UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 91-7082

JOHN B. RAINES, JR.,

Plaintiff-Appellant,

VERSUS

CITY OF STARKVILLE, MISSISSIPPI,
A Municipal Corporation; L. E. Spruill, Larry Sisk,
Stanley Bowles, Sheridan Maiden, David Lindley, William
Stacy, Mary Lee Beal, Thomas E. Prentice, Terrance
Christian, M. H. Pittman, Victor L. Zitta, John Outlaw,
Harold E. Williams, Ed Buckner, and Robert Smith,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-EC-88-319-S-O)

(February 8, 1993)

Before GARWOOD and DeMOSS, Circuit Judges.[*]

PER CURIAM:[**]

[*] Chief Judge Emeritus John R. Brown sat for oral argument in this case, but died before issuance of the final decision herein. Accordingly, this decision is rendered by a quorum of the panel pursuant to 28 U.S.C. § 46(d).

[**] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

PROLOGUE

John B. Raines filed suit in federal district court pursuant to 42 U.S.C. § 1983 alleging that Mr. Spruill and the City of Starkville (Starkville) had committed the following constitutional violations: (1) unlawful arrest; (2) use of excessive force; and (3) unlawful conspiracy to interfere with business. The district court granted summary judgment in favor of the defendants on the § 1983 claims. Raines then filed a motion for reconsideration that was denied by the district court. Raines appeals both the grant of summary judgment and the denial of his motion for reconsideration.

HOW IT ALL BEGAN

On April 9, 1985, after more than thirty years in the automobile salvage business, Raines filed for bankruptcy; subsequently, the bankruptcy trustee scheduled a car crush to crush the remainder of Raines's junk automobiles, which were the bankruptcy estate's only assets. The trustee intended to sell the crushed automobiles as scrap metal. The car crush was scheduled for November 18, 1987. The crush was to be conducted on the southern half of the property which was initially deeded to Mr. Raines by the City of Starkville in 1977. Title to the southern half of the property had been the subject of litigation in Mississippi state court between Raines and Spruill; however, on October 2, 1987, the Chancery Court of Oktibbeha County, Mississippi entered an order, which was later affirmed by the

Mississippi Supreme Court, declaring Spruill to be the sole owner of the southern half of the property.

On November 17, 1987, the day before the car crush, the mayor of Starkville warned Raines that he would be arrested if he interfered with the crush. Despite the mayor's warning, on November 18, 1987, Raines arrived at the site of the car crush. Spruill had arranged for bulldozers to spread dirt on the property after Raines's cars had been removed for crushing. While Spruill's bulldozer was attempting to spread dirt on the property, Raines purposely placed his car in front of the bulldozer to prevent Spruill from moving dirt onto the property. Raines called the Starkville Police Department and requested that a police officer be dispatched to the scene of the car crush. When the police officer arrived, the officer noticed that Raines was repositioning his car in front of the bulldozer every time the bulldozer moved. When the officer asked Raines to stop repositioning his car and to step out of his car, Raines refused. Raines cursed, yelled, and continued to reposition his car, despite the officer's instructions that Raines desist, he refused to obey any commands that the officer gave him. The officer, concerned that other people in the area would be endangered by Raines's reckless driving, attempted to place Raines under arrest. Raines resisted, continued to curse and yell, and attempted at least once to reenter his car after he had been removed from the vehicle. Raines was eventually arrested and charged with disorderly conduct, assault, and resisting arrest.

On November 21, 1987, three days after the car crush, Raines returned to the property with plans to remove various automobiles on that property which comprised his remaining business inventory. After hearing that Raines intended to enter the property, Spruill contacted the city attorney who in turn asked two police officers to inform Raines that he would be arrested if he returned to the property. Raines alleges that this action, taken along with all the previous actions, including his forceful arrest, indicate that there existed a municipal policy that involved a conspiracy on the part of Starkville and Spruill to deprive Raines of his constitutional and statutory rights.

