UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CYNTHIA SPOON, et al	*	CIVIL ACTION
VS.	*	
BAYOU BRIDGE PIPELINE, LLC, et al	*	NO. 3:19-CV-00516-SDD-EWD

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MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Deputies Sharay Arabie, Stacey Blanchard, Troy Dupuis, Gabe Gauthier, Waversun Guidry, Norris Huval, and Chris Martin (the "Deputies") are entitled to summary judgment, both on grounds of qualified immunity and also on the merits for a lack of causation. Plaintiffs' claims arise from their arrests, but Plaintiffs were arrested by officers of a separate state agency, not by the Deputies. None of the Deputies were even present when Plaintiffs were arrested. None of the Deputies violated any Plaintiff's constitutional rights, and all Deputies who had any involvement at all acted reasonably. No Deputy violated any Plaintiff's constitutional rights because their involvement was merely to arrange for and transport Plaintiffs to jail after the arrests. The Deputies acted reasonably because no law required them to second-guess the arresting officers to determine whether there was probable cause for the arrests. Further, the Deputies did not cause any of Plaintiffs' alleged injuries if they did not arrest any Plaintiff.

Former Sheriff Ronald Theriot is also entitled to dismissal on qualified immunity because none of his Deputies acted improperly, and there is no evidence that he had a policy that resulted in the violation of any Plaintiff's constitutional rights, or that he ratified any such violation. Like the Deputies, he did not cause the Plaintiff's alleged injuries.

FACTUAL BACKGROUND

This is a suit for false arrest. On August 9, 2018, Plaintiffs and a journalist, Karen Savage, paddled small boats to a Bayou Bridge Pipeline (the "Pipeline") construction site in the Atchafalaya Basin to protest the construction. Plaintiffs' Amended Complaint, R. Doc. 28 at ¶¶ 35-36. Savage exited onto the bank so that she could document the events. *Id*.

Plaintiffs encountered a barge carrying supplies to the site. R. Doc. 28 at ¶ 37. They were eventually arrested by off-duty officers of the Louisiana Department of Probation and Parole ("P&P") who witnessed the incident. R. Doc. 28, ¶¶ 42 – 47; Exhibit A, Adams deposition excerpts, at 67:18-68:23. Savage captured the incident on video, screen shots of which appear in the Amended Complaint.[1]

After the Plaintiffs had been arrested, off-duty Deputies Gauthier and Dupuis arrived and called for transportation of Plaintiffs to the St. Martin Parish jail. R. Doc. 28 at ¶¶ 51 and 53. Neither Deputy witnessed the arrests. Exhibits B and C. Deputy Huval (on-duty) was summoned to provide water transport back to the boat landing. Exhibit D. Deputies Arabie and Martin (both on-duty) provided ground transport from the boat landing to the jail. Exhibits E and F. Deputies Blanchard and Guidry (both off-duty) were working other areas of the Pipeline and had no involvement with these arrests. Exhibits G and H. As Plaintiffs Spoon and Cook-Phillips testified, Plaintiffs were aware that no Deputy was present for their arrests. Exhibit I at 211:2-21; Exhibit J at 195:23-196:22.

[1] From the video and the accounts of the Probation and Parole officers, it is apparent that Plaintiffs positioned their boats to obstruct the travel of the barge to the work site. Exhibit A at 67:12-19. Plaintiffs were asked to move but they refused. They ultimately made a stand in front of the barge within the Pipeline right-of-way. *Id*. and 68:14-18. However, the grounds for the arrests are immaterial for the present Motion. Unfortunately, the video has been produced by Plaintiffs in segments, with portions of the encounter apparently edited out.

Plaintiffs were taken to the St. Martin Parish jail as required under La. C.Cr.P. Art. 228. R. Doc. 28 at ¶ 58. They were all released on bond later that day. *Id*. at ¶ 62. The St. Martin Parish District Attorney declined to prosecute Plaintiffs and all charges were dropped. Exhibit I at 129:25-130:8.

LAW AND ARGUMENT

Plaintiffs filed this suit against defendants including Sheriff Theriot, the owner of the Pipeline (Bayou Bridge Pipeline LLC ("BBP")), BBP's security contractor HUB Enterprises, Inc. ("HUB"), and the P&P officers, before amending to name the Deputies. Plaintiffs allege that "defendants" formed a "coordinated plan" to "silence the growing dissent" about the Pipeline by "mak[ing] felony arrests of protesters" under the direction of BBP and HUB. R. Doc. 28 at ¶¶ 30-33. Plaintiffs alleged that their "felony arrests" were without probable cause and in retaliation for exercising their First Amendment rights. *Id*. at ¶¶ 1, 54, 61, 69, and 74. They claim:

a. false arrest and imprisonment in violation of the Fourth and Fourteenth Amendments of the United States Constitution (*id*. at ¶ 69),

b. failure to intervene to prevent unlawful arrests (id. at ¶ 72),

c. retaliation for exercise of First Amendment rights (*id*. at ¶ 74),

d. *Monell* liability against Sheriff Theriot (*id*. at ¶ 77),

e. violations of Louisiana Constitution Art. I, Sec. 7 (free expression) (*id*. at, ¶ 86),

f. violations of Article I, Sec. 5 (privacy) and Article I, Sec. 13 (informed of charges) of Louisiana's Constitution (*id*. at ¶ 89), and

g. intentional infliction of emotional distress, assault, battery, and false imprisonment (*id*. at ¶ 92).

I. Legal standards for Motions for Summary Judgment.

On summary judgment, the mover can meet his burden by pointing out the absence of evidence supporting the nonmoving party's case. *Malacara v. Garber*, 353 F.3d 393, 404 (5 Cir.

2003). The non-moving party must then go beyond the pleadings and show that there is a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-moving party must submit "significant probative evidence" to support her claim. *State Farm Life Ins. Co. v. Gutterman,* 896 F.2d 116, 118 (5 Cir. 1990). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson,* 477 U.S. at 249-250. (internal citations omitted).

