IP 00-0393-C M/S Beauchamp v. Milligan [4]
Judge Larry J. McKinney Signed on 5/10/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BEAUCHAMP, RICKY W, BEAUCHAMP, BETH E, Plaintiffs, vs. NOBLESVILLE, CITY OF, DUKETTE, CYNTHIA, RUSSELL, DICK *, COOK, JOE, MILLIGAN, CARY, COTTEY, JACK, WEIDENER, KELLY, LEERKAMP, SONIA, Defendants.	)	CAUSE NO. IP00-0393-C-M/S

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICKY W. BEAUCHAMP and BETH E. BEAUCHAMP, Plaintiffs,	)	
vs.	)	IP 00-393-C-M/S
CITY OF NOBLESVILLE, *et al*., Defendants.	)	

ORDER ON MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE CERTAIN EVIDENTIARY SUBMISSIONS

This matter is before the Court on Defendants', Hamilton County Sheriff Joe Cook ("Cook") and Hamilton County Sheriff's Deputy Cary Milligan("Milligan"), Motion for Summary Judgment on Plaintiffs', Ricky Beauchamp ("Beauchamp")[1] and Beth Beauchamp, claims under federal and Indiana law. Defendants have also filed a motion seeking to strike certain evidentiary submissions. Although Beauchamp named several defendants, this order only addresses the motion filed by Milligan and Cook. Plaintiffs initially alleged claims against Milligan and Cook in their individual and official capacities for violations of the Fourth and Fifth Amendments with respect to Beauchamp's arrests on various charges. They also asserted claims under Indiana law for defamation, false imprisonment, false arrest, defamation, and intentional infliction of emotional distress. During the briefing of this motion, Plaintiffs have apparently conceded that there is no merit to their claim against Cook in his individual capacity, and that they have no

[1] Most of the claims in this matter involve Defendants' alleged treatment of Ricky Beauchamp. Accordingly, the Court's use of the name "Beauchamp" in this opinion will refer to Ricky Beauchamp.

claim for malicious prosecution or any Fifth Amendment violations. Accordingly, the Court **GRANTS** summary judgment for Defendants on those particular claims, and will now consider the remaining counts.

I. FACTUAL BACKGROUND

A. THE FIRST ARREST OF BEAUCHAMP

In February 1998, Beauchamp operated a small window-cleaning business. *Statement of Facts* ¶ 101. That same month, he entered into an agreement with the owner of the Blue Hawaiian Tanning Salon ("the Blue Hawaiian"), 9522 East 126th Street, Fishers, Indiana, to clean windows. *Id*. ¶¶ 6, 102. Beauchamp met Michelle Klingerman ("Klingerman") at the Blue Hawaiian, which is where she worked. *Id*. ¶ 106.

On February 23, 1998, at approximately 11:28 a.m., Michelle Klingerman called 911 and reported that a man was trying to break into her home at 8100 East 146th Street, Noblesville, Indiana. *Id*. ¶ 1. Milligan was one of the officers who responded to the dispatch. *Id*. ¶ 2. Klingerman reported to Milligan that the man pounded on her door very loudly and stated, "Michelle, are you in there? Michelle?" *Id*. ¶ 3. Klingerman saw the man leave her home, running away. Klingerman described him as a white male, with a royal blue or black cap on, a hooded grey sweatshirt, blue jeans, and having a beard and "a little bit of a pot belly." *Id*. ¶ 4. There were fresh pry marks on Klingerman's door. *Id*. ¶ 5. Klingerman told Milligan that Beauchamp had harassed her at work, the Blue Hawaiian. *Id*. ¶ 6. Klingerman told Milligan that Beauchamp had made sexual comments and advances toward her. *Id*. ¶ 8.

Milligan and another detective, identified only as "Clifford", were able to identify Beauchamp and his address from the information Klingerman gave them. *Id*. ¶ 9. Milligan and Clifford went to the Beauchamps' residence to ask Beauchamp some questions. *Id*. ¶ 10. When Beauchamp arrived home, he was wearing blue jeans, a grey hooded sweatshirt, and he had a beard and pot belly. *Id*. ¶ 12. Beauchamp told Milligan and Clifford of his activities that day, including that around at 11:30 a.m. he was home using the family computer, which was the time that Klingerman had reported someone pounding on her door and yelling at her. *Id*. ¶ 123. Beauchamp invited them in to see his computer, but they did not want to go inside. *Id*. ¶ 124. While at Beauchamp's home, Milligan told him that "as soon as Michelle picks you out of the photo lineup, I'm having you arrested for B and E," which the Court assumes means "breaking and entering." *Id*. ¶ 126. When Beauchamp arrived at the "interrogation room" at the Hamilton County Sheriff's Department ("HCSD" or "the Sheriff's Department"), Milligan said to him, "Why don't you just tell us why you were out there – I know you were there. I know you were the one that was out there." *Id*. ¶ 127. At some point, Beauchamp agreed to a voice recording which Milligan played for Klingerman, along with the voices of five other white males. *Id*. ¶ 13. Klingerman correctly identified Beauchamp's voice. *Id*. ¶ 14.

