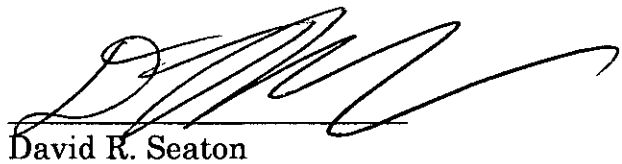
CONCLUSION

For the foregoing reasons, I respectfully request that this Court issue a writ of certiorari to review the judgement of the District of Columba Court of Appeals.

DATED: This 14th day of May 2021.

Respectfully submitted,



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APPENDIX

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

DAVID R. SEATON, Plaintiff, v. BLAKE JOHNSON, et al., Defendants	Case No. 2017 CA 006737B Judge Robert R. Rigsby

ORDER

This matter is before the Court on Defendants' Motion for Summary Judgment, filed on October 22, 2018. Plaintiff filed an opposition on October 31, 2018, and Defendants filed a reply on November 7, 2018. Upon consideration of Defendants' motion, Plaintiff's opposition, and the entire record here in, Defendants' motion is **GRANTED** for the reasons set forth below.

BACKGROUND

Late on the evening of October 6, 2016 or early in the morning on October 7, 2016, Plaintiff, David R. Seaton, raised his middle finger to a police car in downtown Washington, D.C. Compl. ¶ 1; Pl.'s Opp'n at 4. Plaintiff then continued down the street to a bar, known at the time as RFD. Compl. ¶ 2; Pl.'s Opp'n at 4. The bouncer and manager at RFD refused to admit Plaintiff because "he gave the finger to a cop" which the manager considered "aggressive." Pl.'s Opp'n at 4. Plaintiff objected to the manager's decision alleging that he was being excluded for expressing an opinion. Pl.'s Opp'n at 4. As Plaintiff was attempting to enter the bar, the manager walked down to the police car that Plaintiff had walked past previously and asked the officers within the car, Defendants Officer Johnson and Officer Vullo, to come over to the bar. Officers Johnson, Vullo, and D'Angelo's Body Cam Footage, Def.'s Ex. 4, Ex. 5, Ex. 7. The officers approached Plaintiff outside the bar. Compl. ¶ 2; Pl.'s Opp'n at 4. The officers

informed Plaintiff that he was not allowed to enter the bar and would be arrested if he tried to enter. Pl.'s Opp'n at 4. The officers suggested that Plaintiff go to a different bar, but Plaintiff refused. *Id.* Plaintiff then requested the officers' names and badge numbers, which the officers orally provided. Compl. ¶ 3; Pl.'s Opp'n at 4. Plaintiff objected to the oral recitation and demanded that the officers write down their names and badge numbers. Compl. ¶ 3-4; Pl.'s Opp'n at 4. The officers refused to write down the information. Compl. ¶ 4; Pl.'s Opp'n at 4. During this series of exchanges, Plaintiff became increasingly loud and aggressive. Def.'s Ex, 4, Ex. 5, Ex. 7. Officer Johnson stepped toward Plaintiff as he was yelling, and Plaintiff turned toward Officer Johnson and leaned toward him while screaming "fuck you" and made contact with Officer Johnson's face. *Id.* At this point there was an altercation between Officer Johnson and Plaintiff. Compl. ¶ 5; Pl.'s Opp'n at 5. In response Officer Johnson took Plaintiff to

the ground and placed him in handcuffs. Compl. ¶ 5; Pl.'s Opp'n at 5. Plaintiff's was arrested for assaulting an officer, D.C. Code § 22-405(b), and disorderly conduct, D.C. Code § 22-1321. Def.'s Ex.10.

As a result of the takedown, Plaintiff received a laceration on his face. Compl. ¶ 6. An ambulance was called to the scene, but Plaintiff was not taken to the hospital at that time. Pl.'s Opp'n at 5-6. Later that night, Plaintiff went to Howard University Hospital to receive treatment for his injuries. Pl.'s Opp'n at 6.