II. Under qualified immunity, an officer must be dismissed unless the plaintiff shows that the officer violated the plaintiff's constitutional rights and that the officer's actions were objectively unreasonable in light of clearly established law.

Qualified immunity is an immunity from having to stand trial rather than merely a defense to monetary liability. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Thus, it is important to resolve qualified immunity as early as possible. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Qualified immunity claims should be addressed separately for each defendant. *Westfall v. Luna,* 903 F.3d 534, 549 (5th Cir. 2018).

Under the qualified immunity analysis, the Court determines whether the defendant violated the plaintiff's constitutional rights, and whether the defendant's actions were objectively unreasonable in light of clearly established law at the time of the subject incident. *Freeman v. Gore*, 483 F.3d 404, 410–11 (5th Cir. 2007). If the answer to either question is "no," the defendant is entitled to qualified immunity. *Id*. The defendant need only plead qualified immunity; once raised, the plaintiff bears the burden to prove that qualified immunity does not apply. *Est. of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 380 (5th Cir. 2005).

An officer's actions are objectively reasonable unless *all* reasonable officers in the defendant's position would have known that their conduct violates federal law. *White v. Taylor,* 959 F.2d 539, 544 (5 Cir. 1992). Thus, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs,* 475 U.S. 335, 341 (1986). The law is

"clearly established" only if it is clear "in light of the specific context of the case." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). "The contours of the right [that the officer allegedly violated] must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640.

III. The Deputies are entitled to qualified immunity on all of Plaintiffs' claims because no Deputy violated any Plaintiff's constitutional rights, nor were any Deputy's actions objectively unreasonable.

The central problem with Plaintiffs' claims is that they are all based on Plaintiffs' arrests, but no Deputy was present for or participated in those arrests. Rather, the Deputies either arrived after the arrests to transport Plaintiffs to jail, or had no involvement at all. Thus, the Deputies did not violate Plaintiffs' constitutional rights. The Deputies' actions were not unreasonable because no law required them to second-guess the arresting officers as to whether probable cause existed. Thus, the Deputies are entitled to qualified immunity. Each claim is analyzed in turn.

A. The Deputies are entitled to qualified immunity on Plaintiffs' false arrest/imprisonment claim.

The Deputies did not arrest any Plaintiff and were not present for the arrests. Thus, the Deputies could not have violated Plaintiffs' constitutional rights by falsely arresting them.[2] Further, the Deputies were not required to independently examine the probable cause for the arrests by others. The Deputies are entitled to qualified immunity on Plaintiffs' false arrest/imprisonment claim.

[2] Although Plaintiffs styled their claim as one for false detention, arrest, and imprisonment, it is actually a claim for only false arrest because false arrest and false imprisonment are "'virtually synonymous.'" *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 n. 2 (2019). "'If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment….'" *Wallace v. Kato*, 549 U.S. 384, 390 (2007). Any false imprisonment claim does not apply here because Plaintiffs were promptly released on bail the same day as their arrests (R. Doc. 28 at ¶ 62), and then the charges were dropped. Exhibit I at 129:25-130:8. Thus, they were never detained past the "process or arraignment" stage.

1. Plaintiffs' false arrest claim cannot survive a qualified immunity analysis because no Deputy arrested any Plaintiff, and thus no Deputy violated any Plaintiff's constitutional rights.

No Deputy falsely arrested any Plaintiff in violation of the Constitution because no Deputy arrested any Plaintiff. A Fourth Amendment false arrest claim requires (1) the plaintiff to be arrested (2) without probable cause. *Rhodes v. Prince*, 360 Fed. Appx. 555, 558-559 (5th Cir. 2010), *citing Haggerty v. Tex. S. Univ.*, 391 F.3d 653, 655–56 (5th Cir. 2004). The Deputies are entitled to qualified immunity on this claim because the arrests were made by P&P officers rather than any Deputy. That is undisputed because Plaintiffs alleged that the P&P officers arrested them. R Doc. 28 at ¶¶ 42-47. Each Deputy's affidavit verifies that he or she was not present when the arrests were made. Exhibits B to H. P&P officer Angela Adams indicated that the Deputies arrived after Plaintiffs were arrested.[3] Plaintiffs Spoon and Cook-Phillips also admitted that no Deputy was present for the arrests, and that the first Deputy did not arrive until approximately fifteen minutes after the arrests.[4] Thus, no Deputy violated any Plaintiff's constitutional rights by falsely arresting them because no Deputy made an arrest in the first place.

Although Plaintiffs' Amended Complaint alleges an "initial detention" as if to imply that Plaintiffs were actually arrested when the Deputies transported them to the jail (R. Doc. 28 at ¶ 53), that is wrong because "initial detention" describes a brief restraint such as an investigatory stop or when a person is kept from his vehicle while it is searched. *See U.S. v. Landry*, 903 F.2d

[3] *See* Exhibit A at 66:25-72:3, explaining that the P&P officers arrested Plaintiffs before St. Martin Sheriff personnel arrived to transport Plaintiffs to jail.

[4] *See* Exhibit I at 93:8-96:17 and 101:18-19, where Spoon explained that a St. Martin Parish deputy arrived approximately fifteen minutes after the arrests, and 211:2-21, where Spoon confirmed that the arrests had been made before any Deputy arrived, and that no Deputy witnessed the arrests. *See also* Exhibit J at 78:8-82:6, where Plaintiff Cook-Phillips' narrative of events states that the St. Martin Deputies arrived after the arrests, and 196:1-11, where Cook-Phillips stated that no Deputy appeared until sometime after they were taken into custody and did not feel free to leave. The other Plaintiff (Eric Moll) also acknowledged that no Deputy was present for the arrests, but the transcript of his deposition was not available before this Motion was filed.

