

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRIE JO MOYER : CIVIL ACTION  
 :  
v. :  
 :  
BOROUGH OF NORTH WALES, et al. : NO. 00-CV-1092

**MEMORANDUM**

**Padova, J.**

**November , 2000**

This case arises from an alleged sexual assault perpetrated by Timothy Conley against Plaintiff and subsequent cover-up by Timothy Conley’s parents and several police officers in the Borough of North Wales, Pennsylvania. Before the Court is Defendants Borough of North Wales, Kenneth Veit, and Barry Hackert’s Motion to Dismiss the Amended Complaint.<sup>1</sup> The matter has been fully briefed and is ripe for decision.<sup>2</sup> For the following reasons, the Court grants in part and denies in part Defendants’ Motion.

**I. BACKGROUND**

Plaintiff Barrie Jo Moyer (“Moyer”) alleges that Timothy Conley sexually assaulted her on March 4, 1998. After the alleged sexual assault, Moyer went to North Penn Hospital for treatment

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<sup>1</sup>Plaintiff dismissed all claims against Defendants Timothy, William, and Therese Conley on July 31, 2000.

<sup>2</sup>Plaintiff attaches assorted deposition testimony to the Response to Defendants’ Motion. Rule 12(b) permits district courts to consider evidence extrinsic to the pleadings submitted in response to or in support of a Rule 12(b)(6) motion by treating the motion as one for summary judgment pursuant to Rule 56(c). Fed. R. Civ. P. 12(b). The Court, however, declines to do so in this case and excludes the deposition transcripts submitted by Plaintiff.

for physical injuries sustained during the assault. Police officers from the Borough of North Wales (“Borough”) were called. Barry Hackert (“Hackert”), a Borough police officer, responded to Plaintiff’s complaint and interviewed her at the hospital. After conferring with Kenneth Veit (“Veit”), the Borough’s chief of police, Hackert brought disorderly conduct charges against both Moyer and Timothy Conley. A jury acquitted Moyer of the charges while Timothy Conley pled guilty.

Plaintiff essentially challenges Defendants’ failure to criminally prosecute Timothy Conley for sexual assault, and their decisions to prosecute both Timothy Conley and herself for disorderly conduct and to allow Timothy Conley to plea bargain.

## **II. LEGAL STANDARD**

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

## **III. DISCUSSION**

Plaintiff filed an Amended Complaint in the instant action on July 3, 2000. The Amended Complaint states six counts. Count One alleges that Veit and Hackert conspired to violate Moyer’s constitutional rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Count Two claims that Veit and Hackett deprived Moyer of her rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments. Plaintiff fails to specify under what statutes Counts One and Two are brought. For the purposes of this Motion, the Court assumes that Counts

One and Two are brought pursuant to 42 U.S.C. § 1983<sup>3</sup>.

Plaintiff brings Count Three pursuant to § 1983 against Veit and the Borough for maintenance of an allegedly unconstitutional policy or practice and Count Four against the Borough for failing to adequately supervise and train its officers. Count Five purportedly arises under § 1983 and § 1985(3) and asserts that Veit and Hackett's conduct was motivated by gender animus and designed to punish Moyer for exercising her First Amendment rights. Lastly, Count Six sets forth a potpourri of state law claims including malicious prosecution, official oppression, false arrest, assault and battery, obstruction of justice, intentional infliction of emotional distress, abuse of process, and negligence.

The Court will begin by assessing the sufficiency of Plaintiff's constitutional claims that are common to Counts One, Two and Five. After determining what constitutional claims Plaintiff has adequately pled, the Court will discuss each count in turn.

**A. Sufficiency of Constitutional Claims**

Counts One, Two, and Five each arise under section 1983. 42 U.S.C. § 1983 provides a remedy against "any person" who, under the color of law, deprives another of his constitutional rights. *Id.* To establish a claim under § 1983, a plaintiff must allege (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. *Lake v. Arnold*, 112 F.3d 682, 689 (3d Cir. 1997). For the following reasons, the Court concludes that Plaintiff fails to establish any deprivation of rights protected under the First, Fifth, Six, and

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<sup>3</sup>Even if Plaintiff was asserting Count One under 42 U.S.C. § 1985(3), the Court's analysis would remain the same since § 1983(3) requires proof that the plaintiff was deprived of a right or privilege of a citizen of the United States. *United Bhd. of Carpenters and Joiners of Am., Local 610 AFL-CIO v. Scott*, 463 U.S. 825, 828-29 (1983).

Fourteenth Amendments.

