IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT SCOTT LEWIS,

Plaintiff,

v.

MARK LUTTRELL, et al.,

Defendants.

03 CV 2405 Ml/P

REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION TO DISMISS

Before the court is Defendants' Motion to Dismiss, filed on July 24, 2003 (Docket Entry 6). In the motion, Defendant Sheriff Mark Luttrell ("Sheriff Luttrell") argues that the court should dismiss Plaintiff's 42 U.S.C. § 1983 complaint because it fails to state a claim upon which relief can be granted. Both Sheriff Luttrell and Defendant Sergeant J.L. Mayes ("Sergeant Mayes") move to dismiss the complaint on qualified immunity grounds. On September 18, 2003, Plaintiff filed his response to Defendants' motion.[1] Plaintiff contends that he has adequately pleaded his § 1983 claims, that qualified immunity does not apply to either

[1]The court granted Plaintiff an extension of time up to and including September 22, 2003, to file his response.

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Defendant, and that the motion to dismiss is premature because the parties have not yet engaged in discovery. The District Judge referred Defendants' Motion to Dismiss to the United States Magistrate Judge for a report and recommendation. This court recommends that Defendants' Motion to Dismiss be granted in part and denied in part, as set forth in Section III below.

I. PROPOSED FINDINGS OF FACT

A. Factual Allegations in the Complaint[2]

On or about April 20, 2002, Plaintiff, who owns and operates a feed store in Memphis, Tennessee, was approached by one of his customers ("Customer") who asked Plaintiff if he wanted three horses. (Pla.'s Compl.) ¶ 7. The Customer told Plaintiff that the horses were owned by the Customer's relatives, Arnita and Melissa Stine ("the Stines"), and that the horses had been neglected and were in poor condition. Id. ¶¶ 7, 9. Plaintiff told the Customer that he wanted the horses, but could not pick them up until the following week. Id. ¶ 8.

On or about April 24, 2002, "with the express permission, consent and knowledge of Arnita Stine," Plaintiff took the three horses and brought them to Plaintiff's farm located in Hardeman County, Tennessee. Id. ¶ 11. Plaintiff then began nursing the

[2]In the context of a motion to dismiss for failure to state a claim, the court must accept all well-pleaded factual allegations in the complaint as true. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus, the Proposed Findings of Fact are based solely on Plaintiff's complaint.

horses back to health. Id. Plaintiff did not hide the horses or mislead law enforcement about the location of the horses.[3] Id. ¶ 12. On or about April 26, 2002, the Stines, who possessed as many as thirty animals, were arrested and charged with animal cruelty. Id. ¶ 9. Many of the animals were either destroyed or placed for adoption by the Memphis Animal Shelter. Id. ¶ 9. The Stines were not charged with animal cruelty with respect to the three horses given to Plaintiff. Id. at ¶¶ 9, 21.

On or about April 29, 2002, Defendant Sergeant Mayes with the Shelby County Sheriff's Department contacted Plaintiff, and told Plaintiff that he wanted him to return the horses. Id. ¶¶ 13, 14, 22. Plaintiff told Sergeant Mayes that Plaintiff "had been given the horses, they were his, and they were in too bad shape to be moved again." Id. ¶ 14. Plaintiff "had no problem cooperating with law enforcement," but was concerned with the health and welfare of the horses. Id. ¶ 14. Plaintiff believed that Sergeant Mayes was only concerned about preserving evidence to use in the prosecution of the Stines. Id. ¶¶ 14, 16.

Weeks later, Sergeant Mayes "repeated his demand" that Plaintiff return the horses. Id. ¶ 15. Plaintiff told Sergeant Mayes that he did not have a horse trailer available, but would bring the horses to Sergeant Mayes if he could provide a trailer.

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[3]On April 29 and 30, 2002, Plaintiff was interviewed by a television reporter about the horses, and allowed the television station to videotape the horses. Id. ¶ 12.

Id. ¶ 15. Sergeant Mayes became "frustrated that his 'proof' [against the Stines] was disappearing," because the horses were greatly improving. Id. ¶ 16. Sergeant Mayes called Plaintiff's sister and threatened to bring charges against Plaintiff. Id. ¶ 16.