On August 8, 1991, the district court granted summary judgment in favor of Starkville and Spruill, and on September 4, 1991, the district court denied Raines's motion for reconsideration.

DISCUSSION

Was The Notice of Appeal Timely?

The following chart indicates in relevant part the sequence of events that led to this appeal.

DATE	EVENT
August 8, 1991	District court order granting def's motion for summary judgment
August 21, 1991	Plaintiff's motion for reconsideration filed with the district court judge
September 4, 1991	Plaintiff's motion for reconsideration is denied.
October 4, 1991	Notice of appeal filed

The first issue is whether Raines's notice of appeal was timely. Under Fed. R. Civ. P. 4(a), a motion for reconsideration that is timely filed will toll the time period for filing a notice of appeal.[1] The gravamen of Starkville's argument is that Raines's notice was not timely filed because Raines failed to file his motion for reconsideration with the district court clerk as required by local rules,[2] rather Raines filed his motion with the district court judge. Starkville argues correctly that "a timely motion" for reconsideration "filed in the district court" must be treated as a motion to amend the judgment under Fed. R. Civ. P. 59(e).[3] Lavespere v. Niagara Machine and Tool Works, 910 F.2d 167, 173 (5th Cir. 1990), reh'g denied, 920 F.2d 259 (5th Cir. 1990).[4] Fed. R. Civ. P. 5(d), which governs the deadline for filing a Rule 59(e) motion, requires filing either "before

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[1] Fed. R. App. P. 4(a) provides that a notice of appeal must be filed within 30 days after the date of entry of the judgment or order that is appealed.

[2] Rule 8(b) of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi provide in part as follows: "The original of each motion, and all affidavits and other supporting documents shall be filed with the clerk at the division office where the action is docketed."

[3] Fed. R. Civ. P. 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

[4] See also Forsythe v. Saudi Arabian Airlines Corp., 885 F.2d 285, 288 (5th Cir. 1989); Charles L.M. v. Northeast Independent School District, 884 F.2d 869, 870 (5th Cir. 1989); Harcon Barge Co. v. D & G Boat Rentals, 784 F.2d 665, 669-70 (5th Cir. 1986) (en banc), cert. denied, 469 U.S. 930 (1986).

service or within a reasonable time thereafter."[5] Great American Ins. Co. v. Rush, 670 F.2d 995, 996 (5th Cir. 1982).

Starkville advances the technically correct argument that Raines's failure to file his motion for reconsideration with the district court clerk results in a breach of the applicable rules of procedure. In response, Raines cites International Business Machines v. Edelstein, 526 F.2d 37, 46 (2d Cir. 1975), for the proposition that all papers submitted to a presiding judge's chambers should be considered filed within the meaning of Fed. R. Civ. P 5(d) and 5(e). First, Edelstein is a second circuit case which is not binding on this court. Second, the court in Edelstein expressly held that filing papers with a judge is "proper only when the Court's discretion has been invoked by one of the parties for good cause." Id. at 46. The court's discretion has not been invoked in this case.

Nevertheless, the district court in the case at hand acted as if Raines's motion for reconsideration had been properly filed, and all parties proceeded under the assumption that Raines had technically complied with the applicable procedures. Therefore, we disagree with Starkville's argument that allowing this appeal, despite Raines's apparent failure to technically comply with the applicable rules of federal procedure, would open a "Pandora's Box" of innumerable excuses and factual scenarios

[5] Fed. R. Civ. P. 5(d) has since been amended in part as follows: "All papers . . . shall be filed with the court within a reasonable time after service . . . ." This amendment took effect on Dec. 1, 1991, and does not affect this appeal.

for those parties who do not timely file Rule 59 motions. Since it does not appear as if any of the parties were injured by Raines's noncompliance, and the judge acted on the motion, we conclude that this mistake was harmless. The filing of the motion with the presiding judge tolled the time period for filing a notice of appeal.

