***UNITED STATES DISTRICT COURT***

***DISTRICT OF MAINE***

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| ***TAMMY L. VAUGHAN,*** | ***)*** | |
| | ***)*** | |
| ***Plaintiff*** | ***)*** | |
| | ***)*** | |
| ***v.*** | ***)*** | ***Civil No. 95-146-P-DMC*** |
| | ***)*** | |
| ***STEVEN A. GARRISON, et al.,*** | ***)*** | |
| | ***)*** | |
| ***Defendants*** | ***)*** | |

***MEMORANDUM DECISION ON DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT***[1]

The plaintiff asserts federal and state civil rights claims[2] and state-law tort claims in connection with her arrest by officers of the Saco and Biddeford, Maine police departments. Specifically, she claims she was arrested unlawfully and with excessive force, denied her rights to necessary medical attention and to privacy, punished before trial by means of excessive bail, and maliciously prosecuted. She also asserts a claim under 15 M.R.S.A. § 704 for warrantless arrest performed in a wanton or oppressive manner, and common-law claims for malicious prosecution, assault, intentional infliction of emotional distress, false arrest and false imprisonment. The complaint seeks punitive damages on all counts except malicious prosecution and 15 M.R.S.A. § 704. Garrison and the city of Saco move to dismiss the plaintiff's state-law claims, and all

[1] *Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.*

[2] Pursuant to 42 U.S.C. § 1983 and section 4682 of the Maine Civil Rights Act ("MCRA"), 5 M.R.S.A. § 4681 *et seq.*, the plaintiff asserts violations of her rights secured by the United States and Maine Constitutions.

defendants move for summary judgment on numerous grounds. For the reasons set forth below, I deny the motions to dismiss, and I grant the summary judgment motions in part and deny them in part.

## I. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir.) (citing *Celotex*, 477 U.S. at 324), *cert. denied*, 132 L. Ed. 2d 255 (1995); Fed. R. Civ. P. 56(e); Local R. 19(b)(2).

## II. Factual Context

Viewed in the light most favorable to the plaintiff, the summary judgment record reveals the following material facts: Sometime after 1:00 a.m. on April 25, 1993 the plaintiff, Tammy Vaughan,[3] was driving from Saco to her home in Biddeford. Vaughan Dep. at 20-21. Patrolman Steven A. Garrison of the Saco Police Department observed her vehicle cross over the center line and also observed her to be speeding. Deposition of Steven Garrison ("Garrison Dep.") at 6, 86-87.

Garrison pulled the plaintiff over shortly before 2:00 a.m. and decided, after having her perform several field sobriety tests, to charge the plaintiff with an administrative violation of her conditional license. Garrison Dep. at 8; Law Enforcement Officer's Report to the Secretary of State ("Garrison Report") at 5-6, Exh. 2-A to Defendant Steven A. Garrison's and the City of Saco's Statement of Undisputed Material Facts ("Saco SMF") (Docket No. 17); Affidavit of Steven A. Garrison ("Garrison Aff.") ¶ 5, Exh. 2 to Saco SMF. He opted to charge the administrative violation because it would be easier to prove inasmuch as it required proof of a lower blood alcohol content than a criminal charge for operating under the influence ("OUI"). *Id.* ¶ 6; Garrison Dep. at 46.

Garrison and the plaintiff walked to the cruiser, and the plaintiff commented that her dog, who was in her car, was barking. Vaughan Dep. at 25, 27. Garrison told the plaintiff she could go back to her car, and the plaintiff believed that she was being allowed to leave. *Id.* at 27-28. As the plaintiff walked up to the driver's side of her vehicle, Garrison followed her, although the plaintiff was apparently unaware of this. Garrison Dep. at 54; Vaughan Dep. at 28. Garrison turned away momentarily, and when he looked back, the plaintiff was getting into her car. Garrison Dep. at 54.

[3] At the time her last name was LeClaire. Deposition of Tammy L. Vaughan ("Vaughan Dep.") at 3-4.

The plaintiff testified that Garrison did not yell for her to wait or stop; Garrison, however, testified that he told her at least three or four times not to start the car and to get out of the car. Vaughan Dep. at 28; Garrison Dep. at 54. Garrison ran up to the car, and as he reached in through the driver's side window toward the steering wheel, the plaintiff drove off at a high rate of speed. Garrison Dep. at 54-55. The time when the plaintiff drove off was 2:15 a.m. Garrison Report at 13 (Uniform Summons and Complaint).