On or about May 29, 2002, Sergeant Mayes swore out an Affidavit of Complaint which resulted in a judicial officer issuing a warrant for Plaintiff's arrest for theft of property over $500.00 (a felony). Id. ¶ 17. On May 29, 2002, Plaintiff was arrested by the Shelby County Sheriff's Department on the warrant, and remained in custody for sixteen and one-half hours. Id. ¶ 18. While he was in custody, the original warrant for theft of property was "torn up" and Sergeant Mayes swore out a new affidavit and obtained a second warrant based on tampering with and fabricating evidence in violation of T.C.A. § 39-16-503.[4] Id. ¶ 17.

On or about May 30, 2002, Plaintiff appeared before Judge Larry E. Potter, Division XIV General Sessions Judge. Id. ¶ 20. Judge Potter stated in open court, "This is a bunch of bull." Id. ¶ 20. The charges against Plaintiff were eventually dismissed and expunged. Id. ¶ 20.

B. Causes of Action Alleged in Complaint

Plaintiff contends that Sergeant Mayes provided false and misleading information in obtaining the first warrant for theft of

[4]The second affidavit and warrant are attached as exhibits to Plaintiff's complaint.

property over $500.00, as well as the second warrant for tampering with or fabricating evidence, and that Sergeant Mayes "knew or should have known" that both warrants were defective. Id. ¶ 19, 22. As a result, Plaintiff alleges he was unlawfully arrested and held in custody for over sixteen hours. Plaintiff sues Sergeant Mayes in his official and individual capacity, and brings claims based on false arrest, abuse of process, malicious prosecution, false imprisonment, which all stem from his alleged unreasonable seizure under the Fourth Amendment. Id. ¶¶ 22, 23, 31.

With respect to Sheriff Luttrell, Plaintiff sues the sheriff only in his official capacity as Sheriff of Shelby County, Tennessee. At some point, Plaintiff asked that an investigation be conducted of Sergeant Mayes's actions against Plaintiff. Id. ¶ 24. Sheriff Luttrell allegedly failed to undertake a meaningful, thorough investigation. Id. Plaintiff also alleges that Sheriff Luttrell is responsible for training his officers, which includes training on "the criteria for making a proper, legal arrest, the proper filling out of an Affidavit of Complaint, and the criteria for alleging violation of Tennessee law, including T.C.A. § 39-16-503, as well as conduct of an officer during an arrest." Id. ¶ 25. Plaintiff asserts that Sheriff Luttrell "failed to meet said responsibilities, and failed to control his deputy officers, including Sgt. Mayes." Id. ¶ 25. Plaintiff claims that he suffered these constitutional deprivations as a "direct and proximate

result" of Defendants' actions, taken "under the color of state law, in violation of 42 U.S.C. § 1983." Id. ¶ 31.

C. Defendants' Motion to Dismiss

On July 24, 2003, Defendants filed the present motion to dismiss.[5] Defendants contend that the complaint fails to state a claim against Sheriff Luttrell, and that both Defendants are entitled to qualified immunity. Sheriff Luttrell asserts that the claim against him, in his official capacity, is actually a claim against the county. As such, the allegations in the complaint fail to state a claim because Plaintiff has not pleaded the requisite custom or policy of the county. Moreover, Sheriff Luttrell states that the decision to conduct an internal investigation is a purely discretionary function of the sheriff, and there is no liability for the failure to conduct an investigation after Plaintiff had been arrested. (Defs.' Mem. in Support of Mot. to Dismiss, at 2). He further argues that the complaint alleges that he negligently failed to train his officers, which is insufficient to impose liability under § 1983. Sheriff Luttrell also claims that he is entitled to qualified immunity. Id. at 2-3. With respect to Sergeant Mayes, he asserts that the complaint should be dismissed against him because the affidavit attached as an exhibit to Plaintiff's complaint, as well as Plaintiff's admissions set forth in his complaint, establish that there was probable cause to arrest

[5]Defendants are represented by the same attorney.

Plaintiff for tampering with evidence. Id. at 4-7. Sergeant Mayes states that "[t]here is nothing in this Complaint that showed that Sgt. Mayes in any way presented any deliberately false testimony to Judicial Commissioner Rhonda Harris on May 29, 2002. Therefore, [he] is entitled to qualified immunity . . . ."[6] Id. at 7.