On October 7, 2016, Plaintiff appeared in court and he was charged with simple assault, D.C. Code § 22-404. Def.'s Ex. 11; Def.'s Ex. 12, On November 16, 2016, Plaintiff entered into a Community Service Deferred Prosecution Agreement, in which he agreed to complete thirty-two hours of community service in lieu of going to trial. Pl.'s Opp'n at 6; Def.'s Ex. 13. Plaintiff completed his community service on December 28, 2016. Def.'s Ex. 14.

The criminal case against Plaintiff was dismissed on March 16, 2017. Def.'s Ex. 12.

On October 5, 2017, Plaintiff filed this case pro se against Officer Blake Johnson, Officer Corey Vullo, Officer John D'Angelo, the City of Washington, D.C., Mayor Muriel Bowser in her Off. Capacity, Metropolitan Police Department, Chief Peter Newsham in his Off. Capacity, and One to Ten Additional Unknown Officers. In his Complaint, Plaintiff alleged eight counts: Count I: Battery; Count II: False Arrest; Count III: Defamation/Libel/Slander; Count IV: Negligence, Count V: Excessive Force; Count VI: Intentional Infliction of Emotional Distress; Count VII: Assault; and Count VIII: Negligence. On April 24, 2018, the unknown officers were dismissed pursuant to Super. Ct. Civ. R. 4(m). On March 6, 2018, Defendants Mayor Muriel Bowser, Chief Peter Newsham and Metropolitan Police Department filed a motion to dismiss the claims against them. On July10,

2018, the Court granted the motion, and Mayor Muriel Bowser, Chief Peter Newsham and the Metropolitan Police Department were dismissed from the case. Defendants now move for Summary Judgment on all counts.

STANDARD OF REVIEW

To prevail on a motion for summary judgment, the moving party has the burden of demonstrating, based on the pleadings, discovery, and any affidavits submitted, that there is no genuine issue as to any material fact and that it is thus entitled to judgment as a matter of law. *See Super. Ct. Civ. R.* 56(c); *see also Wash. Inv. Ptnrs. Of Del., LLC v. Sec. House, 28 A. 3d 566, 573* (D.C. 2011) *(citing Grant v. May Department Stores Co.,* 786 A.2d 580, 583 (D.C. 2001)). "A genuine issue of material fact exists if the record contains 'some significant probative evidence...so that a reasonable fact-finder would return a verdict for the non-moving party.'" *See*

Brown v. 1301 K St. Ltd. P'ship, 31 A. 3d 902, 908 (D.C. 2011) (citing *1836 S. St. Tenants Ass'n v. Estate of Battle,* 965 A.2d 832, 836 (D.C. 2009)).

Once the movant satisfies this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *See id.; Bruno v. Western Union Fin. Servs., Inc., 973 A. 2d 713, 717 (D.C. 2009).* To defeat summary judgment, the non-moving party "must produce at least enough evidence to make out a prima facie case in support of his position," *Bruno, 973 A. 2d at, 717* (internal quotations and citation omitted), and "set [] forth specific facts showing that there is a genuine issue for trial." *See Harris v. D.C. Water & Sewer Auth.,* No. CV 12-1453 (JEB), 2016 WL 1192652, at *3 (D.D.C. Mar. 28, 2016). "A movant is entitled to summary judgment when the evidence is such that a reasonable jury, drawing all reasonable inferences in

the non-movant's favor, could not return a verdict for the non-movant." *See Walker v. Johnson,* 798 F.3d 1085, 1091 (D.C. Cir. 2015) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 1986)).

ANALYSIS

In their motion, Defendants allege there are not material facts in dispute, and request judgment in their favor on all counts. Plaintiff opposes the request. The Court shall deal with each count and each of Plaintiff's arguments in turn.

