages as well as injunctive relief. However, plaintiff cannot seek punitive damages against the Borough of Taylor as he attempts to do in Count IV since the Supreme Court has held that punitive damages may not be awarded against municipalities under §1983. *See* City of Newport v. Fact Concerts, Inc., 453 US 247, 271 (1981).

On December 16, 2019, after discovery was completed, defendants filed their motion for summary judgment, (Doc. 38), and their statement of material facts with exhibits, (Docs. 39 & 40). Defendants filed their brief in support of their motion on December 30, 2019, (Doc. 41). On January 7, 2020, plaintiff filed his brief in opposition to defendants' motion and his response to defendants' statement of material facts and exhibits. (Docs. 42 & 43). Defendants filed their reply brief on January 21, 2020. (Doc. 48).

The court has jurisdiction over this case pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343(a) because plaintiff avers violations of his constitutional rights under the 4th and 14th Amendments of the U.S. Constitution. The court

can exercise supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. §1367. Venue is appropriate in this court since the alleged constitutional violations occurred in this district and all parties are located here. *See* 28 U.S.C. §1391.

II. MATERIAL FACTS[3]

The following facts pertain to plaintiff's November 7, 2018 arrest. Specifically, on November 7, 2018, plaintiff was arrested without a warrant by Sergeant William Roche of the Borough of Taylor Police Department ("TBPD"). Roche handcuffed and shackled plaintiff, interrogated him, and then charged him with Criminal Attempt–Homicide, Aggravated Assault, Discharge of a Firearm into Occupied Structure, Possession of Weapon, Make Repairs/Sell/Etc Offensive Weapon, Terroristic Threats with Intent to Terrorize Another, Recklessly Endangering Another Person, and Simple

[3]The court only states the relevant material facts that are supported by citation to the record. Legal conclusions and argument are not included. A material fact is one that "might affect the outcome of the suit under the governing law...." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

Assault. *See* Commonwealth v. Charles Simonson, MJ-45101-Cr-0000426-2018.[4]

Roche first became involved in the criminal investigation for attempted homicide regarding plaintiff on November 7, 2018 when he was summoned to TBPD along with Officers Snyder and Holland by Chief Derenick.

As a backdrop, Derenick was called by Officer Priorelli of the Scranton Police Department about a welfare check at the Simonson residence located 112 West Taylor Street, in the Borough of Taylor. Loretta had reported to her doctor (Dr. McCall) that her estranged husband, plaintiff Charles Simonson, had fired a shotgun at her in her house. Loretta also indicated that plaintiff was going to kill the doctor. Loretta and plaintiff were married but separated during the relevant times of this case. On November 7, 2018, at 11:31 a.m., Derenick, along with Priorelli and TBPD Officer Dunn, went to Loretta's residence and knocked on the door. Loretta was visibly upset and appeared hesitant to open the door indicating that she was "afraid" because "he might come back." Loretta then allowed Derenick and Dunn into her house.

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[4]The court again notes that the Lackawanna County Criminal Dockets for plaintiff, as well as Loretta Simonson, can be found at http://ujsportal.pacourts.us. The court takes judicial notice of the Criminal Dockets since they are official court records.

The police spoke with Loretta and initially she denied any altercation with her husband. When the police officers were about to leave the house, Loretta told them that she wanted to show them something. She then took the officers to a bedroom on the second floor and pointed to a hole in the wall. Loretta told the officers that it was a bullet hole and that her husband fired one shot at her a few days earlier on November 2, 2018, at 3:00 a.m.

Based on Loretta's allegations, Derenick and Dunn conducted an investigation and observed the hole in Loretta's bedroom wall which appeared to be from the discharge of a firearm. Dunn took photographs of the area in the room where the shot was fired. Also, the police observed an injury to the bridge of Loretta's nose. Loretta was then taken to TBPD for an interview.

Derenick also called First Assistant Lackawanna County District Attorney ("ADA") Judith Price and told her about the Simonson incident. Loretta was interviewed on November 7, 2018 at TBPD headquarters and gave police a written statement about the alleged shooting incident which occurred on November 2, 2018. (Doc. 39-7). Roche was not present for Loretta's interview. However, a representative from the domestic violence unit of the District Attorney's Office, Jeanne Rosencrance, was present for Loretta's interview along with TBPD officers.

In her November 7, 2018 written statement, prepared at 1:20 p.m., Loretta stated that as she started to fall asleep in her bed on November 2, 2018, "I heard my husband [plaintiff] say die, bitch. I heard the click of [and] I knew it was the sound of [plaintiff's] shotgun. He fired once, spraying me with the pellets from the shot. It missed my head putting a hole in the bedroom wall. I got up, he was running down the stairs. I ran after him turning, on the lights at my house. I heard unlocking the front door at the house . . ."

Additionally, Loretta wrote the following incriminating facts about plaintiff in her statement:

"I turned on the porch light, saw him throw the shotgun in a red car that was already running. He flipped me his middle finger and said 'fuck you! I'm going to kill your Dr.! Then he drove off. It's because he had to pay more spousal support for [the doctor] declaring me disabled. I felt my face burning and smelled smoke. I patted my sheets and my pillow case because they were smoking. I realized that it was out and I stayed up the rest of the night and all the next day."