334, 337 (5th Cir. 1990) (investigatory stop and keeping suspect from entering vehicle was "initial detention"), *and State v. Wimberly*, 95-1445 (La. App. 4 Cir. 7/24/96), 678 So. 2d 577, 578-579, *writ denied* ("initial detention" was merely an initial stop). But an "arrest occurs when there is an actual restraint of the person…and the circumstances indicate an intent to effect an extended restraint on the liberty of the accused." *Wimberly*, 678 So. 2d at 579, *citing* La. C.Cr.P. Art. 201. Under that article, an arrest is defined as "*taking*" a person into custody as opposed to the continued custody once taken. A "prime characteristic" of an arrest is "whether, under the totality of the circumstances, a reasonable person would not consider himself or herself free to leave." *State v. Fisher*, 97-1133 (La. 9/9/98), 720 So. 2d 1179, 1183.

It is clear that the P&P officers arrested Plaintiffs Spoon and Cook-Phillips because Plaintiffs allege that the P&P officers handcuffed or tied their hands, dragged them out of their canoe and into a P&P fan boat, and dragged them to the bank to where they were forced to await transport to jail. R. Doc. 28 at ¶¶ 42-46. Wrestling a person and handcuffing him are hallmarks of an arrest. *Fisher*, 720 So. 2d at 1183; *State v. Lassere*, 95-1009 (La. App. 5 Cir. 10/1/96), 683 So. 2d 812, 818, *writ denied.* Plaintiffs even characterized these as "arrests." *Id*. at ¶ 46. Plaintiff Cook-Phillips agreed that she was not free to leave after the P&P officers restrained her but before any Deputy arrived. Exhibit J at 196:1-11. Moll was also arrested by P&P officers because Plaintiffs allege that he was knocked to the ground, handcuffed, dragged onto a fan boat, then brought to join Spoon and Cook-Phillips in waiting for transportation to jail. R. Doc. 28 at ¶ 46. P&P officer Adams agreed that Plaintiffs were arrested when the P&P officers placed "cuffs" on Plaintiffs. Exhibit A at 71:9-19. Although the Deputies transported Plaintiffs to the jail, a P&P officer accompanied them and booked Plaintiffs. *Id*. at 72:12-73:5. Those were arrests because no reasonable person would believe that he or she was free to leave after the P&P officers' actions.

No Deputy arrested any Plaintiff here because all Plaintiffs were already under arrest when the Deputies arrived. The Deputies are entitled to qualified immunity on Plaintiffs' false arrest claim because no Deputy violated any Plaintiff's constitutional rights with regard to that claim.

2. Plaintiffs' false arrest/imprisonment claim also fails the qualified immunity analysis because no established law required the Deputies to conduct a probable cause inquiry after Plaintiffs' arrests; to the contrary, they could assume that the arrests were lawful.

The Deputies are also entitled to qualified immunity on Plaintiffs' false arrest/imprisonment claim because no clearly established law requires officers who arrive after an arrest to conduct a separate analysis to determine whether the arresting officers had probable cause to make the arrests. Plaintiffs did not specify how the Deputies are responsible for falsely arresting them when the Deputies did not arrest Plaintiffs, but based on the allegation that their arrests were without probable cause, it seems that Plaintiffs may argue that the Deputies had a duty to determine whether there was probable cause for Plaintiffs' arrests before taking them to jail. That would be wrong because no law required the Deputies to second-guess their colleagues; to the contrary, they were entitled to assume that the P&P officers followed proper procedures. In *White v. Pauly*, 137 S. Ct. 548 (2017), several officers identified themselves as officers before entering the home of two armed suspects. A late-arriving officer then shot a suspect without identifying himself as an officer. The late-arriving officer was entitled to qualified immunity because

> Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers.

Id. at 552. Thus, a late-arriving officer can assume that earlier officers followed proper procedures.

The court in *Lincoln v. City of Colleyville, Texas*, 4:15-CV-819-A, 2017 WL 222051 (N.D. Tex. Jan. 17, 2017), *aff'd sub nom. on other grounds*, 887 F.3d 190 (5th Cir. 2018), held that late-

arriving Officer Scott, who merely transported a detained witness to the police station, was entitled to qualified immunity from the plaintiff's false arrest allegation because Officer Scott was "entitled to believe that there was probable cause to detain" the witness. *Id*. at 3. Citing *White*, the court reasoned that "[o]fficers arriving late to a scene take it as they find it…they are entitled to assume that proper procedures have been followed and they are not required to second guess what has earlier transpired." *Id*.

Similarly, the Deputies who arrived late and transported Plaintiffs to jail acted reasonably because no law required them to second-guess the P&P officers as to whether they had probable cause to arrest Plaintiffs before transporting them to jail. Rather, the Deputies were entitled to "take the scene as they found it" by assuming that the P&P officers arrested Plaintiffs with probable cause. Thus, the Deputies' actions were objectively reasonable under established law.

The Deputies' only other option would have been to refuse to transport Plaintiffs to jail, but no law required that. To the contrary, an arrestee must be promptly taken to the nearest jail to be booked under Louisiana law. La. C.Cr.P. Art. 228(A). When the P&P officers arrested Plaintiffs, they *had* to be transported to the jail. The transport was not a violation of any constitutional right because no court has previously held that deputies or officers must independently satisfy themselves that probable cause is present before transporting arrestees to jail as Louisiana law requires.

Thus, Plaintiffs' false arrest/imprisonment claim should be dismissed against the Deputies because they enjoy qualified immunity from that claim. The Deputies did not arrest any Plaintiff, and their actions were objectively reasonable because there was no need for them to conduct their own probable cause analysis merely to transport Plaintiffs to jail as required under Louisiana law.

B. The Deputies are entitled to qualified immunity on Plaintiffs' failure to intervene/bystander liability claim because the Deputies were not present when Plaintiffs were arrested, and thus they had no duty to intervene.

