

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-60936-CIV-DIMITROULEAS

ALEXANDRA TORRENS-VILAS,

Magistrate Judge Snow

Plaintiff,

vs.

CITY OF HOLLYWOOD, FLORIDA, a  
Florida municipal corporation, et al.,

Defendants.

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**OMNIBUS ORDER**

THIS CAUSE comes before the Court upon Defendant City of Hollywood's ("the City") Motion to Dismiss Complaint [DE 10], filed on July 14, 2010, and Defendants Pressley, Francisco and Diaz's Motion to Dismiss [DE 21], filed on September 21, 2010. The Court has carefully considered the Motions, Plaintiff's Responses [DE 13, 27], Defendants' Replies [DE's 14, 28], and is otherwise fully advised in the premises.

**I. BACKGROUND**

Plaintiff Alexandra Torrens-Vilas ("Plaintiff") commenced this action on June 3, 2010. Plaintiff alleges that, on or about February 17, 2009, Plaintiff's stationary vehicle was rear-ended by a patrol car driven by Officer Joel Francisco of the Hollywood Police Department. Plaintiff was arrested and charged with Driving or Being in Actual Physical Control of a Motor Vehicle When Under the Influence of Alcohol to the Extent her Normal Faculties were Impaired (DUI). She was also accused of committing other traffic offenses.

Plaintiff alleges that the Defendant officers – Joel Francisco, Dewey Pressley, and

Andrew Diaz, conspired to fabricate evidence which showed that the accident was the fault of Plaintiff and that Plaintiff was actually inside the car at the time of the crash. Plaintiff alleges that Officer Francisco conspired with Officer Pressley and other Defendant police officers who responded to the scene to fabricate a Probable Cause Affidavit which ultimately led to Plaintiff's arrest. Plaintiff alleges that the Defendant officers then filed various reports under oath which were materially false and misleading, in furtherance of their conspiracy to commit perjury, to tamper with and fabricate evidence, and to falsely accuse Plaintiff.

Plaintiff also alleges that the Defendant officers, together with unknown members of the Evidence/Technical Division of the Hollywood Police Department, further conspired to knowingly and illegally "edit" the DVD sent to the State Attorney's Office as "evidence" of Plaintiff's alleged DUI investigation, tampering with the video evidence so that it would support the already-perjured Probable Cause Affidavit and other reports, by making it seem that the false accusations being made by the involved police officers were true and by deleting the evidence of the conspiracy.

Plaintiff's Complaint [DE 1] includes two causes of action against for relief against the City: (1) false arrest, and (2) a claim pursuant to 42 U.S.C. § 1983 for damages sustained as a result of the City's alleged violation of the following constitutional rights of Plaintiff: (a) to be free from unlawful arrest under the Fourth Amendment of the United States Constitution; (b) to be free from the submission of perjured testimony and the fabrication of false evidence to be used in her criminal prosecution; and (c) to be free from the systemic withholding of exculpatory evidence in accordance with the principles set forth in Brady v. Maryland, 373 U.S. 83 (1963). The City filed its motion to dismiss on July 14, 2010.

Plaintiff's Complaint also includes causes of action against for relief against each of the individual Defendant officers - Francisco, Pressley, and Diaz, for damages pursuant to 42 U.S.C. § 1983 for allegedly violating Plaintiff's civil, constitutionally protected rights. (Counts III-V). The Defendant officers moved to dismiss the Complaint on September 21, 2010.

## **II. DISCUSSION**

### **A. Motion to Dismiss Standard**

To adequately plead a claim for relief, Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007) (abrogating Conley, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Twombly, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. See Linder v. Portocarrero, 963 F. 2d 332, 334-36 (11th Cir. 1992) (citing Robertson v. Johnston, 376 F.2d 43 (5th Cir. 1967)).

However, this is inapplicable if the allegations are merely "threadbare recitals of a cause of action's elements, supported by mere conclusory statements . . .". Iqbal, 129 S. Ct. at 1949. Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint, and "a district court weighing a motion to

dismiss asks ‘not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.’” Twombly, 550 U.S. at n. 8 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984)).