Loretta subsequently testified that she waited almost a week before she told anyone about the November 2, 2018 shooting incident because she was not going to report the incident at all, that she just wanted to get out of

the house and give her husband whatever he wanted. Roche later testified that was not uncommon to delay reporting alleged spousal abuse incidents.

Roche eventually met with Derenick on November 7, 2018 to discuss the investigation and Derenick appointed Roche to be the lead investigator in the case. Derenick told Roche that he and other officers had gone to the Simonson home and saw a bullet hole in the wall, as well as the marks on Loretta's face that allegedly resulted from plaintiff shooting at her. Derenick also advised Roche that Scranton police had received a call from Loretta's doctor and that the doctor indicated Loretta claimed that she had been shot at by her husband. Roche then prepared the paperwork to be filed against plaintiff, meaning the criminal complaint and affidavit of probable cause. Roche also conferred with the District Attorney's Office, including the Deputy in charge of the domestic violence unit.

Roche was further advised by Derenick that ADA Price had approved of the charges to be filed against plaintiff. Crimes above a misdemeanor of the second degree, including felonies such as attempted murder, required the approval from the District Attorney's office before police were allowed to file them. However, Roche did not personally speak with ADA Price regarding Loretta's allegations against plaintiff when he was preparing the criminal complaint and affidavit.

After Roche completed the charging documents, he asked Derenick who he wanted to sign them and Derenick told Roche that as lead investigator he was to sign the documents. Roche then signed the documents on November 7, 2018. Roche later testified that Derenick was also involved in the preparation of the Criminal Complaint.

Thus, after Loretta's interview and the investigation conducted by TBPD police officers, on November 7, 2018, Roche prepared an Affidavit of Probable Cause in support of a Criminal Complaint charging plaintiff in the shooting incident. Roche had experience in conducting criminal investigations, including ones involving attempted homicide. Roche also received formal classroom training on probable cause through training provided by other law enforcement agencies, which was approved and paid for by the Borough of Taylor. However, Roche was never provided formal classroom training on probable cause by Taylor Borough.

In his Affidavit of Probable Cause supporting the charges to be filed against plaintiff based on Loretta's report, (Doc. 43-4), Roche averred that on November 2, 2018, at approximately 3:00 a.m., Loretta was awakened by her estranged husband, i.e., plaintiff, entering the bedroom in their house and said "die bitch!". Roche then averred that Loretta stated she heard the "racking of a shotgun" and that plaintiff fired one blast from the gun at her

while she was in her bedroom. Roche stated that the charges he filed against plaintiff were based on the evidence obtained at the Simonson home, the information Derenick uncovered, and Loretta's interview and statement.

After ADA Price approved of the charges to be filed by Roche against plaintiff, the Criminal Complaint, which indicated the ADA's approval, and the Affidavit of Probable Cause were signed by Roche. (Doc. 39-1 at 15-18).

However, since plaintiff was being arrested without a warrant[5], there was no signature from a Magisterial District Judge ("MDJ") on either the Criminal Complaint or the Affidavit of Probable Cause signed by Roche. (Doc. 39-1 at 17-18).[6]

In her deposition, ADA Price stated that she believed the charges filed against plaintiff were reasonable based upon the facts known at the time. She also believed that the warrantless arrest of plaintiff was justified based

[5]Under Pennsylvania law, a person arrested without a warrant must be arraigned within 48 hours of his arrest, and the arraignment procedure requires a neutral MDJ to make a probable cause determination. *See* Pa.R.Crim.P. 540 ("If the defendant was arrested without a warrant ..., unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.").

[6]Although plaintiff docketed his Ex. F, (Doc. 47), as an "Arrest Warrant", it is actually a NCIC Worksheet notifying police to look for plaintiff as a wanted person for attempted homicide.

upon the applicable protocol and based on the fact that a felony had been committed and there was sufficient probable cause to charge him.

Subsequently, plaintiff was arrested while he was at work on November 7, 2018 by TBPD. Plaintiff's arrest was about 1½ hours after Roche was first advised of the alleged attempted homicide incident by Derenick. At this time, defendants had not interviewed any of Loretta's neighbors about the incident which lead to plaintiff's arrest.

At the time of his arrest, plaintiff was advised that he was being arrested for attempted homicide of his wife, and he repeatedly denied any involvement with it, stating that "I didn't do it", "I have no idea what was going on", and that "I was nowhere near there." Although the police questioned plaintiff at the time of his arrest, they did not speak with plaintiff about the incident before he was arrested.

Roche admitted that when he arrested plaintiff he said to him, "and so we meet again." In fact, Roche was familiar with the Simonsons since he had previously been involved with two police calls regarding them. One of those calls occurred in August 2018, when Loretta called the police and Roche arrested plaintiff and charged him with a misdemeanor following a domestic violence incident involving Loretta.

Upon his instant arrest, plaintiff was taken into custody and driven to TBPD and placed in an interrogation room. He was then given his Miranda rights. Plaintiff invoked his right to have an attorney present and the police stopped questioning him.

