IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ROSEMARY MUNYIRI	*	
Plaintiff	*	
v.	*	**Case No: 1:08-CV-1953 AMD**
PETER M. HADUCH, JR., et al.	*	
Defendants	*	

* * * * * * * * * * * *

BALTIMORE POLICE DEPARTMENT'S, COMMISSIONER FREDERICK H. BEALEFELD'S AND OFFICER PETER M. HADUCH, JR.'S CONSOLIDATED MOTION TO DISMISS

NOW COME defendants, the Baltimore Police Department (hereinafter "BPD"), Commissioner Frederick H. Bealefeld, (hereinafter "Bealefeld"), and Officer Peter M. Haduch, Jr. (hereinafter "Haduch"), by and through their undersigned counsel and pursuant to F. R. Civ. P 12(b)(6), hereby file this consolidated motion to dismiss and move this Honorable Court to dismiss the Plaintiff's Complaint against them and for reasons state the following:

1. The Plaintiff's Complaint fails to allege a cause of action for which relief can be granted;

2. The BPD is a state agency and is entitled to immunity from civil suit under the Eleventh Amendment to the United States Constitution;

3. Bealefeld did not personally participate in the acts complained of by the Plaintiff and is therefore not liable. Bealefeld is entitled to qualified immunity;

4. Haduch had probable cause and legal authority to arrest the Plaintiff and is therefore not liable to the Plaintiff;

5. A Memorandum of Law in support of this motion is being filed contemporaneously for the court's consideration.

WHEREFORE, based on the above averments and the supporting Memorandum of Law, defendants BPD, Bealefeld, and Haduch respectfully move this Honorable Court to dismiss the Plaintiffs' Complaint against them with prejudice.

Respectfully submitted,

/S/
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* * * * * * * * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August 2008, a copy of the foregoing Baltimore Police Department's, Commissioner Frederick H. Bealefeld's, and Officer Peter M. Haduch, Jr.'s Consolidated Motion to Dismiss was forwarded via the court's electronic filing system to the following:

1. Robert D. Schulte, Esquire
   Schulte Booth, P.C.
   3001 Elliott Street
   Baltimore, Maryland 21224

/S/
Neal M. Janey, Jr.

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* * * * * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF BALTIMORE POLICE DEPARTMENT'S, COMMISSIONER FREDERICK H. BEALEFELD'S AND OFFICER PETER M. HADUCH, JR.'S CONSOLIDATED MOTION TO DISMISS

NOW COME defendants, Baltimore Police Department (hereinafter "BPD"), Commissioner Frederick H. Bealefeld (hereinafter "Bealefeld"), and Officer Peter M. Haduch, Jr.(hereinafter "Haduch"), by and through their undersigned counsel and pursuant to L. R. 105 and F. R. Civ. P 12(b)(6), hereby files this Memorandum of Law in support of their consolidated motion to dismiss. In support of their consolidated motion, BPD, Bealefeld, and Haduch further state and aver the following:

Standard of Review

"A motion to dismiss pursuant to F. R. Civ. P.12 (b)(6) tests the sufficiency of [a] complaint." Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). The district court is not bound to accept as true a legal conclusion couched as a factual allegation. *See* Papasan v. Allain, 478 U.S. 265, 286 (1986) (citing Briscoe v. LaHue, 663 F.2d 713, 723 (7th Cir. 1981)); Young v. City of Mount Ranier, 238 F.3d 567, 577 (4th Cir. 2001); White v. Mortgage Dynamics, Inc., 528 F. Supp. 2d. 576, 578 (D. Md.

2007). The court is not obligated to accept Plaintiff's conclusory allegations regarding the legal effect of the facts alleged. *See* United Mine Workers of Am. v. Wellmore Coal Corp., 609 F.2d 1083, 1085-86 (4th Cir. 1994). A Plaintiff has an obligation to provide grounds for his entitlement to relief and that obligation requires more than labels, conclusions, and formalistic recitation of the elements of a cause of action. *See* Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (2007). "Factual allegations must be enough to raise a right to relief above a speculative level." Qwest Communs. Corp. v. Maryland-National Capital Park & Planning Commission, 553 F. Supp. 2d 572, 574 (D. Md. 2008) (*quoting* Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007).) "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." Twombly, 127 S. Ct. at 1969 (2007). Should a complaint set forth an adequate statement of facts, "the [c]ourt must consider all well-pled allegations … in the light most favorable to the [P]laintiff." *See* Lambeth. v. Bd. of Comm 'rs of Davidson County, 407 F.3d 266, 268 (4th Cir. 2005). The BPD, Bealefeld, and Haduch contend that the Plaintiffs' Complaint is insufficient to state a cause of action for which relief may be granted. The Plaintiffs' Complaint must be dismissed.

