



## Cargle v. City of Chattanooga

United States District Court for the Eastern District of Tennessee

September 26, 2003, Decided

No. 1:01-cv-36

### Reporter

2003 U.S. Dist. LEXIS 22101 \*; 2003 WL 23471545

LARRY BRIAN CARGLE, JAMES D. CARGLE, MICHAEL EDWARD HANCOCK, and KURTIS CHADWICK WATKINS, Plaintiffs, v. THE CITY OF CHATTANOOGA, TENNESSEE, THE CITY OF CHATTANOOGA POLICE DEPARTMENT; KEVIN COBB, Individually and in his capacity as an Officer of the Chattanooga Police Department, and NEAL SPURLING, Individually and in his capacity as an Officer of the Chattanooga Police Department, Defendants.

**Disposition:** [\*1] Defendants' motion for summary judgment granted in part. Claims of plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins dismissed. Claims of plaintiff Larry Brian Cargle against defendants dismissed in part.

### Core Terms

arrest, summary judgment, summary judgment motion, defendants', restaurant, official capacity, custom, immunity, qualified immunity, entitled to summary judgment, false arrest, false imprisonment, police officer, probable cause, municipality, training, disorderly conduct, patrons, omission, battery, public intoxication, government entity, plaintiff's claim, state law claim, parking lot, nonmoving, jail, constitutional right, custom or practice, pleadings

### Case Summary

#### Procedural Posture

In plaintiff arrestees' 42 U.S.C.S. § 1983 action against defendants, police officers and a city, defendants moved for summary judgment under Fed. R. Civ. P. 56.

#### Overview

The arrestees were arrested in a restaurant parking lot for disorderly conduct and intoxication. They sued defendants, alleging that the arrests violated their

constitutional rights. The court held that defendants were entitled to summary judgment as to three of the four arrestees because they failed to respond to defendants' motion. The court held that defendants were also entitled to summary judgment as to the remaining arrestee's claims of municipal liability and as to the police officers in their official capacity because the city had no unconstitutional policy, custom, or practice concerning employing improperly trained police officers, allowing its police officers to arrest persons without probable cause, or using excessive force on a person being taken into custody. The officers' training met and/or exceeded the state requirements. Because the arrestee was not imprisoned under a mittimus from a court, defendants were entitled to immunity as to his state law tort claims under the Tennessee Government Tort Liability Act. However, the officers were not entitled to summary judgment on the arrestee's claim that he was arrested without probable cause.

#### Outcome

Defendants' motion for summary judgment was denied as to the arrestee's probable cause claim. Defendants' motion was otherwise granted.

### LexisNexis® Headnotes

Civil Procedure > ... > Summary  
Judgment > Motions for Summary  
Judgment > General Overview

Civil Procedure > Parties > Intervention > General  
Overview

Civil Procedure > Judgments > Pretrial  
Judgments > Judgment on Pleadings

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > General  
Overview

### **HN1[] Summary Judgment, Motions for Summary Judgment**

Pursuant to Fed. R. Civ. P. 12(c), where matters outside of the pleadings--i.e., affidavits, transcripts and other exhibits--have been presented and not excluded by the court, the defendant's motion must be treated as a summary judgment and disposed of pursuant to Fed. R. Civ. P. 56.

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > General  
Overview

Civil Procedure > ... > Summary  
Judgment > Motions for Summary  
Judgment > General Overview

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of  
Law > Appropriateness

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > Genuine  
Disputes

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > Legal  
Entitlement

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of  
Law > Materiality of Facts

### **HN2[] Summary Judgment, Entitlement as Matter of Law**

Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the court must view the facts contained in the record and all inferences that can be drawn from those facts in the light most favorable to the non-moving party. The court cannot weigh the evidence or determine the truth of any matter in dispute.

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > Genuine  
Disputes

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > Movant Persuasion  
& Proof

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > Nonmovant  
Persuasion & Proof

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of Law > General  
Overview

### **HN3[] Entitlement as Matter of Law, Genuine Disputes**

The moving party on a motion for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists. To refute such a showing, the non-moving party must present some significant, probative evidence indicating the necessity of a trial for resolving a material, factual dispute. The court's role is limited to determining whether the case contains sufficient evidence from which a jury could reasonably find for the non-moving party.

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > General Overview

### **HN4[] Summary Judgment, Burdens of Proof**

See Fed. R. Civ. P. 56(e).

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > General Overview

### **HN5[] Summary Judgment, Burdens of Proof**

A party seeking summary judgment bears the initial burdens of specifying the basis upon which it contends judgment should be granted and of identifying that portion of the record which, in its opinion, demonstrates the absence of a genuine issue of material fact. Thus, the burden on the moving party may be discharged by

"showing"--that is, pointing out to the district court--that there is an absence of evidence to support the non-moving party's case. The non-moving party must thereafter produce specific facts demonstrating a genuine issue of fact for trial.

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > General Overview

#### **HN6** **Summary Judgment, Burdens of Proof**

Although a party opposing summary judgment is entitled to a review of the evidence in the light most favorable to him or her, the non-moving party is required to do more than simply show that there is some metaphysical doubt as to the material facts. Fed. R. Civ. P. 56(e) requires the non-moving party to come forward with specific facts showing that there is a genuine issue for trial. Furthermore, the mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient; there must be evidence on which the jury could reasonably find for the non-moving party.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

#### **HN7** **Protection of Rights, Section 1983 Actions**

See 42 U.S.C.S. § 1983.

Civil Rights Law > Protection of Rights > Section 1983 Actions > Scope

#### **HN8** **Protection of Rights, Section 1983 Actions**

In order to prevail on a claim for a violation of civil rights under 42 U.S.C.S. § 1983, a plaintiff must establish: (1) he was deprived of a right secured by the federal Constitution or laws of the United States, and (2) that the aforesaid deprivation was caused by a person acting under color of state law.

Civil Rights Law > ... > Immunity From Liability > Local Officials > General Overview

Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

#### **HN9** **Immunity From Liability, Local Officials**

To impose liability on a governmental entity under 42 U.S.C.S. § 1983, a plaintiff must show that there was some official governmental policy or custom in place that violated his constitutional rights; a governmental entity cannot be held liable under § 1983 for the acts of its employees under a theory of respondeat superior.

Civil Rights Law > ... > Immunity From Liability > Local Officials > General Overview

Governments > Local Governments > Claims By & Against

Civil Rights Law > ... > Section 1983 Actions > Scope > Government Actions

#### **HN10** **Immunity From Liability, Local Officials**

To obtain a judgment against a municipality, a plaintiff must prove that the municipality itself supported the violation of rights alleged. 42 U.S.C.S. § 1983 liability attaches to a municipality only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.

Civil Rights Law > ... > Immunity From Liability > Local Officials > General Overview

#### **HN11** **Immunity From Liability, Local Officials**

It is the burden of the plaintiffs to show that a policymaker is responsible either for the policy or, through acquiescence, for the custom.

Civil Rights Law > ... > Immunity From Liability > Local Officials > General Overview

#### **HN12** **Immunity From Liability, Local Officials**

There are two ways to establish a policy or custom. A policy exists when a decisionmaker possessing final authority to establish municipal policy with respect to the action issues either an official policy, proclamation, or edict. A course of conduct will be considered to be a "custom" when, even though not authorized by law, such practices of state officials are so permanent and

well settled as to virtually constitute law.

Civil Rights Law > ... > Immunity From  
Liability > Local Officials > General Overview

### **HN13** **Immunity From Liability, Local Officials**

A "custom" for purposes of Monell liability must be so permanent and well settled as to constitute a custom or usage with the force of law. In turn, the notion of "law" must include deeply embedded traditional ways of carrying out state policy. It must reflect a course of action deliberately chosen from among various alternatives. In short, a "custom" is a "legal institution" not memorialized by written law.

Civil Rights Law > ... > Immunity From  
Liability > Local Officials > General Overview

### **HN14** **Immunity From Liability, Local Officials**

Official policy often refers to formal rules or understandings--often but not always committed to writing--that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time. A plaintiff must, in order to show a custom or policy, adduce specific facts in support of his claim. Conclusory allegations will not lie.

