

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO.3:98CV-260-H

RUTH ANN WUERTH TRIMBUR

PLAINTIFF

V.

KENTUCKY LOTTERY CORP., *et al.*

DEFENDANTS

MEMORANDUM OPINION

Plaintiff Ruth Ann Wuerth Trimbur has brought a number of tort and civil rights claims against Kentucky Lottery Corporation, Rite Aid Corporation, Rite Aid of Kentucky, Inc., one unnamed and two named Jefferson County Police officers and the Jefferson County Judge/Executive. The police officers and the county judge/executive (“Defendants”) have moved for summary judgment on the claims arising under 42 U.S.C. § 1983 for false arrest, false imprisonment, malicious prosecution, unlawful search and seizure, and the state law claims of assault and battery, and negligent and/or intentional infliction of emotional distress.

I.

On or about March 8, 1997, Plaintiff purchased from a Rite-Aid drugstore in Louisville, Kentucky at least two lottery tickets produced by the Kentucky Lottery Corporation. These tickets were scratch-off, instant win lottery tickets called “9’s-in-a-Line,” and were numbered 32-002691-4-200 and 32-002691-4-201.¹ The next day, numerous lottery tickets were stolen

¹As Plaintiff explains in her complaint, “instant lottery” tickets are “pre-printed, cardboard lottery ticket[s] with a latex or other opaque coating over a small area on the face of the ticket that must be scratched off to reveal numbers or symbols that, when matched in accord with the rules for a particular game may be redeemed by the holder of the ticket for the “prize” indicated on the face of the ticket.” *See* Complaint, ¶ 14.

from the same Rite Aid store. According to the Plaintiff's complaint, on March 10, 1997, a person believed to be a Rite-Aid employee informed the Kentucky Lottery Corporation of the theft, and reported that the stolen tickets included "9's-in-a-Line" tickets numbered 32-002691-4-200 and 32-002691-4-201.

On Tuesday, April 29, 1997, unaware of the lottery ticket theft, Plaintiff redeemed her two scratch off lottery tickets for \$3.00 at The Party Mart store on Brownsboro Road in Louisville. When the store clerk electronically scanned Plaintiff's tickets, the Kentucky Lottery's computer system indicated Plaintiff's tickets were stolen. The Kentucky Lottery Corporation then notified police and directed them to arrest plaintiff. Officers named in the Plaintiff's Complaint, Officer J. Johnson and Officer J. Reffett, and an unnamed officer arrived at the Party Mart shortly after Plaintiff redeemed her tickets, and they arrested her. Plaintiff was charged with Criminal Possession of a Forged Instrument (Second Degree), Disorderly Conduct, and Resisting Arrest.

The officers handcuffed Plaintiff with her hands behind her back. An unnamed female officer frisked the Plaintiff and seated her in the back of a police cruiser. The officers then searched Plaintiff's purse by spreading its contents on the hood of a second police cruiser. Plaintiff, who allegedly has a history of heart problems, complained to the officers that she was experiencing a racing heartbeat and pounding in her chest. She alleges that none of the officers took action to alleviate her discomfort. Later, the police removed Plaintiff from the cruiser and placed her in a paddy wagon. She was taken to the Jefferson County Jail, where she was detained until 2:00 a.m., April 30, 1997. She pled "not guilty" on all counts. Plaintiff alleges in her complaint that all of the events involving the police officers took place without probable

cause. On May 20, 1997, three weeks after her arrest, all charges were dismissed and no other criminal proceedings are pending against Plaintiff. At that dismissal proceeding, Plaintiff stipulated to probable cause for her arrest.

II.

Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P.56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The court must view “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” in the light most favorable to the non-movant. *Id.* The Court may treat a motion to dismiss under Rule 12(b)(6) as a motion for summary judgment when matters outside the pleadings are presented to and considered by the Court. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir.1986) (per curiam). The parties, however, must be afforded a “reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Fed.R.Civ.P. 12(b). *See Friedman v. United States*, 927 F.2d 259, 261 (6th Cir. 1991).

To succeed on her § 1983 claim, Plaintiff must show that she has been deprived of a “right secured by the Constitution and laws of the United States, the deprivation was caused by a person acting under color of state law, and the deprivation occurred without due process of law.” *Dean v. Earle*, 866 F.Supp. 336, 339 (W.D. Ky. 1994) (citing *O’Brien v. City of Grand Rapids*, 23 F.3d 990, 995 (6th Cir. 1994)). Under Kentucky law, false arrest, false imprisonment, and assault and battery associated with these claims are dealt with under a fairly simple analysis. *Lexington-Fayette Urban County Gov’t v. Middleton*, 555 S.W.2d 613, 617-18 (Ky. 1977).

The police must show that they had reasonable grounds to believe and in good faith believed that

the arrestee was committing a crime in their presence, and that the officer used no more force than necessary to affect the arrest. *Id.* at 617.

Plaintiff alleges that the county police who arrested her lacked probable cause to make the arrest. Here, the County Defendants have presented as evidence to support their motion transcripts of the proceeding in which charges against Plaintiff were dismissed. The transcript is offered to show Plaintiff stipulated to probable cause. Plaintiff counters with legal arguments that require the court to ignore the stipulation all together to create a material issue of fact, or to view Plaintiff's stipulation to probable cause as a "release-dismissal agreement."