Beauchamp's next contact with Milligan was on February 27, 1998, at the commercial center where the tan salon and some of his other cleaning customers were located. *Id*. ¶ 128. While there, the owner of the tanning salon who was a customer of Beauchamp's told him that detectives had been there the day before and that he should not return to that store. *Id*. ¶ 129. While at another store in the same center, Beauchamp was asked to step outside by a Fishers Police Department officer. *Id*. ¶ 130. While

walking to the patrol car, Milligan appeared and said, "So, Mr. Beauchamp, we meet again." *Id*. ¶ 131. Milligan then asked Beauchamp if he had any more work to do around there, and Beauchamp responded that he did not. Milligan then said, "because if you do, I'm going to stand here and watch you finish and escort you off the property." *Id*. ¶ 132. Beauchamp walked away from the store and Milligan said "You better get yourself an attorney." *Id*. ¶ 133.

On March 2, 1998, Danelle Ooley ("Ooley"), who worked at the 126th Street Hair Studio located in the same strip mall as the Blue Hawaiian, reported to Milligan that Beauchamp had sexually assaulted her on February 12, 1998. *Id*. ¶ 15. Ooley reported that Beauchamp entered the hair salon, grabbed her from behind, grabbed her breasts, and put his hand up her skirt and into her crotch area. *Id*. ¶ 16. Ooley also reported to Milligan that Beauchamp kissed her neck and restrained her tightly. *Id*. ¶ 17. According to Ooley, Beauchamp told her that they needed a hotel, that he would undress her and lick her all over, and that he would "f*** her hard and nasty." *Id*. ¶ 18.

Milligan submitted a probable cause affidavit to the Hamilton County Superior Court on March 5, 1998, and the court found probable cause to arrest Beauchamp for attempted residential entry against Klingerman and sexual battery against Ooley. *Id*. ¶ 20. Beauchamp admitted that probable cause existed to arrest him for battery against Ooley. *Id*. ¶ 19. The court also entered a protective order against Beauchamp that required him to stay away from both Klingerman and Ooley. *Id*. ¶ 21. An arrest warrant was issued, and Beauchamp turned himself in on March 6, 1998. *Id*. ¶ 22. Beauchamp spent the weekend in the jail, and bonded out on March 9, 1998. *Id*. ¶ 23.

On or around March 30, 1998, Klingerman reported that on her return from vacation travel, she noticed that someone had carved the words "You die bitch" in her door at her house. *Id*. ¶ 24. On April 6, 1998, a hearing was held on Beauchamp's alleged violation of the no-contact order. *Id*. ¶ 139. This hearing apparently resulted from Klingerman's report of the marks and words on her entry door. *Id*. ¶ 140. Klingerman did not testify at this particular hearing; only Milligan did so. *Id*. ¶ 141. The court denied the request to revoke Beauchamp's bond. *Id*. ¶ 144. The day after the bond revocation hearing, Beauchamp – on the advice of an investigator working with his attorney – began keeping a daily log of his activities by date, time, activity, and vehicle mileage. *Id*. ¶ 145.

B. THE SECOND ARREST OF BEAUCHAMP

On April 15, 1998, the Noblesville Police Department ("NPD") notified Milligan that it was on the scene of Klingerman's new residence. *Id*. ¶ 25. At that time, Klingerman reported that she had been attacked inside her apartment by Beauchamp. *Id*. ¶ 26. She reported that she was able to identify her attacker as Beauchamp because she recognized his mannerisms, his voice, his blue eyes, and what he had said to her, notwithstanding the fact that he was wearing a ski mask. *Id*. ¶ 27.

Two days later, the NPD assigned Cynthia Dukette ("Dukette") to investigate Klingerman's allegations. *Id*. ¶ 147. She began working with Milligan on that same day. *Id*. ¶ 150. Later that day, Milligan interviewed Klingerman with Dukette present. *Id*. ¶¶ 151-152. Klingerman stated that she had returned home and had taken a shower and had gotten partially dressed in the bathroom. She came out into the hallway and noticed that her daughter's bedroom door was closed, which was unusual. *Id*. ¶¶ 28-29. She started to walk toward the hallway to check on the children when she was grabbed from behind

and thrown to the floor. *Id*. ¶ 30. According to Klingerman, the attacker jumped on top of her, held her down, struck her several times, scratched her, and said, "Bitch, you are going to die for what you did to me." *Id*. ¶ 31. She said that she had been physically assaulted, but she did not say that she had been raped. *Id*. ¶ 153.