Preliminarily, Plaintiff alleges that Defendants' motion was not timely filed. Pursuant to the original Scheduling Order, the filing motions deadline was October 10, 2018. On September 19, 2018, Defendants filed a motion seeking to extend the deadline to October 19, 2018. Plaintiff did not oppose the motion. On October 19, 2018, Defendants filed their Motion for Summary Judgment. On

November 6, 2018, the Court granted Defendant's Motion to Amend the Scheduling Order, making the deadline for filing motions October 19, 2018. As the Court granted the Motion to Amend the Scheduling Order, Defendant' Motion for Summary Judgment was timely filed.

I. Count I: Battery, Count VII: Assault, Count V: Excessive Force

In cases involving a police officer, battery, assault, and excessive use of force are all related, thus the Court shall dispense with Counts I, VIII and V together.

"An assault is 'an intentional and unlawful attempt or threat, either by words or by acts, to do physical harm to the victim.'" *Evans-Reid v. District of Columbia,* 930 A.2d 930, 937 (D.C. 2007) (quoting *Etheredge v. District of Columbia*, 635 A.2d 908, 916 (D.C. 1993)). "A battery is an intentional act that

causes a harmful or offensive bodily contact." *Id.* In cases involving police action, however, claims for assault and battery usually turn on the defense of privilege. *Id.* "A police officer has a qualified privilege to use reasonable force to effect as arrest, provided that the means employed are not in excess of those which the actor reasonably believes to be necessary." *Smith v. District of Columbia, 882 A.2d 778, 787 (D.C. 2005)* (internal citations and quotations omitted). "Moreover ... an officer[] is justified in using reasonable force to repel an actual assault, or if he reasonably believes he is in danger of bodily harm." *Id.*

Here there are two potential instances of assault and battery. The first is Plaintiff's claim that Officer Johnson head-butted Plaintiff prior to taking Plaintiff down for an arrest. Defendants, by contrast, allege that Plaintiff was the one to head-

butt Officer Johnson. The body camera footage from Officers Johnson, D'Angelo and Vuello shows that Officers Johnson and Vuello approached Plaintiff outside the bar. Def.'s Ex 4, Ex. 5, Ex. 7. Plaintiff was visibly agitated because he had been denied entry into the bar, and was loudly alleging that his first amendment rights were being infringed. Def.'s Ex 4, Ex. 5, Ex. 7, Ex. 8. The officers explained that Plaintiff's' rights were not being infringed, and that the owner and bouncer, who were both outside the bar, had a right to deny Plaintiff entry into the bar. *Id.* Plaintiff continued yelling, becoming increasingly louder and more profane. *Id.* The officers suggested several times that Plaintiff leave or go to a different establishment, but Plaintiff refused. Def.'s Ex 4, Ex. 5, Ex. 7. Plaintiff continued to yell and swear at the officers, demanding that they write down their names and badge numbers. Def.'s Ex 4, Ex. 5, Ex. 7.

After a few moments of Plaintiff yelling and swearing, Officer Johnson took several steps closer to plaintiff. Def.'s Ex 4, Ex. 5, Ex. 7. Plaintiff responded by taking a step toward Officer Johnson and leaning in toward him, so that Officer Johnson and plaintiff were chest to chest and nose to nose. *Id.* Plaintiff continued to yell aggressively and shoved his face even further into Officer Johnson's face causing further contact. *Id.* Thus, though Plaintiff alleges that Officer Johnson initiated the contact, it is clear from the evidence in the record that Plaintiff was the one to initiate the contact.

None of Plaintiff's evidence shows that Officer Johnson was the one to initiate contact. Plaintiff's affidavit does not mention the head-butting incident, and thus, cannot support his claim that Officer Johnson was the one to initiate contact. Pl.'s Ex. 1. Plaintiff's letter to risk management states that

Officer Johnson put his forehead on Plaintiff's cheek, Pl.'s Ex. 2, which differs from plaintiff's description in his opposition, Pl.'s Opp'n at 5, and directly contradicts the video evidence at the scene, Def.'s Ex 4, Ex. 5, Ex. 7, and sworn eyewitness statements that were given at the scene, Def.'s Ex 6, Ex. 8, the remainder of Plaintiff's exhibits relate to his treatment at Howard University Hospital later that night. Thus, though Plaintiff has stated that Officer Johnson was the one to initiate the head-butt, the evidence in the record cannot support this conclusion. As plaintiff initiated the contact with Officer Johnson, Officer Johnson cannot be held liable for assaulting or battering Plaintiff for this contact.