Civil Rights Law > ... > Section 1983  
Actions > Elements > Causal Relationship

Governments > Local Governments > Claims By &  
Against

Civil Rights Law > ... > Immunity From  
Liability > Local Officials > General Overview

Civil Rights Law > ... > Section 1983  
Actions > Scope > Government Actions

### **HN15** **Elements, Causal Relationship**

In order to state a claim against a city or a county under 42 U.S.C.S. § 1983, a plaintiff must show that his injury was caused by an unconstitutional "policy" or "custom" of the municipality. Where the identified policy is itself facially lawful, the plaintiff must demonstrate that the

municipal action was taken with deliberate indifference as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice. Deliberate indifference is a stringent standard of fault requiring proof that a municipal actor disregarded a known or obvious consequence of his action. In other words, the risk of a constitutional violation arising as a result of the inadequacies in the municipal policy must be plainly obvious.

Governments > Local Governments > Claims By &  
Against

Torts > Public Entity  
Liability > Immunities > General Overview

### **HN16** **Local Governments, Claims By & Against**

See Tenn. Code Ann. § 29-20-201.

Torts > Public Entity  
Liability > Immunities > General Overview

Workers' Compensation &  
SSDI > Exclusivity > General Overview

Governments > Local Governments > Claims By &  
Against

Workers' Compensation &  
SSDI > Compensability > Course of  
Employment > General Overview

### **HN17** **Public Entity Liability, Immunities**

See Tenn. Code Ann. § 29-20-205.

Governments > Courts > Common Law

Workers' Compensation &  
SSDI > Compensability > Injuries > General  
Overview

Governments > Local Governments > Claims By &  
Against

Governments > State & Territorial  
Governments > Claims By & Against

Torts > Public Entity Liability > General Overview

Torts > Public Entity  
Liability > Immunities > General Overview

Workers' Compensation &  
SSDI > Compensability > Course of  
Employment > General Overview

Workers' Compensation &  
SSDI > Defenses > Waiver

Workers' Compensation &  
SSDI > Exclusivity > General Overview

Workers' Compensation &  
SSDI > Exclusivity > Exceptions

### **HN18** **Courts, Common Law**

The Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (GTLA), Tenn. Code Ann. § 29-20-101 et seq., in 1973, to codify the general common law rule that all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities, Tenn. Code. Ann. § 29-20-201(a), subject to statutory exceptions in the GTLA's provisions. For instance, a general waiver of immunity from suit for personal injury claims is provided in Tenn. Code Ann. § 29-20-205 for injury proximately caused by a negligent act or omission of any employee within the scope of his employment, unless the injury arises out of one of several enumerated exceptions to this section, such as the intentional tort exception. When analyzing the GTLA, as the legislature created it in derogation of the common law, it must be strictly construed.

Torts > Intentional Torts > Assault &  
Battery > Defenses

Workers' Compensation &  
SSDI > Compensability > Injuries > General  
Overview

Governments > Legislation > Interpretation

Governments > Legislation > Overbreadth

Governments > Local Governments > Claims By &  
Against

Torts > Intentional Torts > General Overview

Torts > Intentional Torts > Assault &  
Battery > General Overview

Torts > Negligence > Defenses > General Overview

Torts > Public Entity Liability > General Overview

Torts > Public Entity  
Liability > Immunities > General Overview

Workers' Compensation &  
SSDI > Compensability > Course of  
Employment > General Overview

Workers' Compensation &  
SSDI > Exclusivity > General Overview

Workers' Compensation &  
SSDI > Exclusivity > Exceptions

### **HN19** **Assault & Battery, Defenses**

The intentional tort exception of Tenn. Code Ann. § 29-20-205 does not include the torts of assault and battery. More specifically, § 29-20-205 of the Tennessee Governmental Tort Liability Act (GTLA), Tenn. Code Ann. § 29-20-101 et seq., removes immunity for injuries proximately caused by the negligent act or omission of a governmental employee except when the injury arises out of only those specified torts enumerated in Tenn. Code Ann. § 29-20-205(2). To immunize all intentional torts would result in an overly broad interpretation of the statute, and there is no indication that the legislature intended such a result. The legislature has excluded the two intentional torts most likely to give rise to injury. Under the maxim "expressio unius est exclusio alterius," which states the principle that the expression of one thing implies the exclusion of all things not expressly mentioned, the court is unable to expand the intentional torts exception to include assault and battery. To do so would be to judicially create two additional exceptions giving rise to an entity's immunity.

Governments > Local Governments > Claims By &  
Against

Torts > Public Entity  
Liability > Immunities > General Overview

Torts > Intentional Torts > False

Imprisonment > General Overview

Torts > ... > False

Imprisonment > Defenses > Immunities

#### **HN20** **Local Governments, Claims By & Against**

Tenn. Code Ann. § 29-20-205(2) does not provide that a city retains immunity from all suit for injuries out of false imprisonment but only from suit for injuries arising out of false imprisonment pursuant to a mittimus from a court.

Civil Rights Law > ... > Immunity From

Liability > Local Officials > General Overview

Governments > Local Governments > Claims By & Against

Torts > ... > Punitive

Damages > Availability > Governmental Entities

Civil Procedure > Remedies > Damages > Punitive Damages

Torts > ... > Types of Damages > Punitive Damages > General Overview

#### **HN21** **Immunity From Liability, Local Officials**

A municipality is immune from punitive damages under 42 U.S.C.S. § 1983.

Civil Rights Law > ... > Immunity From

Liability > Local Officials > Customs & Policies

#### **HN22** **Local Officials, Customs & Policies**

Qualified immunity extends to government officials performing discretionary functions insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity represents an entitlement not to stand or face the other burdens of litigation, conditioned on the resolution of the essentially legal question whether the conduct of which the plaintiff complains violated clearly established law. The entitlement is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.

Civil Rights Law > ... > Immunity From

Liability > Local Officials > Customs & Policies

#### **HN23** **Local Officials, Customs & Policies**

Whether an official may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken. For a law to be "clearly established" in the context of qualified immunity, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

Civil Rights Law > ... > Immunity From

Liability > Local Officials > Customs & Policies

#### **HN24** **Local Officials, Customs & Policies**

In addressing a claim for qualified immunity a court must first determine whether based on the applicable law, a constitutional violation occurred. If the court concludes that a constitutional violation has occurred, it then determines whether this violation involved clearly established constitutional rights of which a reasonable person would have known. Generally, if the right at issue was clearly established at the time the governmental actor committed the violation in question, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Both questions must be answered in the affirmative in order to defeat a government official's claim to qualified immunity. Additionally, the burden is on the plaintiff to allege and prove that the defendant violated a clearly established constitutional right.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Probable Cause

Criminal Law & Procedure > ... > Search Warrants > Probable Cause > Particularity Requirement

**HN25**  **Search & Seizure, Probable Cause**

It is clearly established that an arrest without probable cause violates the Fourth Amendment. The United States Supreme Court has held that the test for whether an arrest is constitutionally valid is whether, at the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.

**Counsel:** For Larry B Cargle, James D Cargle, Michael E Hancock, Kurtis C Watkins, PLAINTIFFS: Brian M House, Law Office of Kyle Weems, Chattanooga, TN USA.

For Larry B Cargle, James D Cargle, Michael E Hancock, Kurtis C Watkins, PLAINTIFFS: C Chad Young, UNKNOWN, UNKNOWN.

For Larry B Cargle, James D Cargle, Michael E Hancock, Kurtis C Watkins, PLAINTIFFS: Clifton M Patty, Jr, Ringgold, GA USA.