**B. Defendants’ Motions to Dismiss**

The City moves to dismiss the Complaint on the following grounds: (1) Count I of the Complaint fails to state a cause of action for false arrest; (2) Count II fails to allege a basis for municipal liability against the City for false arrest and the fabrication of evidence; and (3) Count II fails to allege a policy of violating Brady v. Maryland, 373 U.S. 32 (1963).

The Defendant officers move to dismiss the Complaint based upon the lack of specificity to be attributed to each Defendant, arguing that the Complaint is too vague to allow each of these Defendants to prepare a responsive pleading. Moreover, the Defendant officers argue that Plaintiff does not specifically plead sufficient facts to allow the Court to ascertain if any or all of these Defendants have a right to seek a dismissal of the cause of action based on their claims of qualified immunity.

**(1) False arrest - City of Hollywood**

In Count I, Plaintiff’s false arrest claim against the City of Hollywood, Plaintiff alleges that, on February 17, 2009, she was wrongly and without just cause arrested and imprisoned without probable cause, warrant or other legal authority by Defendant officers Pressley and Francisco, who were acting within the course and scope of their employment as police officers for the City. ¶ 32. In order to establish a claim for false arrest, Plaintiff must allege that she was arrested without probable cause. See Atterbury v. City of Miami Police Dep’t, 322 F. Appx 724, 727 (11th Cir. 2009); Harvey v. City of Stuart, 296 F. Appx 824, 828 (11th Cir. 2008).

Furthermore, Plaintiff must allege facts to support her allegation that she was arrested without probable cause. “[C]onclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.” Davila v. Delta Air Lines, Inc., 326 F.3d 1183, 1185 (11<sup>th</sup> Cir. 2003).

Plaintiff alleges that she was arrested for Driving or Being in Actual Physical Control of a Motor Vehicle When Under the Influence of Alcohol to the Extent her Normal Faculties were Impaired (DUI). ¶ 14. A person is guilty of a DUI offense in the state of Florida “if the person is driving or in actual physical control of a vehicle within this state” and is under the influence of alcohol or other controlled substances. See §316.193, Fla. Stat.

Here, Plaintiff appears to contend that she was falsely arrested based on her allegation that she had abandoned her vehicle in the roadway at the time of the accident to search for a cat who had jumped from her car window. ¶ 11. Plaintiff argues that, since she was not in the vehicle at the time of the collision, the officer did not personally observe her driving or in control of the vehicle.

Under Florida law, “[a] law enforcement officer may arrest a person without a warrant when: (1) The person has committed a felony or misdemeanor . . . in the presence of the officer.” Fla. Stat. 901.15(1). However, the Legislature fashioned an exception to the requirement of section 901.15 that an officer has authority to make a warrantless arrest for a misdemeanor, only when the offense has been committed in his presence. See State v. Hemmerly, 723 So.2d 324, 326 (Fla. 5<sup>th</sup> DCA 1998). This exception, set forth in Section 316.645 of the Florida Statutes, entitled “Arrest authority of officer at scene of a traffic accident,” provides that a warrantless arrest is authorized when, based on his or her personal investigation of a traffic accident, a law

enforcement officer has reasonable and probable grounds to believe that a driver has committed the misdemeanor crime of driving under the influence:

A police officer who makes an investigation at the scene of a traffic accident may arrest any driver of a vehicle involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter or chapter 322 in connection with the accident.

§ 316.645, Fla. Stat. (1995).

In this case, where Plaintiff alleges the Defendant officers were investigating the scene of a traffic accident, there was no requirement for the arresting officer to personally observe Plaintiff behind the wheel of the vehicle, so long as the arresting officer's investigation of the crash gave him reasonable and probable grounds to believe that Plaintiff was impaired while driving, and as such had committed a DUI offense. In fact, Plaintiff's allegations make it clear that she had been driving the vehicle just prior to the crash, regardless of whether she was behind the wheel at the moment the officer observed her. See ¶ 11.<sup>1</sup> Accordingly, Count I of the Complaint is dismissed for failure to state a cause of action for false arrest.