On April 24, 1998, Klingerman revealed that she had not told the police that she had actually been raped. *Id*. ¶ 33.[2] She stated that she had been bleeding vaginally since the attack, but that she had concealed being raped because she did not want her husband to know. *Id*. ¶¶ 34-35. She identified her attacker as wearing a wedding ring and a blue flannel shirt. *Id*. ¶ 36. She identified the attacker as Beauchamp. *Id*. ¶ 37.

At some point on April 24, 1998, Milligan went to the Hamilton County Prosecutor and Hamilton County Circuit Court to seek filing charges against Beauchamp for the rape of Klingerman. *Id*. ¶ 195. When Milligan went to the Prosecutor's Office, he did not have a signed statement or affidavit from Klingerman stating that Beauchamp was the person who raped her. *Id*. ¶ 197. He also did not have a medical examiner's report on Klingerman. *Id*. ¶ 196. Milligan alone testified against Beauchamp in support of the request for a warrant to arrest him and to search his home. *Id*. ¶ 200. He testified that Klingerman had identified her attacker as Beauchamp. *Id*. ¶ 201. He also testified that the results of a polygraph examination that Klingerman took were that she was telling the truth as far as being attacked in her

[2] This revelation apparently came during an interview of Klingerman after she had just completed a polygraph examination.

apartment. *Id*. ¶ 202. The court found probable cause to issue an arrest warrant for Beauchamp on the charges of rape, battery, confinement, and invasion of privacy. *Id*. ¶ 39. It also found probable cause to issue a search warrant, and to secure items of hair samples and samples of semen, saliva, blood, or other bodily fluids needed to complete an Indiana State Police standard rape kit. *Id*. ¶¶ 40-41. It also found probable cause to enter Beauchamp's residence to search for a wedding band and a black ski mask. *Id*. ¶ 42.

At approximately 11:45 p.m. on April 24, 1998, Beauchamp was at home in bed. His wife was working on the computer, and his daughters and a friend were watching television. *Id*. ¶ 207. Beth Beauchamp heard the dogs barking, and she then saw several unmarked cars outside her window. *Id*. ¶ 208. This frightened her because it was after the Beauchamps had received some threats, and she felt there were people around the house. *Id*. ¶ 209. After going upstairs to tell Beauchamp that there were people there, she was coming downstairs when she saw the police. *Id*. ¶¶ 210-211. She saw Milligan on the porch with four or five other people. *Id*. ¶ 213. After he asked her if Beauchamp lived there, she asked him to see a search warrant. *Id*. ¶ 214. She then heard a deputy with a revolver say, "Are you Rick?" *Id*. ¶ 215. Police then told her to come the rest of the way down the stairs, and they pretty much physically pulled her down the stairs because she had asked them to see a search warrant or some type of legal reason why they were there. *Id*. ¶ 216. She then heard Milligan yelling at her to come down the stairs. *Id*. ¶ 217. She believes that Milligan went by her as a couple of other officers forced her to go into the dining room and sit down. *Id*. ¶ 218. There were between six and nine officers in the house. *Id*. ¶ 219. According to Beth Beauchamp, it was chaotic in the house that evening; it was "like a war zone." She was

being pushed from room to room, her kids were upset, and the dogs were barking. *Id*. ¶ 220. At some point, because she had not seen any legal papers justifying the police presence in her home, she got up to check on her kids because they were crying. *Id*. ¶ 224. Milligan then said to her, "If you would sit down and shut up we will read you what the charges are." Milligan was in her face, being rude, and threatening her like she was some kind of criminal. *Id*. ¶ 225.

That evening, Beauchamp was arrested and taken into custody. *Id*. ¶ 43. On May 4, 1998, the Hamilton County Superior Court held a hearing on the State's motion to revoke Beauchamp's bond. *Id*. ¶ 44. At the hearing, Klingerman testified that she was attacked and raped by Beauchamp. *Id*. ¶ 45. Milligan also testified. *Id*. ¶ 46. Beauchamp's attorney cross-examined both Klingerman and Milligan, and the presiding judge also asked questions. *Id*. ¶ 47. Beauchamp had the opportunity to present evidence, but offered none. *Id*. ¶ 48.