Thereafter, Roche handcuffed and shackled plaintiff and drove him to Lackawanna County Processing Center. Plaintiff was processed and his bail was set at $850,000. Since plaintiff could not post bail, he was then transported to Lackawanna County Prison and incarcerated. Plaintiff spent one night in prison and he was released on November 8, 2018.

At the time plaintiff was arrested on November 7, 2018, his vehicle, which was at his place of work, was impounded by Anthracite Auto pursuant to a call made by someone at TBPD, as part of the continuing investigation so that officers could prepare and execute a search warrant for the vehicle to look for evidence of the crime, including a shotgun and shells. Roche testified that he did not know if he made the call or if it was someone else did, but he was 99% sure that the call was to Anthracite Auto. However, at the time plaintiff's vehicle was seized and impounded, the police did not have a search warrant. Although a search warrant for plaintiff's vehicle was subsequently prepared and obtained by Officer Holland, it was not executed

and plaintiff's vehicle was not searched since "the course of the investigation changed before [police] could actually execute it."

Following his release from prison on November 8, 2018, plaintiff's impounded car was returned to him and he was not charged any fees related to the impounding.

In the evening of November 7, 2018, after plaintiff's arrest, the TBPD contacted the Pennsylvania State Police ("PSP") and requested that their forensic trooper process the alleged crime scene at the Simonson home. A search warrant for Loretta's house was prepared by TBPD Officer Holland and it was approved by MDJ Pesota. At 4:00 p.m., Derenick then assisted PSP Trooper Hitchcock in executing the warrant and searching Loretta's house for evidence. Hitchcock took photos. Evidence was then obtained from the scene consisting of suspected blood from Loretta's bedroom wall, plastic "wad" from the shotgun shell removed from the wall, pillow case with apparent blood stains, a section of the wall where projectiles entered, and pajamas.

Also, as part of the investigation, an application for a search warrant of the house in Waverly Township where plaintiff was believed to be living was prepared by TBPD Officer Holland. The application was approved by ADA Price.

The following facts lead to plaintiff's release from prison.

On November 8, 2018, Roche continued with the investigation, including interviewing Loretta's neighbors. One of the neighbors, Leilani Raguckas, provided Roche and other officers with information regarding the shotgun allegedly involved in the shooting incident and stated that Loretta told her a cat had knocked over a shotgun and caused it to discharge in the early morning hours of November 2, 2018. Raguckas also reported that Loretta later gave the shotgun to her daughter's boyfriend, Bradley Albrecht. Albrecht then gave police a statement and gave them the shotgun he received from Loretta. He told police that the gun had a spent casing in the breech when Loretta gave it to him.

Subsequently, Loretta was re-interviewed in light of the inconsistencies discovered with her initial statement to police. Loretta was brought back to the TBPD and she advised police that she had given away the shotgun plaintiff allegedly used to try and shoot her. Loretta was then given her Miranda rights and she was re-questioned about the shooting incident. This is the first time that Roche personally spoke with Loretta. During her questioning, Loretta told police that she had not told them the truth about the shooting incident and that she had lied to them.

At this time, Loretta was asked to provide police with a second written statement and she recanted the statement she gave to police the previous day on November 7, 2018. In her November 8, 2018 statement, Loretta indicated that her initial statement was false and, she denied the shooting altercation with plaintiff and stated that the shotgun had inadvertently discharged.

Roche then called ADA Price and advised her that he had re-interviewed Loretta and confronted her with inconsistencies about her prior allegations against plaintiff and her November 7 statement.

ADA Price and ADA Gene Riccardo then went to the TBPD to review the case, including Loretta's November 7 and 8 statements, the statements of her neighbor and the entire investigation up to that point.

It was determined that Loretta falsified her story to police about the shooting incident. Thus, on November 8, 2018, Loretta was arrested and charged with making a false statement to authorities. She was then taken from TBPD, processed, and confined in the Lackawanna County Prison.

Consequently, on the night of November 8, 2018, an MDJ was contacted and plaintiff's bail was reduced to ROR (release on his own recognizance) to allow him to immediately get out of prison. The next

morning all of the charges filed against plaintiff were withdrawn by defendants and plaintiff's impounded vehicle was released.

Based on the false information Loretta provided to police about the shooting incident involving plaintiff, she was charged with: 1) discharge of a firearm into occupied structure; 2) recklessly endangering another person; 3) unsworn falsification to authorities; 4) false identification to law enforcement officer; and 5) false report- falsely incriminate another. *See* Commonwealth v. Loretta M. Simonson, CP-35-CR-0002450-2018.

On April 25, 2019, Loretta pled guilty to Recklessly Endangering Another Person (second degree misdemeanor) and False Identification to Law Enforcement Officer (third degree misdemeanor). The remaining three charges against Loretta were *nolle prossed*.

On August 28, 2019, Loretta was sentenced to imprisonment for a minimum of 23 days to a maximum of 18 months followed by a 6-month period of probation.