**Judges:** R. ALLAN EDGAR, CHIEF UNITED STATES DISTRICT JUDGE.

**Opinion by:** R. ALLAN EDGAR

## Opinion

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### MEMORANDUM

#### I. Introduction

Plaintiffs, Larry Brian Cargle, James D. Cargle, Michael Edward Hancock, and Kurtis <sup>1</sup> Chadwick Watkins, brought this action against defendants, the City of Chattanooga, Tennessee; the City of Chattanooga Police Department; and Chattanooga Police Officers Kevin Cobb and Neal Spurling, in their individual and official capacities, [\*2] pursuant to 42 U.S.C. §§ 1983 and 1988. [Court File No. 1, P 6]. Plaintiffs assert

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<sup>1</sup> In various pleadings filed with the Court, plaintiff Watkins' name has either been spelled Kurtis Watkins or Curtis Watkins. However, as plaintiff's name appears as Kurtis Watkins on the docket of this Court, that spelling will be used in this Memorandum and the accompanying Order.

that on January 30, 2000, due to the actions and/or omissions of the City of Chattanooga, the City of Chattanooga Police Department and Officers Cobb and Spurling they were:

- (1) subject to violent and abusive acts during arrest even though there was no probable cause for their arrest and even though they did not resist the attempts to place them under arrest;
- (2) they were subject to unlawful searches and seizures of their person in connection with the aforementioned unlawful arrests and were subject to false and unlawful imprisonment as a result of the unlawful arrests;
- (3) they were subject to violent, abusive, and excessive use of force by defendants Cobb and Spurling which was objectively unreasonable under the circumstances;

(4) that plaintiffs James Cargle and Kurtis Watkins suffered pain and agony due to defendant Cobb's failure to provide water, first aid, or medical treatment to them after macing them which constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution(5) that the policies, [\*3] acts and/or omissions of the City of Chattanooga, the City of Chattanooga Police Department and the defendants Cobb and Spurling, combined to directly and proximately cause permanent and severe injuries and damage to plaintiffs, were reckless and constituted willful indifference on the part of defendants to the statutory duties they owed to plaintiffs and evince conscious indifference to plaintiffs and the consequences of their actions;

(6) that as the result of the acts and/or omissions of defendants, plaintiffs have suffered severe, permanent and disability, bodily injuries, mental and physical and have and continue to suffer excruciating pain and agony as well as economic losses, including medical expenses, which have deprived them of their ability to enjoy a normal and happy life;

(7) that defendants Cobb and Spurling in their individual capacities, committed battery against all plaintiffs by the non-consensual touching and handcuffing of the plaintiffs when they were placed under arrest; and that defendant Cobb committed an unlawful touching of plaintiffs James Cargle and Watkins by spraying them in the face with pepper mace;

(8) that the actions of defendants Cobb [\*4] and Spurling in their individual capacities towards

plaintiffs on January 30, 2000, was intentional, reckless, and extreme and outrageous and constitutes the intentional infliction of emotional distress;

(9) that the actions of defendants Cobb and Spurling in their individual capacities towards plaintiff constituted negligent and reckless treatment of plaintiffs while they were in the custody of the aforesaid defendants; and,

(10) that the actions of defendants Cobb and Spurling in their individual capacities toward the plaintiffs on January 30, 2000, constitutes false arrest and false imprisonment in violation of the laws and constitution of the State of Tennessee.

[Court File No. 1].

Currently pending before [\*5] the Court is the motion for judgment on the pleadings or, in the alternative, for a summary judgment, of defendants Kevin Cobb and Neal Spurling, individually and in their official capacities, and of the City of Chattanooga, Tennessee. [Court File No. 21].

## **II. Background**

The events which gave rise to this case began at approximately 3:00 P.M. on January 30, 2000, when the four plaintiffs met at Hooter's Restaurant ("Restaurant"), which is located at 5912 Brainerd Road in Chattanooga, Tennessee, to watch the televised Super Bowl game between the St. Louis Rams and the Tennessee Titans. [Court File No. 1, PP 10 & 11]. Plaintiffs remained at the restaurant and ordered food and drinks while watching the Super Bowl. *Id.* at P 12. They were essentially the only patrons at the restaurant supporting the Rams, while the majority of the patrons at the restaurant supported the Titans. *Id.* at P 13.

Defendant, Officer Kevin Cobb, ("Cobb") a police officer with the City of Chattanooga Police Department since November 6, 1998, was working Delta patrol on the night of January 30, 2000. [Court File No. 20, Cobb Affidavit, p. 1]. At approximately 10:00 P.M., Cobb received [\*6] a report of possible disorderly conduct by patrons at the restaurant. <sup>2</sup> *Id.*, pp. 1-2. The complaint, which was from restaurant management, stated there

was a group of approximately six persons who were causing a disorder and appeared to be trying to leave the premises without paying their bill. *Id.* at 3.

In their complaint, plaintiffs admit that they were engaging in "friendly banter" with other restaurant patrons and that during the course of the evening, the manager and two assistant managers of the restaurant asked that they quiet down. [Court File No. 1, PP 13 & 14]. Upon arriving at the restaurant, Cobb spoke with the restaurant manager about the complaint of disorderly conduct. [Court File No. 21, Cobb Affidavit, p. 2].

Cobb then observed [\*7] the aforementioned patrons for approximately five minutes. *Id.* He could hear that they were being very loud and using profanity; and, he observed that at least one drinking glass, and possibly several drinking glasses, had been knocked off their table and onto the floor. *Id.* Cobb was advised that before he arrived at the scene, the restaurant had stopped selling alcohol to the patrons who were the subject of the complaint. *Id.* Cobb was also advised that the restaurant management had asked the patrons, which included the plaintiffs, to pay their bill and vacate the premises, but they had not complied with the request. *Id.*

Cobb approached the table and asked those present to keep their noise at a minimum. *Id.* Someone at the table retorted that Cobb should "return to guard the door." *Id.* Cobb then advised the group that they should leave the restaurant within several minutes. *Id.*

About five minutes later, Cobb returned to the table to ask the group to again quiet down. *Id.* He spoke with an individual, who identified himself as James Cargle and asked him to try and keep the group quiet and to leave the restaurant as requested by the management. *Id.* [\*8] After Cargle told Cobb that he was "nothing without a gun and badge" and also stated that Cobb did not have the right to tell them to leave the restaurant because they were watching the Super Bowl, Cobb again advised the group that because the management had asked them to, they should pay their bill and exit premises. *Id.* at pp. 2-3.

Ultimately, the group left the restaurant and went into the parking lot. *Id.* at 3. As the group passed by Cobb in the parking lot, one member of the group, Michael Hancock, told Cobb that "one cop couldn't handle his boys." *Id.*

Cobb then got into his patrol car and waited for the

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<sup>2</sup> Cobb did not receive this report through the police radio dispatch. He was eating, during a break, at another restaurant on Brainerd Road, when someone from Hooter's management telephoned that restaurant and asked if there might be a police officer present.

group of patrons to leave the restaurant parking lot. *Id.* After the group of patrons remained in the restaurant parking lot for several minutes, Cobb exited his vehicle and asked the group to leave. *Id.* One member of the group, Kurtis Watkins was making loud statements in the parking lot; and, he told Cobb he would take care of him without his badge and gun. *Id.*

Michael Hancock stumbled toward Cobb in the parking lot. *Id.* Hancock came at Cobb with a hand and threw his arm in Cobb's direction. *Id.* It appeared to Cobb that Hancock was under the [\*9] influence of alcohol and was intoxicated. *Id.* Hancock was then arrested for public intoxication and disorderly conduct. *Id.*

At that point, one of the group of patrons attempted to pull Hancock away from Cobb in the parking lot. *Id.* As he was arresting Hancock and when several other members of the group attempted to pull Hancock away from him, Cobb called for assistance. *Id.* Several Chattanooga Police officers, including defendant Officer Neal Spurling ("Spurling") responded to Cobb's request for assistance. *Id.*

Cobb observed that Kurtis Watkins was unsteady on his feet and had the strong odor of alcohol on his breath and arrested him for public intoxication and disorderly conduct. [Court File No. 21, Cobb Affidavit, p. 4]. In his affidavit, Cobb also stated he observed that Larry Cargle was unsteady on his feet and had the strong odor of alcohol on his breath and also arrested him for public intoxication and disorderly conduct. *Id.*