At the hearing, Klingerman testified that she was assaulted on April 15, 1998. *Id*. ¶ 49. She stated that she was at home and that her children were in their bedroom; that she had taken a shower; and that when she got out of the shower she noticed that the bedroom door was shut. *Id*. ¶¶ 50-52. She stated that she headed toward her living room and turned around to see why the children's door was shut when she was grabbed from behind. *Id*. ¶ 53. Klingerman testified that her attacker grabbed her neck, threw her down, and that she hit her head. *Id*. ¶ 54. She stated that when she tried get back up, her attacker straddled her, punched her in the eye, and said, "Bitch, you're gonna pay for what you did." *Id*. ¶ 55. She testified that her attacker then ripped open her dress. *Id*. ¶ 56. Although her attacker had on a ski mask,

Klingerman testified that she could identify him as a white male, and that she recognized Beauchamp's voice. *Id*. ¶¶ 57-58. She also testified that she recognized Beauchamp's blue eyes through the ski mask, and that the attacker had the same height and weight as Beauchamp. *Id*. ¶¶ 59-60. She testified that she struggled with Beauchamp. *Id*. ¶ 61.

On cross-examination, Klingerman testified that the deadbolt to her door was not locked. *Id*. ¶ 62. According to Klingerman, Beauchamp had previously followed her when she was taking her daughter to gymnastics. *Id*. ¶ 63. There were three different times that Beauchamp followed her, according to Klingerman, between the end of February and March, 1998. *Id*. ¶ 64. She testified that she actually saw him personally on two different occasions when he followed her. *Id*. ¶ 65. She also stated that there were marks on her chest and throat, depicted by photographs introduced into evidence at the hearing. *Id*. ¶ 66. The photographs were taken at Riverview Hospital, where she was examined on April 15, 1998. *Id*. ¶¶ 67, 72. She testified that there were scratches on her chest and on her breasts, and that Beauchamp had punched her in the eye. *Id*. ¶¶ 70, 73.

Milligan testified as follows: On April 17, 1998, he went to Klingerman's address and was able to open the door with a credit card; it was not dead bolted, but the lock on the door was easy to open. *Id*. ¶ 74. When he questioned Klingerman, she was as distraught as he had ever seen a woman in his 18 years as a police officer. *Id*. ¶ 75. Klingerman was in fear that her husband would take out revenge on Beauchamp, which is the reason she did not initially inform the police of the sexual assault. *Id*. ¶ 76.

The court granted the State's motion to revoke Beauchamp's bond. *Id*. ¶ 77. Beauchamp was incarcerated from April 24, 1998, to and including July 28, 1998, at the Hamilton County Jail. After Beauchamp's arrest on April 24, 1998, any further investigation by Milligan was at the direction of the Hamilton County Prosecutor or deputy prosecutors. *Id*. ¶ 79.

At some point, *The Ledger*, which is the local newspaper in Noblesville, Indiana, printed a story about Beauchamp that he claims was defamatory. Milligan did not provide any information to the *Noblesville Ledger* or to Curt Kinman ("Kinman") of the NPD regarding information that was published in newspaper articles regarding Beauchamp. *Id*. ¶ 80. Milligan did not participate in, assemble, or communicate any information to *The Ledger* in connection with any publication regarding Beauchamp. *Id*. ¶ 81.

II. STANDARDS

A. SUMMARY JUDGMENT STANDARDS

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *see United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 499 U.S. 923 (1991). Motions for summary judgment are governed by Rule 56(c) of the Federal Rules of Civil Procedure, which provides in relevant part:

The judgment sought shall be rendered forthwith 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.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials which "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). A genuine issue of material fact exists whenever "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies. *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive

law will preclude summary judgment. *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). "If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997).

B. SECTION 1983

Title 42 U.S.C. § 1983 creates a federal cause of action for "the deprivation, under color of [state] law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States." *Spiegel v. Rabinovitz*, 121 F.3d 251, 254 (7th Cir), *cert. denied*, 522 U.S. 998 (1997). Section 1983 is not itself a font for substantive rights; instead it acts as an instrument for vindicating federal rights conferred elsewhere. *Id*. Liability under § 1983 requires proof of two essential elements: that the conduct complained of (1) was committed by a person acting under color of state law; and (2) deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Larsen v. City of Beloit*, 130 F.3d 1278, 1282 (7th Cir. 1997). In this case, Beauchamp claims Defendants violated his rights under the Fourth Amendment to the United States Constitution by arresting him without probable cause. The Fourth Amendment requires that police have probable cause to believe that a person has committed or is committing a crime before making an arrest. *U.S. v. Scheets*, 188 F.3d 829, 836 (7th Cir. 1999), *cert. denied*, 528 U.S. 1096 (2000).