After hearing a radio dispatch alert that the plaintiff had "possibly taken off" from the scene of the traffic stop, Officer Philip Patch of the Biddeford Police Department drove around and located the plaintiff's vehicle. Deposition of Philip J. Patch ("Patch Dep.") at 7, 25-27. Shortly after Patch advised his dispatcher that he had found the vehicle, Garrison arrived, as did Sergeant David Quinn of the Biddeford Police Department. *Id.* at 31; Deposition of David B. Quinn ("Quinn Dep.") at 3, 7-8. Having determined which apartment was the plaintiff's, Garrison returned to the police station to obtain a search warrant and an arrest warrant for failure to stop for a police officer. Garrison Dep. at 56-57. Patch stayed at the scene in his cruiser to watch the apartment. Patch Dep. at 44.

Eventually, the plaintiff left her apartment to walk her dog. Vaughan Dep. at 29-30. As she walked down the driveway a car came "flying" into the driveway with its lights off, and two people jumped out. *Id*. at 30. She could not see the car clearly and did not know it was a police cruiser. *Id*. at 32. The people were yelling, but the plaintiff did not know whether they were yelling for her. *Id*. at 30.

The plaintiff "started walking very quickly to move away to keep on the path that [she] was going." *Id*. at 85. The two people ran toward her and yelled, "Stop," *id*. at 33, but did not verbally

identify themselves as police officers, Patch Dep. at 55. One of the people, Patch,[4] jumped on top of the plaintiff and knocked her to the ground, and she heard something break. Vaughan Dep. at 30, 34. The break turned out to be a midshaft fracture of her left clavicle. Report of William Owens, M.D. ("Owens Report") (final page of attachments to Garrison Aff.).

According to the plaintiff, the second person[5] pulled her up by her shirt. Vaughan Dep. at 34. She told the two persons she had felt something break, tried to get out of their grip and started screaming about how much pain she was in. *Id*. Although she saw that the two people were uniformed police officers, she broke free and fled "a couple streets over" because she was terrified and hurt. *Id.* Patch called Quinn on the radio, at 3:21 a.m., and pursued the plaintiff on foot. Patch Dep. at 67; Quinn Dep. at 31. The plaintiff claims that the two officers[6] caught up to her and grabbed her arms, which "hurt very much." Vaughan Dep. at 35, 101. She claims that neither of the two officers was Garrison, and does not recall seeing Garrison until she arrived at the Saco police station.[7] *Id.* at 38-39. The plaintiff was arrested at 3:25 a.m. Garrison Dep. at 35.

As Quinn attempted to handcuff the plaintiff, she struggled. Quinn Dep. at 41; Vaughan

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[4] Patch concedes that he interacted with the plaintiff outside her apartment, although his version of the alleged knockdown differs from the plaintiff's. Patch Dep. at 57-58.

[5] According to the deposition testimony of Patch and Quinn, it is apparent that Quinn was not present at the alleged knockdown. *See* Patch Dep. at 49; Quinn Dep. at 31. Thus, despite the plaintiff's assertion that there were two officers at the scene of the alleged knockdown, the summary judgment record establishes that Quinn was not present.

[6] According to Quinn, he detained the plaintiff on his own, and Patch never showed up at the scene where he detained her. Quinn Dep. at 34-35. However, the plaintiff testified that the two officers, one of whom was Patch, caught up with her, thus raising a triable issue as to whether Patch caught up to her.

[7] In contrast, Garrison and Quinn agree that Garrison arrived at the scene shortly after the plaintiff was detained, Quinn Dep. at 35-36; Garrison Dep. at 37, and Garrison testified that he drove the plaintiff to the station in his cruiser, Garrison Dep. at 68-69.

Dep. at 111. Two officers then yanked back the plaintiff's arms hard, further displacing her fractured clavicle. Vaughan Dep. at 41, 101. However, the injury was not visible through her shirt. *Id.* at 102. After she was handcuffed, she told the officers that "something was very wrong with the bone that was on [her] shoulder," and kept saying that she was hurt very badly. Vaughan Dep. at 41, 101-02. She was placed in a police cruiser and driven to the Saco police station, although she asked for medical attention while in the cruiser. *Id.* at 101.

Garrison took the plaintiff into a processing room at the station, where she was left alone for a while, handcuffed and in extreme pain. Garrison Dep. at 69; Vaughan Dep. at 40. Garrison told the bail commissioner that he needed bail set on the plaintiff's failure to stop charge, and the commissioner set bail at $150 cash. Garrison Dep. at 69-70; Affidavit of Vinton T. Ridley ("Ridley Aff.") ¶ 3, Exh. 5 to Saco SMF.

