

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>RUBY GAYLE,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:08cv00091</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
	)	
<b>CITY OF WAYNESBORO, et al.,</b>	)	<b>By: Samuel G. Wilson</b>
<b>Defendants.</b>	)	<b>United States District Judge</b>

Plaintiff Ruby Gayle brings this action against the City of Waynesboro, the Waynesboro Police Department, Police Officer Eric A. Fernandez, Police Chief Douglas Davis, and City Manager Michael Hamp. Gayle alleges that Fernandez’s conduct during Gayle’s arrest violated her constitutional rights and constituted assault and battery under Virginia law. The defendants have moved to dismiss Gayle’s constitutional claims for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6) and have moved the court to decline supplemental jurisdiction over her state-law claims under 28 U.S.C. § 1367(c)(3). The court grants those motions as to all defendants except Fernandez.

**I.**

Gayle, who is 77 years old, was involved in a minor automobile accident in Waynesboro, Virginia on October 13, 2003.<sup>1</sup> After determining that Gayle was at fault in the accident, city police officers demanded that she sign a citation for failure to yield right of way or be placed

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<sup>1</sup>Under Fed. R. Civ. P. 12(b)(6), a court may dismiss a claim for relief if it fails to state a claim upon which relief can be granted. To state a claim, the plaintiff must provide “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007). When considering a Motion to Dismiss, the court construes all factual allegations in favor of the non-moving party. Robinson v. Am. Honda Motor Co., 551 F.3d 218, 222 (4th Cir. 2009).

under arrest. Gayle claims she believed that her insurance carrier would not allow her to sign the citation, but she was willing to be placed under arrest. In making the arrest, Gayle alleges that Officer Fernandez was “physically aggressive and pushed down on her shoulder and jerked and twisted her arms behind her back to handcuff her” and that she then “developed pain in the chest and arm; shortness of breath and dizziness.” (Compl. 2-3.) Gayle alleges that an ambulance took her to the hospital, where she was diagnosed with high blood pressure, bruises, and physical injury to her right arm and shoulder. She also alleges subsequent severe physical and emotional injuries. Gayle sent a complaint to the Waynesboro Police Department on May 17, 2007 summarizing the incident and her injuries, but received no reply. Gayle contends that Fernandez’s conduct violated her constitutional due process rights and constituted assault and battery under Virginia law. Gayle sues Fernandez in his official and personal capacities. She sues the City of Waynesboro and the Waynesboro Police Department as Fernandez’s “employing agency.” (Compl. 2.) She sues Davis and Hamp “as the chief operating officers of the city and [the] department . . . in their official capacit[ies].” (Compl. 2.)

## **II.**

Fernandez moves to dismiss Gayle’s constitutional claims against him because the due process clause of the Fourteenth Amendment does not govern excessive force claims arising from arrest. Fernandez also argues that the court should decline to exercise supplemental jurisdiction over Gayle’s state-law claims. While Gayle may have stated her 42 U.S.C. § 1983 claim under the incorrect constitutional provision, the court finds that the facts Gayle has alleged state a plausible claim to relief and that Gayle may amend her complaint to correct any defect. Therefore, the court denies Fernandez’s Motion to Dismiss and will exercise supplemental

jurisdiction over Gayle’s state-law claims against Fernandez.

The standard governing excessive force claims depends on the stage at which the alleged force was applied. Riley v. Dorton, 115 F.3d 1159, 1161-1164 (4th Cir. 1997). Excessive force claims arising from “an arrest, investigatory stop, or other ‘seizure’ of a free citizen” are based on “a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” Graham v. Connor, 490 U.S. 386, 395-96 (1989) (internal quotation marks omitted). The due process clause of the Fourteenth Amendment governs “‘excessive force claims of a pretrial detainee [or arrestee].”’ Orem v. Rephann, 523 F.3d 442, 446 (4th Cir. 2008) (insertion in original) (quoting Young v. Prince George’s County, Md., 355 F.3d 751, 758 (4th Cir. 2004)). To succeed under the due process analysis, a plaintiff must show that the officer “‘inflicted unnecessary and wanton pain and suffering.”’ Taylor v. McDuffie, 155 F.3d 479, 483 (4th Cir. 1998) (quoting Whitley v. Albers, 475 U.S. 312, 320 (1986)).