A municipality, such as the HCSD, cannot be held liable under § 1983 on a respondeat superior theory. *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001). Instead, to establish liability for the HCSD, Beauchamp must prove that: (1) he suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the City; which (3) was the proximate cause of his injury. *Ienco v. City of Chicago*, 2002 WL 548891, *3 (7th Cir. April 12, 2002) (citing *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-91(1978); *Frake v. City of Chicago*, 210 F.3d 779, 781 (7th Cir.2000)).

C. STATE LAW CLAIMS

1. False Arrest/False Imprisonment

To prevail on his state false arrest claim, Beauchamp has the burden of establishing that Milligan had no probable cause to arrest him, or that he did not act in good faith. *Garrett v. City of Bloomington*, 478 N.E.2d 89, 94 (Ind. Ct. App. 1985). A policeman is not liable for false arrest simply because the innocence of the suspect is later proved. *Id*. False imprisonment involves an unlawful restraint upon one's freedom of locomotion or the deprivation of liberty of another without his consent. *Dietz v. Finlay Fine Jewelry Corp*., 754 N.E.2d 958, 967 (Ind. Ct. App. 2001) (citing *Crase v. Highland Village Value Plus Pharmacy*, 374 N.E.2d 58, 60-61 (Ind. Ct. App. 1978)).

2. Defamation

Defamation consists of the following elements: (1) a communication with defamatory imputation, (2) malice, (3) publication, and (4) damages. *Dietz*, 754 N.E.2d at 968. A communication is defamatory

per se if it imputes criminal conduct. *Id*. Generally, the determination of whether a communication is defamatory is a question of law for the court. *Id*.

3. Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is committed by one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another. The intent to harm emotionally constitutes the basis of the tort. Thus, the elements of the tort are: a defendant (1) engages in extreme and outrageous conduct that (2) intentionally or recklessly (3) causes (4) severe emotional distress to another. The requirements to prove this tort are rigorous, and are only met where conduct exceeds all bounds usually tolerated by a decent society and causes mental distress of a very serious kind. *Branham v. Celadon Trucking Services, Inc.*, 744 N.E.2d 514, 522-523 (Ind. Ct. App. 2001) (citations omitted). With these standards in mind, the Court will now turn to Beauchamp's claims.

III. DISCUSSION

A. THE § 1983 INDIVIDUAL CAPACITY CLAIMS

Beauchamp's § 1983 claims are that Milligan twice arrested him without probable cause, thereby violating his Fourth Amendment rights. "Courts evaluate probable cause not on the facts as an omniscient observer would perceive them but on the facts as they would have appeared to a reasonable person in the position of the arresting officer – seeing what he saw, hearing what he heard." *Wollin v. Gondert*, 192 F.3d 616, 623 (7th Cir.1999) (internal citation and quotations omitted). Probable cause is an objective test, based upon "factual and practical considerations of everyday life on which reasonable and prudent

[people], not legal technicians, act." *Id*. (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)). This "flexible, commonsense approach" does not require that the officer's belief be correct or even more likely true than false, so long as it is reasonable. *Id*. (citing *Texas v. Brown*, 460 U.S. 730, 742 (1983)). It is well established that the totality of the circumstances establishes reasonableness or lack thereof. *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

1. <u>The Arrest for Attempted Residential Entry</u>

Beauchamp first claims that Milligan did not have probable cause to arrest him on the charge of Attempted Residential Entry. It is undisputed that in February of 1998, Klingerman called 911 and reported that a man was trying to break into her home. When Milligan responded to the call, Klingerman told him that a man was pounding on her door, asking if she was in there. She gave Milligan a physical description of the man, including the clothing he was wearing. Milligan also noticed pry marks on Klingerman's door. Klingerman told Milligan that Beauchamp had harassed her at work and had previously made sexual comments and advances toward her.

Armed with this information, Milligan went to Beauchamp's home, where he saw Beauchamp wearing the same clothing that Klingerman had described. Beauchamp allowed Milligan to record his voice for a voice line-up. Milligan then played for Klingerman a recording of Beauchamp's voice along with five other white males' voices, and Klingerman correctly identified Beauchamp's voice. Based upon this information, Milligan submitted a probable cause affidavit to the Hamilton County Superior Court for Beauchamp's arrest.

Beauchamp argues several reasons why Milligan had no probable cause to arrest him, none of which is compelling. First, he claims that Klingerman did not provide Milligan with enough information to support the charge of Attempted Residential Entry. The crime of Residential Entry is defined as follows:

> A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Class D felony.