At 4:06 a.m. officers Snow and Cyr of the Saco Police Department took the plaintiff, in handcuffs and shackles, to Southern Maine Medical Center ("SMMC"). Garrison Dep. at 39, 74; Owens Report. While in the examining room, the plaintiff had to remove her clothes from the waist up so the nurse could help her put on a "figure eight collar." Vaughan Dep. at 45-47. Although the plaintiff and the nurse asked the officers to leave the room, and although the plaintiff was still shackled, the officers refused, saying they "couldn't." *Id.* at 46. The officers then brought the plaintiff to the York County Jail, where her boyfriend bailed her out later that morning. Vaughan Dep. at 47-49.

The plaintiff was prosecuted for failure to stop for a police officer, but the state dismissed the charge "[because] of a discovery violation which entailed failing to [produce to the defense] the part of the report that discussed the reason for the initial stop." Criminal Complaint in *State v. Leclair*, No. SACO 93-7668 (Me. Dist. Ct. 10, E. Bid.) (unnumbered page appended to Statement

of Undisputed Material Facts in Support of Biddeford Defendants' Motion for Summary Judgment (Docket No. 20)). Garrison had filed that report with the Secretary of State concerning the plaintiff's violation of her conditional driver's license. Garrison Report at 1. The Secretary of State returned the report because Garrison did not read the plaintiff an implied consent statement at the police station. Garrison Dep. at 47.

Garrison graduated from the Military Police School in Fort McClellan, Alabama and the Vermont Criminal Justice Training Academy, and passed the written examinations required to obtain a Municipal/County Basic Police School Waiver. Defendant[ Garrison]'s Answers to Plaintiff's Interrogatories ("Garrison Ans.") ¶ 3-4, Exh. 1 to Saco SMF; Letter from Maine Criminal Justice Academy Director to Garrison (unnumbered page appended to Garrison Aff.). During his employment with the Saco Police Department, Garrison attended Maine Criminal Justice Academy ("MCJA") seminars on various topics, including search and seizure, felony vehicle stops and OUI detection. Garrison Ans. ¶ 4.

Patch and Quinn graduated from the MCJA, where the curriculum includes the use of force in making arrests. Patch Dep. at 7; Quinn Dep. at 56-57. The Biddeford Police Department conducts ongoing training for its officers, and past topics have included the use of force. Quinn Dep. at 57.

## III. Civil Rights Claims Against the Officer-Defendants

The individual defendants contend that they are entitled to the qualified immunity afforded government officials performing discretionary functions. This qualified immunity shields government officials from section 1983 liability for alleged constitutional rights violations "as long as their actions could reasonably have been thought consistent with the rights they are alleged to

have violated."[8] *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (citations omitted). "[W]hether an official protected by qualified immunity 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." *Id.* at 639 (citations omitted) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 819 (1982)). Thus, the court must conduct a two-step analysis, determining whether the right was clearly established, and, if so, whether a reasonable officer could have believed that the challenged action was lawful in light of the specific circumstances and the information possessed by the officers. *Maguire v. Old Orchard Beach*, 783 F. Supp. 1475, 1480 (D. Me. 1992) (citation omitted). The officer-defendants focus their qualified immunity arguments solely on the second step of this analysis, the "objective legal reasonableness" of their actions.[9]

### A. Unlawful Arrest

The Fourth Amendment protection against unreasonable seizures requires that arrests be supported by probable cause. *Santiago v. Fenton*, 891 F.2d 373, 383 (1st Cir. 1989). A

[8] The qualified immunity analysis under section 1983 also applies to the MCRA, which was patterned after section 1983. *Hegarty v. Somerset County*, 848 F. Supp. 257, 269 (D. Me. 1994), *aff'd in part, rev'd in part on other grounds*, 53 F.3d 1367 (1st Cir.), *cert. denied sub nom. Hegarty v. Wright*, 133 L.Ed.2d 524 (1995).

[9] At the outset I reject the plaintiff's argument that the officer-defendants are jointly liable for the entire series of events alleged in her section 1983 claim. One may deprive a person of a constitutional right not only by "direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor know[s] or reasonably should know would cause others to inflict the constitutional injury." *Springer v. Seamen*, 821 F.2d 871, 879 (1st Cir. 1987) (citations omitted). However, the summary judgment record does not support an inference that the officer-defendants set in motion a series of events which they knew or reasonably should have known would cause others to inflict the alleged constitutional injuries.

determination of probable cause rests on "whether, at the moment the arrest was made, . . . the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

At the initial traffic stop, Garrison had the plaintiff exit her vehicle, perform several sobriety tests and accompany him to his police cruiser. In response to the plaintiff's comment that her dog was barking, Garrison said she could return to her vehicle. However, he did not give her permission to leave, and he followed her to her vehicle. Although the plaintiff testified that Garrison did not yell for her to wait or stop, in the circumstances this may mean no more than that the plaintiff did not hear Garrison. In any event, Garrison's specific testimony that he ran up to the car and reached in toward the steering wheel as the plaintiff drove off is uncontroverted. A rational juror would find these facts sufficient to warrant a prudent officer in believing that the plaintiff had committed the offense of failure to stop for a police officer.[10] Furthermore, under the "fellow officer rule," Garrison's knowledge of these facts is imputed to Patch and Quinn. *Burns v. Loranger*, 907 F.2d 233, 236 n.7 (1st Cir. 1990). Thus, there was probable cause to support the plaintiff's arrest.

