

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7330

Summary Calendar

RUSSELL T. JACOBS, Individually
and On Behalf of the Heirs at Law
of Stephanie Kaye Jacobs; Betty Jacobs,
Melinda Jacobs, and Brandy Jacobs,

Plaintiffs-Appellants,

versus

CITY OF McCOMB, Mississippi,
A Municipal Corporation and
Mark Shepherd, and XYZ,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-J-90-0483(1))

(January 19, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

The heirs of Stephanie Kaye Jacobs brought this wrongful death action against the City of McComb, Mississippi and Mark

* 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 Pursuant to that rule, the court has determined that this opinion should not be published.

Shepherd, a police officer employed by that city. Plaintiffs allege that Stephanie's death resulted from violations of the Fourth and Fourteenth Amendments to the United States Constitution, and they raise several pendant causes of action under Mississippi law--namely, assault, false arrest (imprisonment), intentional infliction of emotional distress, negligence, and trespass.¹ Defendants moved for summary judgment and, finding no basis for imposing liability and also that defendants are immune from liability, the district court granted defendants' motion. Brandy Jacobs,² Stephanie's natural daughter, now appeals from the district court's grant of summary judgment in favor of defendants. Finding no error, we affirm.

¹ Plaintiffs also originally alleged that defendants violated the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. § 1961, but plaintiffs have admitted that this claim is without merit, and it has been dropped from their lawsuit.

² This action was originally brought by a number of Stephanie's heirs--her parents, Russell Jacobs and Betty Jacobs, her sister, Melinda Jacobs, and her daughter, Brandy. However, plaintiffs conceded before the district court that, under Mississippi law, Brandy is the only proper plaintiff in this wrongful death action, even though she was adopted by Stephanie's parents prior to Stephanie's death. See Partyka v. Yazoo Development Corp., 376 So.2d 646, 648 (Miss. 1979) (where decedent is survived by a minor child, decedent's parents, brothers, and sisters are not proper beneficiaries); see also Fillingame v. Patterson, 704 F. Supp. 702, 704-05 (S.D. Miss. 1988) (this rule is not changed by the fact that decedent's minor child is adopted by someone else prior to decedent's death). Moreover, although the Notice of Appeal in this action reflects that all original plaintiffs are appealing from the district court's decision regarding Brandy's claims, plaintiffs have acknowledged in the Reply Brief submitted to this court "that Brandy Jacobs is the only proper party before the Court."

I

Stephanie Kaye Jacobs died from a self-inflicted gunshot wound during the early morning hours of September 26, 1989. This case involves the series of events preceding Stephanie's death.

For approximately one month prior to her death, Stephanie lived with her boyfriend, Patrick Sullivan, at Sullivan's apartment. On September 24, 1989, Stephanie and Sullivan had an argument, following which Sullivan telephoned Stephanie's parents, informed them that Stephanie was intoxicated, and asked them to help him reason with her. The Jacobs went to Sullivan's apartment, but they were unable to convince Stephanie to leave with them; instead, she left the apartment on foot. At Mrs. Jacobs' request, Sullivan called the police, who then arrested Stephanie for public drunkenness. Stephanie was held in the McComb City Jail for several hours before being released.

The following evening, after consuming alcohol with friends, Stephanie returned to Sullivan's apartment. Stephanie and Sullivan again argued and, after Stephanie left the apartment, Sullivan heard a crash, which he believed was the sound of Stephanie driving into his pickup truck. Sullivan telephoned the police station and reported that his pickup truck had been involved in an accident.³ Officers Mark Shepherd and Toby Jones responded to Sullivan's call. Sullivan told these officers that Stephanie had crashed into his vehicle and then left the scene of

³ The parties dispute whether Sullivan called the police station and reported this alleged incident for the purpose of filing an insurance claim or to file charges against Stephanie.

the accident;⁴ he also informed them that Stephanie was intoxicated. Without checking Sullivan's vehicle, Officer Shepherd left Sullivan's apartment to look for Stephanie, while Sullivan accompanied Officer Jones to the police department to fill out paperwork.