The fact that no Deputy was present when Plaintiffs were arrested entitles the Deputies to qualified immunity on Plaintiffs' bystander liability claims because an officer cannot be liable for failing to intervene to prevent a constitutional rights violation if the officer is not present when the alleged violation occurs. Bystander liability may be imposed on "an officer who is present at the scene and does not take reasonable measures to protect a suspect from another officer's [constitutional violations]." *Hale v. Townley*, 45 F.3d 914, 919 (5th Cir. 1995). But bystander liability "will not attach where an officer is not present at the scene of the constitutional violation." *Whitley v. Hanna*, 726 F.3d 631, 646 (5th Cir. 2013). In *Westfall v. Luna*, 903 F.3d 534, 547 (5th Cir. 2018), the Court held that officers Melton and Robertson were not liable for failing to intervene to prevent an arrest without probable cause because they arrived on the scene after the arrest and thus could not have intervened.

In the present case, the Deputies are entitled to qualified immunity on Plaintiffs' bystander liability claim because none were present when Plaintiffs were arrested, and thus none could have prevented any constitutional rights violation arising from those arrests. Again, the evidence shows that only two Deputies arrived at the scene about fifteen minutes after the arrests. *See* § III(A)(1), above. Although Plaintiffs alleged that Deputies Blanchard and Guidry were present when Plaintiffs were arrested (R. Doc. 28 at ¶ 55), there has never been any evidence to support that claim. See Exhibits G and H. All of the Deputies are entitled to qualified immunity on Plaintiffs' bystander liability claim because no Deputy was present for the arrests, and thus no Deputy could have stopped any alleged violation of Plaintiffs' constitutional rights.

The Deputies also acted reasonably in transporting Plaintiffs to the jail after their arrests because, again, no law required the Deputies to second-guess whether the arresting officers had

probable cause to arrest Plaintiffs, and the law required that Plaintiffs be taken to jail. Thus, the Deputies are entitled to qualified immunity on Plaintiffs' bystander liability claim.

C. The Deputies are entitled to qualified immunity on Plaintiffs' retaliatory arrest claim because the Deputies could not have violated Plaintiffs' constitutional rights by arresting Plaintiffs in retaliation for protesting if the Deputies did not arrest Plaintiffs.

The Deputies are entitled to qualified immunity on Plaintiffs' retaliatory arrest claim because, again, they did not arrest any of the Plaintiffs, and thus no Deputy violated Plaintiffs' First Amendment rights. A claim for First Amendment retaliation requires the plaintiff to show that (1) he or she was "engaged in constitutionally protected activity," (2) the defendant's actions caused the plaintiff to "suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity," and (3) the defendant's actions were "substantially motivated against [the plaintiff's] exercise of constitutionally protected conduct." *Villarreal v. City of Laredo, Texas*, 17 F.4th 532, 542 (5th Cir. 2021). Furthermore, within the Fifth Circuit, a retaliation claim requires an allegation that the plaintiff has curtailed her own exercise of free speech. *Id.*

The Deputies did not retaliate against Plaintiffs by arresting them because, again, no Deputy arrested any Plaintiff. No Deputy could have known whether Plaintiffs were even engaged in constitutionally-protected activity at the time of their arrests because no Deputy was present for those arrests. Thus, the Deputies did not retaliate against Plaintiffs by arresting them.

The Deputies are also entitled to qualified immunity because their actions were objectively reasonable. Again, they were entitled to assume that the P&P officers followed proper procedure, *i.e.*, that they had probable cause to arrest Plaintiffs and that those arrests were not retaliatory. Thus, the Deputies' actions were reasonable in light of clearly established law.

There is also no constitutional violation because there is no allegation, much less evidence, that any Plaintiff was "chilled" from continuing to protest. In the Fifth Circuit, "a retaliation claim requires some showing that *the plaintiffs'* exercise of free speech has been curtailed." *Villarreal,* 17 F.4th at 542. Mere physical or emotional injury does not meet that standard. *See Id.*, and *McLin v. Ard*, 866 F.3d 682, 697 (5th Cir. 2017) ("allegation of 'great personal damage'" did not "demonstrate that [plaintiff] reduced or changed his exercise of free speech in any way"). Here, Plaintiffs alleged that they sustained "bodily injury, pain, suffering, mental distress, anguish, humiliation, loss of liberty, and legal expenses" as a result of their arrests, but Plaintiffs never alleged that they curtailed their protests due to their arrests. *See* Exhibit I at 158:23-164:10. Thus, the Deputies are also entitled to summary judgment on Plaintiffs' retaliatory arrest claim because Plaintiffs did not allege, nor can they prove, that they suffered a constitutional violation.

IV. The Court should dismiss Plaintiffs' *Monell* claims against Sheriff Theriot because there is no underlying constitutional violation by his Deputies, and because Plaintiffs cannot establish a claim for any of their theories of liability under *Monell*.

The Amended Complaint asserts *Monell*[5] municipal liability claims against Sheriff Theriot as the policymaker for the Sheriff's department (R. Doc. 28 at ¶¶ 77 – 85), but those claims should be dismissed because the Deputies did not violate Plaintiffs' constitutional rights, so there is nothing for which Sheriff Theriot could be liable. Those claims should also be dismissed because Plaintiffs cannot establish a prima facie case against Sheriff Theriot for failing to train or supervise, and because Sheriff Theriot did not ratify the action of any Deputy.

As a basis for liability, Plaintiffs allege that Sheriff Theriot had policies of allowing deputies to work private details without sufficient oversight or approval processes, and of allowing

[5] *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

his deputies to suppress protesters by arresting them in violation of law; and that he failed to train his deputies "to recognize the First Amendment rights of protesters and demonstrators" and "in the scope of La. R.S. § 14:61 and its exception for protected speech." R. Doc. 28 at ¶¶ 78-81. Plaintiffs also allege that Sheriff Theriot ratified the Deputies' actions by not terminating approval for his deputies to work security details, and by "sign[ing] off on the approvals of all twenty-five deputies who worked with HUB Enterprises in making arrests at the BBP site." *Id*. at 83.