On September 18, 2003, Plaintiff filed his response to the motion to dismiss. In his response, Plaintiff argues that he has sufficiently pleaded his claims against Defendants, and that qualified immunity is not appropriate in this case. He also asserts that dismissal of his complaint at this stage, before any discovery has taken place, would be premature.[7]

II. PROPOSED CONCLUSIONS OF LAW

A. Claims Against Sheriff Luttrell

1. Failure to State a Claim

When considering a motion to dismiss for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6), a court must accept all well-pleaded factual allegations as true and view the complaint in

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[6]Sergeant Mayes's motion to dismiss is based solely on qualified immunity grounds. He does not bring the motion under Fed.R.Civ.P. 12(b)(6).

[7]On August 11, 2003, the parties appeared before this Magistrate Judge for a scheduling conference pursuant to Fed.R.Civ.P. 16(b). At that conference, the parties jointly made an oral motion that the court stay the Rule 16(b) scheduling conference and all discovery in this case until the court ruled on Defendants' pending motion to dismiss. Based on this joint request, the court granted the motion. (See Docket Entry 11).

the light most favorable to the plaintiff.[8] Cooper v. Parrish, 203 F.3d 937, 944 (6th Cir. 2000). Under the federal notice pleading standards, "a complaint need only put a party on notice of the claim being asserted against it to satisfy the federal requirement of stating a claim upon which relief can be granted." Memphis, Tenn. Area Local, Am. Postal Workers Union, AFL-CIO v. City of Memphis, No. 02-5694, 2004 WL 103000, at *3 (6th Cir. Jan. 21, 2004) (citing Fed.R.Civ.P.8(a)).[9] A complaint alleging § 1983 claims is no longer subject to any heightened pleading standards. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 165-66 (1993); Goad v. Mitchell, 297 F.3d 497, 502-03 (6th Cir. 2002) (no heightened pleading standard in civil rights cases in which defendant raises qualified immunity defense). Dismissal for failure to state a claim is proper only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of its claims that would entitle it to relief[.]" Kostrzewa v. City of Troy, 247 F.3d 633, 638 (6th Cir. 2001) (quotation omitted).

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[8]The court considers Sheriff Luttrell's motion to dismiss for failure to state a claim to be brought under Fed.R.Civ.P. 12(b)(6), even though he does not specifically cite this rule.

[9]Rule 8(a) states, in relevant part: "A pleading which sets forth a claim for relief, . . . shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, . . ." Fed.R.Civ.P. 8(a).

While individual capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law, individuals sued in their official capacities stand in the shoes of the entity they represent. Kentucky v. Graham, 473 U.S. 159, 165 (1985)(citing Monell v. Dept. of Soc. Servs., 436 U.S. 658, 690 n.55 (1978)). Since Sheriff Luttrell is sued only in his official capacity, the suit is actually against Shelby County, a municipality. See Gottfried v. Medical Planning Services, Inc., 280 F.3d 684, 692 (6th Cir. 2002); Warren v. Shelby County, Tennessee, 191 F.Supp.2d 980, 983-84 (W.D. Tenn. 2001); see also Vine v. County of Ingham, 884 F. Supp. 1153, 1159 (W.D. Mich. 1995)("[t]he sheriff, when sued in his official capacity, *is* the county"). Therefore, the court must determine whether Plaintiff has sufficiently pleaded a § 1983 claim against Shelby County.

A plaintiff bringing a § 1983 claim against a municipality must allege that agents of the municipality (1) while acting under color of state law, (2) violated the plaintiff's constitutional rights, and (3) that a municipal custom or policy, or policy of inaction, was the moving force behind the violation. City of Canton v. Harris, 489 U.S. 378, 379 (1989). A municipality cannot be held liable for an injury caused by its agents or employees under § 1983 based on a theory of *respondeat superior*. Monell, 436 U.S. at 691. Instead, the plaintiff must "identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." Board of County

Comm'rs of Bryan County, Okla. v. Brown, 520 U.S. 397, 403 (1997). The plaintiff must demonstrate a "direct causal link" between official action and the deprivation of rights, such that the "deliberate conduct" of the governmental body is the "moving force" behind the alleged constitutional violation. Waters v. City of Morristown, 242 F.3d 353, 361-62 (6th Cir. 2001). A municipal policy or custom may be established by proof of the knowledge of policymaking officials and their acquiescence in the established practice. Memphis, Tenn. Area Local, Am. Postal Workers Union, AFL-CIO, 2004 WL 103000, at *3. As this court in Alexander v. Beale Street Blues Co., Inc., 108 F.Supp.2d 934 (W.D. Tenn. 1999) explained:

> Under the liberal pleading requirements of the federal rules, all a plaintiff need do to set forth a cognizable § 1983 claim against a municipality, then, is to allege that agents of the municipality, while acting under color of state law, violated the plaintiff's constitutional rights, and that a municipal policy or policy of inaction was the moving force behind the violation. No further factual specificity is required at the initial pleading stage.