After leaving Sullivan's apartment, Stephanie returned to her parents' home, which is located just outside the McComb city limits,⁵ and went to sleep. When Officer Shepherd arrived, he was greeted at the back door by Stephanie's sister, Melinda. According to Melinda's deposition, Officer Shepherd stated that he needed to speak with Stephanie because Sullivan reported that she had hit his truck. Melinda spoke with Stephanie, and then returned to Officer Shepherd, informing him that Stephanie denied hitting the truck. Shepherd insisted on speaking to Stephanie, so Melinda went back to the living room where Stephanie was sleeping and summoned her.

When Stephanie went to the door, Officer Shepherd advised her that, because of Sullivan's allegations, she needed to come to the police station some time that night or the following morning. Stephanie decided to go to the police station immediately but, because she had been drinking, Officer Shepherd insisted that Melinda drive her to the station. After telling

⁴ According to the record, Sullivan was mistaken about Stephanie's actions and the sound he allegedly heard, for investigating officer Toby Jones found no damage to Sullivan's vehicle.

⁵ The record is not clear as to whether Officer Shepherd knew that Jacobs' residence was located outside the city limits.

Officer Shepherd that she needed to change her clothes, Stephanie went back into the house. Officer Shepherd and Melinda then went outside to look at Stephanie's car and, moments later, a house guest--one of four persons who, having gone out drinking with Stephanie and Melinda earlier that evening, were present at the Jacobs' home and hiding--ran out of the house and told Officer Shepherd and Melinda that Stephanie had a gun.

Officer Shepherd radioed for assistance. He then ran into the house, where he discovered Stephanie locked in a bathroom. Shepherd waited outside the door until Officer Ken Foil arrived. Melinda attempted to talk to Stephanie, but Stephanie requested that Officer Shepherd move her from outside the door. Soon after, Stephanie fired two shots. The officers broke into the bathroom and found Stephanie lying on the bathroom floor; there was a gunshot wound in her chest, and a gun was lying next to her. The officers rushed Stephanie to the emergency room, but she was pronounced dead soon after their arrival.

Brandy brought this action pursuant to the Mississippi Wrongful Death Act, MISS. CODE ANN. § 11-7-13, and section 1983 of Title 42 of the United States Code, charging that Officer Shepherd's actions were the proximate cause of Stephanie's death. According to Brandy, Shepherd violated the Fourth and Fourteenth Amendments to the United States Constitution and committed the state law torts of assault, false arrest (imprisonment), intentional infliction of emotional distress, negligence, and trespass by going to Stephanie's residence--a residence located

outside of his jurisdiction--without an arrest warrant, informing Stephanie of charges he thought were being filed against her, and attempting to arrest her in connection with those charges. Defendants moved for summary judgment on Brandy's state law claims on the basis of immunity, and on her section 1983 claims on the grounds that Brandy failed to show (1) that Officer Shepherd had greatly exceeded his authority and (2) the existence of a city policy which caused Stephanie's death. Finding that "there is simply no basis for imposing liability on either the City of McComb or Mark Shepherd," the district court granted summary judgment in favor of defendants. Brandy appeals from that judgment.

II

Brandy appeals from the district court's grant of summary judgment in favor of defendants on all of her claims. In considering her challenges to the district court's grant of summary judgment,

[t]his court reviews the grant of a summary judgment motion de novo We review the evidence and inferences to be drawn therefrom in the light most favorable to the non-moving party. Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.) (footnotes and internal citations omitted), cert. denied, ___ U.S. ___, 113 S. Ct. 462 (1992); see also FED. R. CIV. P. 56(c). "[T]he plain language of Rule 56(c) mandates the entry of summary

judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986).