The plaintiff also argues that she was arrested in violation of 17-A M.R.S.A. § 15(1)(B), which provides in relevant part: "[A] law enforcement officer may arrest without a warrant . . . [a]ny person who has committed in his presence or is committing in his presence any Class D or Class E crime." An arrest under section 15(1)(B) "shall be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit."

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[10] Refusal to stop a motor vehicle on request or signal of a uniformed law enforcement officer is a Class E crime. 29 M.R.S.A. § 2501-A, *repealed by* P.L. 1993, ch. 683, § A-1 (eff. Jan. 1, 1995) and *recodified at* 29-A M.R.S.A. § 2414(2).

*Id.* § 15(2).

There is no question that the alleged failure to stop occurred in Garrison's presence. The plaintiff, however, argues that she was not arrested within a reasonable time after the alleged offense was committed. The plaintiff left the scene of the traffic stop at 2:15 a.m. and was arrested at 3:25 a.m. In the interval, Garrison located the plaintiff's apartment and returned to the Saco police station to obtain a search warrant and an arrest warrant. I find that this seventy-minute delay constituted a reasonable time within the meaning of section 15(2). Accordingly, Garrison is entitled to summary judgment on the plaintiff's MCRA claim for violation of her rights under 17-A M.R.S.A. § 15(1)(B).

Patch and Quinn argue that they merely detained the plaintiff until Garrison arrived and arrested her. However, the plaintiff testified that: the two officers whom she encountered outside her apartment caught and handcuffed her; neither of those two officers was Garrison; and she did not see Garrison until she arrived at the Saco police station. Although a factfinder may ultimately determine that the plaintiff is mistaken in believing that Patch and Quinn alone arrested her, I must resolve this factual dispute in the plaintiff's favor at the summary judgment stage. Because neither Patch nor Quinn personally observed any "facts which [were] sufficient to warrant a prudent and cautious law enforcement officer in believing" that the plaintiff had failed to stop for Garrison, they were not entitled to arrest the plaintiff without a warrant for the Class E crime of failure to stop for a police officer. 17-A M.R.S.A. § 15(1)(B), (2); *cf. State v. Thurston*, 393 A.2d 1345, 1349 (Me. 1978) ("a crime is committed 'in the presence' of an officer who, although he may not have personal knowledge of all the facts constituting the crime, could reasonably infer those facts from others he has perceived directly through his own senses"). Accordingly, the plaintiff's MCRA claims against Patch and Quinn for violation of her rights under 17-A M.R.S.A. § 15(1)(B) survive summary judgment.

### B. Excessive Force

The Fourth Amendment prohibits law enforcement officers from using unreasonable force to effect an arrest. *See Graham v. Connor*, 490 U.S. 386, 394-95 (1989); *Gaudreault v. Salem*, 923 F.2d 203, 205 (1st Cir. 1990), *cert. denied*, 500 U.S. 956 (1991). In measuring "reasonableness" the court considers the specific facts and circumstances, "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Thus, police may use the level of force "consistent with the amount of force that a reasonable police officer would think necessary to bring the arrestee into custody." *Gaudreault*, 923 F.2d at 205. The plaintiff argues that the officers used excessive force by jumping on her and knocking her to the ground, and by violently yanking her arms while handcuffing her.

The summary judgment record, viewed in the light most favorable to the plaintiff, reveals no justification for Patch to jump on top of the plaintiff and knock her to the ground. He did not call her by name or identify himself as a police officer before knocking her down. The plaintiff did not attempt to run as he approached; she merely walked quickly. There is no suggestion that the plaintiff posed any immediate threat to him or to others. Under these circumstances, no reasonable police officer would believe it was necessary to jump on the plaintiff and knock her down in order to bring her into custody.[11]

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[11] Patch argues that his use of force was justified because he believed the plaintiff had fled the police once and had been pulled over for operating under the influence, that she had been belligerent to Garrison during the stop, and that the officers had knocked on her door and gotten no response. However, his Statement of Material Facts does not provide record citations evidencing these beliefs, and thus they are not part of the summary judgment record. *See Pew*, 161 F.R.D. at 1.