Cobb also observed that James Cargle was being unsteady on his feet and had the strong odor of alcohol on his breath. *Id.* Cobb had also previously observed that James Cargle had engaged in loud talk, had been disruptive with [\*10] management inside the restaurant and had caused a public disorder outside the restaurant, so Cobb arrested James Cargle for disorderly conduct and public intoxication. *Id.*

Once a problem with the pat-down search of James Cargle had been resolved, [Court File No. 21, Cobb Affidavit, p. 4, P 14], Cobb transported James Cargle and Kurtis Watkins to the Hamilton County jail in his police motor vehicle. *Id.*, p. 4. Cargle and Watkins were thrashing around in the rear of Cobb's police motor vehicle. *Id.* Specifically, they were banging their heads against the glass partition between the front and rear seats of the police vehicle and kicking at the doors and windows as well. *Id.* While they were being transported to the jail, Cobb maced James Cargle and Kurtis Watkins in the rear of the police vehicle to control their

behavior. *Id.* Officer Cobb observed that both James Cargle and Kurtis Watkins appeared to be extremely intoxicated. *Id.*

Officer Spurling transported both Larry Cargle and Michael Hancock to the Hamilton County jail. *Id.* at 5. He did not arrest any of the four plaintiffs; however, he did assist Officer Cobb in handcuffing one of them. *Id.*

In [\*11] addition, while James Cargle was being processed at the jail, he threatened Officer Cobb in front of the magistrate. *Id.* As a result of his conduct at the jail, James Cargle was also charged with simple assault, a charge which was approved by the magistrate. *Id.*

The Affidavit of Attorney Lawrence W. Kelly also appears in the record. [Court File No. 21, Exhibit 3]. Attorney Kelly now practices in Atlanta, Georgia, but previously participated in litigation work for Chattanooga City Attorney, Randall L. Nelson. *Id.*, p. 1.

In the course of his preparation for the trial of the plaintiffs based upon their arrests on January 30, 2000, Attorney Kelly had contact with the attorney for the State of Tennessee, Mary Sullivan Moore, concerning the preparation of the police officer witnesses for trial in the criminal case which was tried before Judge Rebecca Stern and a jury in December 2002. *Id.*, pp. 1-2. Attorney Kelly attended each day of the criminal trial. *Id.* at 2.

Larry Brian Cargle, James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins were scheduled to be tried during the same trial. *Id.* However, in December 2002, Larry Cargle and James D. Cargle [\*12] showed up for the trial, but Michael Hancock and Kurtis Watkins failed to appear for the trial. *Id.* Following a two-day trial, the jury returned verdicts of guilty of public intoxication and disorderly conduct as to defendant James Cargle. *Id.* A certified copy of the judgments entered by Judge Rebecca Stern against James D. Cargle on December 13, 2002, appears in the record. [Court File No. 21, Kelly Affidavit, Exhibit 1]. In that same case, the jury returned a verdict of not guilty on behalf of Larry Cargle. *Id.*

Subsequent to the December 2002 criminal trial, Kurtis Watkins pled guilty to the charges of public intoxication and disorderly conduct stemming from the events of January 30, 2000. [Court File No. 21, Kelly Affidavit, p. 2]. A certified copy of the judgment entered by Judge Rebecca Stern against Kurtis Chadwick Watkins on May 19, 2003, appears in the record. [Court File No. 21, Kelly Affidavit, Exhibit 2].

During the criminal trial, Larry Cargle, James Cargle, Michael Hancock, and Kurtis Watkins were represented by Attorneys Brian House and Chad Young. [Court File No. 21, Kelly Affidavit, p. 2]. Copies of the indictments issued by the Hamilton County [\*13] Grand Jury against Larry Cargle, James Cargle, and Michael Hancock also appear in the record. [Court File No. 21, Kelly Affidavit, Exhibit 3].

Finally, at the time Kelly signed his affidavit, June 18, 2003, all criminal charges stemming from the incident/events of January 30, 2000, had been resolved with the exception of the criminal charges against Michael Edward Hancock for which outstanding warrants have been issued due to his failure to appear in state court in December of 2002. [Court File No. 21, Kelly Affidavit, p. 6].

The Affidavit of Lon Eilders, the manager in charge of the Accreditation and Standards of the Chattanooga Police Department also appears in the record. [Court File No. 21, Exhibit 2, p. 1]. Lon Eilders was familiar with the written policies and the customs and practices within the Chattanooga Police Department as of January 2000. *Id.*

In January 2000, the City of Chattanooga did not have any policy, custom or practice of allowing its police officers to arrest and/or prosecute persons without probable cause. *Id.* Attached to the affidavit of Lon Eilders is police Manual Order No. 3.03, which was the official policy of the Chattanooga Police Department [\*14] in effect on January 30, 2000. *Id.* Manual Order No. 3.03, defines the elements of a lawful arrest, including "probable cause," at great length. [Court File No. 21, Exhibit 2, Manual Order No. 3.03, Subsections I & II].

In January 2000, the City of Chattanooga did not have a policy, custom, or practice of allowing its police officers to use excessive or unwarranted force on a person being taken into custody. [Court File No. 21, Eilders' Affidavit, p. 2]. Attached to Lon Eilders' Affidavit is General Order ADM-5-98, which was in effect on January 30, 2000. *Id.* ADM-5-98, pertains to the use of force. [Court File No. 21, ADM-5-98]. The philosophy subsection of this lengthy document states in pertinent part:

It is the philosophy of the Chattanooga Police Department to use only the minimum level of force necessary to conduct lawful public safety activities and accomplish the mission of the department. The level of force used by a police officer in any given

situation is dependent on the level of resistance presented by the person with whom the officer is dealing. An officer shall only use the minimal amount of physical force reasonably necessary to (1) protect persons [\*15] and property and (2) overcome any physical resistance offered by a person with whom the officer is dealing. Under no circumstances shall the force used be greater than necessary to achieve lawful objectives. . .

[Court File No. 21, ADM-5-98, p. 1].

Further, on January 30, 2002, the City of Chattanooga did not maintain a policy, custom or practice of employing police officers who were either improperly trained or supervised. [Court File No. 21, Eilders' Affidavit, p. 2]. In this regard, Lon Eilders' Affidavit states with regard to the training of Officers Cobb and Spurling:

I am aware that Officer Kevin Cobb successfully completed an eighteen (18) week training academy in 1999-2000 provided by the Chattanooga Police Department which is above and beyond the requirements and standards of the State of Tennessee for Police Training. I am aware the Officer Neal Spurling successfully completed a nineteen (19) week training academy in 1989-1990 provided by the Chattanooga Police Department which is above and beyond the requirements and standards of the State of Tennessee for Police Training. I am aware that Officer Cobb and Officer Spurling were certified by the Tennessee [\*16] Peace Officer Standards and Training Commission and were in good standing with that commission on January 30, 2000. I am aware that both Officer Cobb and Officer Spurling were required to undergo annual in-service training in each year while they were employed by the City of Chattanooga.

*Id.* Lastly, Lon Eilders' Affidavit stated that he was not aware "of any policy making official of the City of Chattanooga who has authorized or condoned any policy, custom or practice in the Chattanooga Police Department of allowing police officers to use excessive or unwarranted force against a person being taken into custody, to arrest a person without probable cause, to engage in an abuse of power or to misuse their official positions." *Id.*

### **III. Defendants' Motion for a Judgment on the Pleadings or, in the alternative, a Summary Judgment [Court File No. 24].**

Defendants have moved for a judgment on the

pleadings/summary judgment, on the grounds:

A. That to the extent the complaint seeks to hold the City of Chattanooga liable under 42 U.S.C. § 1983 based upon *respondeat superior*, the City is entitled to summary judgment pursuant [\*17] to the decision in *Monell v. Department of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978);

B. Defendants, the City of Chattanooga, Officer Cobb and Officer Spurling in their official capacities are entitled to a summary judgment with respect to plaintiffs' § 1983 claims since plaintiffs cannot establish either "deliberate indifference" and/or any injuries which were proximately caused by any unconstitutional policy, custom or practice of the City of Chattanooga;

C. Defendants, the City of Chattanooga, Officer Cobb and Officer Spurling in their official capacities are entitled to a summary judgment with respect to any state law claims raised by the plaintiff(s) relating to false arrest, false imprisonment, battery or intentional infliction of emotional distress because the City and the defendant officers in their official capacities retain the common law immunity from such claims under the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq*. D. The City of Chattanooga is entitled to summary judgment on any claims for punitive damages made by the plaintiffs; and,

E. Defendants Cobb and Spurling are entitled [\*18] to summary judgment with respect to plaintiffs' claims for false arrest and alleged illegal seizure in light of the guilty pleas and the actions of several of the plaintiffs.

