

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**LARRY HUNTE,** : **CIVIL ACTION NO. 1:13-CV-2676**  
 :  
 **Plaintiff,** : **(Chief Judge Conner)**  
 :  
 **v.** :  
 :  
 **DOUGLAS HOWELL, individually and :**  
 **in his capacity as a police officer for the :**  
 **Pennsylvania State Police, and :**  
 **CHRISTOPHER DARHOWER,** :  
 **individually and in his capacity as a :**  
 **police officer for the Carlisle Police :**  
 **Department,** :  
 :  
 **Defendants.** :

**MEMORANDUM**

Plaintiff Larry Hunte (“Hunte”) filed the instant civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for use of excessive force in violation of the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution. Presently before the court is defendant Christopher Darhower’s motion for summary judgment.<sup>1</sup> (Doc. 8). For the reasons that follow, the court will grant the motion.

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<sup>1</sup> The record does not indicate whether Hunte properly served process upon defendant Douglas Howell. To date, Corporal Howell has not entered an appearance in the instant action. Hence, the present motion for summary judgment relates only to Officer Darhower. However, the court recognizes that Corporal Howell may raise the same arguments for summary judgment. The court will issue an order to show cause directing Hunte to demonstrate proper service of process upon Corporal Howell.

**I. Factual Background & Procedural History**<sup>2</sup>

On or about June 29, 2012, Pennsylvania State Police Corporal Douglas Howell initiated a traffic stop of Hunte's vehicle. (Doc. 9 ¶ 2). During the traffic stop, Corporal Howell believed that Hunte was behaving strangely and requested back-up assistance. (Id. ¶ 3). Officer Christopher Darhower of the Carlisle Police Department responded to the back-up request. (Id. ¶ 4). Upon arrival, Officer Darhower informed Corporal Howell that he recognized Hunte from prior incidents with the Carlisle Police Department. (Id.) In one such incident, Hunte attempted to elude police and allegedly threw down a firearm. (Id.) Corporal Howell stated that Hunte's behavior was suspicious and that he intended to perform a pat down search. (Doc. 8, Ex. A ¶ 10).

Both defendants approached the idling vehicle. (Doc. 9 ¶ 5). When Corporal Howell asked Hunte to exit the vehicle, Hunte lunged towards the driver's side door. (Id. ¶¶ 6-7). Corporal Howell then reached through the open window into the vehicle.<sup>3</sup> (Id. ¶ 8). Hunte began closing the window with Corporal Howell still reaching inside

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<sup>2</sup> In accordance with the standard of review for a motion for summary judgment, the court will present the facts in the light most favorable to Hunte, the non-moving party. See infra Part II. The court notes, however, that Hunte's counsel failed to file any response to Officer Darhower's motion. By order dated June 16, 2014, the court expressly ordered Hunte's counsel to file such a response. (Doc. 12). Local Rule 56.1 provides that the moving party's statement of facts will be deemed "admitted unless controverted" by the opposing party.

<sup>3</sup> It is unclear from the record evidence whether Corporal Howell was attempting to turn off the ignition or to restrain Hunte's arms to prevent him from fleeing in the vehicle. (See Doc. 9 ¶ 8; Doc. 8, Ex. A ¶ 14; id., Ex. B at 4).

the vehicle. (Id. ¶ 9). Officer Darhower believed that Hunte intended to trap Corporal Howell in the vehicle and attempt to drive away. (Id. ¶ 10). Officer Darhower produced his taser and gave Hunte several verbal warnings to roll down the window and exit the vehicle. (Id. ¶ 11). When Hunte continued to resist, Officer Darhower deployed the taser in drive stun mode to Hunte's lower chest and wrist. (Id.)