**(2) 42 U.S.C. § 1983 - City of Hollywood**

Plaintiff's § 1983 cause of action against the City claims three alleged violations of Plaintiff's constitutional rights: (a) to be free from unlawful arrest under the Fourth Amendment of the United States Constitution; (b) to be free from the submission of perjured testimony and the fabrication of false evidence to be used in her criminal prosecution; and (c) to be free from the systemic withholding of exculpatory evidence in accordance with the principles set forth in

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<sup>1</sup> The circumstances leading up to the traffic accident, i.e., that Plaintiff had stopped and abandoned her vehicle in the roadway to search for a cat, are certainly relevant to the arresting officer's personal investigation of the scene.

Brady v. Maryland, 373 U.S. 83 (1963).

First, Plaintiff's unlawful arrest claim under § 1983 fails for the same reasons as her false arrest claim in Count I. See supra. Moreover, the Fourth Amendment does not require a misdemeanor to have occurred in the officer's presence, even where that requirement is imposed by state law. See Barry v. Fowler, 902 F.2d 770, 772 (9<sup>th</sup> Cir. 1990) ("The [state of California's] requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment."). Accordingly, Plaintiff's §1983 claim against the City for violating her constitutional right "to be free from unlawful arrest under the Fourth Amendment of the United States Constitution" is dismissed.<sup>2</sup>

Plaintiff's second theory for her § 1983 claim against the City is that the City violated her constitutional right "to be free from the submission of perjured testimony and the fabrication of false evidence to be used in her criminal prosecution." ¶ 35(b). Using or planting false evidence in an effort to obtain a conviction may violate a plaintiff's constitutional rights. Jones v. Cannon, 174 F.3d 1271, 1283, 1289 (11<sup>th</sup> Cir. 1999). See Riley v. City of Montgomery, Ala., 104 F.3d 1247, 1253 (11<sup>th</sup> Cir. 1997) (holding it was "well established . . . that fabricating incriminating evidence violated constitutional rights."). Nonetheless, there is no basis alleged for the imposition of municipal liability under 42 U.S.C. § 1983 for the perjured testimony and fabricated police reports prepared by City employees.

Under Section 1983, municipalities may not be held liable on a theory of respondeat superior. Monell v. Dep't of Social Serv. of City of New York, 436 U.S. 658, 691 (1978); Snow

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<sup>2</sup> Moreover, Plaintiff's unlawful arrest claim against the City pursuant to § 1983 also fails because there is no basis alleged for the imposition of municipal liability under Monell v. Dep't of Social Serv. of City of New York, 436 U.S. 658, 691 (1978). See infra.

ex rel. Snow v. City of Citronelle, 420 F.3d 1262, 1270 (11th Cir.2005) (*citing* City of Canton v. Harris, 489 U.S. 378, 385 (1989)). A municipality may only be held liable where an “official policy” causes a constitutional violation. See Monell, 436 U.S. at 694; Grech v. Clayton County, Ga., 335 F.3d 1326, 1329 (11th Cir.2003). “The ‘official policy’ requirement was intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible.” Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986). In order to establish a municipality’s policy, a plaintiff must identify either (1) an officially promulgated municipality policy or (2) an unofficial custom or practice of the municipality shown through the repeated acts of a final policymaker for the municipality. See Grech, 335 F.3d at 1329 (*citing* Monell, 436 U.S. at 690-91). “Because a [municipality] rarely will have an officially-adopted policy of permitting a particular constitutional violation,” most plaintiffs must demonstrate the latter. Id. at 1330. In Pembaur, the Supreme Court held that “municipal liability under § 1983 attaches where-and only where-a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.” 475 U.S. at 483-84 (*citing* Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985)).

Certainly, Plaintiff has not alleged that the City has an officially promulgated policy of submitting perjured testimony and fabricating false evidence perjury, nor has she alleged that a final policymaker for the City of Hollywood created such an unofficial custom or practice.<sup>3</sup>

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<sup>3</sup> The only City “policy” alleged in the Complaint, regarding submission of videos of roadside sobriety tests to the State Attorney, is addressed, infra, in the Court’s discussion of the alleged Brady violation.