III. DISCUSSION

Initially, since the parties state the correct legal standard with respect to a motion for summary judgment under Fed.R.Civ.P. 56(c) in their briefs,

the court does not fully repeat it herein. Suffice to say that if the moving party meets its burden by showing that "on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the non-moving party", In re Bressman, 327 F.3d 229, 238 (3d Cir. 2003), then the non-moving party "must do more than simply show that there is some metaphysical doubt as to material facts," but must show sufficient evidence to support a jury verdict in its favor. Boyle v. County of Allegheny,139 F.3d 386, 393 (3d Cir. 1998).

"Section 1983 provides remedies for deprivations of rights established in the Constitution or federal laws. It does not, by its own terms, create substantive rights." Kaucher v. County of Bucks, 455 F.3d 418, 423 (3d Cir. 2006) (citations omitted). To state a claim under §1983, "a plaintiff must demonstrate the defendant, acting under color of state law, deprived him or her of a right secured by the Constitution or the laws of the United States." *Id*. (citations omitted). "A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of *respondeat superior*." Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). *See also* Sutton v. Rasheed, 323 F.3d 236, 249 (3d Cir. 2003) (citing Rode).

In his claims under §1983 raised in Counts I-III, and VII, plaintiff essentially alleges that defendants violated his 4th and 14th Amendment rights to be free from false arrest, unlawful search and seizure, false imprisonment, and malicious prosecution. In Count VIII, plaintiff alleges that defendants unlawfully seized and searched his vehicle. Based on Monell, plaintiff claims that the Borough failed to adequately supervise and train Roche. In Count IV, plaintiff raises his stigma-plus due process claim against Roche and the Borough under the 14th Amendment.

Insofar as plaintiff bring his unlawful seizure and search claims against defendants in Counts I and VIII under the 14th Amendment due process clause in addition to the 4th Amendment alleging that his arrest and the use of force constituted a deprivation of due process, the court finds that since 4th Amendment covers his stated claims, his 14th Amendment claims, as stand alone claims, must be dismissed under the "more-specific provision rule." "Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of 'substantive due process', must be the guide for analyzing the claims.'" Albright v. Oliver, 510 U.S. 266, 273, (1994) (citation omitted). *See also* Lawson v. City of Coatsville, 42 F.Supp.3d 664, 675-76 (E.D.Pa. 2014) ("[W]here the Fourth

Amendment covers alleged misconduct—such as searches and seizures without probable cause—a plaintiff's claims must be analyzed under the Fourth Amendment, not under the rubric of substantive due process."). Also, since Pennsylvania provides the constitutionally required procedures under the 4th Amendment for pre-trial detainees and affords them the process that is due for the seizures of such persons in criminal cases, there is no 14th procedural due process claim. *Id*. (citing Stewart v. Abraham, 275 F.3d 220, 228–29 (3d Cir. 2001) ("The Pennsylvania law requiring probable cause for arrests and a preliminary arraignment within 48 hours satisfies all that the Fourth Amendment requires[.]")).[7]

Defendants argue that they are entitled to summary judgment with respect to the constitutional claims plaintiff asserts against them in Counts I-III of his amended complaint under 42 U.S.C. §1983 since they had sufficient probable cause to arrest and charge him on November 7, 2018. Specifically, defendants argue that summary judgment should be granted regarding

[7]The court notes that plaintiff's reference to the Fourteenth Amendment in Counts I and VIII can be based on the incorporation doctrine, holding that "the Fourth Amendment and other provisions of the Bill of Rights apply on their face only to the federal government, and were incorporated against the states later by operation of the Fourteenth Amendment's Due Process Clause." Williams v. Papi, 30 F.Supp.3d 306, 311 (M.D.Pa. 2014) (citation omitted).

plaintiff's claims under the 4th Amendment, since Roche and TBPD had ample probable cause to arrest plaintiff in light of Loretta's statement, the evidence, and its investigation. They contend that immediate action was required since Loretta alleged that plaintiff had threatened her, tried to shoot her, and there was evidence supporting her allegations. Plaintiff argues that defendants failed to conduct a proper and thorough investigations before they arrested and charged him and that they lacked probable cause since they failed to interview Loretta's neighbors, Roche failed to personally speak with Loretta, and they failed to ask him about the incident before his arrest.

"The threshold question for each of [plaintiff's] Fourth Amendment claims [under §1983 for false arrest, unlawful search, false imprisonment, and malicious prosecution] is whether [defendants] had probable cause to arrest [him]." Lawson, 42 F.Supp.3d at 673 (citing James v. City of Wilkes–Barre, 700 F.3d 675, 680, 683 (3d Cir. 2012) (lack of probable cause is an element of a Fourth Amendment false arrest claim); Johnson v. Knorr, 477 F.3d 75, 81–82 (3d Cir. 2007) (lack of probable cause is an element of a Fourth Amendment malicious prosecution claim); Groman v. Twp. of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995) (lack of probable cause is an element of a Fourth Amendment false imprisonment claim based on detention pursuant to an unlawful arrest); Henry v. United States, 361 U.S.

98, 102, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959) ("[I]f an arrest without a warrant is to support an incidental search, it must be made with probable cause.")).