[Court File No. 22].

Defendants have moved for a judgment on the pleadings, or in the alternative, a summary judgment [Court File No. 24]. However, HN1[↑] pursuant to Fed. R. Civ. P. 12(c), because matters outside of the pleadings -- i.e., affidavits, transcripts and other exhibits -- have been presented and not excluded by this court, defendants' motion must be treated as a summary judgment and disposed of pursuant to Fed. R. Civ. P. 56. *Pierzynowski v. Police Dep't*, 941 F. Supp. 633, 639 (E.D. Mich. 1996)(citing *Scott v. Central States, Southeast & Southwest Areas Pension Plan*, 727 F. Supp. 1095, 1095 (E.D. Mich. 1989)). Thus, the Court

will treat defendants' motion for a judgment on the pleadings as a motion for summary judgment.

#### **A. Standard of Review**

HN2[↑] Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled [\*19] to judgment as a matter of law. Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must view the facts contained in the record and all inferences that can be drawn from those facts in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986); *National Satellite Sports, Inc. v. Eliadis Inc.*, 253 F.3d 900, 907 (6th Cir. 2001). The Court cannot weigh the evidence or determine the truth of any matter in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

HN3[↑] The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). To refute such a showing, the non-moving party must present some significant, probative evidence indicating the necessity of a trial for resolving a material, factual dispute. *Celotex Corp.*, 477 U.S. at 322. A mere scintilla of evidence is not enough. *Anderson*, 477 U.S. at 252; *McLean v. Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). [\*20] The Court's role is limited to determining whether the case contains sufficient evidence from which a jury could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 248, 249; *National Satellite Sports*, 253 F.3d at 907.

#### **B. Plaintiff's Response to Defendant's Motion for a Summary Judgment [Court File No. 36].**

As is noted above, defendants filed the instant motion for a summary judgment on June 20, 2003 [Court File No. 21]. Shortly thereafter, on July 3, 2003, plaintiffs filed a motion for an extension of time to respond to defendants' summary judgment motion. [Court File No. 23]. Plaintiffs' motion for an extension of time was granted and they were given until Monday, August 11, 2003, to respond to defendants' motion for a summary judgment. [Court File No. 24].

Subsequently, on August 4, 2003, plaintiffs filed a second motion for an extension of time to respond to defendants' summary judgment motion [Court File No. 29]. Plaintiffs' motion for an extension was again granted and they were given until Friday, August 29,

2003 to respond to defendants' motion for a summary judgment [Court File No. 31].

Plaintiffs filed [\*21] a third motion for an extension of time to respond to defendants' motion for a summary judgment on August 27, 2003 [Court File No. 32]. Plaintiff's third motion for an extension of time to respond was again granted and they were given up to and including Friday, September 12, 2003 to file a response to defendants' motion for a summary judgment. [Court File No. 33].

Counsel for the plaintiffs filed a response to the defendants' motion for a summary judgment on behalf of plaintiff Larry B. Cargle on September 12, 2003. [Court File No. 36]. The response to defendants' motion for a summary judgment states in pertinent part:

The attorneys for the plaintiffs in this action are unable to file a Response on behalf of James D. Cargle, Michael Edward Hancock and Curtis Chadwick Watkins due to the fact that said Plaintiffs have not communicated or contacted their attorneys, have moved or changed their mailing address without notifying their attorneys of new addresses and that said attorneys have been unable to communicate with said plaintiffs . . .

[Court File No. 36].

Thus, plaintiffs James Cargle, Michael Hancock and Kurtis Watkins have not responded to defendants' [\*22] motion for a summary judgment.

Fed. R. Civ. P. 56(e) states in relevant part:

. . . **HN4** [↑] When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits, or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not do so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e).

In *Pierce v. Commonwealth Life Ins. Co.*, 40 F.3d 796 (6th Cir. 1994), the Sixth Circuit stated:

**HN5** [↑] A party seeking summary judgment bears the initial burdens of specifying the basis upon which it contends judgment should be granted and of identifying that portion of the record which, in its opinion, demonstrates the absence of a genuine

issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986). Thus, "the burden on the moving [\*23] party may be discharged by 'showing' -- that is, pointing out to the district court -- that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325, 106 S. Ct. at 2554. The nonmoving party must thereafter produce specific facts demonstrating a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10, 91 L. Ed. 2d 202 (1986).

**HN6** [↑] Although a plaintiff is entitled to a review of this evidence in the light most favorable to him or her, the nonmoving party is required to do more than simply show that there is some "metaphysical doubt as to the material facts." *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). The Rule requires the nonmoving party to come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). (emphasis added); see also *United States v. WRW Corp.*, 986 F.2d 138, 143 (6th Cir. 1993)(court not required to speculate as to what portion of record nonmoving party relies upon, nor [\*24] is there an obligation for it to "wade through" the record for specific facts). Furthermore, "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512.

*Id.* at 800.

In this instance, the Court has performed a detailed review of the pleadings and evidence submitted by the defendants in support of their motion for a summary judgment [Court File No. 21, 22], including the Affidavit of Kevin Cobb [Court File No. 21, Exhibit 1], the Affidavit of Lon Eilders [Court File No. 21, Exhibit 2], the Affidavit of Lawrence Kelly [Court File No. 21, Exhibit 3] and the true bills of indictments from the Hamilton County [Tennessee] Grand Jury against plaintiffs Larry Brian Cargle, James D. Cargle and Michael Edward Hancock. *Id.*

Based upon its review, the Court finds that the defendants have satisfied their burden of demonstrating the absence of a genuine issue of material fact with

regard to the claims/allegations of plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick [\*25] Watkins against them. *Pierce*, 40 F.3d at 800. Further, plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins have failed to respond to defendants' motion for a summary judgment; and, therefore, have failed to come forward with evidence of any specific facts showing the presence of any genuine issue for trial.<sup>3</sup> *Id.* Hence, the Court concludes that defendants are entitled to a summary judgment on the claims of plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins pursuant to Fed. R. Civ. P. 56(c), (e).

Accordingly, that aspect of defendants' motion for a summary judgment [Court File No. 21], which seeks a summary judgment on the claims of plaintiffs James D. Cargle, Michael [\*26] Edward Hancock and Kurtis Chadwick Watkins will be **GRANTED**.

### C. Analysis

Plaintiff Larry Brian Cargle has responded to defendants' motion for a summary judgment [Court File No. 36, 37]. He asserts defendants are not entitled to a summary judgment because there is a genuine issue of material fact as to whether or not probable cause existed for his arrest [Court File No. 37, p. 8].

#### (1) Municipal Liability

The sole remaining plaintiff, Larry Brian Cargle, seeks to hold the City of Chattanooga liable under 42 U.S.C. § 1983 on the grounds that its policies, acts and/or omissions led to the alleged violations of his constitutional rights on the night of January 20, 2000.

42 U.S.C. § 1983 provides in relevant part:

**HN7** [↑] Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured [\*27] in an action at law, suit in equity, or

other proper proceeding for redress . . .

**HN8** [↑] In order to prevail on a claim for a violation of civil rights under 42 U.S.C. § 1983, a plaintiff must establish: (1) he was deprived of a right secured by the Federal Constitution or laws of the United States, and (2) that the aforesaid deprivation was caused by a person acting under color of state law. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155-57, 56 L. Ed. 2d 185, 98 S. Ct. 1729 (1978).