A. All of Plaintiffs' *Monell* claims should be dismissed because Sheriff Theriot's Deputies committed no underlying constitutional violation as required for any theory of *Monell* liability.

The Court should dismiss Plaintiffs' *Monell* claims altogether because none of Sheriff Theriot's Deputies violated any Plaintiff's constitutional rights, and thus there is no constitutional violation for which Sheriff Theriot could be liable. A policymaker such as a sheriff cannot be liable under *Monell* for a constitutional violation by the policymaker's subordinates "'[i]f a person has suffered no constitutional injury at the hands of the individual…officer.'" *Bustos v. Martini Club Inc.*, 599 F.3d 458, 467 (5th Cir. 2010). Stated differently, "'[a] claim of inadequate training, supervision, and policies under § 1983 cannot be made out against a supervisory authority absent a finding of a constitutional violation by the person supervised.'" *Vincent v. City of Sulphur*, 17-CV-573, 2017 WL 6010450, at *3 (W.D. La. Oct. 23, 2017).[6]

Plaintiffs' claims against Sheriff Theriot are based on their allegations that his Deputies violated Plaintiffs' constitutional rights by participating in Plaintiffs' arrests because they allege that "Theriot's actions were the direct and proximate cause of the violations of Plaintiffs' First, Fourth and Fourteenth Amendment rights" set forth in their Complaint, and those violations

[6] *Adopted*, 17-CV-573, 2017 WL 6008706 (W.D. La. Dec. 4, 2017), *quoting Webber v. Mefford*, 43 F.3d 1340, 1344–45 (10th Cir. 1994).

allegedly arose from their arrests in which the Deputies allegedly participated. R. Doc. 28 at ¶ 85. But again, none of the Deputies violated any Plaintiff's constitutional rights because no Deputy participated in the arrest of any Plaintiff. Thus, Sheriff Theriot is not liable under *Monell*. Their entire claim can be dismissed on this ground alone.

B. As another basis for dismissal, the Court should dismiss Plaintiffs' *Monell* claims because Plaintiffs cannot establish a prima facie case for any of their claims against Sheriff Theriot.

Although the lack of an underlying constitutional violation warrants dismissal of all of Plaintiffs' *Monell* claims, those claims should also be dismissed because Plaintiffs cannot establish a prima facie case against Sheriff Theriot for their claims of improper policy, custom, or practice; failure to train; or ratification. Each is analyzed in turn.[7]

1. Plaintiffs cannot establish a claim for improper policies, customs, or practices because there is no evidence that Sheriff Theriot had any improper policy, custom, or practice.

Plaintiffs' policy, custom, and practice claim should be dismissed because there is no evidence that Sheriff Theriot had any policy, custom, or practice that resulted in the alleged constitutional violations here. Such a claim requires proof that (1) a policymaker with actual or constructive knowledge of a constitutional violation acted on behalf of the municipality; (2) the action constitutes a "custom or policy"; and (3) the policy or custom was the moving force for a violation of constitutional rights. *Brown v. Tarrant County, Texas*, 985 F.3d 489, 497 (5th Cir. 2021). An "official policy" can be either a "policy statement formally announced by an official

[7] Plaintiffs also allege that "Sheriff Theriot and his agents had the power to prevent or aid in the prevention of the wrongs done and conspired to be done as described herein, yet failed or refused to do so, in violation of 42 U.S.C. § 1983." R. Doc. 28 at ¶ 82. It is unclear exactly what this allegation means, but it should be dismissed because it does not allege any policy, custom, practice, failure to train, failure to supervise, ratification, or any other ground for liability under *Monell*. It seems to be most akin to a bystander liability claim against Sheriff Theriot personally; if so, it should be dismissed because there is no evidence that Sheriff Theriot was anywhere near the work site on the day of the arrests.

policymaker" or a "persistent widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy." *Id.* The "moving force" element requires "a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989).

Plaintiffs' claim that Sheriff Theriot "had a policy, custom, or practice of allowing and encouraging his deputies to work private details without sufficient oversight or approval processes" (R. Doc. 28 at ¶ 78) should be dismissed because it cannot survive a Rule 12(b)(6) analysis. There is no allegation as to what oversight or approval processes were supposedly insufficient, nor how they caused any constitutional violation. The claim also cannot survive summary judgment because there is no evidence that any Deputy was insufficiently supervised or that there were insufficient approval processes. There is also no evidence that any insufficient supervision or approval process caused any constitutional violation as required to meet the "moving force" element. This claim should be dismissed.

The other alleged policy, custom, or practice claim – that Sheriff Theriot agreed to a plan to arrest protesters and charge them with *felony* violations of La. R.S. 14:61 *regardless of whether those arrests were "permissible" under law* (R. Doc. 28 at ¶ 79) – should be dismissed because there is no evidence that Sheriff Theriot had any policy, custom, or practice of arresting protesters *without probable cause*, nor any evidence that he ever agreed to such a plan. Although Sheriff Theriot allowed his deputies to work security details, that does not mean that he agreed that they could make unlawful arrests during those details. Thus, this claim should also be dismissed.

2. Plaintiffs' failure to train claim should be dismissed because there is no evidence that Sheriff Theriot failed to train any deputy, much less that any lack of training resulted in a violation of constitutional rights.

The Court should also dismiss Plaintiffs' failure to train claim because there is no evidence for any of the elements of a claim for failure to train. The bar for such a claim is very high, as Plaintiffs must prove: (1) that the Sheriff failed to train the Deputies; (2) a causal connection between the failure to train and the violations of Plaintiffs' rights; and (3) that the failure to train constituted deliberate indifference to Plaintiffs' constitutional rights. *Thompson v. Upshur County, Tex.*, 245 F.3d 447, 459 (5th Cir. 2001).