Id. at 949.

In the present case, Plaintiff has sufficiently pleaded in his complaint that (1) officers of Shelby County while acting under color of state law, (2) violated the plaintiff's constitutional rights. City of Canton, 489 U.S. at 379. The right to be free from unlawful arrests or unreasonable seizures is a clearly established constitutional right. California v. Hodari D., 499 U.S. 621, 624

(1991). It is also well-established that an officer violates a plaintiff's constitutional rights when the officer deliberately or recklessly submits materially false information in a warrant affidavit that results in the plaintiff's arrest. Ahlers v. Schebil, 188 F.3d 365, 373 (6th Cir. 1996); Yancey v. Carroll County, 876 F.2d 1238, 1243 (6th Cir. 1989)(holding that "an officer cannot rely on a judicial determination of probable cause if that officer knowingly makes false statements and omissions to the judge such that but for these falsities the judge would not have issued the warrant."). Here, Plaintiff has sufficiently alleged that Sergeant Mayes provided false and misleading information to the judicial officer in order to obtain the warrant for Plaintiff's arrest on the charge of theft of property, and furthermore, that after Plaintiff was arrested and held in custody on the original warrant, Sergeant Mayes destroyed that warrant and obtained a new warrant with new charges.[10] (See Section II.B.2, infra).

Sheriff Luttrell argues, however, that Plaintiff's complaint fails to satisfy the "custom" or "policy" requirement. First, Sheriff Luttrell contends that, with respect to Plaintiff's failure to investigate claim, "[w]hether an Internal Affairs investigation was or was not conducted is purely a discretionary function of the

[10]In the motion to dismiss, Defendants do not address the allegations surrounding the first warrant for theft of property over $500.00 that was allegedly later destroyed.

Sheriff and there is no liability for the failure to conduct an investigation after the Plaintiff has been arrested." (Defs.' Mem. in Support of Mot. to Dismiss, at 2). He argues that "[w]hether an internal investigation should be done would be a duty owed to the public, as opposed to any particular individual, and that duty owed by the Sheriff to the public can never constitute grounds for a federal civil rights violation." Id. Second, Sheriff Luttrell asserts that with respect to both the failure to investigate and failure to train claims, Plaintiff has not identified a municipal "custom" or "policy."

a. Failure to Investigate

The court disagrees with Sheriff Luttrell's first argument - that a sheriff's failure to investigate a complaint can never give rise to municipal liability under § 1983. "In most cases, once an individual's rights have been violated, a subsequent failure to conduct a meaningful investigation cannot logically be the 'moving force' behind the alleged constitutional deprivation." Daniels v. City of Columbus, No. C2-00-562, 2002 WL 484622, at *5 (S.D. Oh. Feb. 20, 2002). In some cases, however, "the municipality may be held liable where its failure to conduct an investigation or discipline the accused rises to the level of 'a policy of acquiescence that in itself was a 'moving force.'" Id. (quoting Alexander, 108 F.Supp.2d at 949); see also Dyer v. Casey, No. 94-5780, 1995 WL 712765, at *2 (6th Cir. Dec. 4, 1995)(citing Leach v.

Shelby County Sheriff, 891 F.2d 1241, 1247 (6th Cir. 1989); Marchese v. Lucas, 758 F.2d 181, 188 (6th Cir. 1985)); Hullett v. Smiedendorf, 52 F.Supp.2d 817, 825 (W.D. Mich. 1999) (citing Leach and Marchese). As the court in Hullet stated:

> "The theory underlying these cases is that the municipality's failure to investigate or discipline amounts to a ratification of the officer's conduct." . . . Failure by a municipality to investigate or discipline its police officers "may permit an inference that the misconduct which injured the plaintiff was pursuant to an official policy or custom." . . . [A] plaintiff must show "a history of widespread abuse that has been ignored by the city."