Defendants argue that summary judgment should be entered in their favor on plaintiff's claims for unlawful seizure and search, malicious prosecution, false imprisonment, and false arrest since the undisputed evidence shows that he cannot prevail on all of the essential elements of his claims.

With respect to plaintiff's unlawful seizure and search claim, Count I, in Washington v. Hanshaw, 552 Fed.Appx. 169, 172–73 (3d Cir. 2014), "the [Third Circuit] Court has held that, if a right to be free from prosecution absent probable cause exists, it must [] be grounded on the Fourth Amendment's prohibition on unreasonable searches and seizures." "[Plaintiff's] arrest and [1]–day pretrial detention are seizures within the meaning of the Fourth Amendment." Lawson, 42 F.Supp.3d at 676 (citing Schneyder v. Smith, 653 F.3d 313, 321–22 (3d Cir. 2011) ("When the state places constitutionally significant restrictions on a person's freedom of movement for the purpose of obtaining his presence at a judicial proceeding, that person has been seized within the meaning of the Fourth Amendment.")).

It is well-settled that "[t]o prove malicious prosecution [under §1983, Count II] ... a plaintiff must show that: (1) the defendants initiated a criminal

proceeding; (2) the criminal proceeding ended in plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding." Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir. 2003); Kossler v. Crisanti, 564 F.3d 181, 186 (3d Cir. 2009); Piazza v. Lakkis, 2012 WL 2007112, *7 (M.D.Pa. June 5, 2012); Curry v. Yachera, 835 F.3d 373, 379-80 (3d Cir. 2016). "[A] claim for malicious prosecution 'permits damages for confinement imposed pursuant to legal process.'" Piazza, 2012 WL 2007112, *8 (citations omitted). Further, "a claim for malicious prosecution seeks to remedy 'the deprivation of liberty accompanying prosecution, not prosecution itself.'" *Id*. (citations omitted). Additionally, "[the] [m]alice [element] may be inferred from the absence of probable cause." Lawson, 42 F.Supp.3d at 674 n. 8 (citation omitted).

A false arrest claim under §1983, Count III, also has an element requiring that the plaintiff show the criminal proceeding was initiated without probable cause. To succeed on a false arrest claim under §1983, the court in Kokinda v. Breiner, 557 F. Supp. 2d 581, 592 (M.D.Pa. 2008), stated:

> A claim under §1983 for false arrest/false imprisonment is grounded in the Fourth Amendment guarantee against unreasonable seizures. Garcia v. County of Bucks, 155 F.Supp.2d 259, 265 (E.D.Pa. 2001) (citing Groman v. Twp. of

> Manalapan, 47 F.3d 628, 636 (3d Cir. 1995)). To maintain his false arrest claims, "a plaintiff must show that the arresting officer lacked probable cause to make the arrest." *Id.* "Probable cause exists when the totality of facts and circumstances are sufficient to warrant an ordinary prudent officer to believe that the party charged has committed an offense." *Id.*
>
> "[W]here the police lack probable cause to make an arrest, the arrestee has a claim under §1983 for false imprisonment based on a detention pursuant to that arrest." Groman v. Twp. of Manalapan, 47 F.3d 628, 636 (3d Cir. 1995). However, unlike a malicious prosecution claim, for which each criminal charge is analyzed independently, a false arrest claim will fail if there was probable cause to arrest for at least one of the offenses involved. Johnson, 477 F.3d at 75; *see also* Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994) (holding that for an arrest to be justified, "[p]robable cause need only exist as to any offense that could be charged under the circumstances").

See also Cummings v. City of Phila., 137 Fed. Appx. 504, 506 (3d Cir. 2005).

In order for Plaintiff to prevail on his malicious prosecution and false imprisonment claims under §1983, he must satisfy each of the above stated elements. Kossler, 564 F.3d at 186. Further, "whether characterized as a false arrest, or couched in terms of malicious prosecution, proof that probable cause was lacking is essential to any §1983 claim arising out of the arrest and prosecution of an individual." Price v. Zirpoli, 2016 WL 3876442, *5 (M.D.Pa. Jan. 20, 2016), adopted by 2016 WL 3876646 (M.D.Pa. July 15, 2016).

"[A]n arrest requires probable cause." Arditi v. Subers, 216 F.Supp.3d 544, 552 (E.D.Pa. 2016). "Probable cause to arrest exists when the facts and

circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Id*. (citations omitted). *See also* Lawson, 42 F.Supp. 3d at 673 ("An arrest was made with probable cause if 'at the moment the arrest was made ... the facts and circumstances within [the officers'] knowledge ... were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense.'" (citation omitted). "In conducting an inquiry into whether probable cause to arrest existed, a court should consider the totality of the circumstances presented, and 'must assess the knowledge and information which the officers possessed at the time of arrest, coupled with the factual occurrences immediately precipitating the arrest.'" Price, 2016 WL 3876442, *5 (citing United States v. Stubbs, 281 F.3d 109, 122 (3d Cir. 2002)).

Further, "the probable cause standard does not turn on the actual guilt or innocence of the arrestee, but rather, whether the arresting officer reasonably believed that the arrestee had committed the crime." Arditi, 216 F.Supp.3d at 552. *See also* Lawson, 42 F.Supp. 3d at 674 ("In other words, the constitutional validity of the arrest does not depend on whether the suspect actually committed any crime.") (citation omitted).