Moreover, Plaintiff does not allege that a deliberate choice to follow a course of action was made among various alternatives by the final policymaking authority, which Pembaur requires. See 475 U.S. at 483-84. Accordingly, Plaintiff's §1983 claim against the City for violating her constitutional right "to be free from the submission of perjured testimony and the fabrication of false evidence to be used in her criminal prosecution" is dismissed.

Plaintiff's final theory for her § 1983 claim against the City is that the City violated her constitutional right "to be free from the systemic withholding of exculpatory evidence in accordance with the principles set forth in Brady v. Maryland, 373 U.S. 83 (1963)." ¶ 35(c). More specifically, Plaintiff alleges that the City's marked police vehicles are equipped with videotaping devices that can videotape events to the front of the car by means of a forward facing camera and can also videotape arrested individuals in the back seat of the police unit through the use of a rear-facing camera. ¶ 38. Additionally, audio recordings are made of the entire incident. ¶ 39. Plaintiff alleges that it is the standard policy of the police department to keep the recording machinery operational from initial activation through the time at or near the moment the police vehicle enters the police department. ¶ 39. Plaintiff alleges that City had an automated system to electronically "upload" the entire recorded audio/video evidence from the police vehicle. ¶ 40. Plaintiff alleges, however, it was the actual practice, policy, and procedure of the City that the City's police officers and technical personnel would then only transfer to DVD's for use by the State of Florida as evidence in criminal prosecutions the images from the forward-facing camera. ¶ 50. Accordingly, Plaintiff claims, the City had a system in operation which caused the delivery of incomplete versions of video evidence to the State Attorney's Office for prosecution, thus systematically concealing relevant and potentially exculpatory evidence from prosecutors and,

consequently, from Plaintiff. ¶¶ 36-41.

Plaintiff does not allege that the City had a policy of destroying the recorded audio/video evidence from the police vehicle that it did not transfer to DVD for use by the State Attorney's Office to use in criminal prosecution. Moreover, and fatal to Plaintiff's claim, the Complaint does not even allege that any Brady material was withheld from her, but rather, that she could and did obtain it herself with reasonable diligence.

[T]o establish a Brady violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and, (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different.

U.S. v. Bailey, 123 F.3d 1381, 1397 (11<sup>th</sup> Cir. 1997), quoting Routly v. Singletary, 33 F.3d 1279, 1285 (11<sup>th</sup> Cir. 1994) (per curiam), cert. denied, 515 U.S. 1166 (1995). Here, Plaintiff specifically alleges that her criminal attorney obtained the entire unedited recording "shortly after the arrest" by requesting the records from the police department. ¶¶ 17, 19.<sup>4</sup> It appears from Plaintiff's allegations that she and her attorney actually possessed the unedited video before or soon after criminal charges were formally filed against her. See ¶¶ 17-19. Consequently, Plaintiff's allegations fail to meet the criteria set forth in Bailey to establish a Brady violation. It directly follows that Plaintiff fails to state a cause of action against the City for an alleged policy that resulted in a Brady violation. Accordingly, Plaintiff's §1983 claim against the City for violating her constitutional right "to be free from the systemic withholding of exculpatory

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<sup>4</sup> Furthermore, Plaintiff's alleges that the "edited" DVD sent to the State Attorney's Office for prosecution of her DUI charges "only showed [Plaintiff] performing sobriety tests." ¶ 21. It appears to the Court that the State Attorney's Office would not routinely need a DVD containing hours of video footage when it needs only the video of a driver failing a sobriety test.

evidence in accordance with the principles set forth in Brady v. Maryland, 373 U.S. 83 (1963).”  
is dismissed.

**(3) 42 U.S.C. § 1983 - Individual Police Officers**

In Counts III-V, Plaintiff alleges causes of action against Officers Pressley, Francisco and Diaz for damages pursuant to 42 U.S.C. § 1983 as a result of each Defendant officer’s violation of Plaintiff’s civil, constitutionally protected rights.