While Quinn was handcuffing the plaintiff, two officers allegedly "yanked [her] arms back hard." Vaughan Dep. at 101. However, the plaintiff struggled as he attempted to handcuff her. Under these circumstances a reasonable police officer could have believed it was necessary to yank back the plaintiff's arms in order to handcuff her. Thus, Quinn is entitled to qualified immunity on the excessive-force claims, as is Garrison to the extent he participated in handcuffing the plaintiff.

### C. Necessary Medical Treatment

The Due Process Clause of the Fourteenth Amendment requires "the responsible governmental authorities to provide medical care to persons who have been injured while being apprehended by the police." *Gaudreault*, 923 F.2d at 208. Government officials deny pretrial detainees their due process rights by exhibiting deliberate indifference to their serious medical needs. *Elliott v. Cheshire County*, 940 F.2d 7, 10 & n.2 (1st Cir. 1991).

To show deliberate indifference, which is a significantly stricter standard than negligence, the plaintiff must "prove that the defendants had a culpable state of mind and intended wantonly to inflict pain." *Manarite v. Springfield*, 957 F.2d 953, 956 (1st Cir.) (quoting *DeRosiers v. Moran*, 949 F.2d 15, 19 (1st Cir. 1991)), *cert. denied*, 506 U.S. 837 (1992). This state of mind requires "actual knowledge [or wilful blindness] of impending harm, easily preventable." *Id.* (alteration in original) (quoting *DeRosiers*, 949 F.2d at 19).

The plaintiff has failed to generate evidence suggesting that any defendant exhibited deliberate indifference to her fractured clavicle. Although she told the officers that something was wrong with the bone on her shoulder, the fracture did not pierce the skin and was not visible through her shirt. Thus, there is no evidence suggesting knowledge or wilful blindness of the plaintiff's injury. The delay in obtaining medical treatment lasted, at most, from 3:21 a.m. (when Patch called

Quinn on the radio) until 4:06 a.m. (when the plaintiff was taken to SMMC). The plaintiff cites no evidence suggesting that the officer-defendants "intended wantonly to inflict pain" through this forty-five minute delay. Accordingly, the officer-defendants are entitled to summary judgment on the claims for failure to provide necessary medical treatment.[12]

### D. Excessive Bail

Although the Eighth Amendment expressly prohibits excessive bail, the plaintiff asserts her excessive-bail claim in the context of a pretrial detainee's right to be free from punishment. Under that standard, absent a showing of express intent to punish, the plaintiff's claim depends on whether there is another purpose for setting her bail, and whether the bail is excessive in relation to that purpose. *See Ellis v. Meade*, 887 F. Supp. 324, 329-30 (D. Me. 1995).

The plaintiff, citing no evidence of an express intent to punish, argues that Garrison has not provided an alternative purpose. However, the bail commissioner did. He testified that his standard practice is to set bail in an amount sufficient to ensure the defendant's appearance. Ridley Aff. ¶ 5. No rational jury could find that $150 cash bail was excessive in relation to the objective of securing the plaintiff's appearance at trial. *See Pilkinton v. Circuit Court*, 324 F.2d 45, 46 (8th Cir. 1963) (as matter of law, $500 bail on each of two charges insufficient to raise constitutional claim; defendant's mere inability to make bail does not render it excessive); *Estes-El v. New York*, 552 F. Supp. 885, 889 (S.D.N.Y. 1982) (dismissing section 1983 claim where plaintiff made no showing that $150 was excessive). Even if $150 cash bail were excessive, the bail commissioner set the plaintiff's bail, not

[12] The plaintiff also suffered a ripped earlobe when her earring was pulled out during the alleged knockdown. Vaughan Dep. at 95-96. This condition does not rise to the level of a serious medical need. *See Gaudreault*, 923 F.2d at 208 (plaintiff with bruises, abrasions, sling on one arm and patch over eye did not display serious medical needs).

the officer-defendants. *See Potter v. Clark*, 497 F.2d 1206, 1208 (7th Cir. 1974) (affirming dismissal of section 1983 excessive bail claim against sheriff because state court judge set bail); *Estes-El*, 552 F. Supp. at 889 (dismissing section 1983 excessive bail claim where arresting officers argued for, but did not set, bail). Thus, the officer-defendants are entitled to summary judgment on the excessive-bail claims.

**E. Malicious Prosecution**

The plaintiff claims that she was maliciously prosecuted, and that the defendants' conduct was "so egregious that it violated [her] substantive or procedural due process rights under the Fourteenth Amendment." *Torres v. Superintendent of Police*, 893 F.2d 404, 409 (1st Cir. 1990). *Torres* has been effectively overruled in part, inasmuch as the Supreme Court has since announced that there is no substantive due process right to be free from malicious prosecution. *Albright v. Oliver*, 127 L.Ed.2d 114, 124 (1994) (plurality); *Calero-Colon v. Betancourt-Lebron*, 68 F.2d 1, 3 n.7 (1st Cir. 1995). Accordingly, I consider only the plaintiff's procedural due process argument.