More specifically, **HN9** [↑] to impose liability on a governmental entity, such as the City of Chattanooga, Tennessee, under 42 U.S.C. § 1983, a plaintiff must show that there was some official governmental policy or custom in place that violated his constitutional rights; a governmental entity cannot be held liable under § 1983 for the acts of its employees under a theory of *respondeat superior*. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978).

**HN10** [↑] "To obtain a judgment against a municipality, a plaintiff must prove that the municipality itself supported the violation of rights alleged." *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990) [\*28] (citing *Monell*, 436 U.S. at 692-95). "Section 1983 liability attaches to a municipality only when 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.'" *Id.* (quoting *Monell* at 694).

**HN11** [↑] It is the burden of the plaintiffs to show that a policymaker is responsible either for the policy or, through acquiescence, for the custom. *Id.* (citing *Jett v. Dallas Independent School District*, 491 U.S. 701, 736-37, 105 L. Ed. 2d 598, 109 S. Ct. 2702, 2723 (1989)).

**HN12** [↑] There are two ways to establish a policy or custom. A policy exists when a "decisionmaker possessing final authority to establish municipal policy with respect to the action" issues either an official policy, proclamation, or edict. *Andrews*, 895 F.2d at 1480 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481, 89 L. Ed. 2d 452, 106 S. Ct. 1292, 1299 (1986)). A course of conduct will be considered to be a "custom" when, even though not authorized by law, "such practices of state officials [are] so permanent and well settled" as to virtually constitute law. *Id.* [\*29] (citing *Monell*, 436 U.S. at 690, 98 S. Ct. at 2035 (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 167-68, 26 L. Ed. 2d 142, 90 S. Ct. 1598, 1613-14 (1970))).

<sup>3</sup> In addition, Local Rule 7.2 of the Local Rules of the United States District Court for the Eastern District of Tennessee, states that "failure to respond to a motion may be deemed a waiver of opposition to the relief sought."

In *Doe v. Claiborne County, Tenn, By and Through Claiborne County Bd. of Educ.*, 103 F.3d 495 (6th Cir. 1996), the Sixth Circuit explained:

**HN13** [↑] A "custom" for purposes of *Monell* liability must be "so permanent and well settled as to constitute a custom or usage with the force of law." *Monell*, 436 U.S. at 691, 98 S. Ct. at 2036 (internal quotation marks and citation omitted); see also *Feliciano v. City of Cleveland*, 988 F.2d 649, 655 (6th Cir.), cert. denied, 510 U.S. 826, 114 S. Ct. 90, 126 L. Ed. 2d 57 (1993). In turn, the notion of "law" must include "deeply embedded traditional ways of carrying out state policy." *Nashville, Chattanooga & St. Louis Ry. Co. v. Browning*, 310 U.S. 362, 369, 60 S. Ct. 968, 84 L. Ed. 1254 (1940). It must reflect a course of action deliberately chosen from among various alternatives. *City of Oklahoma v. Tuttle*, 471 U.S. 808, 823, 105 S. Ct. 2427, 2436, 85 L. Ed. 2d 791 (1985). **[\*30]** In short, a "custom" is a "legal institution" not memorialized by written law. *Feliciano*, 988 F.2d at 655.

*Doe*, 103 F.3d at 507-08.

In *Warren v. Shelby County, Tenn.*, 191 F. Supp.2d 980 (W.D. Tenn. 2001), the court further explained:

**HN14** [↑] "Official policy often refers to formal rules or understandings -- often but not always committed to writing -- that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time." *Pembaur*, 475 U.S. at 480-81, 106 S. Ct. at 1299. A plaintiff must, in order to show a custom or policy, adduce specific facts in support of his claim. Conclusory allegations will not lie. *Culberson v. Doan*, 125 F. Supp. 2d 252, 263-64 (S.D. Ohio. 2000).

*Id.* at 984-985.

Thus, that aspect of the defendant's motion for a summary judgment [Court File No. 21], in which the City of Chattanooga seeks a summary judgment on plaintiff Larry Cargle's claim to the extent that he seeks to hold the City of Chattanooga liable for the actions of Officers Cobb and Spurling under a theory of *respondeat superior*, **[\*31]** will be **GRANTED**.

That aspect of the defendant's motion for a summary judgment [Court File No. 21] in which the City of Chattanooga and Officers Cobb and Spurling in their official capacities, seek a summary judgment on plaintiff

Larry Cargle's claims of liability under § 1983 based upon any "alleged unconstitutional policy, custom or practice by the City of Chattanooga, the City of Chattanooga and Officers Cobb and Spurling in their official capacities," will be **GRANTED**.

In the complaint plaintiff alleges that the City of Chattanooga and Officers Cobb and Spurling are liable to him because he was subjected to "violent and abusive acts during an arrest even though there was no arguable probable cause and no legal basis for said arrest and even though plaintiffs did not resist the attempts to place them under arrest." [Court File No. 1, P 35]. The complaint, however does not identify the specific unconstitutional policies or customs of the City of Chattanooga which resulted in the violation of plaintiff's constitutional rights.

The Affidavit of Lon Eilders states that the City of Chattanooga did not on January 20, 2000, maintain a policy, custom or practice of employing **[\*32]** improperly trained police officers. [Court File No. 21, Eilders' Affidavit]. Further, the evidence presented by the City, including Lon Eilders' Affidavit and Manual Order 3.03, shows that the City did not have a custom, policy or practice of allowing its police officers to arrest persons without probable cause or to use excessive force on a person being taken into custody. *Id.* Finally, the Affidavit of Lon Eilders shows that the training provided to Officers Cobb and Spurling met and/or exceeded the requirements for Peace Officers within the State of Tennessee. *Id.*

In *Stemler v. City of Florence*, 126 F.3d 856, (6th Cir. 1997), cert. denied, 523 U.S. 1118, 140 L. Ed. 2d 936, 118 S. Ct. 1796 (1998), the Sixth Circuit stated:

**HN15** [↑] in order to state a claim against a city or a county under § 1983, a plaintiff must show that his injury was caused by an unconstitutional "policy" or "custom" of the municipality. See *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81, 106 S. Ct. 1292, 1298-99, 89 L. Ed. 2d 452 (1986). The plaintiffs both assert that they were injured by the municipalities' allegedly deficient training programs. Where, as here, the identified policy **[\*33]** is itself facially lawful, the plaintiff "must demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." *Board of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, \_\_\_, 117 S. Ct. 1382, 1390, 137 L. Ed. 2d

626 (1997)(quoting *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S. Ct. 1197, 1204, 103 L. Ed. 2d 412 (1989)). "'Deliberate indifference' is a stringent standard of fault requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Brown*, 520 U.S. at 409, 117 S. Ct. at 1391. In other words, the risk of a constitutional violation arising as a result of the inadequacies in the municipal policy must be "plainly obvious." *Id.* 520 U.S. at 413, 117 S. Ct. at 1393.

*Stemler*, 126 F.3d at 865.

In this case, the City of Chattanooga's policies concerning arrest and the use of force during arrest which were in effect on January 30, 2000, have been identified in Lon Eilder's affidavit. These policies are Manual Order 3.03 and ADM-5-98. [Court File No. [\*34] 21, Eilders' Affidavit]. A review of these policies of the City of Chattanooga reveals that they are facially valid. Further, there is no evidence before the Court upon which a finding of "deliberate indifference" on the part of the City of Chattanooga can be based.

In his response to defendants' motion for a summary judgment, plaintiff Larry Cargle states that:

In this case the defendant, City of Chattanooga failed to take any action against the defendants despite having in [sic] policy in place, Department of Internal Affairs, to act upon such actions and to perform investigations into misconduct. (Aff. of Lon Eiders [sic]) If an employee does not act reasonably but pursues a course of conduct that violated mandatory regulations, the discretionary function exception will not apply because the action would be contrary to the entity's established policy. *Limbaugh v. Coffee Medical Center*, 59 S.W.3d 73 (2001); *United States v. Gaubert*, 499 U.S. 315, 324, 113 L. Ed. 2d 335, 111 S. Ct. 1267 (1991) In this case the City did just that, nothing.