Motion For Reconsideration

Starkville also argues that this court's review must be limited to a review of the district court's order denying Raines's motion for reconsideration. Raines's notice of appeal[6] refers specifically to the "final judgment entered in this action of the 3rd day of September, 1991," which, as Starkville points out, is the final order denying Raines's motion for reconsideration. In Friou v. Phillips Petroleum Co., 948 F.2d 972, 974 (5th Cir. 1991), this court held that an error in designating a judgment appealed should not bar an appeal if the intent to appeal a particular judgment can be fairly inferred, and if the appellee is not prejudiced or misled by the mistake. The court in Friou noted that although the notice of appeal in that case did not specify that the plaintiffs were appealing the district court's grant of summary judgment in favor of the defendants, the defendants were not prejudiced or misled by the imperfect notice. Id. Therefore, the court treated the case as

[6] Fed. R. App. P. 3(c) specifically requires the following: "The notice of shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken."

an appeal from the grant of summary judgment in favor of the defendants. Id.

Similarly, we reject Starkville's argument that Raines's failure to designate precisely the final judgment appealed from strictly limits our review to the motion for reconsideration. Defects in the notice of appeal should be construed broadly in favor of the appellant. Id.; Torres v. Oakland Scavenger Co., 487 U.S. 312, 316-17, 108 S. Ct. 2405, 2408-09, 101 L. Ed. 2d 285 (1988). It is beyond the bounds of common sense to argue, as Starkville has, that Raines would intentionally limit his appeal to the denial of his motion for reconsideration. Construing the notice of appeal broadly, we must conclude that despite its obvious failure to so indicate, Raines intended to appeal the grant of summary judgment in favor of the defendants. We are, however, sympathetic to Starkville's complaint that, for the second time, Raines has failed to technically comply with the applicable rules of federal civil and appellate procedure; nevertheless, we cannot conclude that these careless procedural errors deprive this court of jurisdiction.

The district court's order denying Raines's motion for reconsideration is reviewed under an abuse of discretion standard. Midland West Corp. v. Federal Deposit Ins. Corp., 911 F.2d 1141, 1145 (5th Cir. 1990) (holding that standard of review for denial of Rule 59(e) motion is abuse of discretion). Since the motion for reconsideration addresses the district court's conclusions with respect to the grant of summary judgment in

favor of the defendants, we now turn to the merits of Raines's contentions on appeal that the district court erred in granting summary judgment on his § 1983 claims.

Summary Judgment

Raines alleges that the district court erred in granting summary judgment to the defendants on his 42 U.S.C. § 1983 claims. Under Fed.R. Civ. P. 56(c), a party is entitled to summary judgment as a matter of law if, when the evidence is viewed in the light most favorable to the nonmovant, there are no genuine issues of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). An appellate court reviews a trial court's grant of a motion for summary judgment under the same standard as that used by the trial court--the appellate court employs a de novo standard of review with respect to the law and the facts are viewed with deference to the nonmovant. E.E.O.C. v. Southern Publishing Co., 894 F.2d 785, 789 (5th Cir. 1990); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548-49 (5th Cir. 1989). This court, however, need not defer to any fact assumptions made by the trial court. New York Life Ins. Co. v. Baum, 707 F.2d 870, 871 (5th Cir. 1983). In addition, the determination of whether a factual dispute exists must be governed by the substantive evidentiary standards that apply to the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (holding that where the clear and convincing evidence standard applied, the appropriate summary judgment question in a

defamation case was whether the evidence in the record would support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not).

Raines has named Spruill and the municipal defendants, which comprise the City of Starkville, the Mayor of Starkville, Members of the Board of Alderman, and various police officers employed by the City of Starkville as defendants to this action. In order, we address Raines's § 1983 claims of unlawful arrest, excessive use of force, and unlawful conspiracy to interfere with business.