Thus, "[i]f [defendants] had probable cause, then no constitutional violation took place [regarding plaintiff's claims for false arrest, unlawful search, false imprisonment, and malicious prosecution]." Lawson, 42 F.Supp. 3d at 673.

No doubt that "[g]enerally, the question of probable cause in a section 1983 damage suit is one for the jury", which "is particularly true where the probable cause determination rests on credibility conflicts." *Id*. (internal citations). "However, a district court may conclude that probable cause exists as a matter of law if the evidence, viewed most favorably to Plaintiff, reasonably would not support a contrary factual finding, and may enter summary judgment accordingly." *Id*. (citations omitted). It is the court's function "to determine whether the objective facts available to the officers at the time of arrest were sufficient to justify a reasonable belief that an offense was being committed." Price, 2016 WL 3876442, *5 (citation omitted).

Plaintiff was charged, in part, with Criminal Attempt, Homicide,18 Pa. C.S. §901a(A), and Aggravated Assault. A person commits criminal attempt when, with attempt to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime. Plaintiff was charged with attempt to commit murder based on the claim that it was

alleged he fired a shotgun at Loretta as she was in her bed. (Doc. 39-1 at 15).

Under Pennsylvania law, the charge of Aggravated Assault, 18 Pa. C.S. §2702, provides, in part, as follows:

> (a) Offense defined. A person is guilty of aggravated assault if he:
>
> (1) attempts to cause serious bodily injury to another or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; [ ]
>
> (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon.

Here, the court finds that the probable cause determination does not rest on credibility conflicts and that in viewing the evidence most favorable to plaintiff, no genuine dispute of material fact exists as to whether defendants, based on the objective facts available to them at the time of plaintiff's arrest, had probable cause to arrest plaintiff. *See* Price, 2016 WL 3876442, *5 ("an arrest is made with probable cause if at the moment it was made the facts and circumstances within the officer's knowledge 'were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense.'") (citation omitted). The information defendants had when they arrested and charged plaintiff on November 7, 2018, as detailed

above, was well beyond sufficient to warrant a reasonable person to believe that plaintiff committed the charged offenses by firing his shotgun at Loretta on November 2, 2018 while she was in her bedroom. Loretta had reported the alleged incident to her doctor, then to Derenick, who, along with another officer, observed and photographed physical evidence at her house which was consistent with Loretta's story. Loretta was then interviewed at TBPD and gave a full description of the shooting incident in a written statement.

Further, prior to arresting plaintiff, ADA Price had approved of the charges to be filed against plaintiff and Roche was aware of this. "Under Pennsylvania law, ... '[c]riminal proceedings initiated on the advice of counsel are ... presumed to be supported by probable cause when the advice of counsel was sought in good faith and the advice was given after full disclosure of the facts to the attorney.'" Price, 2016 WL 3876442, *6 (citations omitted). "This presumption applies even if the prosecutor errs since "[t]he attorney's advice need not be correct." *Id*. (citation omitted).

Plaintiff contends that the investigation was not thorough and he points out that Loretta initially denied any attempted assault during the welfare check by TBPD officers, that TBPD officers did not speak with Loretta's neighbors prior to his arrest, that officers did not speak to him before his arrest, and that Roche did not speak to Loretta prior to his arrest. Plaintiff

also states that probable cause was lacking since he was arrested about 1½ hours "after being notified of a stale crime that allegedly occurred [5] days earlier." However, the undisputed evidence shows that Derenick and police officers spoke to Loretta and, after initially saying there were no problems, she told them plaintiff threatened her and fired his shotgun at her. Loretta also showed the police physical evidence to support her claim. Based on the totality of the circumstances known at the time of plaintiff's arrest, it was more than reasonable for defendants to believe that immediate action was required to prevent another incident between plaintiff and Loretta. Also, Roche had responded to domestic problems at the Simonson's house in the past. In short, Roche had the benefit of purported eyewitness information that Loretta had provided to Derenick and other officers, and he had sufficient knowledge from which he reasonably could believe there was probable cause to arrest and charge plaintiff with attempted aggravated assault. "Whether [plaintiff] actually *did* [attempt to shoot Loretta] does not matter for probable cause purposes; what matters is whether [defendants] reasonably believed that probable cause existed." Arditi, 216 F.Supp.3d at 556 (emphasis original). Additionally, "the evidentiary standard for probable cause is significantly lower than that required for conviction." Price, 2016 WL 3876442, *5 (citation omitted).

Further, it is of no moment that plaintiff states Loretta's version of the incident could not have been reasonably believed by Roche since, based on her story, he would have fired the shotgun again at her as he was allegedly running down the stairs with the gun and with Loretta following him. Such speculation by plaintiff cannot defeat defendants' summary judgment motion which is supported by undisputed material facts in the record. "On summary judgment, the moving party need not disprove the opposing party's claim, but does have the burden to show the absence of any genuine issues of material fact." *Id*. at 550 (citation omitted).