[Court File No. 37, p. 7). The Court concludes that the forgoing concusory allegations by the plaintiff are insufficient to [\*35] establish "deliberate indifference." Moreover, the Court notes that Plaintiff Larry Cargle has submitted no evidence in support of the forgoing statements.

Accordingly, the City of Chattanooga and Officers Cobb and Spurling in their official capacities are entitled to a summary judgment on plaintiff's claims that a policy, act and/or omission of the City of Chattanooga resulted in violation of his constitutional rights.

## **(2) Immunity under the Tennessee Government Tort Liability Act**

Defendants assert that the City of Chattanooga, and Officer Cobb and Spurling in their official capacities are entitled to summary judgement with respect to any state law claims raised by the plaintiff, Larry Cargle, relating to false arrest false imprisonment, battery or intentional infliction of emotional distress on the ground that the City and Officer Cobb and Spurling in their official capacity retain their common law immunity for such claims under Tennessee Governmental Tort Liability Act ("GTLA"), Tenn. Code Ann. § 29-20-101, *et seq.*

Tenn. Code Ann. § 29-20-201 states in relevant part:

### **HN16[↑] 29-20-201. General rule of [\*36] immunity from suit -- Exception. --**

(a) Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of the functions, governmental or proprietary.

Tenn. Code Ann. § 29-20-201. Further, Tenn. Code Ann. § 29-20-202 states in pertinent part:

### **HN17[↑] 29-20-205. Removal of immunity for injury caused by negligent act or omission of employees -- . . .**

Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of:

(2) false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights . . .

Tenn. Code Ann. § 29-20-205.

**HN18[↑]** The Tennessee [\*37] General Assembly enacted the GTLA in 1973, "to codify the general common law rule that 'all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities,' Tenn Code. Ann. § 29-20-201(a), subject to statutory exceptions in the Act's provisions. For instance, a general waiver of immunity from suit for personal injury claims is provided in § 29-20-205 'for injury proximately caused by a negligent act or omission of any employee within the scope of his employment,' unless the injury arises out of

one of several enumerated exceptions to this section, such as the intentional tort exception." *Limbaugh v. Coffee Medical Center*, 59 S.W.3d 73, 79 (Tenn. 2001). "When analyzing the GTLA, as the legislature created this Act in derogation of the common law . . . the Act must be strictly construed." *Id.* at 83 (citing *Roberts v. Blount Memorial Hosp.*, 963 S.W.2d 744, 746 (Tenn. Ct. App. 1967); *Lockhart ex rel. Lockhart v. Jackson-Madison County Gen. Hosp.*, 793 S.W. 2d 943 (Tenn. Ct. App. 1990).

Applying the rule of strict construction to the GTLA, the court stated [\*38] that **HN19** intentional tort exception of § 29-20-205 did not "include the torts of assault and battery." *Id.* More specifically, the *Limbaugh* court held that:

section 29-20-205 of the GTLA removes immunity for injuries proximately caused by the negligent act or omission of a governmental employee except when the injury arises out of *only those specified torts enumerated in subsection (2)*. To immunize *all intentional* torts would result in an overly broad interpretation of the statute, and there is no indication that the legislature intended such a result. . . we find it noteworthy that the legislature excluded the two intentional torts most likely to give rise to injury. Under the maxim "expressio unius est exclusio alterius," which states the principle that the expression of one thing implies the exclusion of all things not expressly mentioned, *City of Knoxville v. Brown*, 195 Tenn. 501, 260 S.W.2d 264, 268 (1953), we are unable to expand the intentional torts exception to include assault and battery. To do so would be to judicially create two additional exceptions giving rise to an entities immunity.

*Limbaugh*, 59 S.W.3d at 84 [\*39] (emphasis in original). See also *Fortenberry v. George*, 2002 Tenn. App. LEXIS 466, No. E20002984COAR3CV, 2002 WL 1446675 (Tenn. Ct. App. July 3, 2002)(unpub.)(same).

Furthermore, in *Elmore v. Cruz*, 2003 Tenn. App. LEXIS 85, No. E200103136COAR3CV, 2003 WL 239169 (Tenn. Ct. App. Feb. 4, 2003), the plaintiff was arrested and placed in the Hamilton County jail after her husband informed the police that she had violated the terms of a restraining order which had against her. *Id.* at \*2. It was subsequently discovered that plaintiff "had be arrested and imprisoned in error and she was released. . ." *Id.* Thereafter, plaintiff brought suit against the City of Chattanooga for false arrest and imprisonment. *Id.* at \*4.

The *Elmore* Court held that Tenn. Code Ann. 29-20-

205(2) did not provide immunity to the City in that action because **HN20** "T.C.A. 29-20-205(2) does not provide that the City retains immunity form all suit for injuries out of false imprisonment but only from suit for injuries arising out of "false imprisonment *pursuant to a mittimus* from a court," and that as the plaintiff was not imprisoned pursuant to a mittimus from a court, the City was not immune on [\*40] her claim of false imprisonment. *Id.* at \*9.

Likewise, plaintiff Larry Cargle was not imprisoned pursuant to a mittimus from a Court. Accordingly, that aspect of defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga and Officers Cobb and Spurling in their official capacities seek a summary judgment as to Larry Cargle's state law claims, including his claims of false arrest and intentional infliction of emotional distress (intentional infliction of mental anguish) will be **GRANTED**. However, that aspect of defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga and Officers Cobb and Spurling in their official capacities seek a summary judgment as to Larry Cargle's state law claims of false imprisonment and battery will be **DENIED**.

#### (4) Punitive Damages

The City of Chattanooga asserts that it is entitled to a summary judgment on plaintiff's claims, if any, against it for punitive damages. [Court File No. 22, pp. 16-17].

**HN21** A municipality is immune from punitive damages under 42 U.S.C. § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 272, 69 L. Ed. 2d 616, 101 S. Ct. 2748 (1981). [\*41] Accordingly, that aspect of the defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga seeks a summary judgment on Larry Cargle's claims against it for punitive damages will be **GRANTED**.

#### (5) Qualified Immunity

Defendants Cobb and Spurling assert they are entitled to summary judgment with respect to plaintiff's claims for false arrest and alleged illegal seizure. More specifically, they assert they are also entitled to qualified immunity with respect to plaintiff's 1983 claims of false arrest.

In *Veney v. Hogan*, 70 F.3d 917 (6th Cir. 1995), the Sixth Circuit summarized the law governing a claim of qualified immunity. It stated:

**HN22** Qualified immunity extends to "government officials performing discretionary functions . . . insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982). As the Supreme Court explained in *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985), qualified immunity **[\*42]** represents

an entitlement not to stand or face the other burdens of litigation, conditioned on the resolution of the essentially legal question whether the conduct of which the plaintiff complains violated clearly established law. The entitlement is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.

*Id.* at 526, 105 S. Ct. at 2815. **HN23** Whether an official "may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 3038, 97 L. Ed. 2d 523 (1987)(citations omitted). For a law to be "clearly established" in the context of qualified immunity,

the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question **[\*43]** has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

*Id.* at 649, 107 S. Ct. at 3039 (citations omitted).

*Veney*, 70 F.3d at 920.

**HN24** In addressing a claim for qualified immunity the Court must:

first determine "whether based on the applicable law, a constitutional violation occurred." If we conclude that a constitutional violation has occurred, we then determine whether this violation

"involved clearly established constitutional rights of which a reasonable person would have known." Generally, if the right at issue was clearly established at the time the governmental actor committed the violation in question, "the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." Both questions must be answered in the affirmative in order to defeat a government official's claim to qualified immunity. Additionally, the burden is on the plaintiff to allege and prove that the defendant violated a clearly established constitutional right.

*Spurlock v. Satterfield*, 167 F.3d 995, 1005 (6th Cir. 1999). **[\*44]**

In his response to defendants' motion for a summary judgment, plaintiff Larry Brian Cargle asserts that plaintiffs are not entitled to qualified immunity because:

The right to be free from unreasonable seizures and to be free from the use of excessive force under the Fourth Amendment are clearly established. A plaintiff bringing a constitutional claim of false arrest under the Fourth Amendment must show that there was not probable cause for the arrest. The defendants are thus not entitled to qualified immunity on this claim because a question of fact exists as to whether there was probable cause for the arrest and thus whether defendants violated rights that were clearly established at the time of the arrest.