Facts

On April 12, 2008 at approximately 7:35 p.m., the plaintiff, Rosemary Munyiri (hereinafter "Plaintiff") was driving home from work. Pl's Compl. at ¶¶ 30-31. "Unbeknownst to [Plaintiff], an accident had occurred some time prior [to her commute] in the area of I-83 and North Avenue." *Id.* at ¶ 35. "As a result, a number of Baltimore [C]ity police officers were dispatched to block a number of entrance ramps to … I-83." *Id.* at ¶ 36. Haduch was one of several Baltimore Police officers dispatched to block an

entrance ramp to I-83. *Id.* at ¶ 37-38. Initially, Haduch positioned his marked patrol vehicle across the Madison Street entrance ramp to I-83. *Id.* "Shortly thereafter, a civilian vehicle attempted to bypass Haduch…." *Id.* at ¶ 39. Haduch was able to turn the civilian vehicle away without incident. *Id.* at ¶ 41. "Thereafter, Officer Haduch repositioned his patrol car from the entrance ramp onto the wide low curb immediately adjacent to [the Madison Street ramp to I-83 North] with his emergency lights activated …." *Id.* at ¶ 42. Haduch placed five road flares across the Madison Street ramp *Id.* at ¶ 43. "Approximately [twenty-five] minutes after Officer Haduch … placed road flares across the Madison Street [r]amp, [Plaintiff] approached from the East … [and] proceeded up the [r]amp in the normal course as it was not blocked by Officer Haduch's [p]atrol [v]ehicle or by any other physical barrier." *Id.* at ¶¶ 44-45. "Plaintiff observed no road flares across the Madison Street [r]amp." *Id.* at ¶ 46. Thereafter, Haduch proceeded after Plaintiff with lights and sirens activated. *Id.* at ¶ 47. Upon realizing that Haduch was attempting to stop her, Plaintiff stopped her vehicle after traveling four tenths of a mile up the I-83 ramp. *Id.* at ¶¶ 49-50. Once the Plaintiff's vehicle was stopped, Haduch drew his service weapon for officer safety and ordered the Plaintiff to exit her vehicle. *Id.* at ¶¶ 53-58. At gun point, Haduch ordered the Plaintiff to lie prone on the wet ground. *Id.* Upon complying with Haduch's order, Haduch arrested the Plaintiff for negligent driving, failure of driver to curb upon signal by police, and attempt by driver to elude uniformed police. *Id.* at ¶ 71. Haduch transported Plaintiff to the Central Booking and Intake Facility (hereinafter "CBIF") where prison officials subjected Plaintiff to a strip search. *Id.* at ¶ 76. On July 2, 2008, the state of Maryland entered a *nolle prosequi* to all charges against the Plaintiff because Haduch failed to appear for

court. *Id.* at ¶ 84. The Plaintiff now brings the instant lawsuit against the BPD, Bealefeld, and Haduch.

Argument

The 42 U.S.C. § 1983 cause of action asserted against the BPD, Bealefeld, and Haduch fail as a matter of law.[1] Accordingly, the Plaintiffs Complaint must be dismissed against the aforementioned defendants.