Despite the fact that the charges against plaintiff were withdrawn the day after his arrest this "does not alter the judicial findings that probable cause existed to bring these charges." Price, 2016 WL 3876442, *7.

Thus, defendants' motion for summary judgment will be granted regarding plaintiff's 4th Amendment claims against Roche in Counts I-III.

In Count VIII, plaintiff raises an unlawful seizure and search claim against both defendants under the 4th and 14th Amendments regarding his vehicle which was seized and impounded when he was arrested. Plaintiff alleges that his vehicle was searched and seized without a warrant, and that it should not have been impounded. Similarly, in Count I, plaintiff also raises a claim of unlawful search and seizure of his vehicle, alleging: "Defendant

Roche seized, searched and impounded Plaintiff's vehicle when he did not have legal authority for the same. Defendant Sergeant Roche did not have probable cause for such activities and Plaintiff did not consent to any physical seizure or impounding of his vehicle."

Initially, there is not sufficient evidence that Roche was personally involved in the seizure of plaintiff's vehicle. Roche did not know who made the call to Anthracite Auto to impound plaintiff's vehicle and there is no evidence showing for certainty that it was him. Nor is there any evidence to show that Roche participated in any search of plaintiff's vehicle, either with or without a warrant. Rather, Officer Holland prepared the search warrant for plaintiff's vehicle. Further, there is no evidence that Roche contacted other officers about seizing and searching plaintiff's vehicle. As such, Roche is entitled to summary judgment on Count VIII. *See* Arditi, 216 F.Supp.3d at 556 (court granted officer's summary judgment motion on plaintiff's claim that he unlawfully searched his vehicle since "there is no evidence that [defendant] Officer [] participated in the [vehicle] search in any way, or that he even communicated with [another officer] about conducting such a search."). *See also* Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005) (A "defendant in a civil rights action must have personal involvement in the

alleged wrongdoing; liability cannot be predicated solely on the operation of *respondeat superior*.").

Additionally, Roche testified that there was no search warrant for plaintiff's car when it was seized and impounded. As stated above, a search warrant for plaintiff's vehicle was later prepared and obtained by Holland since at the time of plaintiff's arrest, police officers were attempting to locate the shotgun plaintiff allegedly used to fire at Loretta, particularly since she stated that he threw the gun in his car after he ran out of her house. However, the warrant was not executed and plaintiff's vehicle was not searched after it was seized and impounded. Plaintiff's vehicle was then returned to him November 8, 2018. Defendants state that "[t]here was nothing unlawful about the seizure of Mr. Simonson's vehicle since, as discussed at length above, there was probable cause to arrest Mr. Simonson."

The court finds that probable cause existed to seize and impound plaintiff's vehicle in order to look for the shotgun he allegedly used to shoot at Loretta because there was sufficient probable cause to arrest and charge plaintiff for the shooting incident. It was more than objectively reasonable for defendants to believe that plaintiff's shotgun might have still been in his vehicle after the incident since it was not yet located and since he allegedly

drove to Loretta's house on the day of the shooting and threw the gun in the vehicle after he shot at Loretta.

With respect to the constitutional claims plaintiff asserts against the Borough in Counts VII and VIII under Monell for allegedly failing to adequate train Roche as to the probable cause required to arrest a citizen and for failing to train Roche on seizing a vehicle without a warrant, since the court has found no violations of plaintiff's constitutional rights by Roche, the Borough will be granted summary judgment on Counts VII and VIII. *See* Williams v. Borough of West Chester, 891 F.2d 458, 467 (3d Cir. 1989) (In general, as a matter of law, a Monell claim against a municipal defendant cannot proceed where plaintiff has failed to show he suffered a constitutional violation.).

In Count IV, plaintiff raises his 14th Amendment stigma-plus due process claim against both defendants alleging that they leaked information to the press about his arrest for attempting to shoot Loretta. In his amended complaint, plaintiff alleges that he was defamed by defendants since local news outlets, including WNEP 16 and FOX 56, covered his arrest, and that "Defendants made public stigmatizing statements to the local television and newspaper outlets about Plaintiff based on an unlawful arrest." He also alleges that "Defendants' comments damaged Plaintiff's reputation and the false statements were made in connection with an illegal arrest."

Specifically, in his deposition, Derenick stated as follows:

Q. At the news conference [after plaintiff's arrest] I'm assuming Charles Simonson's name was mentioned?

A. At the news conference, yeah, I believe the arrest had already been made and the name [of plaintiff] was given.

Q. And who did you contact?

A. I think it was the two local or the three. Might have been FOX 56, Channel 16 and Channel 2 and 28, which are the same. And I'm not positive, but I don't know if I reached out to the Scranton Times.

"[A] plaintiff may make out a due process claim for deprivation of a liberty interest in reputation by showing "'a stigma to his reputation plus deprivation of some additional right or interest.'" Kocher v. Larksville Bor., 926 F.Supp.2d 579, 600 (citing Dee v. Borough of Dunmore, 549 F.3d 225, 233–34 (3d Cir. 2008)). "The creation and dissemination of a false and defamatory impression is the 'stigma,' and the [deprivation of some additional right or interest] is the 'plus.'" Mazur v. City of Pittsburgh, 2019 WL 3068215, at *5 (W.D.Pa. July 12, 2019) (citation omitted). *See also* Hill v. Borough of Kutztown, 455 F.3d 225, 236 (3d Cir. 2006) ("[T]o make out a due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to his reputation plus deprivation of some additional right or interest.").