Plaintiffs cannot meet the first element because their claim merely restates their injuries as a failure to train, and because there is no evidence that the Deputies needed some special training to work security details that they did not receive. This element requires that the plaintiff "allege with specificity how a particular training program is defective." *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). Merely "styling…complaints about the specific injury suffered as a failure to train" does not meet this standard. *Id*. *Roberts* illustrates the type of allegations that do not meet this standard. There, an off-duty police officer working as a crossing guard shot and killed a driver attempting to run over the officer. The plaintiffs alleged that the police chief failed to train officers for crossing guard duty without resorting to deadly force, but that stated no failure to train claim because it merely restated the plaintiffs' alleged injury in terms of a failure to train. To state a claim, the plaintiffs had to allege that the job required some special training, the officer did not receive it, and the injury resulted from it. There was also no evidence that crossing guard duty involved some special skill that needed additional training.

Similarly, Plaintiffs' failure to train claim merely restates their injuries as a failure to train because their allegations that Sheriff Theriot did not train his deputies in the First Amendment rights of protesters or in La. R.S. 14:61's exception for protected speech are merely another way to state that they were arrested in violation of their First Amendment rights and of La. R.S. 14:61's

protected speech exception. Plaintiffs never alleged that working security details on the Pipeline required some specialized training that the Deputies did not receive, nor that training the Deputies would have changed anything about Plaintiffs' arrests by the P&P officers. There is also no evidence that Sheriff Theriot improperly trained any Deputy. To the contrary, all Deputies except Norris Huval were certified under Louisiana's Peace Officer Standards and Training law ("POST"), La. R.S. 40:2401, *et seq*. Exhibits B to H. Norris Huval only drove the boat that brought Plaintiffs to the landing after their arrests. Thus, Plaintiffs cannot establish that Sheriff Theriot failed to train the Deputies.

Plaintiffs also cannot meet the second element of a failure to train claim because there is no allegation, much less evidence, of a causal connection between Plaintiffs' injuries and any failure to properly train the Deputies in the First Amendment rights of protesters or the scope of La. R.S. 14:61's exception for protected speech. Causation requires more than a bare allegation that a constitutional violation would not have occurred had the additional training been conducted. *City of Canton,* 489 U.S. at 391. But Plaintiffs do not even allege that much because they do not allege that additional training would have changed anything about their arrests. And it would not have because Plaintiffs' alleged injuries arose from their arrests by the P&P officers rather than the Deputies. Plaintiffs were not even protesting when the Deputies arrived because Plaintiffs had been arrested by then. Thus, no failure to train the Deputies concerning rights of protesters under the First Amendment or La. R.S. 14:61 caused this incident.

Plaintiffs also cannot meet the third element of a failure to train claim because there is no allegation or evidence that Sheriff Theriot was deliberately indifferent to Plaintiffs' rights. Deliberate indifference requires "at least a pattern of similar violations arising from training that is so clearly inadequate as to be obviously likely to result in a constitutional violation." *Roberts*,

397 F.3d at 292. Plaintiffs did not meet this standard because there is no allegation that before Plaintiffs' arrests on August 9, 2018, the Sheriff or his Deputies ever arrested anyone *without probable cause* and charged them with *felony* violations of La. R.S. 14:61. To the contrary, Plaintiffs allege that before August 1, 2018, protesters had merely been charged with misdemeanors rather than felonies (R. Doc. 28 at ¶ 30), and there is no allegation nor evidence that any felony arrest was made under La. R.S. 14:61 between August 1 and August 9. These allegations do not meet the third element of a failure-to-train claim.

Therefore, neither Plaintiffs' allegations nor the evidence can sustain a failure to train claim against Sheriff Theriot. That claim should be dismissed.

3. Plaintiffs' ratification claim should be dismissed because Sheriff Theriot's alleged actions do not amount to ratifications.

Plaintiffs also allege that Sheriff Theriot is liable because he ratified the Deputies' actions, but that should be dismissed because the actions that allegedly constituted a ratification did not ratify anything, and there is no evidence that he ratified any unlawful act of any Deputy. A policymaker can be liable under a ratification claim if the policymaker *approves* a subordinate's decision *and the basis for it* such that the decision becomes a final policy. *World Wide St. Preachers Fellowship v. Town of Columbia,* 591 F.3d 747, 755 (5th Cir. 2009). But ratification "has been limited to 'extreme factual situations.'" *Id.* Thus, unless a "subordinate's actions are sufficiently extreme—for instance, an obvious violation of clearly established law—a policymaker's ratification ... is insufficient to establish an official policy or custom." *Id*.

Sheriff Theriot ratified nothing here because there is no allegation, much less evidence, that he approved any extreme wrongful action by any Deputy. Plaintiffs allege that Sheriff Theriot ratified the Deputies' actions because he or his agents approved "[d]ozens of 'Outside Employment Request' forms" for deputies who worked security details on the Pipeline, and because Sheriff

Theriot never "terminated the approval for SMPSO deputies to work details with HUB" on the Pipeline. R. Doc. 28 at ¶ 68 and 83. That ratified nothing because there is no evidence or authority that merely signing the Outside Employment Request forms is somehow an approval of any Deputy's actions. There is also no other evidence that could be construed as some ratification by Sheriff Theriot of any action by any of his Deputies. This is nowhere close to an "extreme factual situation" that could possibly be considered a ratification. This claim should thus be dismissed.

4. Plaintiffs' conspiracy claim against Sheriff Theriot should be dismissed because Plaintiffs' allegations do not meet the standard for pleading a conspiracy, and because there is no evidence of a conspiracy.