A procedural due process violation occurs where the alleged conduct deprived the plaintiff of her liberty "by a distortion and corruption of the processes of law, i.e., corruption of witnesses, falsification of evidence, or some other egregious conduct resulting in a denial of a fair trial." Torres, 893 F.2d at 410. A procedural due process claim for malicious prosecution will lie under section 1983 only if there is no state post-deprivation remedy available. *Id.*

The plaintiff claims that Garrison abused the legal process by withholding exculpatory evidence from her prosecutors. Specifically, she argues that Garrison withheld the administrative report that he filed with the Secretary of State to revoke her conditional licence. However, the plaintiff has not explained how the report could be construed as exculpatory on the failure to stop

charge.[13] On the contrary, the report lists "Eluding" as an aggravating circumstance, and describes Garrison's version of the events underlying the failure-to-stop charge. Garrison Report at 2, 5-7. Thus, the defendants are entitled to summary judgment on the plaintiff's malicious prosecution claims under section 1983 and the MCRA.

## II. Civil Rights Claims Against the Municipal Defendants

There is no *respondeat superior* liability under section 1983. *Canton v. Harris*, 489 U.S. 378, 385 (1989). Instead, a municipality is liable under section 1983 only when its policy or custom caused the alleged constitutional deprivation.[14] *Id.* (citation omitted). The plaintiff must "demonstrate both the existence of a policy or custom and a causal link between that policy and the constitutional harm." *Santiago*, 891 F.2d at 381. Any offending custom or practice "must be so well-settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice." *Bordanaro v. McLeod*, 871 F.2d 1151, 1156 (1st Cir.), *cert. denied*, 493 U.S. 820 (1989).

The municipal defendants argue that the summary judgment record reveals no evidence of a municipal policy or custom causally linked to the alleged constitutional deprivations.[15] The

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[13] The plaintiff argues that "[t]here is at least a question of fact generated on whether he did so either to hide the fact that the report had been returned to him as inadequate or to further punish Plaintiff." Plaintiff's Memorandum in Opposition to Defendants' Motions for Summary Judgment ("Plaintiff's Memo.") (Docket No. 23) at 17. Garrison's motivation, however, is irrelevant unless withholding the report denied the plaintiff a fair trial. *Torres*, 893 F.2d at 410.

[14] The municipal liability analysis under section 1983 also applies to the MCRA. *Fowles v. Stearns*, 886 F. Supp. 894, 899 n.6 (D. Me. 1995).

[15] The plaintiff also asserts an invasion of privacy claim against the city of Saco, based on the refusal of two Saco police officers, who are not named as defendants, to leave the hospital examining room while she undressed from the waist up. Assuming, arguendo, that this claim is

plaintiff responds, first, that failure to discipline the officers after the alleged violations evidences municipal policies encouraging unconstitutional conduct. However, "the failure of a police department to discipline in a specific instance" is not an adequate basis for municipal liability. *Santiago*, 891 F.2d at 382.

The plaintiff next refers to a "mutual aid agreement" among the police chiefs of Biddeford, Saco and Old Orchard Beach, and claims that the municipalities failed to train the officer-defendants in "'mutual aid' scenarios." Plaintiff's Memo. at 21-22; Exh. 2-B to Garrison Aff. However, the plaintiff suggests no causal connection between that alleged failure to train and the constitutional violations at issue.

The plaintiff argues that the officer-defendants lacked knowledge in such areas as the difference between detention and arrest, night and day warrants, and the meaning of exigent circumstances, due to their deficient in-service training. Even if that assertion were supported by the summary judgment record, the plaintiff must also demonstrate that "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact," i.e., a deliberate or conscious choice among various alternatives by the municipality. *Canton*, 489 U.S. at 388-89. The plaintiff has produced no evidence suggesting that the municipal defendants made a deliberate or conscious choice not to provide adequate training.

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constitutionally cognizable, *but see Cookish v. Powell*, 945 F.2d 441, 446-47 (1st Cir. 1991) (visual body cavity search of male inmate by male correctional officers, in presence of female officers, did not violate inmate's right to privacy), the plaintiff has produced no evidence that it was causally related to a municipal policy or custom. Contrary to the plaintiff's suggestion, the officers' mere statement that "they couldn't" leave the examining room does not establish a relevant municipal policy or custom. *See Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir.1990) (party opposing summary judgment may not rely on "conclusory allegations, improbable inferences, and unsupported speculation").