Second, Plaintiff alleges he was battered and assaulted when the officers took him down to the ground and arrested him. Plaintiff further alleges

that the officers used excessive force when arresting him, specifically alleging that the officers' body slammed him to the ground when they arrested him. If the officers used reasonable force to bring Plaintiff under control for the arrest, then they are not liable for assault or battery to Plaintiff. *See Etheredge*, 635 A.2d at 916. The body cameras on the officers clearly show that Officer Johnson, with some assistance from Officer Vullo and Officer D'Angelo, quickly and efficiently stepped behind Plaintiff, and brought him down to the ground with control. Def.'s Ex 4, Ex. 5, Ex. 7. Officer Johnson did not, as Plaintiff alleged, "[throw] Plaintiff over his head like a sack of potatoes toward the concrete." Pl.'s Opp'n at 5. Rather, the amount of force the officers used was proportional to the amount necessary to bring Plaintiff under control for the arrest. Further, similar to his allegation related to the head-butting,

none of the evidence Plaintiff submitted supports his conclusion. As the officers did not use excessive force when arresting plaintiff, they cannot be held liable for assaulting or battering Plaintiff.

Accordingly, Summary Judgment must be granted in Defendants'favor on Count I, Count V, and Count VII.

II. Count II: False Arrest

In Count II, Plaintiff alleges false arrest. The essential element of a false arrest claim is unlawful detention. *Enders v. District of Columbia, 4 A.3d 457, 461 (D.C. 2010).* Therefore, the central issue for the Court to determined is "whether the arresting officer was justified in ordering the arrest of the plaintiff." *Id.* (quoting *(Sharon) Scott v. District of Columbia,* 493 A.2d 319, 321 (D.C. 1985)). An arrest is justified when the arresting officer has probable cause. *Bradshaw v. District of Columbia*, 43 A.3d

381, 323 (D.C. 2012). An officer has probable cause if "the officer can demonstrate that (1) he or she believed, in good faith, that his or her conduct was lawful, and (2) this belief was reasonable." *Id.* At 324 (citations omitted). Whether an officer acted in good faith must be considered "from the perspective of the arresting officer, not the plaintiff." *Id.*

Here Plaintiff was arrested for assaulting a police officer. D.C. Code § 22-405(b). To violate the statute, an individual's conduct "must go beyond speech and mere passive resistance, and cross the line into active confrontation, obstruction or other action directed against an officer's performance in the line of duty." *Cheek v. United States,* 103 A.3d 1019, 1021 (D.C. 2014). Here, Plaintiff did "go beyond speech and mere passive resistance" when he leaned into Officer Johnson and pushed his face into Officer Johnson's face. Thus, Plaintiff did violate the

statute. A violation of D.C. Code § 22-405(b) is a misdemeanor. Police officers are permitted to make an arrest for misdemeanors committed in their presence. *See* D.C. Code § 22-581(a)(1)(B). Thus, as Plaintiff committed a misdemeanor in the presence of a police officer, the officers were justified in arresting Plaintiff.

Further, in his Deferred Prosecution Agreement, Plaintiff admitted that "there is probable cause for the Court to conclude that "he committed a simple assault in violation of D.C. Code § 22-404. Def.'s Ex. 13. Though Plaintiff now claims he did not understand that signing the Deferred Prosecution Agreement meant he was making an admission that there was probable cause, there is no evidence to support his conclusion. Plaintiff has admitted he was represented by counsel when he entered into the agreement and that his counsel explained the

agreement to him. Pl.'s Opp'n at 14. Plaintiff's affidavit does state the he thought the only right he had given up was his right to a speedy trial. Pl.'s Ex.1. That does not, however, suggest that Plaintiff failed to understand the agreement or that there was undue coercion in executing the agreement. Thus as Plaintiff previously admitted there was probable cause for a misdemeanor, he cannot now challenge the arrest by saying it was improper.