Hunte was immediately incapacitated, and Officer Darhower continued to give loud verbal commands to open the door. (Doc. 8, Ex. A ¶¶ 22-23). After finally exiting the vehicle, Hunte continued to ignore verbal commands, but Corporal Howell eventually placed Hunte in handcuffs and patted him down. (Id. ¶ 24-28). Officer Darhower removed the taser probes and photographed the impact areas. (Id. ¶ 29). Hunte stated that he did not sustain any injuries and refused medical treatment. (Id. ¶ 30; Doc. 9 ¶ 12). Corporal Howell took Hunte into custody and Officer Darhower had no further contact with Hunte. (Doc. 8, Ex. A ¶ 31).

Hunte filed the instant action against Corporal Howell and Officer Darhower in the Cumberland County Court of Common Pleas on October 3, 2013. (See Doc. 1, Ex. A). Hunte filed suit pursuant to 42 U.S.C. §§ 1983 and 1988 for use of excessive force in violation of the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Pennsylvania common law. (Id.) Officer Darhower removed the action to federal court on October 30, 2013 with the concurrence of the Pennsylvania State Police. (Doc. 1 ¶ 6). The court held an initial case management conference on December 16, 2013 and set April 15, 2014 as the deadline for discovery. (Doc. 7). According to

Officer Darhower, Hunte's counsel failed to engage in any discovery whatsoever.<sup>4</sup> (Doc. 10 at 1, 3). Hunte's counsel neither served his Rule 26 disclosures, nor requested any discovery or depositions. (Id.) The evidence of record consists entirely of documents produced by Officer Darhower in compliance with Rule 26.

Officer Darhower filed the instant motion for summary judgment on May 15, 2014. (Doc. 8). Officer Darhower contends that summary judgment is appropriate in this case because Hunte has failed to bring forth any evidence in support of his claim and Hunte's claims fail as a matter of law. Hunte's counsel failed to file a brief in opposition to this motion. By order dated June 16, 2014 (Doc. 12), the court alerted Hunte's counsel to Local Rule 7.6, which provides that a party who fails to file a brief in opposition to a motion "shall be deemed not to oppose such motion." L.R. 7.6. The court also directed Hunte's counsel to file a brief in opposition by June 23, 2014. (Doc. 12). Hunte's counsel did not file any brief in compliance with this new deadline. Accordingly, the motion is deemed unopposed and is ripe for disposition. See FED. R. Civ. P. 56(e); Blasi v. Attorney Gen., 30 F. Supp. 2d 481, 484 (M.D. Pa. 1998) ("[T]he district court may not grant a motion for summary judgment . . . solely because the motion is unopposed; such motions are subject to review for merit."). The court will proceed with a review of the merits of Officer Darhower's motion.

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<sup>4</sup> Counsel for Officer Darhower notes that he received an email from Hunte's counsel on March 8, 2014, in which counsel indicated that he may seek an extension of deadlines. (Doc. 10 at 3 n.3). No extension was ever requested.

## II. Legal Standard

Under Federal Rule of Civil Procedure 56, summary judgment is appropriate only when “there is no genuine dispute as to any material fact” and a jury trial would be an empty and unnecessary formality. FED. R. CIV. P. 56(a). The burden of proof is upon the non-moving party to come forth with “affirmative evidence, beyond the allegations of the pleadings,” in support of its right to relief. Pappas v. City of Lebanon, 331 F. Supp. 2d 311, 315 (M.D. Pa. 2004); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). This evidence must be adequate, as a matter of law, to sustain a judgment in favor of the non-moving party on the claims. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-57 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-89 (1986); see also FED. R. CIV. P. 56(c), (e). Only if this threshold is met may the cause of action proceed. Pappas, 331 F. Supp. 2d at 315.

## III. Discussion

Hunte asserts a claim against Officer Darhower under Section 1983 for use of excessive force in violation of his constitutional rights under the Fourth, Eighth, and Fourteenth Amendments. Officer Darhower argues that Hunte has failed to present any evidence in support of his claim and that Officer Darhower is now entitled to judgment as a matter of law. Officer Darhower also alleges that he is entitled to qualified immunity. The court will address these issues *seriatim*.

As a preliminary matter, the court notes that Hunte’s failure to present any evidence in support of his Section 1983 claim is, by itself, fatal. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001) (stating that the non-moving party may not rest

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