A. *Complaint against the BPD must be dismissed*

The BPD is an agency of the State of Maryland. PUBLIC LOCAL LAWS OF MARYLAND, Art. 4, § 16-2(a) ("The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the State of Maryland."); Clea v. Baltimore, 312 Md. 662, 668 (1988) ("Unlike other municipal or county police departments which are agencies of the municipality or county, the Baltimore City Police Department is a state agency.") (citations omitted); Ashton v. Brown, 339 Md. 70, 104 n.18 (1995) ("The Baltimore City Police Department, for purposes of Maryland law, is a state agency."); Baltimore Police Department v. Cherkes, 140 Md. App. 282, 303-05, 323 (2001); Williams v. Baltimore, 128 Md. App. 1 (1999), *rev'd on other grounds*, 359 Md. 101 (2000). The status of the BPD as a state agency dates back nearly 150 years. Baltimore v. State, 15 Md. 376 (1860); H. H. Walker Lewis, The Baltimore Police Case of 1860, 26 MD. L. REV. 215 (1966). The General Assembly continues to classify and treat the BPD as a State agency to this day. Clea, 312 Md. at 669; Adams v. Baltimore

[1] Count V and Count VI are the only counts asserted against the BPD, Bealefeld, and Haduch. When reading the specific counts, it is unclear whether the Plaintiff attempts to assert federal and state causes of actions. On the other hand, footnote number one on page five of the Plaintiff's Complaint seems to indicate that she is only asserting an action against the BPD, Bealefeld, and Haduch under 42 U.S.C. § 1983. Hence, the BPD, Bealefeld, and Haduch will take the Plaintiff at her word and only address her cause of action as if she only presented a case under 42 U.S.C. § 1983. No state causes of action referenced in the specific counts will be addressed.

Transit Co., 203 Md. 295, 311 (1953); Upshur v. Baltimore, 94 Md. 743, 756 (1902). Hence, as a matter of law, the BPD is entitled to immunity from civil suit guaranteed under the Eleventh Amendment to the United States Constitution. *See* Dixon v. Balt. City Police Dep't, 345 F. Supp. 2d 512, 513 (D. Md. 2003). Moreover, as an instrumentality and arm of the State of Maryland, the BPD is not considered a person for the purposes of § 1983. *See* Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (A State nor its officials acting in their official capacities are "persons" under § 1983.) The Plaintiff's Complaint against the BPD must be dismissed.

Notwithstanding the BPD's position, the BPD is aware that in Hector v. Weglin, Chief Judge Kaufman, writing for this federal district, did not agree with the BPD's Eleventh Amendment argument pertaining to § 1983 lawsuits. *See* Hector v. Weglin, 558 F. Supp. 194 (D. Md. 1982).[2] Judge Kaufman opined that the record before him demonstrated that the Mayor & City Council of Baltimore (hereinafter "MCC") had enough influence over the BPD as to make the BPD an arm of the MCC for the purposes of § 1983. *Id.* at 198. Later, Chief Judge Legg, writing for this federal district agreed with the analysis of Hector. *See* Alderman v. Baltimore City Police Dep't, 952 F. Supp. 256, 258 (D. Md. 1997). Unfortunately, Chief Judges Kaufman and Legg did not have the benefit of recent case law which has affirmed the BPD's status as a state agency and has emphasized the MCC's lack of control over the affairs of the BPD. *See* Clark v. O'Malley, 169 Md. App. 408, 431 (2006) (The Baltimore City Police Department is a State agency governed by the enactments of the General Assembly. The Mayor enjoys

[2] Chief Judge Kaufman opined "[w]hile the Department and the Commissioner are hybrid creatures, the City exercises such substantial control over the day-to-day activities and policies of the Department that if there was something major amiss in the Department … the City and/or the Commissioner either would or should have known about it, and would or should have taken steps toward cure of the same."

no inherent authority over the department or the office of Police Commissioner.) *aff'd by* Mayor & City Council v. Clark, 404 Md. 13, 24 (2008) ([T]he General Assembly of Maryland was intent upon taking the City of Baltimore out of the business of controlling civil disorders … [p]ursuant to Acts of 1860, ch. 7, the Baltimore Police Department was removed completely from the control of the city government….); *See also* Dixon v. Balt. City Police Dep't, 345 F. Supp. 2d 512, 513 (D. Md. 2003). Hence, as a matter of law, the BPD is a state agency which is not subject to control by the MCC. Clark makes clear that while the MCC can appoint and confirm a police commissioner, the MCC cannot summarily fire a police commissioner if there are disagreements between the MCC and BPD. Clark v. O'Malley, 169 Md. App. 408, 431 (2006) *aff'd by* Mayor & City Council v. Clark, 404 Md. 13, 24 (2008). Accordingly, there is no control over the policies and procedures of the BPD by the MCC. The BPD is entitled to Eleventh Amendment immunity from all civil suits. The BPD, as an arm and instrumentality of the state of Maryland, is not a person for the purposes of § 1983.