As an initial matter, the Court determines that Plaintiff's allegations regarding Defendants' failure to prosecute Timothy Conley for sexual assault, and their decision to bring charges of disorderly conduct against him fail to establish a constitutional injury. Private citizens lack a judicially cognizable interest in the criminal prosecution of another. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973); Brown v. Grabowski, 922 F.2d 1097, 1104 (3d Cir. 1991). Furthermore, the decision whether to prosecute and what charge to file generally rests in the discretion of the prosecutor. Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978); Government of the V.I. v. Charles, 72 F.3d 401, 409 (3d Cir. 1995). Moyer has no judicially cognizable interest in Timothy Conley's criminal prosecution. Accordingly, an agreement to refrain from prosecuting Conley for sexual assault or to charge him with disorderly conduct or the act thereof violates no constitutional right that Moyer has standing to assert. Only statements about Defendants' treatment, arrest, and prosecution of Plaintiff herself may support any causes of action.

The First Amendment prohibits state action that interferes with a private citizen's ability to petition the government for redress of grievances. See California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972); Olender v. Township of Bensalem, 32 F.Supp.2d 775, 785 (E.D. Pa. 1999). The Amended Complaint lacks any allegations relating to how Plaintiff attempted to petition the government, or what any Defendant did to thwart her efforts. Rather, Plaintiff states in a conclusory fashion "Defendants agreed and acted with others to punish Plaintiff for having exercised constitutionally protected rights to confront and question the performance of a public official." (Am. Compl. ¶37(e).) This conclusory allegation is insufficient to state a claim under the First Amendment.

Any claim under the Fifth Amendment fails. The Amended Complaint does not allege double jeopardy, compelled testimony, or a taking. See U.S. Const. amend. V; Williams v. Pennsylvania State Police, 108 F. Supp. 2d 460, 469 n.12 (2000). Furthermore, the Fifth Amendment's due process clause applies only to actions of the federal government, and not state officials. Huffaker v. Bucks Cty. Dist. Attorney's Office, 758 F. Supp. 287, 290 (E.D. Pa. 1991). Plaintiff alleges no federal action. Similarly, Plaintiff's Sixth Amendment claims fail since she does not allege that she was denied counsel<sup>4</sup>, prevented from confronting witnesses, issuing compulsory process, or kept ignorant of the charges against her in her criminal trial. See U.S. Const. amend. VI; Faretta v. California, 422 U.S. 806, 807 (1975); Olender, 32 F. Supp. 2d at 787.

Plaintiff grounds her claims under the Fourteenth Amendment on several theories, all of which fail. The Fourteenth Amendment's due process clause confers both substantive and procedural rights. Albright v. Oliver, 510 U.S. 266, 272 (1994). Under the Fourteenth Amendment, state actors must refrain from preventing individuals from obtaining access to the civil courts. Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1991)(citing Wolff v. McDonnell, 418 U.S. 539, 578-79 (1974)). Only when the state has custody of an individual, however, must its actors provide assistance in gaining access to the courts. Id. The Amended Complaint lacks allegations that Defendants agreed to or actually took any action hindering Moyer from obtaining access to civil courts, or failed to provide assistance while Moyer was in state custody. Thus, any claim based on this ground fails.

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<sup>4</sup>The Sixth Amendment right to counsel attaches upon initiation of adversarial judicial procedures. Davis v. United States, 512 U.S. 452, 456-57 (1994); In re Grand Jury Subpoena, 223 F.3d 213, 220 (3d Cir. 2000). Plaintiff fails to allege that she was improperly interviewed after initiation of adversarial judicial procedures.

Substantive due process does not support a claim for malicious prosecution or false arrest. Albright, 510 U.S. at 273-5 (“Where a particular Amendment ‘provides an explicit textual source of constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.’” citing Graham v. Connor, 490 U.S. 386, 395 (1989)). Similarly, the procedural due process prong of the Fourteenth Amendment does not support a cause of action for false arrest. Berg v. County of Allegheny, 219 F.3d 261, 269 (3d Cir. 2000)(“[T]he constitutionality of arrests by state officials is governed by the Fourth Amendment rather than due process analysis.”) Although the procedural due process clause may ground a cause of action for malicious prosecution, Torres v. McLaughlin, 163 F.3d 169, 173 (3d Cir. 1998), Plaintiff’s claim fails because she does not allege a deprivation of a legally protected liberty or property interest. Marchese v. Umstead, 110 F.Supp.2d 361, 370 (E.D. Pa. 2000). Accordingly, Plaintiff may not sustain any claims under the Fourteenth Amendment.