A. Section 1983 Claims

Brandy contends that Stephanie's rights under 42 U.S.C. § 1983 were violated by both the City of McComb and Officer Shepherd. Specifically, Brandy alleges that (1) the City of McComb has developed a policy of making warrantless misdemeanor arrests in violation of state law, see MISS. CODE ANN. § 99-3-7, and that this system caused the deprivation of Stephanie's constitutional rights, and (2) Officer Shepherd "greatly exceeded his authority under state law and under federal law[,]" thereby violating Stephanie's constitutional rights. In short, Brandy alleges that Stephanie committed suicide because she was victimized by an illegal arrest in violation of the Fourth Amendment to the United States Constitution.

Although defendants have pled immunity in response to these allegations,⁶ before reaching this issue, we must consider whether Brandy has "failed to allege the violation of a clearly established constitutional right." See Siegert v. Gilley, ___ U.S. ___, ___, 111 S. Ct. 1789, 1793 (1991) (where former government employee brought a section 1983 action against his

⁶ The issue of immunity, especially Officer Shepherd's immunity against Brandy's claims, is addressed infra at Part II.B.

former supervisor, clarifying "the proper analytical framework for determining whether a plaintiff's allegations are sufficient to overcome a defendant's defense of qualified immunity asserted in a motion for summary judgment"); see also Quives v. Campbell, 934 F.2d 668, 670 (5th Cir. 1991) (where district court granted summary judgment on the grounds of immunity, holding that court of appeals had jurisdiction to consider whether the plaintiff stated a constitutional claim). We begin by stating that "municipalities may be liable for damages under § 1983, but only when an official policy or governmental custom of the municipality causes the deprivation or violation of the constitutional rights complained of by the plaintiff." Frairie v. City of Arlington, 957 F.2d 1268, 1277 (5th Cir.) (footnotes and citations omitted), cert. denied, ___ U.S. ___, 113 S. Ct. 462 (1992). Brandy identifies the McComb policy she challenges as being "a policy of making arrest[s] where Affidavits were being made out or had been signed, and where no arrest warrant had been issued." Brandy's contention is, therefore, premised on the belief that Officer Shepherd arrested Stephanie, thereby violating her Fourth Amendment rights and proximately causing her suicide. Having thoroughly reviewed the record and viewed the facts presented in the light most favorable to Brandy, we agree with the district court's finding that Officer Shepherd did not arrest Stephanie.

"An arrest requires either physical force . . . or, where that is absent, submission to the assertion of authority."

California v. Hodari D., __ U.S. __, 111 S. Ct. 1547, 1551 (1991) (emphasis in original); see also United States v. Silva, 957 F.2d 157, 159 (5th Cir.) ("To effect a show of authority seizure, the suspect must yield to or comply with that show of authority."), cert. denied, __ U.S. __, 113 S. Ct. 250 (1992). The test for determining whether a Fourth Amendment seizure has occurred "is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." Hodari D., __ U.S. at __, 111 S. Ct. at 1551.

There is no evidence in the record that Officer Shepherd used physical force against Stephanie. To the contrary, the record establishes that Officer Shepherd simply informed Stephanie that charges were being filed against her and that she had to go to the police station either that evening or the following morning.⁷ It was Stephanie's decision to go to the

⁷ For example, Melinda explicitly stated in her deposition that Officer Shepherd "did not say arrest, he just said charges filed against her." Melinda also described the conversation between Officer Shepherd and Stephanie in greater detail, and her testimony supports defendants' non-arrest interpretation:

She went and she talked to him, and she told him that he didn't--she didn't hit his truck, and you know, and he said that he wanted her to come down to the station, you know, either right then or first thing in the morning, and you know, and she kept telling him still that she didn't hit his truck, and he said--I didn't understand this, and you know, I didn't know what he meant by it or anything, he just said, "I've given you chance after chance" or something, and he said something like, "And you've taken them," and I didn't know what he meant, but evidently, she did because she just said--she just said, "Okay, Mark," or something and then she just--she said, "I need to go change. Mark, let me go get my things" or something, and she

station that evening, and her sister--not Officer Shepherd--was going to drive her there. Finally, the fact that Officer Shepherd willingly allowed Stephanie to go into the house unaccompanied to change her clothes, and actually walked away from the house and checked her car while she was doing so, is evidence that Officer Shepherd's purpose was merely to inform Stephanie of the charges filed against her--not to arrest her. Therefore, we conclude that, even when viewing the facts in the light most favorable to Brandy, Officer Shepherd did not arrest Stephanie. See United States v. Brunson, 549 F.2d 348, 357 (5th Cir.) ("[A] person is not arrested or seized under the Fourth Amendment if he is free to choose whether to enter or continue an encounter with police and elects to do so."), cert. denied, 434 U.S. 842, 98 S. Ct. 140 (1977).