Finally, the plaintiff argues, "municipal liability is not precluded simply because the events occurred in a 'single' evening." *Santiago*, 891 F.2d at 381 (citing *Bordanaro*, 871 F.2d at 1157). That is true, but absent some other evidence, "a single event alone cannot establish a municipal custom or policy." *Bordanaro*, 871 F.2d at 1156-57. Accordingly, I grant the municipal defendants' motions for summary judgment on the civil rights claims.

## III. State-Law Claims

### A. Motions to Dismiss

Garrison and the city of Saco move to dismiss all of the state-law claims for failure to comply with the notice provisions of the Maine Tort Claims Act ("MTCA"), 14 M.R.S.A. § 8107(1) (plaintiff must file written notice of tort claim with governmental entity within 180 days after claim accrues). Where the defendant is a city, the required notice must be served on the city clerk, treasurer or manager. *Id.* § 8107(3)(B); Me. R. Civ. P. 4(d)(6). The plaintiff has substantially complied with this requirement by mailing a copy of her notice to the Saco Police Chief. Affidavit of Paul Aranson, Esq. (Docket No. 26) ¶ 2; *see* 14 M.R.S.A. § 8107(4); *Robinson v. Washington County*, 529 A.2d 1357, 1360 (Me. 1987) (mailing notice to sheriff, rather than party specified in Me. R. Civ. P. 4(d)(4), constitutes substantial compliance with MTCA notice provision).

The city of Saco also claims absolute immunity from liability on the state-law claims pursuant to 14 M.R.S.A. § 8103. However, the city concedes that it is insured against the plaintiff's claims, Reply to the Plaintiff's Opposition to the Defendants' Motion for Summary Judgment (Docket No. 29) at 17, and thus waives MTCA immunity to the extent of that coverage, 14 M.R.S.A. § 8116.

### B. Common-Law Tort Claims: Discretionary Immunity[16]

The officer-defendants claim that 14 M.R.S.A. § 8111(1)(C) renders them immune from liability on the plaintiff's state-law tort claims. Section 8111(1) provides in relevant part:

> Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:
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> . . .
>
> C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid;
>
> . . .
>
> E. Any intentional act or omission within the course and scope of employment; provided that such immunity shall not exist in any case in which an employee's actions are found to have been in bad faith.
>
> The absolute immunity provided by paragraph C . . . shall be available to all governmental employees, including police officers . . . , who are required to exercise judgment or discretion in performing their official duties.

14 M.R.S.A. § 8111(1).[17]

Discretionary function immunity under section 8111(1)(C) applies "as long as the[] conduct is not so egregious that 'it exceeds as a matter of law, the scope of any discretion [the defendants]

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[16] The plaintiff concedes that she may not bring her malicious prosecution claim under state law. Plaintiff's Memo. at 16. Thus, the common-law tort claims at issue are assault, intentional infliction of emotional distress, false arrest and false imprisonment. Complaint ¶ 41.

[17] Although the parties read the "bad faith" language of subsection (E) as a limitation on this discretionary function immunity, the Law Court has held that the "bad faith" proviso in section 8111(1)(E) does not restrict discretionary function immunity. *Dall v. Caron*, 628 A.2d 117, 119 (Me. 1993).

could have possessed in [their] official capacity . . . .'" *Bowen v. Department of Human Servs.*, 606 A.2d 1051, 1055 (Me. 1992) (quoting *Polley v. Atwell*, 581 A.2d 410, 414 (Me. 1990)). In *Leach v. Betters*, 599 A.2d 424, 426 (Me. 1991), the Law Court suggested that, where police officers act with "ill will, bad faith, or improper motive," their use of force exceeds the scope of their discretion. *See Ellis*, 887 F. Supp. at 331 (government official entitled to discretionary function immunity where there was no persuasive evidence that conduct was motivated by ill will, bad faith, or improper motive) (citing *Leach*, 599 A.2d at 426).

**1. Garrison**

Garrison first argues that he did not exert excessive force on the plaintiff, nor did he cause or contribute to her injury. The plaintiff does not respond to this argument, and the summary judgment record contains no evidence that Garrison was involved in the alleged assault. Thus, Garrison is entitled to summary judgment on the assault claim.

Garrison argues that his other actions, i.e., arresting the plaintiff, denying her medical attention and arranging her bail, fall within the scope of his discretionary function immunity.[18] The plaintiff does not argue that any of the actions for which she asserts liability are not discretionary functions. Because the plaintiff fails to cite any facts suggesting that Garrison acted with ill will, bad faith or improper motive, Garrison is entitled to discretionary function immunity on the plaintiff's remaining common-law tort claims.