Hullett, 52 F.Supp.2d at 825 (internal citations omitted); see also Dyer, 1995 WL 712765, at *2; Alexander, 108 F.Supp.2d at 949. "[W]here liability is based on the municipality's alleged inaction rather than on an express policy, a plaintiff must show that the city was 'deliberately indifferent' to the constitutional rights of its citizens." Daniels, 2002 WL 484622, at *4.

Although a municipality's failure to investigate may give rise to § 1983 liability, the court concludes that in this case, Plaintiff has not sufficiently pleaded a county policy or custom that was the moving force behind the constitutional deprivation. The complaint alleges that Plaintiff "requested that an investigation be conducted of the wrongful acts of Sgt. Mayes[,]" and that he "requested an internal affairs investigation, which was never carried out[.]" (Pla.'s Compl. ¶¶ 24, 26). Plaintiff fails to allege, however, that the sheriff's failure to investigate

Sergeant Mayes's action was a county "custom" or "policy" of acquiescence that was the moving force behind the constitutional deprivation. Daniels, 2002 WL 484622, at *4. In its current form, Plaintiff's complaint only alleges a single, isolated constitutional deprivation caused by Sergeant Mayes, and a single, isolated failure by the county to investigate a complaint of officer misconduct. Even under the liberal notice pleading standards, the court cannot conclude that Plaintiff has sufficiently pleaded a custom or policy that was a moving force behind the constitutional deprivation. See Alexander, 108 F.Supp.2d at 949-50 (granting city's motion to dismiss; "Although ratification might tend to establish the existence of a policy of acquiescence that in itself was a 'moving force,' mere ratification of the conduct at issue by itself cannot legally suffice as a 'moving force.'"); Daniels, 2002 WL 484622, at *7 (citing cases); Hullet, 52 F.Supp.2d at 828 ("municipal liability for failure to investigate or discipline its officers cannot be derived from a single act by a non-policy-making municipal employee"); see also Berry v. City of Detroit, 25 F.3d 1342, 1354 (6th Cir. 1994) (plaintiff must show a "history of widespread abuse that has been ignored by the City" to establish liability under a "failure to discipline" theory). For these reasons, the motion to dismiss the failure to investigate claim is granted.

b. Failure to Train

Plaintiff also claims that Sheriff Luttrell failed to train his officers, including Sergeant Mayes, in the areas of "making a proper, legal arrest, the proper filling out of an Affidavit of Complaint, and the criteria for alleging violation of Tennessee law, including T.C.A. § 39-16-503, as well as conduct of an officer during an arrest." (Pla.'s Compl. ¶ 25). Plaintiff alleges that "[t]he Sheriff has failed to meet said responsibilities, and failed to control his deputy officers, including Sgt. Mayes." Id. Sheriff Luttrell's failure to properly train his officers, Plaintiff contends, resulted in a violation of his constitutional right against unreasonable seizures. Id. ¶ 31.

A municipality may be held constitutionally liable under § 1983 for failing to properly train its officers. See City of Canton, 489 U.S. at 387. Inadequate police training may serve as a basis for § 1983 liability only where the failure to train "amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id. at 388. Additionally, "adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable." Id. at 391.

The court finds that the complaint sufficiently pleads a county policy or custom to trigger municipal liability under § 1983. Paragraphs 25 and 31 of the complaint, read together, allege that Sheriff Luttrell failed to train Sergeant Mayes and his

other officers on, among other things, how to properly fill out an Affidavit of Complaint. It is alleged that Sergeant Mayes provided false and misleading information to the judicial officer, resulting in Plaintiff's unlawful arrest without probable cause. At this stage of the litigation, where the court must construe the complaint in Plaintiff's favor, these allegations suffice to support the inference that the county had a policy of failing to train its officers. See Denton v. Bedinghaus, No. 00-4072, 2002 WL 1611472, at *3-4 (6th Cir. July 19, 2002); see also Atchinson v. District of Columbia, 73 F.3d 418, 423 (D.C. Cir. 1996) ("A complaint describing a single instance of official misconduct and alleging a failure to train may put a municipality on notice of the nature and basis of a plaintiff's claim."). Therefore, the motion to dismiss the failure to train claim is denied.