In short, as accurately stated by the district court, "[a]lthough [Brandy] has arguably identified a policy of the City of McComb of making warrantless misdemeanor arrests in violation of state law, see MISS. CODE ANN. § 99-3-7, as there was no arrest in this case, she has not demonstrated a connection between any allegedly invalid municipal policy and the injury which occurred, Stephanie Jacobs' death." See Bennett v. City of Slidell, 728 F.2d 762, 767 (5th Cir. 1984) ("If a city may be liable only where the injury is inflicted in the execution of city policy, the complainant must [1] identify the policy, [2] connect the policy to the city itself and [3] show that the particular injury

turned around, and she walked back there

was incurred because of the execution of that policy.") (emphasis added). In other words, Stephanie was not arrested, and the policy identified by Brandy as violating Stephanie's Fourth Amendment rights was not triggered. Moreover, the record establishes that Officer Shepherd simply informed Stephanie that she had to make an appearance at the police station to respond to charges against her. Officer Shepherd did not arrest Stephanie, and the record does not support Brandy's contention that Officer Shepherd "greatly exceeded his authority under state law and under federal law[,]" thereby violating Stephanie's constitutional rights.⁸ Accordingly, we conclude that Brandy has failed to state a claim under 42 U.S.C. § 1983. See Siegert, ___ U.S. at ___, 111 S. Ct. at 1793.

B. The Pendant State Law Claims

In considering Brandy's state law claims, the district court held that "[b]oth the City of McComb and Shepherd in his official capacity are entitled to sovereign immunity under the facts presented." We agree with the district court's determination.

In 1982, the Mississippi Supreme Court abolished the doctrine of sovereign immunity as it then existed, holding that:

[w]e agree that the time has arrived when this Court should recognize that the judiciary is no longer the branch of government to supervise and control the extent to which persons with rightful claims against the sovereign may propound those claims [T]he

⁸ Brandy's allegations regarding Officer Shepherd's actions are tangled with her state law claims against him, which--along with Officer Shepherd's immunity to those claims--are addressed infra at Part II.B.

problem is one our system of government places on the legislative branch.

Pruett v. City of Rosedale, 421 So.2d 1046, 1051 (Miss. 1982).⁹

The Mississippi legislature responded by enacting the Sovereign Immunity Act of 1984, MISS. CODE ANN. § 11-46-6 (Supp. 1992), which "provides that claims against the State and its agencies shall continue to be governed by the Mississippi case law as it existed immediately prior to the decision in Pruett." Grimes v. Pearl River Valley Water Supply Dist., 930 F.2d 441, 443 (5th Cir. 1991). Therefore, at least for Mississippi actions brought prior to August 31, 1992,¹⁰ traditional sovereign immunity remains

⁹ We note, however, that the Mississippi Supreme Court explicitly limited its conclusion by stating:

We do not abolish by this opinion the historical and well-recognized principle of immunity granted to all legislative, judicial and executive bodies and those public officers who are vested with discretionary authority, which principle of immunity rests upon an entirely different basis, and is left intact by this decision.

Id. at 1052.