The Defendant officers move to dismiss the Complaint based upon the lack of specificity to be attributed to each Defendant, arguing that the Complaint is too vague to allow each of these Defendants to prepare a responsive pleading. The Defendant officers concede that “it is plausible that Plaintiff has alleged in some instances civil rights violations.” [DE 28 at p.1]. Nonetheless, the Defendant officers argue that Plaintiff does not specifically plead sufficient facts to allow the Court to ascertain if any or all of these Defendants have a right to seek a dismissal of the cause of action based on their claims of qualified immunity. See, e.g., Jones v. Cannon, 174 F.3d 1271, 1283 (11<sup>th</sup> Cir. 1999) (An arrest without probable cause is unconstitutional, but officers who make such an arrest are entitled to qualified immunity if there was arguable probable cause for the arrest). The Court agrees.

The Court is not required to accept the allegations in a complaint when they are supported only by conclusory statements. Iqbal, 129 S. Ct. at 1949. See also South Florida Water Management Dist. v. Montalvo, 84 F.3d 402, 409 n.10 (11<sup>th</sup> Cir. 1996) (“As a general rule, conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss.”). Furthermore, “heightened pleading requirements” apply to civil rights cases involving individuals capable of asserting the defense of qualified immunity. Cottone v. Jenne,

326 F.3d 1352, 1362 n.7 (11<sup>th</sup> Cir. 2003). See Gonzalez v. Reno, 325 F.3d 1228, 1235 (11<sup>th</sup> Cir. 2003) (“In examining the factual allegations in the complaint, we must keep in mind the heightened pleading requirements for civil rights cases, especially those involving the defense of qualified immunity.”).

The allegations in the Complaint against the Defendant officers fail to meet the heightened pleading standard applicable to defendants who could seek dismissal on qualified immunity grounds. According to the Complaint, “Francisco conspired with Pressley and other Defendant police officers who responded to the scene to fabricate a Probable Cause Affidavit which ultimately led to [Plaintiff]’s arrest,” (¶12); the three Defendants conspired with each other to “fabricate evidence which declared that the accident was the fault of [Plaintiff] and that she was actually inside the car at the time of the crash;” (¶ 13); the “Defendant officers then filed various reports under oath which were materially false and misleading, in furtherance of their conspiracy to commit perjury, to tamper with and fabricate evidence, and to falsely accuse” Plaintiff (¶ 15); and the “Defendant officers . . . further conspired to knowingly and illegally ‘edit’ the DVD sent to the State Attorney’s Office” (¶ 16). Additionally, the allegations inside the individual counts against each Defendant officer contain identical language (other than changing the name of the Defendant), and alternatively plead that the acts of the Defendant officer “were committed either due to his plain incompetence or with the specific intent to deprive [Plaintiff] of” her constitutional rights. See ¶¶ 52, 59, 66 (emphasis added).

These allegations fail to state with sufficient specificity what each of the Defendants did to violate each of the constitutional rights claimed by Plaintiff. Moreover, the allegations of the Complaint are too vague for each individual Defendant officer to ascertain if any or all of them

have a right to seek dismissal of the § 1983 action based on a claim of qualified immunity.

Accordingly, Counts III-V, Plaintiff's § 1983 claims against the individual officers, are dismissed with leave to attempt to meet the heightened pleading standard applicable to these claims.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The City of Hollywood's Motion to Dismiss Complaint [DE 10] is hereby **GRANTED**;
2. Defendants Pressley, Francisco and Diaz's Motion to Dismiss [DE 21] is hereby **GRANTED**;
3. The Complaint [DE 1] is hereby **DISMISSED WITHOUT PREJUDICE**;
4. Plaintiff shall have fourteen (14) days from the date of this Order to file an amended complaint.

**DONE AND ORDERED** in Chambers at Broward County, Fort Lauderdale, Florida this 12th day of October, 2010.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:

Counsel of record