Plaintiff further fails to adequately assert a claim under the Fourth Amendment for malicious prosecution. While § 1983 unequivocally supports a cause of action for malicious prosecution under the Fourth Amendment, the law governing the basis for a malicious prosecution claim is still evolving. See Donahue v. Gavin, No. Civ. A. 98-1602, 2000 WL 772819, at \*2 (E.D. Pa. June 15, 2000). Prior to the United States Supreme Court’s decision in Albright v. Oliver, 510 U.S. 266 (1994), a plaintiff alleging a section 1983 claim for malicious prosecution needed only show the elements of the common law tort. See Gallo v. City of Philadelphia, 161 F.3d 217, 221 (3d Cir. 1998). In Albright, the Supreme Court suggested that prosecution without probable cause is not, in and of itself, a constitutional tort. Id. at 222. Rather, the actionable constitutional injury is the

deprivation of liberty accompanying the prosecution. Id. As a result, to state a claim for malicious prosecution under the Fourth Amendment, the plaintiff must plead the elements of the common law tort and that the plaintiff suffered a seizure as a consequence of a legal proceeding. Id.; Marchese, 110 F. Supp. 2d at 370. A person is seized for Fourth Amendment purposes “only if he is detained by means intentionally applied to terminate his freedom of movement.” Berg, 219 F.3d at 269. A seizure actionable in a malicious prosecution case includes post-indictment restrictions on the plaintiff’s liberty through, for example, travel restrictions, bond requirements, required attendance at court hearings, or incarceration. Id. at 222-223. The Amended Complaint fails to state any seizure or deprivation of Moyer’s freedom of movement as a consequence of a legal proceeding. The conclusory allegation stated in paragraph 22 is insufficient to make out a constitutional injury. Plaintiff’s claim for malicious prosecution under the Fourth Amendment is accordingly unsustainable.

Plaintiff, however, has successfully alleged a claim for false arrest under the Fourth Amendment. The Fourth Amendment prohibits arrests without probable cause. Berg, 219 F.3d at 269; Torres, 163 F.3d at 173. To state a claim for false arrest, the plaintiff must establish that the police lacked probable cause to believe that she had committed the offense for which she was arrested. Groman v. Township of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995). The Amended Complaint alleges that Veit and Hackert agreed and acted to “intentionally falsely arrest Plaintiff,” and “intentionally fabricate[d] and contrive[d] the charges that would have been lodged against Plaintiff.” (Am. Compl. ¶37(a),(b).) These allegations are sufficient to state a claim in Counts One<sup>5,6</sup>

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<sup>5</sup>Conspiracy claims must be pled with factual specificity. Robinson v. McCorkle, 462 F.2d 111, 113-14 (3rd Cir.), cert. denied, 409 U.S. 1042 (1972). Accordingly, a plaintiff may not make “[b]are conclusory allegations of ‘conspiracy’ or ‘concerted action,’ ” but is required to

and Two.

**B. Count Three**

Plaintiff asserts Count Three against Veit and the Borough for maintenance of an unconstitutional policy presumably pursuant to §1983. Municipalities may be held liable for violations of constitutional rights under § 1983 when the alleged unconstitutional action implements a municipal policy or practice, or a decision that is officially adopted or promulgated by those whose acts may fairly be said to represent official policy. Monell v. Dep't of Social Services, 436 U.S. 658, 690-91 (1978); Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997). To state a claim, the plaintiff must allege (1) the existence of a policy or custom; (2) the policy or custom was administered by a policymaker with deliberate indifference to the rights of the public; and (3) proximate causation between the administration of the policy or custom and the violation of his rights. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996), cert. denied, 519 U.S. 1151 (1997).

The doctrine of respondeat superior liability does not apply in cases brought under section

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"expressly allege an agreement or make averments of communication, consultation, cooperation, or command from which such agreement can be inferred." Burden v. Wilkes-Barre Area Sch. Dist., 16 F. Supp. 2d 569, 573 (M.D. Pa. 1998) (quoting Flanagan v. Shively, 783 F. Supp. 922, 928 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir.), cert. denied, 510 U.S. 829, (1993)). Such averments "must be supported by facts bearing out the existence of the conspiracy and indicating its broad objectives and the role each defendant allegedly played in carrying out those objectives." Id. The allegations stated in the Amended Complaint adequately establish the existence of an agreement, the respective roles of Veit and Hackert, and the broad objective. (See Am. Compl. ¶¶ 16, 18, 37.)

<sup>6</sup>The Court rejects Defendants' argument that the voluntary dismissal of alleged co-conspirators Timothy, William, and Therese Conley precludes any conspiracy claims. Defendant cites no caselaw in support of their argument and the Court's independent research discloses none.