¹⁰ On August 31, 1992, the Mississippi Supreme Court issued its opinion in Presley v. Mississippi State Highway Commission, No. 90-CC-0644, 1992 WL 211961 (Miss. Aug. 31, 1992). In Presley, the court struck MISS. CODE ANN. § 11-46-6 as unconstitutional under Article IV, section 61 of the Mississippi Constitution, which provides that "[n]o law shall be revived or amended by reference to its title only, but the section or sections, as amended or revived, shall be inserted [in the statute] at length." Specifically, the court held as follows:

The clause in section 11-46-6 providing that causes of action arising from acts or omissions of the State or political subdivisions shall be governed "by the case law governing sovereign immunity as it existed immediately prior to the decision in the case of Pruett v. City of Rosedale . . ." does not adopt a mere statute by reference but revives and entire body of common law on a particular subject by reference

The Legislature, as that branch of our government charged most directly with establishing policy, has

intact unless expressly removed by statute. See Strait v. Pat Harrison Waterway District, 523 So.2d 36, 38 (Miss. 1988).

According to traditional sovereign immunity, absent statutory provisions to the contrary, a municipality is immune from civil actions based on alleged tortious misconduct arising out of the exercise of functions which are essentially governmental in character. See White v. City of Tupelo, 462 So.2d 707, 708 (Miss. 1984). The official operation of a police department is a governmental function for which no liability is imposed for alleged wrongful or tortious misconduct. See Webb v. Jackson, 583 So.2d 946, 952 (Miss. 1991) (holding that police officer sent to carry out official police work "was involved in the exercise of a governmental function"); see also Anderson v. Vanderslice, et al., 126 So.2d 522, 523 (Miss. 1961) ("This

every right to prescribe the parameters of the immunity of the sovereign. It must do so, however, in a manner which comports with the Constitution. This it has not done, and we are compelled to so declare. Presley, 1992 WL 211961, at *10. However, the court also limited its "new rule" abolishing sovereign immunity under section 11-46-6 to prospective applications, holding that:

This Court creates a "new rule" as today's ruling suddenly scraps the continuing, temporal extensions of immunity the State of Mississippi and its political subdivisions were granted under MISS. CODE ANN. § 11-46-6. An essential question before this Court, then, is whether this "new rule" will apply prospectively (stripping immunity from the date of this decision forward), retroactively (stripping immunity for this action as well as for actions caused prior to the date of this decision), or assume a selectively prospective application (stripping immunity from the date of this decision forward and stripping immunity from the Mississippi State Highway Commission in this case). We conclude that the first option--pure prospective application of the new rule--is the correct course.

Id. at *11.

State, along with the overwhelming majority of the others, adheres to the rule that municipalities are immune from liability for the torts of the officers, agents, and employees while engaged solely in matters pertaining to the police powers of the city."). Moreover, state law claims against a city police officer acting in his official capacity are barred by the sovereign immunity afforded the city. See McGee v. Parker, 772 F. Supp. 308, 312-13 (S.D. Miss. 1991) ("The court concludes that the suit against Parker in his official capacity is the equivalent of a suit against the City of McComb and is, therefore, barred by the immunity afforded the city.") (footnote omitted). As for Brandy's state law claims against Officer Shepherd in his individual capacity, Mississippi public officials

enjoy a qualified immunity to a civil action for damages when acting in the performance of official functions discretionary in nature. They lose that immunity only when they substantially exceed their authority and commit wrongs under color of office. They have no immunity where they commit willful wrongs or malicious acts.

Hudson v. Rausa, 462 So.2d 689, 696 (Miss. 1984) (emphasis added).

According to Brandy, the City of McComb and Officer Shepherd are not entitled to sovereign immunity because the City of McComb waived sovereign immunity through its membership in the Mississippi Municipal Liability Plan. The Mississippi Supreme Court recently rejected this exact argument, holding that "[t]he bylaws of the Mississippi Municipal Liability Plan state that the funds contributed by members under the Plan are intended `for the

payment of claims which are not insured and which are not covered by immunity under [section 11-46-6]'" Webb v. Jackson, 583 So.2d 946, 952 (Miss. 1991) (emphasis added).¹¹

Brandy also contends that sovereign immunity does not bar her state law claims against Officer Shepherd in his individual capacity, for

Officer Shepherd knew, or certainly should have known, that his conduct violated clearly established statutory and constitutional rights. First, he [made] an arrest for a misdemeanor for which he had no warrant. Second, he was outside of his jurisdiction, the city limits of McComb. Third, his investigation could not confirm the alleged hit and run. That Mark Shepherd understood what he should have done becomes apparent from the reading of his deposition, and his coloring of the facts that night, as compared to the testimony of the other officers on duty that night.