Indiana Code § 35-43-2-1

In addition, a person "attempts" to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. Indiana Code § 35-41-5-1. A "substantial step" is any overt act beyond mere preparation and in furtherance of intent to commit an offense. *Hughes v. State*, 600 N.E.2d 130 (Ind. 1992). Beauchamp claims that Klingerman never told police that the man ever attempted to *enter* her residence. *Beauchamp's Reply Brief* at 7. Beauchamp ignores the facts, however, that a man, later identified as Beauchamp, was at her door asking if she was in there. Significantly, there were pry marks on the door of Klingerman's home. This is more than enough evidence to establish probable cause to believe that Beauchamp had taken a substantial step in his effort to break and enter Klingerman's home.

Beauchamp next argues that he was cooperative with Milligan in providing a voice sample, and that Milligan failed to otherwise consider allegedly exculpatory evidence Beauchamp wanted to provide. The fact that Beauchamp cooperated with police sheds no light whatsoever on the probable cause issue. In addition, once Milligan had probable cause to believe Beauchamp was the person at Klingerman's door,

he was under no obligation to further investigate Beauchamp's claims of innocence. "Many putative defendants protest their innocence, and it is not the responsibility of law enforcement officials to test such claims once probable cause has been established. Consequently, 'the law does not require that a police officer conduct an incredibly detailed investigation at the probable cause stage.'" *Spiegel v. Cortese*, 196 F.3d 717, 724-725 (7th Cir. 1999), *cert. denied*, 530 U.S. 1243 (2000) (quoting *Gerald M. v. Conneely*, 858 F.2d 378, 381 (7th Cir. 1988)).

Beauchamp further contends that because Klingerman told Milligan that Beauchamp had previously harassed her, Milligan should have realized that Klingerman had a "grudge" against Beauchamp and might attempt to fabricate something against him. Even if Milligan suspected Klingerman had a grudge against Beauchamp, that would not have precluded him from determining that probable cause existed to arrest him.[3] Indeed, "[n]othing suggests that a victim's report must be unfailingly consistent to provide probable cause. The credibility of a putative victim or witness is a question, not for police officers in the discharge of their considerable duties, but for the jury in a criminal trial . . . We refuse to require law enforcement officers to delay arresting a suspect until after they have conclusively resolved each and every inconsistency or contradiction in a victim's account." *Id*. at 725.

In sum, the Court concludes that Milligan had probable cause to arrest Beauchamp for Attempted Residential Entry. Klingerman's description of the clothing the perpetrator was wearing matched the

[3] The Court notes that a report from Klingerman that Beauchamp had previously harassed her could have actually supported a conclusion that probable cause existed for Beauchamp's arrest.

clothing Beauchamp was wearing that day, there were pry marks on Klingerman's door, and Klingerman identified Beauchamp's voice in a voice line-up. The existence of probable cause is fatal to Beauchamp's § 1983 claim with respect to his arrest for this particular crime. *See Potts v. City of Lafayette*, 121 F.3d 1106, 1113 (7th Cir. 1997) (the existence of probable cause for arrest is an absolute bar to a § 1983 claim for unlawful arrest). Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment on that claim.

2. <u>The Arrest for Rape and Other Charges</u>

Beauchamp next argues that Milligan had no probable cause to pursue his arrest for rape and other charges on April 24, 1998. Again, the undisputed facts are that on April 15, 1998, Klingerman reported to Milligan that she had been attacked inside her apartment by Beauchamp. She stated that she was able to identify the attacker as Beauchamp because she recognized his mannerisms, his voice, his blue eyes, and what he said to her, notwithstanding the fact that he was wearing a ski mask. Milligan interviewed Klingerman again two days later, and she gave him a more detailed explanation of how the attack occurred. She told him that the attacker said, "Bitch, you are going to die for what you did to me." Although Klingerman did not initially disclose it, she later reported to police that she had actually been raped during the attack. She stated that she had been bleeding vaginally since the attack, but had not told police because she did not want her husband to know. Based upon this information, Milligan testified at a probable cause hearing for the arrest of Beauchamp.

Beauchamp again offers several reasons why Milligan did not have probable cause to arrest him.

Prior to his arrest, Beauchamp told Dukette he would be interested in taking a polygraph examination regarding his relationship to Klingerman. He also gave Dukette a log that he had been keeping of his daily whereabouts, including his whereabouts on the date of the alleged attack. Because Milligan worked with Dukette on the investigation, Beauchamp concludes that there is a reasonable inference that Milligan had access to this log, and that he knew Beauchamp was willing to participate in a polygraph examination. According to Beauchamp, the existence of this allegedly exculpatory evidence should have alerted Milligan that he had no probable cause to arrest Beauchamp. As already discussed, however, because Milligan already had probable cause to arrest Beauchamp – based upon Klingerman's identification of him as the attacker – he was under no obligation to test Beauchamp's protestations of innocence. *Spiegel*, 196 F.3d at 724-725. Thus, the fact that Beauchamp was willing to submit to a polygraph examination and willing to produce a log of his whereabouts does not defeat a determination of probable cause.