Rather than concentrate its analysis on Plaintiff's stipulation to probable cause, the Court will consider the undisputed facts relating to her arrest, and how those facts relate to the question of probable cause.² A warrantless arrest must be supported by probable cause to be reasonable under the Fourth Amendment. "Probable cause to make an arrest exists if the facts and circumstances within the arresting officer's knowledge 'were sufficient to warrant a prudent man in believing that the [arrestee] had committed or was committing an offense.'" *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)); *see also*, *Donovan v. Thames*, 105 F.3d 291, 298 (6th Cir. 1997); *United States v. Dotson*, 49 F.3d 227, 229 (6th Cir. 1995).

It is undisputed that the police arrested Plaintiff because an unbroken chain of facts and

²The Defendants make a strong argument that because Plaintiff stipulated to probable cause at the hearing where the charges against her were dismissed, she cannot now dispute a finding of probable cause. *See Broaddus v. Campbell*, 911 S.W.2d 281, 284 (Ky. Ct. App. 1995). The Plaintiff counters that her stipulation does not allow for a finding of probable cause as a matter of law. Instead, Plaintiff cites authority for the notion that she cannot be precluded from relitigating the probable cause issue because it was not truly litigated before. The Defendants did not raise a preclusion argument, but instead offered the stipulation for what it is--an admission by Plaintiff that resolves the dispute. The Court does not reach this question, but merely expresses here its belief that the Defendants would likely win this argument.

logical inferences pointed to her as a likely suspect in the theft of the subject lottery tickets. According to the pleadings, employees of the Rite Aid store from where the tickets were stolen reported the theft to the Kentucky Lottery. When the allegedly stolen tickets were scanned at the Party Mart, employees there notified Kentucky Lottery, who in turn notified the police. Having neither witnessed the theft nor investigated it independently, the police could only rely on the information provided to them by the Kentucky Lottery Corporation and the people at the Party Mart. That this information was flawed was not the fault of the police, and no further investigation at the scene would have cleared up the misinformation. “The Constitution does not guarantee that only the guilty will be arrested.” *Baker v. McCollan*, 443 U.S. 137, 145 (1979). The facts and circumstances as outlined in the pleadings indicate that a prudent person with the arresting officers’ knowledge could reasonably believe that Plaintiff had committed the theft of the lottery tickets in this case, and thus, had probable cause to arrest her. Furthermore, though the Court certainly does not doubt the discomfort and humiliation Plaintiff suffered during this ordeal, nothing in the pleadings indicates the force used by the police during the arrest was excessive.

III.

The remaining questions now are to what extent a finding of probable cause results in dismissal of Plaintiff’s claims against the County defendants. First, the Court notes that Plaintiff has not pled facts to support claims that her First, Fifth, and Eighth Amendment rights have been harmed. Those claims shall be dismissed. Her federal claims for false arrest, false imprisonment, unlawful search and malicious prosecution fail because they rest on her ability to prove the police lacked probable cause to arrest her. Her similar state law claims likewise fail.

This leaves her state claim of negligent and/or intentional infliction of emotional distress. Kentucky has adopted Section 46 of the Restatement (Second) of Torts, “Outrageous Conduct Causing Severe Emotional Distress.” The Plaintiff must meet a very stringent test to prove the tort of outrage. In *Craft v. Rice*, 671 S.W.2d 247, 249 (1984), the Kentucky Supreme Court stated that the alleged wrongdoing must be intentional or reckless, the conduct “must be outrageous and intolerable” by offending “generally accepted standards of decency and morality,” the wrongful conduct must have caused the emotional harm, and the emotional harm must be severe. Having found that the police officers’ actions were supported by probable cause, the Court must logically conclude that they were reasonable, certainly not reckless nor intended to cause Plaintiff emotional harm, and were not outrageous. Thus her claim for intentional infliction of emotional distress will be dismissed.

A claim for negligent infliction of emotional distress is essentially a negligence claim asserting a particular kind of harm. It is available to Plaintiff if she shows the defendants unintentionally caused emotional distress to her that resulted in illness or bodily harm, but only if the police “should have realized that [their] conduct involved an unreasonable risk of causing the distress” and “from facts known to [them] should have realized that the distress . . . might result in illness or bodily harm.” RESTATEMENT (SECOND) OF TORTS § 313. Nothing in the pleadings indicates that the police had any awareness or should have known that their arrest would have resulted emotional distress that in turn would result in bodily harm to Plaintiff.

Plaintiff has not made any argument or provided any evidence that further discovery in this case will reveal a genuine issue of material fact. See *Chilingirian v. Boris*, 882 F.2d 200, 203 (6th Cir. 1989). Her response to the motion for summary judgement, in fact, focused solely

on the legal arguments surrounding the stipulation to probable cause. The Court, therefore, sees no reason to retain Plaintiff's claims against the police officers in this case. Her claims against the County Judge/Executive shall also be dismissed because they derive from the claims against the police.

The Court will enter an Order consistent with this Memorandum Opinion.

JOHN G. HEYBURN, II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

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ORDER

Having considered the Motion for Summary Judgment made by Defendants Officer J. Johnson, Officer J. Reffett, one unnamed police officer, the Jefferson County Judge/Executive, and the Jefferson County Police Department, and having reviewed the record and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendants' motion for summary judgment be and hereby is SUSTAINED, and Plaintiff's Claims against defendants Officer J. Johnson, Officer J. Reffett, one unnamed police officer, the Jefferson County Judge/Executive, and the Jefferson County Police Department are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the remaining claims against Rite Aid Corporation, Rite Aid of Kentucky, Inc., and Kentucky Lottery Corporation.

This _____ day of April, 1999.

JOHN G. HEYBURN, II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record