We have a very different reading of the record. Responding to Sullivan's complaint and allegations, Officer Shepherd investigated the alleged incident in an objectively reasonable manner. Although Officer Shepherd did leave his jurisdiction, there has been no showing that he knowingly did so, and he did this to investigate Sullivan's complaint. Upon reaching the residence, he simply walked up to the back door, knocked, and then requested to see Stephanie--a series of actions which does

¹¹ According to the Mississippi Supreme Court, "[s]ince [the officer being sued] was involved in the exercise of a governmental function for which immunity is granted under § 11-46-6, the funds paid by MMLP members do not apply to this action." Id. at 952-53. The court reasoned that, "[e]ven if the Plan is general liability insurance, it would not provide coverage for an act which enjoys immunity under the law." Id. Therefore, according to Webb, the City of McComb's participation in the Municipal Liability Plan does not constitute a waiver of sovereign immunity.

not constitute a trespass under Mississippi law.¹² While Officer Shepherd did go to the Jacobs' residence without an arrest warrant for Stephanie, the record establishes that he did not attempt to arrest her; he merely informed her that charges were being filed against her and told her that she had to come to the police station that evening or the following day. See supra Part II.A (discussing Officer Shepherd's actions and the absence of an arrest). Moreover, there is nothing in the record to suggest that Officer Shepherd could have foreseen that, when Stephanie entered her home under the pretense of changing her clothes, she would lock herself in a bathroom with a gun and then take her own life. Therefore, based upon the record, we conclude that Officer Shepherd acted in a reasonably objective manner, and we find a lack of evidence to support Brandy's assertions that Officer Shepherd committed the torts of assault,¹³ false imprisonment,¹⁴

¹² See Waldrop v. State, 544 So.2d 834, 838 (Miss. 1989) ("It is not objectionable for an officer to come upon that part of the property which 'has been open to public common use.' The route which any visitor to a residence would use is not private in the Fourth Amendment sense") (quotation omitted). We also note that there is no evidence in the record suggesting that Officer Shepherd was asked to leave the residence.

¹³ An "[a]ssault occurs where a person (a) . . . acts intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension." Webb v. Jackson, 583 So.2d 946, 951 (Miss. 1991) (internal quotation omitted). The record simply does not support a finding that Officer Shepherd's actions placed Stephanie in imminent apprehension of harmful or offensive contact.

¹⁴ Brandy has not shown either of the two elements of the tort of false imprisonment--(1) detention, and (2) the unlawfulness of such detention. See Thornhill v. Wilson, 504 So.2d 1205, 1208 (Miss. 1987) ("tort of false imprisonment

and intentional infliction of emotional distress,¹⁵ negligence,¹⁶ and trespass. See Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982) ("Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.").

III

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment in favor of defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure.

involves two elements: detention of the plaintiff and the unlawfulness of such detention").

¹⁵ According to the record, Officer Shepherd's conduct was wholly reasonable, and "[a]n action for the intentional infliction of emotional distress occurs where there is something about the defendant's conduct which evokes outrage or revulsion, done intentionally-- . . . the results being reasonably foreseeable-- . . . even though there has been no physical injury." McFadden v. State, 580 So.2d 1210, 1217 (Miss. 1991) (internal quotation omitted).

¹⁶ Brandy has not established that Officer Shepherd breached any duty owed to Stephanie, nor has she shown that the breach of any such duty was the proximate cause of Stephanie's suicide. See Palmer v. Biloxi Regional Medical Center, Inc., 564 So.2d 1346, 1354 (Miss. 1990) ("[A] negligence action requires proof by a preponderance of the evidence of the conventional tort elements: duty, breach of duty, proximate causation, and injury").