[18] It is not clear whether Garrison argues for discretionary function immunity from the plaintiff's MCRA claims. The plaintiff, however, understood the defendants to be arguing for discretionary immunity only on the common-law tort claims, *see* Plaintiff's Memo. at 25, and Garrison has not argued otherwise in his reply memorandum. Accordingly, I do not treat Garrison's discretionary function immunity argument as applying to the MCRA claims.

### 2. Patch & Quinn

Patch and Quinn construe the complaint as stating state-law tort claims only for violation of 15 M.R.S.A. § 704, 17-A M.R.S.A. § 15[19] and malicious prosecution. Thus, they do not explicitly argue for discretionary function immunity on the other common-law tort claims. However, the plaintiff specifically addressed the applicability of discretionary function immunity to all of those claims in her memorandum. Thus, I consider Patch's and Quinn's discretionary function immunity arguments as applying to all of the common-law tort claims.

Patch and Quinn argue that detaining and/or arresting the plaintiff was a discretionary function, and the plaintiff does not suggest otherwise. As with Garrison's motion, the plaintiff fails to cite any facts suggesting ill will, bad faith or improper motive by Patch or Quinn. Accordingly, they are entitled to discretionary function immunity on the plaintiff's common-law tort claims.

## C. 15 M.R.S.A. § 704

The plaintiff argues that her warrantless arrest was performed wantonly or oppressively, in violation of 15 M.R.S.A. § 704.[20] In *Leach*, 599 A.2d at 426, the Law Court held that police conduct was not "wanton or oppressive" within the meaning of section 704 because the record contained "no hint of ill will, bad faith, or improper motive." Although the officer-defendants argue that their

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[19] 17-A M.R.S.A. § 15 merely states the circumstances in which a law enforcement officer may arrest without a warrant, and does not provide a private right of action.

[20] 14 M.R.S.A. § 704 provides, in part: "Every . . . police officer shall arrest and detain persons found violating any law of the State . . . until a legal warrant can be obtained . . . ; but if, in so doing, he acts wantonly or oppressively, . . . he shall be liable to such person for the damages suffered thereby." Thus, section 704 imposes liability only on the arresting officers, not the municipalities. *Id.*

discretionary function immunity applies to the section 704 claims, the Law Court has left open the question of whether MTCA immunity abrogates the remedy available under section 704. *Creamer v. Sceviour*, 652 A.2d 110, 115 (Me. 1995). I need not decide that issue because the plaintiff cites no evidence that the officer-defendants acted with ill will, bad faith or improper motive. Thus, the officer-defendants are entitled to summary judgment on the plaintiff's section 704 claims.

## IV. Punitive Damages

Because there are no surviving claims against the municipal defendants, they are entitled to summary judgment on the plaintiff's punitive damages claims as well. The only surviving claims against the officer-defendants are the MCRA claims for arrest in violation of 17-A M.R.S.A. § 15(1)(B) against Patch and Quinn, and the section 1983 and MCRA excessive-force claims against Patch. Punitive damages are available in section 1983 claims in cases of "reckless or callous disregard for the plaintiff's rights" or "intentional violations of federal law." *Smith v. Wade*, 461 U.S. 30, 51 (1983). Under Maine law, punitive damages are available only where the plaintiff can prove, by clear and convincing evidence, that the defendant acted with express or implied malice. *Tuttle v. Raymond*, 494 A.2d 1353, 1363-64 (Me. 1985). Express malice exists "where the defendant's tortious conduct is motivated by ill will toward the plaintiff," whereas implied malice exists where the conduct is "so outrageous that malice toward a person injured as a result of that conduct can be implied." *Id.* at 1361.

The mere fact that the officer-defendants are not entitled to qualified immunity on this record does not justify a punitive damages award. Although Patch's decision to knock down the plaintiff may not have been objectively reasonable, the plaintiff points to no evidence suggesting that he knocked her down because of ill will, or that he acted in "reckless or callous disregard" for her

constitutional rights. Similarly, the plaintiff cites no evidence suggesting that any of the officer-defendants arrested her because of ill will or with reckless or callous disregard for her constitutional rights. Accordingly, the officer-defendants are entitled to summary judgment on the plaintiff's punitive damages claims.

## V. Conclusion

For the foregoing reasons, Garrison's and the city of Saco's motions to dismiss are ***DENIED***. The motions for summary judgment are: ***DENIED*** as to the MCRA claims for arrest in violation of 17-A M.R.S.A. § 15(1)(B) against Patch and Quinn; ***DENIED*** as to the section 1983 and MCRA excessive-force claims against Patch; and otherwise ***GRANTED***.

***Dated this 22nd day of May, 1996.***

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***David M. Cohen***
***United States Magistrate Judge***