Beauchamp also argues that Klingerman's responses in an April 24, 1998, polygraph examination negated any probable cause to arrest him. Beauchamp asserts that the polygraph examiner determined that Klingerman was truthful when she answered "yes" to questions about whether an "unknown" person attacked her and tore her dress. He also claims that the examiner concluded that Klingerman was untruthful when she answered "yes" to a question about whether she told the police everything about the attack on April 15, 1998. Despite the hearsay problems with this evidence, it does nothing to show that Klingerman was lying or that Milligan had no probable cause to believe Beauchamp was the attacker. Indeed, it is entirely possible that when Klingerman was attacked, she did not initially know the attacker. This would explain her response that someone "unknown" to her attacked her. It is undisputed, however, that based

upon the attacker's mannerisms, his voice, his blue eyes, and what he had said, Klingerman had identified the attacker as Beauchamp. Even if her testimony that the attacker was "unknown" could be construed as inconsistent with her reports to the police, that is insufficient to defeat the probable cause to arrest Beauchamp. Again, "[n]othing suggests that a victim's report must be unfailingly consistent to provide probable cause. The credibility of a putative victim or witness is a question, not for police officers in the discharge of their considerable duties, but for the jury in a criminal trial." *Id*. at 725. With respect to Klingerman's possibly not telling the police everything about the attack, she later explained that she initially did not disclose that she had been raped because she did not want her husband to know. Again, that does not cast any doubt upon her identification of Beauchamp as the attacker.[4]

Finally, Beauchamp argues that Klingerman never positively identified Beauchamp as her attacker until after he had been arrested. This simply is not the case. For example, Milligan testified at the probable cause hearing regarding his investigation of the attack on April 15, 1998:

> Q: And was she (Klingerman) able to identify the person that attacked her at that time?
>
> A: She identified the person as being Rick Beauchamp, the person whom she has a case currently against him on, but she also stated that he was wearing a ski mask at the time of the assault.
>
> Q: How was she able to identify him if he had a ski mask on?
>
> A: She was able to identify him through his mannerisms, his voice, his eyes, what he said to

[4] Beauchamp also contends that a polygraph examination conducted after his arrest shows that he was truthful in denying any involvement in the attack. The results of that examination, conducted *after* the probable cause determination had already been made, simply has no bearing on whether Milligan had probable cause to arrest Beauchamp.

> her. She had had previous knowledge and had been around Mr. Beauchamp quite a bit prior to –

Defendants' Ex. 3 at 4.

In addition, on or around April 17, 1998, which was prior to the probable cause hearing, Klingerman looked at Milligan directly in the eyes and told him that it was Beauchamp in a ski mask who attacked her. *Milligan Dep*. at 265-266. Finally, Milligan testified that on April 24, 1998, the day of the probable cause hearing, Klingerman told him that she was raped by Beauchamp. Klingerman later submitted a statement after the probable cause hearing, but it reflected what she had told Milligan *before* the hearing. *Milligan Aff*. ¶¶ 4-7. In that statement, Klingerman clearly stated that Beauchamp was the person who raped her. *Defendants' Exhibit 4-A*. Beauchamp offers no evidence to contradict what Klingerman told Milligan. Based upon this undisputed evidence, Milligan had probable cause to believe that Beauchamp was the person who attacked – or raped – Klingerman. Because probable cause existed, Beauchamp's arrest was lawful and his § 1983 claim fails. Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment on Beauchamp's § 1983 claim stemming from his arrest on April 24, 1998.

B. THE § 1983 OFFICIAL CAPACITY CLAIMS

Beauchamp also asserted claims against Milligan and Cook in their official capacities, which are really claims against the HCSD. Because the Court has concluded that there was probable cause for the arrests, however, Beauchamp's official capacity claims necessarily fail. This is because the first element

of such claims is that Beauchamp suffered a deprivation of a federal right. *See Ienco,* 2002 WL 548891 at *3. As a result, the Court **GRANTS** summary judgment for Defendants on the official capacity claims under § 1983.