Section 1983

Title 42 U.S.C. § 1983 creates a cause of action against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . . ." Section 1983 does not create federal court jurisdiction, rather federal jurisdiction for § 1983 actions is conferred pursuant to 28 U.S.C. § 1331, which provides for general federal question jurisdiction, or 28 U.S.C. § 1343(3), which provides that the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person "[t]o redress the deprivation, under color of any State law,

statute, ordinance, regulation, custom, or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." The purpose of § 1983 was to give litigants a federal forum to adjudicate violations of federally protected civil rights because the state law was either inadequate on its face or adequate in theory but inadequate in practice. Monroe v. Pape, 365 U.S. 180, 173-74, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled by Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). The respondents in Monroe argued unsuccessfully that Congress's use of the words "under color of" excluded acts of an official who could show no authority under state law, state custom, or state usage to do what he did. Id. at 172. The Court concluded that even random or unauthorized acts of government officials, if violative of the plaintiff's federal statutory or constitutional rights, were actionable under § 1983. It wasn't, however, until Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), that the Supreme Court, overruling Monroe in part, held that municipalities were "persons" subject to liability under § 1983. Nevertheless, the Monell Court restricted a municipality's § 1983 liability to damages that resulted from the execution of a municipal policy or custom.

> We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its

> lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

436 U.S. at 658. To prevail in a § 1983 action against a municipality, therefore, a plaintiff must establish that he was injured and that some municipal policy or custom caused that injury. Polk County v. Dodson, 454 U.S. 312, 326, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). As an initial matter, plaintiffs in a § 1983 action must plead specific facts which, if proved, would establish liability.[7] In Leatherman v. Tarrant

[7] The circuits are split on the issue of the specificity of pleadings required in a civil rights action. The First, Second, Fourth, Ninth, and Tenth circuits have adopted liberal pleading requirements that do not require § 1983 plaintiffs to plead facts with specificity. See Kader Corp. v. Milbury, 549 F.2d 230 (1st Cir. 1977); Oliveri v. Thompson, 803 F.2d 1265 (2d Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1373 (1987); Loe v. Armistead, 582 F.2d 1291 (4th Cir. 1978), cert. denied, 446 U.S. 928, 100 S. Ct. 1865 (1980); Gibson v. U.S., 781 F.2d 1334 (9th Cir. 1986), cert. denied, 479 U.S. 1054, 107 S. Ct. 928 (1987); Shah v. Los Angeles County, 797 F.2d 743, 747 (9th Cir. 1986); Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), cert. denied, 397 U.S. 991, 90 S. Ct. 1111 (1970). In contrast, the Third, Fifth, Sixth, Eighth, Eleventh, and District of Columbia circuits require specific fact pleadings. District Council 47 v. Bradley, 795 F.2d 310 (3d Cir. 1986); Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1981); Dominique v. Telb, 831 F.2d 673 (6th Cir. 1987); Strauss v. City of Chicago, 760 F.2d 765, 767-78 (7th Cir. 1985); Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986); Lancaster v. Newsome, 880 F.2d 362 (11th Cir. 1989); Haynesworth v. Miller, 820 F.2d 1245 (D.C. Cir. 1987). The Seventh Circuit has expressed skepticism of the heightened pleading requirement concluding that this requirement appeared to conflict with the Federal Rules of Civil Procedure. Elliott v. Thomas, 937 F.2d 338, 345 (7th Cir. 1991), cert. denied, 112 S. Ct. 973, 117 L. Ed. 2d 138 (1992).

The most recent Fifth Circuit case on the issue of specific fact pleadings in civil rights cases is Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 954 F.2d 1054, 1055 (5th Cir.), cert. granted, 112 S. Ct. 2989, _____U.S._____ (1992). The appellant in Leatherman asked the court to reconsider the wisdom of the heightened pleading

County Narcotics Intelligence and Coordination Unit, 954 F.2d 1054, 1055 (5th Cir. 1992), cert. granted, 112 S. Ct. 2989, _____U.S._____ (1992), the Fifth Circuit held that a civil rights complaint must allege with particularity all material facts establishing a plaintiff's right of recovery, and, in cases such as this one, facts that support the requisite allegation that the municipality engaged in a policy or custom for which it can be held liable. In addition, this heightened pleading requirement was extended to the municipal liability context in Palmer v. City of San Antonio, 810 F.2d 514, 516-17 (5th Cir. 1987). The heightened pleading requirement, therefore, applies to all § 1983 cases brought in this circuit, including cases brought against municipalities.