[Court File No. 37, p. 8](internal citations omitted).

The Sixth Circuit stated in *Donovan v. Thames*, 105 F.3d 291, 297-98 (6th Cir. 1997):

**HN25** It is clearly established that an arrest without probable cause violates the Fourth Amendment. *Beck v. Ohio*, 379 U.S. 89, 90-91, 85 S. Ct. 223, 225-26, 13 L. Ed. 2d. 142, 31 Ohio Op. 2d 80 (1964). "The Supreme Court has held that the test for whether an arrest is constitutionally valid is "whether, **[\*45]** at the moment the arrest was made, the officers had probable cause to make it -- whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *United States v. Dotson*, 49 F.3d 227, 229 (6th Cir.)(quoting *Beck*, 379 U.S. at 91, 85 S. Ct. at 225), *cert. denied*, 516 U.S. 848, 116 S. Ct.

141, 133 L. Ed. 2d 87 (1995).

Plaintiff Larry Cargle has submitted portions of the state court criminal trial transcript. [Court File No. 36]. During the state criminal trial, Officer Neal Spurling testified that he placed Larry Cargle under arrest. [Court File No. 36, p. 63]. He testified that based upon his observation of Larry Cargle, Cargle was not endangering anyone. *Id.* Officer Spurling testified that he placed Larry Cargle under arrest for intoxication. *Id.* at 64. When asked what he observed plaintiff Larry Cargle doing that prompted an arrest, Officer Spurling testified:

. . . When he was placed under arrest, that's after, you know, he started [\*46] causing a disorder and, in fact, I don't know exactly what was coming out of his mouth but it started drawing a crowd and he was the last one to be placed under arrest . . .

Q. Tell me what you observed of his as far as endangering himself.

A. Just, you know, the verbal and, you know, him drawing a crowd and here they are, you know, coming out of the bar, you know.

Q. So the fact that a crowd is coming toward him, that's what you are talking about?

A. Right.

*Id.* 64-65. Further, Officer Spurling testified that he was not directed by Officer Cobb to arrest plaintiff Larry Cargle. *Id.* at 65.

This is consistent with Officer Cobb's testimony at the state criminal trial that plaintiff Larry Cargle was all over the Hooter's parking lot screaming and yelling, but he did not tell Officer Spurling to arrest him. [Court File No. 36, p. 138].

However, in the Affidavit which he submitted in support of the defendant's motion for summary judgment, Officer Cobb stated:

12. I observed that Watkins was unsteady on his feet and had a strong odor of alcohol on his breath. I arrested Watkins for public intoxication and disorderly conduct. I observed [\*47] Larry Cargle was unsteady on his feet and had a strong odor of alcohol on his breath. I arrested Larry Cargle for public intoxication and disorderly conduct.

. . . .

16. Officer Spurling was asked to transport Larry Cargle and Michael Hancock to the jail. Officer Spurling **did not arrest any of the plaintiffs** but did assist me by handcuffing one of the individuals.

I cuffed James Cargle and Kurtis Watkins. Larry Brian Cargle was handcuffed by Officer Grover Wilson . . .

[Court File No. 21, Cobb Affidavit, pp. 4-5](emphasis added).

Here, the statements in Officer Cobb's affidavit and the state court trial testimony as to who arrested plaintiff Larry Brian Cargle and on what grounds are directly contradictory. Thus, the Court concludes that there is, based upon the evidence in the record, a genuine issue of material fact as to whether or not there was probable cause on the night of January 30, 2000 for the arrest of plaintiff Larry Brian Cargle.

Accordingly, that aspect of the defendants' motion for a summary judgment [Court File No. 21] which seeks a summary judgment on the grounds that Officers Cobb and Spurling are entitled to qualified immunity [\*48] will be **DENIED**.

#### **(6) Officer Spurling's alleged use of Excessive Force**

Finally, it is asserted that:

Defendant Spurling should also be entitled to summary judgment in his favor on the claim of excessive use of force based upon the force he used in handcuffing Michael Hancock was not excessive (Cobb Aff. P 20). Not every push or shove constitutes a violation of the Fourth Amendment. Furthermore, 42 U.S.C. § 1983 does not grant a cause of action for every injury wrongfully inflicted by an officer. In order to state a cause of action under the federal statute, the officers conduct must cause sever injuries, be grossly disproportionate to the need for action under the circumstances and be inspired by malice. *Shillingford v. Holmes*, 634 F.2d 263, 264 (5th Cir. 1981). The testimony is very limited regarding any force which Officer Spurling used on these plaintiffs at any time. His only involvement was the handcuffing of one plaintiff and the transport of two plaintiffs to the Hamilton County Jail (Cobb. Aff. P 16).

[Court File No. 22, p. 20]. Since, as has been stated above, the Court has already determined that [\*49] the defendants are entitled to a summary judgment on the claims of plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins, this aspect of the defendants motion for a summary judgment has been rendered **moot**.

A separate order will enter.

09-26-03

R. ALLAN EDGAR

CHIEF UNITED STATES DISTRICT JUDGE

### **ORDER**

In accordance with the accompanying memorandum opinion, the defendants' motion for summary judgment [Court File No. 21] is **GRANTED IN PART**. All claims against the defendants brought by plaintiffs James D. Cargle, Michael Edward Hancock and Kurtis Chadwick Watkins are **DISMISSED WITH PREJUDICE**.

With respect to the claims of the sole remaining plaintiff, Larry Brian Cargle:

(1) That aspect of the defendant's motion for a summary judgment [Court File No. 21] in which the City of Chattanooga seeks a summary judgment on plaintiff Larry Cargle's claims to the extent that he seeks to hold the City of Chattanooga liable for the actions of Officers Cobb and Spurling under a theory of *respondeat superior* is **GRANTED**;

(2) That aspect of the defendants' motion for a summary judgment [Court File No. 21] in which the City of [\*50] Chattanooga and Officers Cobb and Spurling in their official capacities, seek a summary judgment on plaintiff Larry Cargle's claims of liability under § 1983 based upon any "alleged unconstitutional policy, custom or practice by the City of Chattanooga, the City of Chattanooga and Officers Cobb and Spurling in their official capacities," is **GRANTED**;

(3) That aspect of defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga and Officers Cobb and Spurling in their official capacities seek a summary judgment as to Larry Cargle's state law claims, including his claims of false arrest and intentional infliction of emotional distress (intentional infliction of mental anguish) is **GRANTED**;

(4) That aspect of defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga and Officers Cobb and Spurling in their official capacities seek a summary judgment as to Larry Cargle's state law claims of false imprisonment and battery is **DENIED**;

(5) That aspect of the defendants' motion for a summary judgment [Court File No. 21] in which the City of Chattanooga seeks a summary judgment on Larry Cargle's [\*51] claims against, if any, for punitive damages is **GRANTED**; and,

(6) That aspect of the defendants' motion for a summary judgment [Court File No.21] which seeks a summary judgment on the grounds that Officers Cobb and Spurling are entitled to qualified immunity is **DENIED**.

To summarize, the claims of plaintiff Larry Brian Cargle which have survived, and upon which the parties should be prepared to go to trial, are:

(1) Plaintiff's state law claims against the City of Chattanooga and Officers Cobb and Spurling in their official capacities for false imprisonment and battery;

(2) Plaintiff's claim against Officer Cobb and Officer Spurling in their individual capacity under 42 U.S.C. § 1983 for violation of plaintiff's rights under the Fourth Amendment of the United States Constitution based upon the alleged false arrest of plaintiff; and

(3) Plaintiff's state law claims against Officer Cobb and Officer Spurling in their individual capacity for battery, false arrest, false imprisonment, and intentional infliction of emotional distress/mental anguish.

SO ORDERED.

ENTER.

09-26-03

R. ALLAN EDGAR

CHIEF UNITED [\*52] STATES DISTRICT JUDGE

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