Accordingly, Summary Judgment must be granted in Defendant's favor on Count II.

III. Count III: Defamation/Libel/Slander

In Count III, Plaintiff alleges defamation/libel/slander. "To state a cause of action for defamation, [a] plaintiff must allege and prove four elements: (1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement

without privilege to a third party. (3) that the defendant's fault in publishing the statement amounted to at least negligence: and (4) either that the statement was actionable as a matter of law irrespective of social harm or that its publication caused the plaintiff special harm." *Oparango v. Watts, 884 A.2d 63, 76 (D.C. 2005).* Plaintiff cannot support a claim for defamation.

Plaintiff cannot meet any of the elements of defamation in this case. Plaintiff has only alleged that Defendants falsely claimed that he battered a police officer. As discussed above, the plaintiff was the one to make contact with Officer Johnson. Thus, he cannot show that it was a false statement. Further, however, Plaintiff has provided no evidence to suggest that Defendants publication of the statement was negligent or malicious or that he suffered a harm as a result of the publication.

Finally, the officers' statements in their report are privileged statements, as they were made in good faith, in relation to a law enforcement proceeding. *See Columbia First Bank v. Ferguson*, 665 A.2d 650, 655 (D.C. 1995). Thus, the officers' statements cannot be the basis of a defamation claim, even if everything as alleged in Plaintiff's complaint is true.

Accordingly, Summary Judgment must be granted in Defendants' favor on Count III.

IV. Count IV: Negligence and Count VIII: Negligence

In Count IV, Plaintiff alleges that the officers who arrested him were negligent in their duty and caused him harm during the arrest. In Count VIII, Plaintiff alleges negligent supervision, retention, and training, with regard to the officers that were responsible for his arrest. An expert is required to prove both of these claims. *See Holder v. District of Columbia,* 700 A.2d 738, 741-42 (D.C. 1997) (stating

that an expert is required in cases where a plaintiff sues an officer for negligence because "the applicable standard of care in cases of this kind is beyond the ken of the average lay juror"); *see also Pannell v. District of Columbia,* 829 A.2d 474, 479 (D.C. 2003) (stating that "the standard of care owed by the District of Columbia to persons in its custody is a matter beyond the ken of the average juror that requires expert testimony"); *see also. District of Columbia, v. Davis,* 386 A.2d 1195, 1200-01 (D.C. 1987) (holding that an expert is necessary in negligent supervision, training, and retention cases against police officers). Plaintiff has identified no experts in this case. Thus, Plaintiff cannot prove his negligence claims.

Accordingly, Summary Judgment must be granted in Defendants' favor on Count IV and Count VIII.

V. Count VI: Intentional Infliction of Emotional Distress

In Count VI, Plaintiff alleges intentional infliction of emotional distress. In order to establish intentional infliction of emotional distress "a plaintiff must shoe (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff [to suffer] severe emotional distress." *Ortberg v. Goldman Sachs Group,* 64 A.3d 158, 163 (D.C. 2013) (quoting *Baltimore v. District of Columbia,* 10 A.3d 1141, 1155 (D.C. 2011)) (alteration in original). "Liability will only be imposed for conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Id.* (quoting *Homan v. Goyal,* 711 A.2d 812, 818 (D.C. 1998)). Further, under D.C. law, a

claim for intentional infliction of emotional distress "generally requires a Plaintiff's distress to be so intense that there is some physical manifestation of the emotional turmoil." *Arias v. DynCorp,* 2016 U.S. Dist. LEXIS 15156 at *36 (D.D.C. 2016).

Here, Plaintiff has put forth no evidence to show that he is suffering from severe emotional distress or that he is suffering from any physical manifestations of emotional turmoil. Though Plaintiff submitted medical reports from his visit to the hospital shortly after his arrest, the reports only state that Plaintiff had received a laceration on his face, and do not suggest that there were any further emotional issues at the time. Pl.'s Ex. 4. Further, Plaintiff has not shown that the symptoms continued after that initial visit. Thus, Plaintiff cannot show that he is suffering from emotional distress.