2. Qualified Immunity

In civil suits for money damages, government officials are entitled to qualified immunity for discretionary acts that do "not violate clearly established [federal] statutory or constitutional rights of which a reasonable person would have known." Goad, 297 F.3d at 501 (quoting Anderson v. Creighton, 483 U.S. 635, 638-39 (1982)). When deciding whether a defendant is entitled to qualified immunity, the court must conduct a two-part analysis:

> First, we inquire whether, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? . . . "If no constitutional right

> would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity." . . . "[I]f a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established."

Goad, 297 F.3d at 501 (quoting Saucier v. Katz, 533 U.S. 194 (2001)) (internal citations omitted).

As discussed above, Plaintiff's claim against Sheriff Luttrell in his official capacity is actually a claim against Shelby County. It is well-established that counties, as municipalities, are not entitled to qualified immunity from a § 1983 claim. See Owen v. City of Independence, 445 U.S. 622, 650 (1980); Leatherman, 507 U.S. at 166. For these reasons, Sheriff Luttrell's motion to dismiss based on qualified immunity grounds is denied.

B. Claims Against Sergeant Mayes

1. Qualified Immunity in Official Capacity

To the extent that Sergeant Mayes is being sued in his official capacity, he, like Sheriff Luttrell, stands in the shoes of Shelby County. Collins v. City of Detroit, 780 F.2d 583, 584 (6th Cir. 1986). Therefore, Sergeant Mayes also is not entitled to qualified immunity in his official capacity. For these reasons, his motion is denied.

2. Qualified Immunity in Individual Capacity

As stated above, an officer sued in his individual capacity is entitled to qualified immunity for discretionary acts that do "not violate clearly established [federal] statutory or constitutional

rights of which a reasonable person would have known." Goad, 297 F.3d at 501. An officer is not entitled to qualified immunity when the officer arrests the plaintiff on a warrant which the officer obtained by deliberately or recklessly submitting materially false information to the judicial officer. See Malley v. Briggs, 475 U.S. 335, 344-45 (1986); Ahlers, 188 F.3d at 373; see also Hill v. McIntyre, 884 F.2d 271, 275 (6th Cir. 1989). To overcome an officer's entitlement to qualified immunity, "a plaintiff must establish: (1) a substantial showing that the defendant stated a deliberate falsehood or showed reckless disregard for the truth and (2) that the allegedly false or omitted information was material to the finding of probable cause." Johnson v. Hayden, No. 01-3661, 2003 WL 21321087, *4 (6th Cir. June 6, 2003).

Plaintiff's complaint alleges that "[b]ut for the false and misleading information given to the hearing officer, the arrest warrant would not have been issued, either for [theft] or for [tampering with evidence]." The facts alleged in the complaint indicate that Sergeant Mayes knew that Plaintiff was given the horses by the Stines, and had express permission from Arnita Stine to keep the horses. Despite knowing this information, Sergeant Mayes obtained the original warrant for theft of property over $500.00. Plaintiff alleges that Sergeant Mayes provided false and misleading information to the judicial officer in obtaining the original warrant, and although not expressly stated in the

complaint, the inference is that Sergeant Mayes omitted information in his affidavit regarding Plaintiff's ownership of the horses. To state the obvious, Plaintiff's ownership of the horses would certainly be material in a judicial determination of whether there is probable cause that Plaintiff committed the crime of theft of property. This court finds that Plaintiff has sufficiently pleaded that Sergeant Mayes provided or omitted information in his original affidavit, which amounted to at least a reckless disregard for the truth, and that these omissions were material to the judicial officer's finding of probable cause. The complaint alleges that, as a result of the original warrant being issued for his arrest, Plaintiff was unlawfully arrested and held in custody in violation of this constitutional rights. Thus, based on the record before the court, Sergeant Mayes is not entitled to qualified immunity, and therefore his motion to dismiss on these grounds is denied.

III. RECOMMENDATION

The court recommends that the Motion to Dismiss the claim against Sheriff Luttrell for failure to investigate be GRANTED. The court further recommends that Defendants' Motion to Dismiss, in all other respects, be DENIED.

Respectfully submitted.

[redacted]

TU M. PHAM
United States Magistrate Judge

2/25/04
Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

Notice of Distribution

This notice confirms a copy of the document docketed as number 19 in case 2:03-CV-02405 was distributed by fax, mail, or direct printing on February 25, 2004 to the parties listed.

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