Plaintiffs' conspiracy claim against Sheriff Theriot should be dismissed because neither Plaintiffs' allegations nor the evidence show any conspiracy. A conspiracy claim under § 1983 requires 1) an agreement between private and public defendants to commit an illegal act, and 2) a constitutional rights deprivation. *Cinel v. Connick,* 15 F.3d 1338, 1343 (5th Cir. 1994). There is a heightened standard for such a claim: "Plaintiffs who assert conspiracy claims under civil rights statutes must plead the operative facts upon which their claim is based. Bald allegations that a conspiracy existed are insufficient." *Lynch v. Cannatella,* 810 F.2d 1363, 1369–70 (5th Cir. 1987).

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), expounded on the sufficiency of conspiracy allegations. Plaintiffs must plead more "than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Id*. at 555. Rather, they must plead "enough factual matter (taken as true) to suggest that an agreement was made." *Id*. at 556. The complaint must establish something beyond the mere possibility of a claim, "lest a plaintiff with 'a largely groundless claim' be allowed to 'take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.'" *Id*. at 557-558.

Plaintiffs' allegations do not meet this standard because they did not allege any operative facts for that claim. The alleged conspiracy was some "coordinated plan" to "silence the growing

dissent about the construction of the Bayou Bridge Pipeline," under which BBP and HUB "contracted with law enforcement officials to make felony arrests of protesters of the Pipeline." R. Doc. 28 at heading on p. 6 and ¶ 29. Plaintiffs also allege:

- "Sheriff Theriot agreed that deputies…would be allowed to work 'details' with HUB at or near the construction site, and that after August 1, 2018, these deputies would make felony arrests under La. R.S. § 14:61 as directed by employees of BBP and/or HUB" (*id*. at ¶ 33);
- "Defendants worked together to effect these arrests in retaliation for Plaintiffs' protected speech against the construction of the pipeline" (*id*. at ¶ 75); and
- "Sheriff Theriot…agreed with BBP and HUB to provide deputies to work 'detail' shifts to suppress protests against the pipeline project in St. Martin's Parish by arresting protesters and charging them with felonies under the amendments to R.S. § 14:61, whether or not the arrests were permissible under the terms of the statute itself or the Constitutions of the United States and of Louisiana" (*id*. at ¶ 79).

These are merely bald conclusory allegations because they are devoid of any factual allegation that Sheriff Theriot agreed to any plan to arrest protesters *unlawfully*. These conclusory allegations should be dismissed because they state no viable conspiracy claim.

That claim also cannot survive summary judgment because there is no evidence that Sheriff Theriot agreed to arrest protesters in violation of their constitutional rights. Now, at the summary judgment stage, Plaintiffs must come forward with actual proof of an illegal agreement with the Sheriff and P&P officers (since they made the arrests) to have Plaintiffs arrested without probable cause. There is absolutely no evidence of any such agreement. Thus, this claim should be dismissed.

C. As an additional basis for dismissal of Plaintiff's *Monell* claims against Sheriff Theriot, there is no *Monell* against the Sheriff under Louisiana law because a sheriff has no "official capacity" under Louisiana law.

Although there is no merit to Plaintiffs' *Monell* claims as discussed above, Sheriff Theriot objects to Plaintiffs' claims against him in his "official capacity." Official capacity claims

"generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (*quoting Monell*, 436 U.S. at 690, n. 55. Thus, "an official capacity claim against the Sheriff would, in reality, be a claim against the local governmental entity itself." *Stuart v. Russell*, CV 3:21-01231, 2021 WL 4820244, at *2 (W.D. La. Oct. 15, 2021). But the problem is that under Louisiana law, Sheriffs are not agents of a local government entity because there is no such entity as a Sheriff's Department or Sheriff's office. *Valentine v. Bonneville Ins. Co.*, 691 So.2d 665 (La. 1997); *Liberty Mutual Insurance Company v. Grant Parish Sheriff's Department*, 350 So.2d 236 (La. App. 3rd Cir. 1977). Instead, Sheriffs exercise authority personally, by virtue of their election. La. Const. Art. 5, § 27. Therefore, they enjoy the benefit of qualified immunity, and that cannot be eroded by merely labeling a claim as one against a Sheriff's "official capacity." Although a panel of the Fifth Circuit held in *Burge v. Parish of St. Tammany*, 187 F.3d 452, at 469-470 and 476 (5 Cir. 1999), that Louisiana Sheriffs may be sued in an official capacity, the panel mistakenly applied notions of vicarious liability under State law to an action under § 1983 where there is no vicarious liability.

V. The Deputies and Sheriff Theriot should be dismissed from Plaintiffs' state law constitutional and tort claims because the Deputies have qualified immunity for those claims, and Sheriff Theriot cannot be liable if his Deputies are not liable.

Plaintiffs also alleged state constitutional violations and tort law claims. Because the Deputies and Sheriff Theriot are entitled to summary judgment on Plaintiffs' federal claims, this Court has discretion over whether to retain jurisdiction over their pendent state-law claims. 28 U.S.C. § 1367(C). The Court should retain jurisdiction and rule on the merits of those claims because the Court will be deciding the same issues at the heart of Plaintiffs' state law claims. A trial court should dismiss a state claim on the merits when the primary issue has been decided during adjudication of the federal claim and it is clear how the state claim would be decided. *Rothman v. Emory Univ.*, 123 F.3d 446, 454 (7th Cir. 1997).

It is clear that Plaintiffs' state claims should be dismissed because the Deputies enjoy the same qualified immunity for those claims that they enjoy for Plaintiffs' § 1983 claims. As the Louisiana Supreme Court explained, "[t]he same factors that compelled the United States Supreme Court to recognize a qualified good faith immunity for state officers under § 1983 require us to recognize a similar immunity for them under any action arising from the state constitution." *Moresi v. State Through Dept. of Wildlife and Fisheries*, 567 So. 2d 1081, 1093 (La. 1990). Thus, it is clear that the Deputies will be entitled to summary judgment on qualified immunity if they committed no state constitutional or tort violation, or if the allegedly-violated right was not clearly established at the time of the violation. If the Deputies are dismissed, then Sheriff Theriot should likewise be dismissed from those claims because there would be no basis for liability against him.