Accordingly, Summary Judgment must be granted in Defendants' favor on Count VI.

CONCLUSION

Construing all evidence and drawing all reasonable inferences in the light most favorable to Plaintiff, this Court **GRANTS** Defendant's Motion for Summary Judgment. Accordingly, and based on the entire record herein, it is this 9th day of January, 2019, hereby

ORDERED that Defendants' Motion for Summary Judgment is **GRANTED**; it is further

ORDERED that judgment is entered in favor of Defendants against Plaintiff on all counts, it is further

ORDERED that all future hearings and events are **VACATED** and this case is **CLOSED**

SO ORDERED.

s/

Robert R. Rigsby, Associate Judge

Superior Court of the District of Columbia

Copies to:

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David A. Jackson

Michael K. Addo

Counsel for Defendant

Via CaseFileXpress

Civil Division

DAVID R. SEATON, Plaintiff, v. BLAKE JOHNSON, et al., Defendants	Case No. 2017 CA 006737B Judge Robert R. Rigsby

JUDGMENT

On January 9, 2019, this Court issued an Order granting Defendants' Motion for Summary Judgment. Accordingly, and for the reasons stated in the January 9, 2019 order, it is this 9th day of January, 2019, hereby

ORDERED that judgment is entered in favor of Defendants, City of Washington, DC, John D'Angelo, Blake Johnson, and Corey Vullo, against Plaintiff, David R. Seaton, in accordance with the January 9, 2019 order from this Court.

IT IS FURTHER ORDERED that this matter is closed.

SO ORDERED.

s/

Robert R. Rigsby, Associate Judge

Superior Court of the District of Columbia

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-CV-85

DAVID R. SEATON, APPELLANT,

V.

BLAKE JOHNSON, ET AL., APPELLEES,

Appeal from the Superior Court

Of the District of Columbia

(CAB6737-17)

(Hon. Robert R. Rigsby, Trial Judge)

(Submitted January 17, 2020

Decided March 3, 2021)

Before GLICKMAN and EASTERLY, *Associate Judges,* and STEADMAN, *Senior Judge.*

MEMORANDUM OPINION AND JUDGEMENT

PER CURIAM: After appellant David Seaton had an altercation with the police outside of a bar, he sued three

officers and the District of Columbia in Superior Court (among others who were subsequently dismissed form the case), alleging claims of assault, battery, false arrest, excessive force, defamation/libel/slander, negligence, and intentional infliction of emotional distress. The Court granted appellees' summary judgment on all of Mr. Seaton's claims. On appeal, Mr. Seaton, who proceeds pro se as he did in the Superior Court, argues that appellees' summary judgment motion was not timely filed, and "when the facts of record were interpreted in the light most favorable to [him] ...[he] had a valid claim for damages," which we understood to mean that, in his view, there were disputed issues of fact that should have been litigated at trial. We affirm.

Preliminarily, we note that Mr. Seaton's brief is almost a verbatim recitation of his opposition to the District's motion for summary judgment, with the result that he does not acknowledge the particulars of the

Superior Court order he seeks to appeal, much less explain why it is incorrect. But as an appellate court, we look to the trial court's summary judgment order to provide the framework for our analysis, even if our review of the particular legal rulings made by the trial court warrant de novo review. *See Vessels v. District of Columbia*, 531 A.2d 1016, 1019 (D.C. 1987) (explaining that although we "conduct[] an independent review of the record when reviewing a trial court order granting summary judgment, our review [is] limited to consideration of whether the trial court conducted an adequate independent review of the record in the context of the legal and factual issues as framed by the parties at summary judgment" (internal citation omitted0).