C. THE STATE LAW CLAIMS

1. Defamation

Beauchamp alleges that an article published in the local newspaper in Noblesville, Indiana, defamed him. The problem with that claim, however, is that Beauchamp has provided no evidence whatsoever that Milligan or Cook provided any of the information for the article. Indeed, Beauchamp candidly admits the following: "Milligan claims he did not make or publish any false or defamatory statements, and did not give information to Kinman or *The Ledger* (Memo. pp. 32-33). There is no direct proof of that, true." *Plaintiffs' Response Brief* at 26. Beauchamp thus admits that there is no evidence that Milligan provided any information contained in the allegedly defamatory article. He has produced no evidence that Cook provided any such information, either. Instead, he invites the Court to infer that given Milligan's role in the assault-rape investigation, he must have caused the information to be published. Such an inference is unreasonable, however, and one that the Court is unwilling to make. As a result, Beauchamp's defamation claim fails as a matter of law, and the Court **GRANTS** Defendants' Motion for Summary Judgment on that claim.

2. False Arrest/False Imprisonment

To state a claim for false arrest, Beauchamp must show that Milligan had no probable cause to

arrest him, or that he did not act in good faith. *Garrett*, 478 N.E.2d at 94. As discussed above, both of Beauchamp's arrests were based upon probable cause. There is no evidence that Milligan did not act in good faith in believing that probable cause existed to arrest Beauchamp. Accordingly, Defendants are entitled to summary judgment on Beauchamp's false arrest claim. To the extent Beauchamp alleges a separate claim for false imprisonment, that claim similarly fails because there was probable cause to arrest Beauchamp. *See Roddel v. Town of Flora*, 580 N.E.2d 255, 259 (Ind. Ct. App. 1991) (where there was probable cause for plaintiff's arrest, he was not subjected to false imprisonment, as a matter of law). The Court also **GRANTS** summary judgment for Defendants on these claims.

3. Intentional Infliction of Emotional Distress

Finally, the Beauchamps assert claims for intentional infliction of emotional distress. In support of these claims, they argue that the circumstances surrounding the investigation, arrest, and prosecution of Beauchamp amounted to outrageous conduct. They also point out that the police went to their home to arrest Beauchamp on April 24, 1998 – when they knew he had an attorney whom they could have called to seek a surrender – and that they were rude to Beth Beauchamp during that particular arrest. The Beauchamps also claim that the article in *The Ledger* caused them severe emotional distress, although there is no evidence that either Milligan or Cook was responsible for its publication. Even viewing all of these facts in a light most favorable to the Beauchamps, they simply are insufficient to meet the stringent standards for the tort of intentional infliction of emotional distress.

This particular tort was first recognized by the Indiana Supreme Court in *Cullison v. Medley*, 570

N.E.2d 27 (Ind.1991). The court stated that "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress." *Id*. at 31 (citations omitted). Conduct will satisfy this requirement:

> only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'

Bradley v. *Hall*, 720 N.E.2d 747, 752-753 (Ind. Ct. App. 1999) (quoting Restatement (Second) of Torts § 46).

Liability for this tort will not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Gable v*. *Curtis*, 673 N.E.2d 805, 809 (Ind. Ct. App. 1996). Indiana courts have also referred to this tort as the tort of outrage. *Doe v*. *Methodist Hosp*., 690 N.E.2d 681, 691 (Ind. 1997). The tort contains "stringent" proof requirements: "To establish liability for outrage, a plaintiff must prove that a defendant (1) engaged in 'extreme and outrageous' conduct that (2) intentionally or recklessly (3) caused (4) severe emotional distress." *Id*. (citations omitted).

In *Cullison*, the Indiana Supreme Court held that although the tort may be appropriate "under proper circumstances," under the facts of that case, in which the defendants had broken into the plaintiff's

home, yelled angrily at him, and threatened him with a gun (knowing, the plaintiff alleged, that he had a fear of guns), the court nevertheless upheld the entry of summary judgment in favor of the defendants on that claim. *Cullison*, 570 N.E.2d at 31. Since *Cullison*, Indiana courts have been reluctant to recognize the tort of intentional infliction of emotional distress.

In this case, Milligan's conduct simply does not rise to the level of "outrageous." Indeed, Milligan's actions seem to be less extreme than breaking into someone's house and threatening them with a gun, as was the case in *Cullison*. With no evidence of outrageous conduct, the Beauchamps' claims for intentional infliction of emotional distress fails as a matter of law, and the Court **GRANTS** summary judgment in favor of Defendants.[5]

IV. CONCLUSION

Plaintiffs have failed to present sufficient evidence from which the Court could find a genuine issue of material fact on their claims under federal and Indiana law. Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment in its entirety. Defendants' Motion to Strike Certain Evidentiary Submissions is **DENIED** as moot.

IT IS SO ORDERED this _____ day of May, 2002.

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[5] The Court notes that the parties disagreed about whether the state law claims could be brought against Milligan and Cook individually, or only against the HCSD. Because there is no evidence of the underlying state law torts, however, that issue becomes moot and the Court need not discuss it.

LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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