"The second, or 'plus,' requirement refers to the additional deprivation needed to transform a stigmatizing statement into a §1983 claim." D & D Assocs., Inc. v. Bd. of Educ. of N. Plainfield, 552 Fed.Appx. 110, 113 (3d Cir. 2014). "[T]he 'stigma-plus' test requires that the defamation be accompanied by an injury directly caused by the Government, rather than an injury caused by the act of some third party.'" *Id*. at 114 (quoting WMX Techs., Inc. v. Miller, 80 F.3d 1315, 1320 (9th Cir.1996)).

Although plaintiff states that "defamatory statements made 'in connection' with an unlawful arrest are actionable under §1983, since the unlawful arrest provides the necessary 'plus' factor", citing to Carbone v. City of New Castle, 2016 WL 406291, *5 (W.D.Pa. 2016), for support, this was not the court's conclusion in the case. Rather, the court was simply quoting the argument made by the plaintiff in the case. The court then pointed out that outside of the public-employment context, the Third Circuit has not determined what other types of deprivations are sufficient to state a stigma-plus claim. *See id*. The court in Carbone also noted that in Rehberg v. Paulk, 611 F.3d 828, 853 (11th Cir. 2010) aff'd, 132 S. Ct. 1497 (2012), the Court "explain[ed] that the plaintiff could not 'use the prosecution itself (the indictment and arrest) as the basis for constitutional injury supporting a §1983 defamation claim.") *Id*. at n. 3. The court in Carbone, *id*. at *7, then

"question[ed] whether Plaintiff would be permitted to recover for harm to her reputation as an element of damages on her unreasonable search and seizure claim [under the 4th Amendment] *and* for the damage to her reputation arising 'in connection with' her false arrest, which smacks of allowing double recovery." (emphasis original). The court concluded that plaintiff's claim alleging that she was defamed in connection with her alleged unlawful arrest should be analyzed under "the Fourth Amendment alone" and it dismissed plaintiff's 14th Amendment stigma-plus due process claim. *Id*. (holding that with respect to "Plaintiff's purported 'stigma-plus' claim, which is just 'a species within the phylum of procedural due process claims,' Plaintiff has not alleged that she was entitled to any 'process' beyond that which is called for by the Fourth Amendment.") (internal citation omitted).

In any event, assuming *arguendo* that plaintiff can bring a stigma-plus due process claim in this case for an alleged 4th Amendment violation, and that the evidence he submitted, (Doc. 42 at 12), is sufficient to show that his reputation was negatively impacted and that defendants defamed him by virtue of the news reports and alleged false statements they made to the press about his arrest, the undisputed evidence shows that plaintiff did not suffer a deprivation of some additional right or interest under the 4th Amendment since there was probable cause to arrest and charge him

regarding the shooting incident. As such, defendants are entitled to summary judgment with respect to Count IV.[8]

Finally, since the court is granting defendants summary judgment on all of plaintiff's federal claims, it will decline to exercise supplemental jurisdiction over his remaining state law claims, Counts V and VI, and these claims will be dismissed without prejudice. "A district court may refuse to exercise [supplemental] jurisdiction where, as in the instant case, 'the district court has dismissed all claims over which it has original jurisdiction.'" Kocher, 926 F.Supp.2d at 613 (citing 28 U.S.C. §1367(c)(3)). "In fact, 'where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.'" *Id*. (quoting Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995)).

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[8]The court does not address defendants' penultimate argument that Roche is entitled to qualified immunity since it has found that he is entitled to summary judgment on plaintiff's constitutional claims based on the undisputed material facts.

However, the court notes that Roche would be entitled to qualified immunity since plaintiff cannot satisfy the first prong of the analysis, i.e., he has failed to show the violation of a constitutional right by Roche. *See* Kelly v. Borough of Carlisle, 622 F.3d 248, 253 (3d Cir. 2010).

IV. CONCLUSION

The defendants' motion for summary judgment, (Doc. 38), will be **GRANTED** with respect to plaintiff's federal claims in Counts I-IV and VII-VIII of his amended complaint, (Doc. 15), and judgment will be entered in favor of defendants on these claims. Plaintiff's state law claims against defendants in Counts II, III, V and VI will be **DISMISSED WITHOUT PREJUDICE**. An appropriate order will issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

DATE: **March 30, 2020**
18-2445-02-Word

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1896

CHARLES SIMONSON,
Appellant

v.

BOROUGH OF TAYLOR; WILLIAM ROCHE

(M.D. Pa. No. 3-18-cv-02445)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and FUENTES*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

* Hon. Julio M. Fuentes vote is limited to panel rehearing only.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated: January 22, 2021
CJG/cc: Mark J. Kozlowski, Esq.
Patrick J. Boland, III, Esq.
Cynthia L. Pollick, Esq.