Good Cop, Bad Cop: Unlawful Arrest And Use of Excessive Force

Raines argues that the district court erred in granting summary judgment in favor of Starkville because there was a genuine issue of material fact with regard to the lawfulness of Raines's arrest, the amount of force used by the police officers during the arrest, and the extent of Raines's injuries caused by the arrest. The essence of Raines's claim is that the police officers violated his clearly established constitutional rights under the Fourth

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requirement. Id. at 1061. The court declined to do so and Judge Goldberg, in a special concurrence, opined that "until such time as the en banc court sees fit to reconsider [the heightened pleading requirement], and in the absence of an intervening Supreme Court decision undermining our settled precedent, I find myself constrained to obey the command of the heightened pleading requirement." Id.

Amendment by arresting him without probable cause. Fields v. City of South Houston, 922 F.2d 1183, 1189 (5th Cir. 1991) (holding there is no cause of action for `false arrest' under § 1983 unless arresting officer lacked probable cause); Bodzin v. City of Dallas, 768 F.2d 722, 724 (5th Cir. 1985) (holding that warrantless arrest violates suspects' Fourth and Fourteenth Amendment rights if arresting officer lacks probable cause to believe that suspect has committed crime). Under Mississippi law, a police officer may make an arrest without a warrant for breach of the peace threatened or attempted in his presence.[8] In addition, under Mississippi law, disturbance of the peace by violent, loud, or offensive talk or by conduct which may lead to a breach of the peace is illegal.[9]

The district court found that Raines's cursing, yelling, and refusal to obey any commands that the officers gave him constituted a sufficient violation of the applicable Mississippi law to justify arrest. One of the officers was also injured when Raines, after refusing to obey the officers' instructions, drove his car in reverse while the officer was standing inside the open door on the driver's side of Raines's automobile. As a result of these

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[8] Miss. Code Ann. § 99-3-7 (Supp. 1989) provides that "[a]n officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence . . . ."

[9] Miss. Code Ann. § 97-35-15 (1972) provides that "[a]ny person who disturbs the public peace or the peace of others, by violent, or loud, or insulting, or profane, or indecent, or offensive, or boisterous conduct or language, or by intimidation, or seeking to intimidate any other person or persons, or by conduct either calculated to provoke a breach of the peace, or by any other act, shall be guilty of a misdemeanor . . . ."

findings, the district court concluded that Raines failed to come forward with evidence sufficient to create a genuine issue of material fact as to whether the officers' conduct was objectively unreasonable in light of clearly established law. We fail to see where the district court erred in reaching this conclusion. In fact, it appears that the Mississippi statute which proscribes behavior that would lead to a breach of the peace was enacted to criminalize the type of conduct exhibited by Raines. Raines's argument on appeal consists of a recitation of the facts of the case, followed by the bold conclusion that these facts must lead this court to conclude that his § 1983 rights were violated by the allegedly unlawful arrest. Even if the facts are viewed with deference to the nonmoving party, Raines's behavior at the car crush was at best erratic. Raines has raised no argument and has pointed to no specific facts that would persuade us that the district court erred.

Raines also argues that the officers used excessive force during the arrest and that this excessive force constituted a violation of his constitutional rights. For the reasons noted below, there is no basis for municipal liability in respect to this claim. The individual arresting officers are entitled to qualified immunity if an objectively reasonable officer could conclude that their conduct on the occasion in question did not violate then clearly established constitutional limitations. See Anderson v.