1983. Rouse v. Plantier, 182 F.3d 192, 200 (3rd Cir. 1999). To hold Veit liable in his capacity of chief of police, therefore, Plaintiff must allege that Veit was directly responsible for or personally involved in the alleged constitutional deprivations. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3rd Cir. 1988). The Amended Complaint alleges that Veit fabricated evidence and falsely arrested Plaintiff, and instructed Hackert to bring disorderly conduct charges, (Am. Compl. ¶ 37), and that:

Defendant North Wales permits its subordinate officers to utilize their capacity as police officers for personal gain and benefit, and in conspiracy with private citizens, and either has no policy prohibiting same, or ignores said policy by not disciplining police officers whose conduct violate [sic] that policy.

Defendant Veit, as the chief of police and while acting under color of law, allowed his subordinate officer to enforce an unconstitutional policy complained of above which was and is unconstitutional on its face and he further allowed his officer to conduct himself in the manner previously set forth, which conduct tended to deprive the Plaintiff of her constitutional rights afforded to her by the Constitution and laws of the United States and rights afforded to her by Federal and State law.

(Am. Compl. ¶¶ 27, 28.) These allegations are sufficient to state claims against the Borough and Veit when combined with the statements of injury set forth in other parts of the complaint. (Am. Compl. ¶¶ 20, 24, 25.) Count Three, therefore, is viable.

**C. Count Four**

Count Four alleges that the Borough failed to train officers to properly respond to “complaints of sexual assaults and/or assault made by female citizens, when said complaints are made to police officers concerning civilian friends of the police officers.” (Am. Compl. ¶30.) A municipality may be held liable if it fails to properly train its employees, such that the failure

amounts to deliberate indifference to the rights of persons with whom its employees come into contact. Reitz, 125 F.3d at 145 (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989)). The Amended Complaint contains sufficient allegations to sustain a failure to train claim. Accordingly, Count Four, also survives Defendant's Motion.

**D. Count Five**

Count Five alleges that Veit and Hackert violated sections 1983 and 1985(3) by depriving Plaintiff of equal protection of the laws and retaliating against her for exercising her First Amendment rights. The Court concludes that Plaintiff fails to state a claim under § 1983, but successfully asserts a claim under § 1985(3).

To assert a claim under § 1983 for denial of Equal Protection under the Fourteenth Amendment, the plaintiff must allege that she was subjected to purposeful discrimination because of her gender. Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293 (3d Cir. 1997). The plaintiff must allege that she (1) is a member of a protected class; (2) was similarly situated to members of an unprotected class; and (3) was treated differently from the unprotected class. Puricelli v. Houston, No. Civ. A. 99-2982, 2000 WL 760522, at \*12 (E.D. Pa. June 12, 2000); Wood v. Rendell, Civ. A. No. 94-1489, 1995 WL 676418, at \*4 (E.D. Pa. Nov. 3, 1995). In essence, the plaintiff must show that she was intentionally discriminated against because of her membership in a particular class, not just that she was treated differently as an individual. Puricelli, 2000 WL 760522, at \*12. Plaintiff alleges that she is female (Am. Compl. ¶ 5) and hence a member of a protected class. See Keenan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992). Plaintiff also alleges discriminatory intent by stating that Veit and Hackert's actions were motivated by gender animus. (Am. Compl. ¶36.) She fails to allege a claim, however, because she does not allege that she was similarly situated with

respect to members of an unprotected class.

Section 1985(3) creates a private right of action against persons who conspire to deprive others of equal protection of the laws.<sup>7</sup> 42 U.S.C. § 1985(3) (1994). To establish a claim under § 1985(3), the plaintiff must plead the following elements: (1) a conspiracy; (2) for the purpose of depriving any person or class of person of equal protection of the laws; (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or property, or a deprivation of any right or privilege of a citizen of the United States.” Scott, 463 U.S. at 828-29; Hankins v. City of Philadelphia, No. 98-1327, 1999 WL 624602, at \*15 (3rd Cir. Aug. 18, 1999). A claim under section 1985(3), therefore, requires some class-based discriminatory animus behind the conspirators’ action. Scott, 463 U.S. at 834. Section 1985(3) recognizes women as a cognizable class and permits claims based on gender discrimination. Carchman v. Korman Corp., 594 F.2d 354, 356 (3d Cir. 1979), cert. denied, 444 U.S. 898 (1979); Lloyd v. Jefferson, 53 F.Supp.2d 643, 670 (E.D. Pa. 1999).