A. The Deputies enjoy qualified immunity on all of Plaintiffs' state constitutional and tort claims because all of those claims are related to arrests by others.

The Deputies are entitled to qualified immunity because, like Plaintiffs' § 1983 claims, all of Plaintiffs' state constitutional and tort claims are related to their arrests, but the Deputies did not arrest any Plaintiff, and they were entitled to assume that the arresting officers followed proper procedure in making those arrests. Plaintiffs' claims are for:

1. violations of Article I, §§ 7 and 9 of Louisiana's Constitution (free expression and free assembly) (R. Doc. 28, par. 86);
2. violations of Article I, § 5 (privacy);
3. violations of Article I, § 13 (informed of charges) (R. Doc. 28, par. 89); and
4. intentional infliction of emotional distress, assault, battery, and false imprisonment (R. Doc. 28, par. 92).

Plaintiffs' claims for violation of La. Const. Art. I, §§ 7 and 9 are related to their arrests because Plaintiffs allege that "Defendants' actions in arresting and detaining Plaintiffs as described above interfered with their exercise" of their rights under those articles to freely express themselves

and freely assemble. Their claim for violation of La. Const. Art. I, § 5 also arises from their arrests because Plaintiffs allege that the "seizure of Plaintiffs was unreasonable and without probable cause, constituting a violation of the right to be left alone and the right to privacy" under that article. Their claim for violation of La. Const. Art. I, § 13 obviously arises from their arrests because Plaintiffs allege that they were not promptly informed of the charges against them. Their tort claims are related to their arrests because Plaintiffs allege that "Defendants inflict a harmful or offensive contact upon Plaintiffs in the process of *arresting* them," that the arrests were "unjustified by legal authority," and that Defendants' "*arrest* of Plaintiffs amounts to extreme and outrageous conduct" causing them emotional distress. The Deputies are entitled to qualified immunity for all of these claims because they did not arrest any Plaintiff, and they were entitled to assume that the arresting officers followed proper procedure in making the arrests.

As an additional ground to dismiss the Deputies from Plaintiffs' Article I, § 13 claim, there is no violation under Plaintiffs' allegations because Art. I § 13 does not require that an arrestee receive prompt notice of the *charges*. To the contrary, it states that an arrestee "shall be advised fully of the reason for his arrest or detention" rather than the specific charges. An arrestee has no right to know of the specific charges until he is booked in jail because under La. C.Cr.P. Art. 229, "[t]he officer in charge of the jail or police station shall immediately inform the prisoner booked…Of the charge against him." There is no allegation in Plaintiffs' Amended Complaint that Plaintiffs were not advised of the charges against them when they were booked. To the contrary, they complain that they asked about the charges immediately after the arrests and on the way to the jail but were not informed. R. Doc. 28 at ¶¶ 47 and 58. Plaintiffs knew of their charges after arriving at the jail because they acknowledged that they were charged when booked then released on bond. *Id.* at ¶¶ 61-62. Thus, there was no violation of Art. I, § 13 in any event.

As an additional ground to dismiss the Deputies from Plaintiffs' tort claims, they are all intentional torts, but there is no evidence that any Deputy committed any of these torts, much less intentionally. As to assault and battery, there is no allegation or evidence that any Deputy contacted or threatened to contact any Plaintiff in a harmful or offensive manner. As to false arrest and imprisonment, no Deputy named as a defendant arrested or imprisoned any Plaintiff. As to intentional infliction of emotional distress, there is no authority that merely transporting an arrestee to jail is grounds for that tort, and there is no evidence that any Deputy intended to inflict emotional distress on any Plaintiff. Thus, those claims should be dismissed.

B. Plaintiffs' state law claims should be dismissed against Sheriff Theriot because he is not alleged to have participated in the events, and he cannot be vicariously liable because his Deputies are not liable for those claims.

The Court should also dismiss Sheriff Theriot from Plaintiffs' state law claims because there would be no ground for him to be liable if the Deputies are dismissed. He could only be liable if his Deputies were liable because Plaintiffs do not allege that Sheriff Theriot personally participated in any of the state constitutional violations or torts. He is not liable for the actions of his Deputies, vicariously or otherwise, because his Deputies violated none of Plaintiffs' state constitutional rights nor did the Deputies cause any of the alleged torts. Thus, there is no basis for Sheriff Theriot to be liable for those claims.

VI. The claims against the Deputies can also be dismissed because no Deputy caused any of Plaintiffs' claims.

In addition to qualified immunity, the Court can dismiss the Deputies and Sheriff for lack of causation. Again, Plaintiffs' claims – whether federal or state – arise from their arrests, but no Deputy made any of those arrests. Thus, there is no causation between Plaintiffs' claims and the

act of any Deputy. If no Deputy is liable, Sheriff Theriot could not have caused any of Plaintiffs' claims. Thus, they should be dismissed for lack of causation.

CONCLUSION

Plaintiffs' claims arise from their arrests, but no Deputy arrested Plaintiffs or witnessed their arrests. They are entitled to dismissal, with prejudice, on qualified immunity because they violated none of Plaintiffs' constitutional rights, and settled law allowed them to assume that the arresting officers followed proper procedure when they made the arrests. They are also entitled to dismissal with prejudice because there is also no causation between any Deputy's act and any of Plaintiffs' claims.

As to Sheriff Theriot, Plaintiffs cannot establish a prima facie case that he had some policy of violating Plaintiffs' rights, that he ratified any wrongful actions of his Deputies, or that he conspired with anyone to arrest Plaintiffs or any other protesters and charge them with felonies without probable cause. The Court should likewise dismiss him from this suit, with prejudice.

Respectfully submitted,

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