However, should this Honorable Court follow the holdings in Hector and Alderman, the BPD is still entitled to a dismissal of the Plaintiff's Complaint. In the instant matter, the Plaintiff seems to assert that the BPD has committed a constitutional violation because it has an improper policy of having its officers' transport people arrested for misdemeanors to CBIF. Pl's Compl. at ¶ 140. The Plaintiff alleges in a conclusory fashion that the BPD is aware that all people charged with misdemeanors will be subjected to strip searches by CBIF personnel. *Id.* at ¶¶ 139-146. The BPD contends that the Plaintiff's Complaint assumes too much.

As an initial matter, "[a] municipality is only liable under [§ 1983] if it causes such a deprivation through an official policy or custom." Carter v. Morris, 164 F. 3d 215, 218 (4th Cir. 1999). Here, the Plaintiff points to no facts in her Complaint which suggests that the BPD or any of its agents and employees perform strip searches at CBIF. Additionally, the Plaintiff has not pointed to a policy, procedure, and/or custom of the BPD whereby it encourages strip searches of its misdemeanor arrestees upon entering CBIF. This federal district has had the occasion to deal with claims such as the Plaintiff's recently. In Jones v. Murphy, the court found that cases such as the Plaintiff's attempt to assert an "entrustment liability" cause of action. Jones v. Murphy, 470 F. Supp. 2d 537, 552 (D. Md. 2007). The court found that "[a]n "entrustment liability" approach, [which obviously the Plaintiff here attempts to assert], has been neither adopted nor rejected in the Fourth Circuit." *Id.* at 552. "Liability …requires that the accused municipality have both a policy of entrustment and knowledge of constitutional violations at the detaining entity." *Id.* at 553. However, "[i]mplicit in the policy component required to impose liability is that the entrusting entity has formulated the policy; that is, that it had a choice over whether to follow the challenged course of action." *Id.* Here, the Plaintiff has not pled one fact which suggests that the BPD was aware that CBIF allegedly has a policy of strip searching all misdemeanor arrestees, as opposed to classifying arrestees based on offenses. In a conclusory fashion, the Plaintiff states, without any facts, that the BPD has actual or constructive knowledge of CBIF's alleged behavior because strip searches at CBIF is "well documented". Pl's Compl at ¶ 142. Moreover, as the City defendants asserted in Jones, the BPD cannot be held liable for strip searches at CBIF because its employees have no choice but to present all if its

arrestees to CBIF for processing. *See* Jones v. Murphy, 470 F. Supp. 2d 537, 553 (D. Md. 2007). Hence, the BPD and its employees, as a matter of Maryland law, must present its arrestees to CBIF for charging and processing. The BPD has no choice in the matter. Accordingly, the Plaintiff's Complaint against the BPD must be dismissed.

B. *Complaint against Bealefeld must be dismissed*

Likewise, and for the same reasons asserted above, the Plaintiff's Complaint must be dismissed against the Bealefeld. "In order for supervisory inaction to form the basis of § 1983 liability, it is necessary that the supervisor have actual or fairly imputable knowledge of the misconduct." Hector v. Weglin, 558 F. Supp. 194, 201 (D. Md. 1982). "[A] supervisor [must] have knowledge (actual or constructive) of his subordinate behaving in a way that posed a pervasive and unreasonable risk of constitutional injury." Jones v. Murphy, 470 F. Supp. 2d 537, 546 (D. Md. 2007) Here, the Plaintiff has pled no facts which suggests that Bealefeld knew or should have known that CBIF allegedly strip searches all misdemeanor arrestees brought to its facility. Thus, the Plaintiffs have failed to plead a cause of action against Bealefeld.