Creighton, 107 S.Ct. 3034 (1987).[10] As the events in question occurred in 1987, prior to Graham v. Connor, 109 S. Ct. 1865 (1989) and Hudson v. McMillian, 112 S. Ct. 995 (1992), the clearly established law in this respect was that of Shillingford v. Holmes, 634 F.2d 263 (5th Cir. 1981). See Mouille v. City of Live Oak, 977 F.2d 924, 927-29 (5th Cir. 1992); Simpson v. Hines, 903 F.2d 400, 403 (5th Cir. 1990).

In Shillingford, this court observed that § 1983 was not a general tort statute, but only imposed liability for rights secured by the Constitution. "We here consider the distinction between those personal injuries for which redress is allowable under Section 1983 and those, however wrongful, for which a remedy must be sought under state tort law." Id., 634 F.2d at 264. The court in Shillingford held that physical abuse by police under color of state law may in some circumstances constitute a constitutional deprivation allowing recovery of damages under § 1983. Id. at 265. "The right to be free of state-occasioned damage to a person's bodily integrity is protected by the Fourteenth Amendment guarantee of due process." Id. This right to be free of state-occasioned

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[10] Raines claims the qualified immunity defense is limited to federal officers. We reject this contention because it is well established that both state and federal police officers are entitled to assert the defense of qualified immunity. Davis v. Scherer, 468 U.S. 183, 104 S.Ct. 3012, 82 L. Ed. 2d 139 (1984); Cagne v. City of Galveston, 805 F.2d 558, 559 (5th Cir. 1986), cert. denied, 483 U.S. 1021, 107 S. Ct. 3266 (1987); Saldana v. Garza, 684 F.2d 1159, 1162 (5th Cir. 1982), cert. denied, 460 U.S. 1021, 103 S. Ct. 1253; Harris v. Rowland, 678 F.2d 1264, 1271 (5th Cir. 1982), cert. denied, 459 U.S. 864, 103 S. Ct. 143,

damage has also been premised on the Fourth Amendment[11] guarantee of a person's right to be secure in their persons, made applicable to the states via the Fourteenth Amendment. The Shillingford court enunciated the test for redress of excessive force claims under § 1983 as follows:

> If the state officer's action caused severe injuries, was grossly disproportionate to the need for action under the circumstances and was inspired by malice rather than merely careless or unwise excess of zeal so that it amounted to an abuse of official power that shocks the conscience, it should be redressed under Section 1983.

Id.

In the case at hand, Raines's own medical expert and examining physician testified that Raines had a "slight swelling" and "discoloration" of his left arm as a result of his scuffle with the police during the arrest. Raines contends that his age--he was 64 years old at the time of the arrest--his bruised elbow, and the reasonable force necessary to arrest him given his age and size were all factors that should have been probative of whether he was able to make a legally sufficient claim. Even taking Raines's age and size into consideration, our review of the record nevertheless leads us to conclude that none of the actions taken by the officers in this case so "shocks the conscience" as to rise to the level of

[11] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

a constitutional violation actionable under § 1983.[12] Despite Raines's assertions to the contrary, there is no evidence that indicating that the district court erred in concluding that Raines suffered no serious physical injury. An arrest is, by definition, a confrontational affair and we have little doubt that many arrests involve some form of physical coercion. Most injuries that result from arrests, even if they are actionable, do not rise to the level of a constitutional violation under the Shillingford test; depending on the actions of the officers, however, they may be sufficient to give rise to a state tort claim. Shillingford, 634 F.2d at 265.

The district court did not err in concluding that Raines did not establish a genuine issue of material fact to show either injury of such character or objectively unreasonable excessive force so as to demonstrate that any reasonable officer would have realized that the force employed violated then clearly established constitutional limitations.

If It Were Done When 'Tis Done,
Then 'Twere Well It Were Done Quickly:
Municipal Conspiracy?