Plaintiff adequately pleads the first three elements. The Amended Complaint states that Veit and Hackert agreed and acted to falsely arrest Plaintiff, fabricate charges and evidence against her, and intimidate her. (Am. Compl. ¶37.) This is sufficient to establish a conspiracy and acts in

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<sup>7</sup>Section 1985(3) provides in pertinent part:

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of the damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C.A. § 1985(3).

furtherance thereof. The Complaint also alleges that their conduct was motivated by gender animus. This establishes action with discriminatory intent for the purpose of depriving her of her equal protection of the laws. See Lloyd, 53 F. Supp. 2d at 671. With respect to the fourth element, Plaintiff alleges that the conduct deprived her of her First and Fourth Amendment rights. As previously discussed, the Amended Complaint lacks sufficient allegations to plead a deprivation of First Amendment rights, but successfully pleads a deprivation of her Fourth Amendment right to be free from false arrest. Count Five, therefore, may proceed only with respect to a claim under § 1985(3) with respect to a deprivation of Plaintiff's Fourth Amendment right to be free from false arrest.

**E. Count Six**

Count Six states a laundry list of state law torts including malicious prosecution, official oppression, false arrest, assault and battery, obstruction of justice, intentional infliction of emotional distress, abuse of process, negligence, and gross negligence against all Defendants. (Am. Compl. ¶ 40.) Defendant Borough argues that the Pennsylvania Political Sub-Division Tort Claims Act ("PSTCA" or "Act") bars recovery against it. The Court agrees and dismisses Count VI against the Borough.

The Act exempts local agencies from liability for damages for any injuries caused by acts of the agency or its employees. 42 Pa. Cons. Stat. Ann. § 8541 (West 2000). Injured parties may recover in tort from a municipality only if: (1) damages would be otherwise recoverable under common law or statute; (2) the injury was caused by the negligent act of the local agency or an employee acting within the scope of his official duties; and (3) the negligent act of the local agency falls within one of eight enumerated categories. 42 Pa. Cons. Stat. Ann. § 8542 (West 2000); Swartz v. Hilltown Township Volunteer Fire Co., 721 A.2d 819, 820-21 (Pa. Commw. Ct. 1998). The eight

exceptions to the legislative grant of immunity are: (1) vehicle liability; (2) care, custody, or control of personal property; (3) care, custody, or control of real property; (4) trees, traffic controls, and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody, or control of animals. 42 Pa. Cons. Stat. Ann. §8542(b) (West 2000). A municipality not be held liable for the willful or wanton misconduct of its employees. Verde v. City of Philadelphia, 862 F. Supp. 1329, 1336 (E.D. Pa. 1994)(citations omitted). None of the actions alleged in the Amended Complaint fit the exceptions to the legislative grant of immunity. Count Six, therefore, must be dismissed as to the Borough.

#### **F. Qualified Immunity**

Defendants Veit and Hackert assert the defense of qualified immunity. Police officers and other government officials enjoy qualified immunity from suit under 42 U.S.C. § 1983 so long as “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Sharrar v. Felsing, 128 F.3d 810, 826 (3d Cir. 1997)(quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). 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 defendant has the burden of pleading and proving qualified immunity. Harlow, 457 U.S. at 815.

Because the qualified immunity doctrine provides the official with immunity from suit, the district court should resolve any immunity question at the earliest possible stage of the litigation. Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995). When resolving issues of qualified immunity, a court must first determine whether the plaintiff has alleged a deprivation of a constitutional right. Torres v. McLaughlin, 163 F.3d 169, 172 (3d Cir. 1998)(internal citations

omitted). Only after satisfying that inquiry should the court then ask whether the right allegedly implicated was clearly established at the time of the events in question. Id. Even if both inquiries are satisfied, if the official's actions were objectively reasonable in light of the constitutional rights at issue, the official is entitled to qualified immunity. Giuffre v. Bissell, 31 F.3d 1241, 1252 (3d Cir. 1994).

As discussed above, Plaintiff has alleged a deprivation of her constitutional right to be free from false arrest. Furthermore, her Fourth Amendment right to be free from arrest without probable cause was clearly established during the events in question. See Orsatti, 71 F.3d at 483. Reading the sparse allegations contained in the Amended Complaint, however, the Court is unable to determine whether Veit and Hackert's actions were objectively reasonable in light of the constitutional rights in dispute. Defendant's request for qualified immunity, therefore, is denied at this time.

### **III. CONCLUSION**

In summary, Plaintiff may proceed on Counts One and Two with respect to a claim for false arrest under the Fourth Amendment, Counts Three and Four, Count Five with respect to the §1985(3) claim, and the causes of action listed in Count Six against Veit and Hackert. The remaining counts and claims are dismissed pursuant to Rule 12(b)(6). An appropriate Order follows.