The trial court rejected Mr. Seaton's challenge to the timeliness of the District's motion for summary judgment because the District had filed a motion for an extension of the time before the original motions deadline expired, and

the court subsequently both granted this motion nunc pro tune and amended the scheduling order. Pursuant to Superior Court Civil Procedure Rule 6(b)(1), the Superior Court may at any time in it's discretion "with or without motion" grant an extension of time to file so long as "good cause" is shown and a request "is made[] before [1]the original time...expires." Super. Ct. Civ. R. 6(b)(1). Mr. Seaton does not acknowledge either that the trial court amended the scheduling order or that it had the discretion to do so under Rule 6(b)(1); he therefore fails to explain why the trial court in granting the motion for an extension of time abused its discretion under the rule. Further, even if it is true that he never received a copy of the District's

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[1]. The motion's certificate of service states the Mr. Seaton was served through CaseFileExpress, mail, and e-mail, and that the motion should be treated as contested because the Office of the Attorney General was unable to reach Mr. Seaton to see if he would consent.

motion for an extension of time,[1] he does not explain how he was prejudiced by the court's ruling. *See Johnson v. United States,* 398 A.2d 354, 366 (D.C. 1979) (explaining that prejudice is a necessary component of a showing of abuse of discretion).

Turning to the merits of the trial court's summary judgment ruling, the trial court addressed Mr. Seaton's battery, assault, and excessive force claims collectively, addressing his remaining claims individually, and concluded that all of his claims failed as a matter of law. Our review of an order granting summary judgment is de novo. *See Aziken v. District of Columbia,* 194 A.3d 31, 34 (D.C. 2018). Like the trial court, we consider whether "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Super. Ct. Civ. R. 56(a); *Aziken,* 194 A.3d at 34. Although we examine the record in the light most

favorable to the non-movant, conclusory assertions will not create a triable issue of fact. *See Jones v. Thompson,* 953 A.2d 1121, 1124 (D.C. 2008).

1. Assault, Battery, and excessive Force

The trial court examined Mr. Seaton's assault, battery, and excessive force claims together because they all rested on Mr. Seaton's assertion that the police had attacked him when he demanded that they write their badge numbers down. Mr. Seaton alleged in his complaint that one officer involved in the incident, Officer Johnson, had head-butted him. Retreating from that allegation in his opposition to the motion for summary judgment, Mr. Seaton asserted that the body worn camera ("BWC") footage from the officers showed Officer Johnson "shov[ing] his head into Plaintiff's face." Examining the BWC footage, Mr. Seaton's affidavit (which did not reference any physical contact), as well as sworn

statements of other eyewitnesses to the incident, the court concluded that the evidence established that Mr. Seaton was the one to initiate contact with Officer Johnson by leaning into the officer "so that [they] were chest to chest and nose to nose" while yelling aggressively, thereby providing the officer with probable cause to arrest Mr. Seaton for assaulting a police officer. Because his argument on appeal is a duplicate of his opposition to summary judgment, Mr. Seaton fails to identify any evidence in the record that contradicts this assessment or to explain why the trial court's evaluation of the evidence was incorrect. We are unaware of any such evidence and discern no such reason.

The court also rejected as unsupported by any evidence Mr. Seaton's claim that the officers used excessive force when effectuating his arrest. Relying on *Etheredge v. District of Columbia,* 635 A.2d 908,

916 (D.C. 1993), the court explained that and officer using reasonable force to effect an arrest I immune to a tort claim of assault or battery, and concluded that the force used against Mr. Seaton "was proportional to the amount necessary to bring Plaintiff under control for the arrest." Specifically, the court found that the BWC footage showed Officer Johnson br[inging] [Mr. Seaton] down to the ground with control" – not "throw[ing][Mr. Seaton] over his head like a sack of potatoes," as Mr. Seaton alleged in his opposition to the motion for summary judgment. Again, Mr. Seaton does not challenge the trial court's legal analysis and points to no evidence in the record that creates a disputed issue of fact regarding whether the police employed excessive force.