Regardless of the standard applicable, Gayle has alleged facts sufficient to raise a plausible claim to relief. If proven, the allegation that a police officer jerked and twisted the arms of a 77-year-old woman who was submitting to his authority in arresting her after a minor automobile accident could satisfy the Fourth Amendment’s balancing approach or the Fourteenth Amendment’s unnecessary and wanton standard. Therefore, the court denies Fernandez’s Motion to Dismiss and as a consequence will exercise supplemental jurisdiction over Gayle’s state-law claims against him.<sup>2</sup>

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<sup>2</sup>Under 28 U.S.C. § 1367, district courts have supplemental jurisdiction over state-law claims that “are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” The requisite relationship exists if “[t]he state and federal

### III.

Gayle alleges that the City and the Police Department are liable under 42 U.S.C. § 1983 for Fernandez’s conduct because they are his employers and that Davis and Hamp are liable for Fernandez’s conduct in their “official capacities” as the Police Chief and City Manager, respectively. These defendants argue that they are not liable for Gayle’s alleged constitutional violations because *respondeat superior* liability does not exist under 42 U.S.C. § 1983. Gayle argues that the failure of these defendants to respond to her complaint regarding the incident renders them liable. The court disagrees and dismisses these claims.

Under 42 U.S.C. § 1983, government agencies are not liable for constitutional injuries caused by their employees under a *respondeat superior* theory. Monell v. Dept. of Soc. Serv. of N.Y., 436 U.S. 658, 691 (1978). “Instead, it is when execution of a government’s policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983.” Id. at 694. The government entity is liable only when the policy or custom is “the moving force of the constitutional violation.” Id. Official capacity suits against individual public officers are based on the same standard: “Because the real party in interest in an official capacity suit is the governmental entity and not the named official, the entity’s policy or custom must have played a part in the violation of federal law.” Hafer v. Melo, 502 U.S. 21, 25 (1991) (internal quotation marks omitted).

As the Fourth Circuit has held, a policy is “a course of action consciously chosen from

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claims . . . derive from a common nucleus of operative fact.” United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). Because Gayle alleges that the same conduct that violated her constitutional rights also constituted assault and battery under Virginia law, the state and federal claims arise out of a common nucleus of operative fact, and this court may properly exercise supplemental jurisdiction to hear them.

among various alternatives respecting basic governmental functions, as opposed to episodic exercises of discretion in the operational details of government.” Spell v. McDaniel, 824 F.2d 1380, 1386 (4th Cir. 1987) (internal quotation marks omitted). A custom exists when the “persistent and widespread” practices of government officials are “so permanent and well-settled as to [have] the force of law.” Id. (internal quotation marks omitted) (insertion in original).

Gayle has failed to raise a plausible claim to relief against these defendants. Her complaint to the Police Department regarding a single incident of allegedly unconstitutional conduct is not sufficient to establish that the City or the Police Department had a consciously chosen policy or a permanent and well-settled custom that was the moving force behind Fernandez’s actions. Her official capacity claims against Davis and Hamp fail on the same grounds.<sup>3</sup> Accordingly, the court grants defendants’ Motion to Dismiss Gayle’s constitutional

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<sup>3</sup>Gayle’s complaint does not explicitly assert claims against Davis and Hamp in their individual capacities. To the extent that it should be construed to do so under Biggs v. Meadows, 66 F.3d 56, 61 (4th Cir. 1995), the court notes that Gayle’s claims would fail if asserted against Davis and Hamp in their personal capacities. In such claims, the plaintiff must prove

(1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) that the supervisor’s response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) that there was an affirmative causal link between the supervisor’s inaction and the particular constitutional injury suffered by the plaintiff.

Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (internal quotation marks omitted). Ordinarily, a single or isolated incident of misconduct does not establish deliberate indifference. Slakan v. Porter, 737 F.2d 368, 373 (4th Cir. 1984). Even assuming that Gayle’s letter to the Police Department establishes that these defendants had actual or constructive knowledge of Fernandez’s actions, that letter would notify them of only a single alleged instance of unconstitutional conduct, not the pervasive and unreasonable risk of such injury that is required for supervisory liability in individual capacity claims.

claims against the City, the Police Department, Davis, and Hamp, and declines supplemental jurisdiction over her state-law claims against them.<sup>4</sup>

**IV.**

For the foregoing reasons, the court **DISMISSES** the claims against all defendants except Fernandez. The court **GRANTS** Gayle leave to amend her complaint as to the 42 U.S.C. § 1983 claim against Fernandez.

It is so **ORDERED**.

**ENTER:** This March 13, 2009.

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UNITED STATES DISTRICT JUDGE

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<sup>4</sup>Because the court declines supplemental jurisdiction, it does not determine whether these defendants would be immune under Niese v. City of Alexandria, 564 S.E.2d 127 (Va. 2002), Gordon v. City of Winchester, 38 Va. Cir. 274 (Cir. Ct. 1995), and Pigott v. Ostulano, 74 Va. Cir. 228 (Cir. Ct. 2007).