Moreover, even if a cause of action could be pled against Bealefeld in the instant matter, he would nevertheless have qualified immunity. "Qualified immunity is a doctrine that shields government officials performing discretionary functions from liability for civil damages when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Rossignol v. Voorhaar, 321 F. Supp. 2d 642, 646 (D. Md. 2004) *quoting* Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "Generally, when the doctrine of qualified immunity is raised as a defense, the Court must first identify the right infringed by the

challenged conduct." *Id.* "The Court then considers whether, at the time of the violation, the right was clearly established, and whether a reasonable person in the official's position would have known that his conduct would violate that right." *Id.* In the instant matter, Bealefeld could not have known that entrusting misdemeanor arrestees to CBIF would subject him to liability. As the court in Jones v. Murphy discussed, the Fourth Circuit has not opined on "entrustment liability" as pled by the Plaintiff. *See* Jones v. Murphy, 470 F. Supp. 2d 537, 553 (D. Md. 2007). Only one case in this federal district appears to have dealt with the Plaintiff's cause of action and that case, Jones, dismissed the City and its agencies and employees from the lawsuit. *Id.* Hence, a reasonable person in Bealefeld's position would not have known that entrustment of misdemeanor arrestees would violate clearly established constitutional rights. The Complaint against Bealefeld must be dismissed.

C. *Complaint against Haduch must be dismissed*

In Count V of the Plaintiff's Complaint, the Plaintiff asserts that Haduch arrested her without probable cause and assaulted and used excessive force when he pointed his service weapon at her and used his patrol vehicle to maneuver the Plaintiff's vehicle to the side of the road. Pl's Compl at ¶¶ 126-129. "[A]n arrest without probable cause creates a cause of action under § 1983; however, … the existence of probable cause constitutes a bar to such a claim. *See* Street v. Surdyka, 492 F.2d 368, 372-73 (4th Cir. 1974). In the instant matter, Haduch contends that the facts, as pled by the Plaintiff, demonstrates that he had probable cause to arrest the Plaintiff. The Plaintiff admits in her pleadings that Haduch attempted to block the Madison Street ramp to I-83. Further, the Plaintiff admits that she entered the Madison Street ramp, albeit she claims that she did

not observe the road flares that Haduch placed on the road. Hence, the Plaintiff affirmatively admits in her pleadings to committing the traffic violations to which she was charged. The Plaintiff's § 1983 cause of action fails because the Haduch had probable cause to arrest the Plaintiff for a misdemeanor committed in his presence.

Next, the Plaintiff asserts that Haduch used excessive force by pointing his service weapon at her and using his patrol vehicle to force her to the side of the road. Notably however, the Plaintiff's Complaint never asserts that Haduch ever stuck the Plaintiff with his service weapon or vehicle.

> Claims of excessive force during an arrest or investigatory stop are examined under the Fourth Amendment's objective reasonableness standard. *See Graham v. Connor,* 490 U. S. 386, 395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). This "requires balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee v. Garner,* 471 U. S. 1, 8, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985) (citation omitted). Factors to be included in making this determination include the severity of the crime, whether there is an immediate threat to the safety of the officer or others, and whether the subject is resisting arrest or attempting to flee. *Graham,* 490 U. S. at 396. The determination is to be made "from the perspective of a reasonable officer on the scene." *Id.* "The Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm." *Elliott v. Leavitt,* 99 F.3d 640, 641 (4th Cir. 1996), *reh'g en banc denied,* 105 F.3d 174 (4th Cir. 1997). "The right to make an arrest carries with it the right to use the amount of force that a reasonable officer would think necessary to take the person being arrested into custody." *Martin v. Gentile,* 849 F.2d 863, 869 (4th Cir. 1988).

Lawrence v. Montgomery County, 2006 U.S. Dist. LEXIS 95964 *aff'd by* Lawrence v. Montgomery County, 222 Fed. Appx. 272, 2007 (4th Cir. 2007). In the instant matter,

Haduch used reasonable force to arrest the Plaintiff. The Plaintiff's Complaint must be dismissed against Haduch.

Conclusion

For the reasons advanced above, defendants BPD, Bealefeld, and Haduch respectfully move this Honorable Court to dismiss the Plaintiff's Complaint against them with prejudice.

Respectfully submitted,

/S/
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1. Robert D. Schulte, Esquire
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   Baltimore, Maryland 21224

   Attorney for Plaintiff

/S/
Neal M. Janey, Jr.