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[12] See also Pfannstiel v. City of Marion, 918 F.2d 1178, 1185 (5th Cir. 1990) (holding that an arrest that involved slapping the arrestee and throwing him to the ground did not amount to an injury of constitutional severity); Johnson v. Morel, 876 F.2d 477, 480 (5th Cir. 1989) (en banc) (per curiam)(holding that an officer's harassment, humiliation, ridicule, and handcuffing of an arrestee so tightly that the handcuffs left permanent scars created a genuine issue of material fact as to the use of excessive force); Raley v. Fraser, 747 F.2d 287, 289 (5th Cir. 1984) (holding that an arrest the resulted in bruised arms, a scraped face, and welts on the wrists of the arrestee was not so gross as to make § 1983 applicable).

Raines also alleges the existence of an unlawful conspiracy on the part of Spruill and Starkville to deprive him of his constitutional rights. As discussed earlier, under Monell v. Department of Social Services, 436 U.S. 658 (1978), a municipality is liable only if a complaining party can establish that his injury was caused by a municipal policy. This court defined what constitutes a municipal policy in Bennett v. City of Slidell as follows:

> 1. A policy, ordinance, regulation or decision that is officially adopted and promulgated by the municipality's law-making officers or by an official to whom the lawmakers have delegated policy-making authority; or
>
> 2. 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. Actual or constructive knowledge of such custom must be attributable to the governing body of that municipality or an official to whom that body has delegated policy-making authority.

735 F.2d 861, 862 (5th Cir. 1984) (en banc) (per curiam), cert. denied, 472 U.S. 1016, 105 S. Ct. 3476, 87 L. Ed. 2d 612 (1985).

Raines argues that the "Lease Agreement" and the "Release and Lease Cancellation Agreement," which provides that the City clear Raines's business inventory from the property for the benefit of Spruill, clearly establishes the existence of a municipal policy that is part of a larger conspiracy to deprive Raines of his constitutional rights. Raines contends, in particular, that the "Release and Lease Cancellation Agreement" was entered into "as a pretext to give the City of Starkville authority to clear Raines's

personal property off the Property for the benefit of Defendant Spruill." There is nothing in the record to support this contention. The "Release and Lease Cancellation Agreement" that is the basis for Raines's alleged conspiracy theory is nothing more than a standard release agreement which releases each party and their assignees from any and all future liability. Further, the "Release and Lease Cancellation Agreement" was entered into to supersede the "Lease Agreement" previously entered into by the City of Starkville and Spruill's assignors because Spruill, pursuant to the terms of the "Lease Agreement," had cancelled the "Lease Agreement." This type of commercial transaction does not appear to be either covert or out of the ordinary. There is simply no evidence of any policy, ordinance, regulation, decision, or widespread practice of the City of Starkville that would justify the conclusion that there exists a municipal policy of any sort, much less a conspiracy. Raines's argument on the conspiracy issue consists of a long list of innuendos that taken as a whole are insufficient to support any claim that there was collusion on the part of Spruill and Starkville to deprive Raines of his constitutional rights. Furthermore, as Starkville correctly points out, there is absolutely no evidence of any causal link between the alleged municipal policy and the injuries sustained by Raines. In fact, Raines himself initiated the call to the Starkville police that ultimately resulted in his arrest. We conclude that the district court did not err in finding that Raines did not plead (or produce evidence of) facts sufficient to show the existence of a

municipal policy or conspiracy to deprive Raines of any of his federal constitutional or statutory rights.[13]

CONCLUSION

The district court did not err in granting summary judgment adverse to Raines on all his claims.

AFFIRMED.

[13] Raines makes these same allegations of illegal conspiracy against Spruill. There is case law that supports the proposition that individuals engaged in conspiracies with municipalities can be held liable under 42 U.S.C. § 1983. Adickes v. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). We reach the same conclusion with respect to Spruill as we do with respect to Starkville--that the district court did not err in concluding that Raines did not plead (or produce evidence of) facts sufficient to show liability.