2. False Arrest

The court concluded the District was entitled to summary judgment on Mr. Seaton's false arrest

claim because he failed to present any evidence supporting the essential element of this tort, that he was unlawfully detained. *See Enders v. District of Columbia,* 4 A.3d 457, 461 (D.C. 2010). The court relied on its determination that, on the record presented, the police had probable cause to arrest Mr. Seaton for assaulting a police officer under D.C. § Code 22-405(b) (2020 Supp.), and that Mr. Seaton had specifically admitted in his deferred prosecution agreement that the police had probable cause to arrest him. The trial court rejected as unsupported by any evidence Mr. Seaton's claim that he entered into this agreement against his will or without knowledge of the terms, specifically noting that Mr. Seaton was represented by counsel who explained the agreement to him. On appeal Mr. Seaton does not direct us to evidence the trial court overlooked; he simply repeats his assertion that he understood

the deferred prosecution agreement only to waive his speedy trial rights. But as the trial court noted, this claim of misunderstanding was unsupported by any evidence and thus entirely conclusory.

3. Defamation, Libel, and Slander[2]

The trial court also concluded that Mr. Seaton's claim that he had been defamed by the false accusation that he had battered a police officer failed because he could not show that the accusation was false. *See Oparaugo v. Watts,* 884 A.2d 63, 76 (D.C. 2005). (explaining that to prove defamation a plaintiff must show, among other things, that "a false and defamatory statement" was made). On appeal Mr. Seaton reiterates his assertion in the trial court that the "evidence contained in the record indicates that Appellees' lied," apparently "when they

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[2] Like Mr. Seaton, the court conglomerated these three claims.

submitted statements reasonably calculated to cover-up that fact that they escalated the situation." It is unclear how such lies were defamatory to Mr. Seaton. But in any event, as noted above, after reviewing BWC footage of the altercation, as well as other evidence, the trial court determined that the record evidence established Mr. Seaton made physical contact with Officer Johnson and thus had assaulted him.

4. Negligence

Citing to our decision in *Holder v. District of Columbia,* 700 A.2d 738, 741-42 (D.C. 1997), the trial court ruled that Mr. Seaton failed to present the requisite expert testimony to support his claims that the officers negligently effectuated his arrest, and that the District breached its duty of care to him by failing to train its officers in de-escalation tactics and in documenting their identities for the public.

Without citation to any authority, Mr. Seaton asserts expert testimony is unnecessary because the police officer' conduct concerns "a value judgment that We the People can and must decide for ourselves." Like the trial court, we are bound by our precedent that expert testimony is required to support a claim that the police were negligent "[b]ecause the applicable standard of care...is beyond the ken of the average lay juror," *Holder,* 700 A.2d at 741, and we similarly conclude that the failure to present expert testimony was fatal to Mr. Seaton's negligence claims.

5. Intentional Infliction or Emotional Distress

Lastly, the trial court explained that an intentional infliction of emotional distress claim will only lie when the conduct at issue is "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Ortberg v.*

Goldman Sachs Group, 64 A.3d 158, 163 (D.C. 2013) (internal quotation marks omitted). The trial court correctly determined that the evidence did not support such a claim where Mr. Seaton's medical records showed that he had a minor abrasion to his face and that the treating physician at Howard University Hospital otherwise noted an "unremarkable" evaluation on the night of the incident, including "[n]o acute distress." Once again, Mr. Seaton does not respond to the trial court's ruling. He merely repeats his assertions that he carried his burden to create an issue of fact on this claim because (1) the police "thr[ew] [him] to the ground and smash[ed] [his] face into the concrete in revenge at being cursed at," and (2) "he was tachycardic" while at the hospital. As previously discussed, the record evidence establishes that the police executed the takedown after Mr. Seaton

assaulted Officer Johnson. And Mr. Seaton's medical records simply document that he initially had an elevated heart rate, "likely due to being upset," that returned to normal by the time of his discharge. As a matter of law, such a temporary physical condition does not rise to the level of "harmful physical consequences" indicative of "acute" emotional distress. See *Kotsch v. District of Columbia,* 924 A.2d 1040, 1046 (D.C. 2007)

For the foregoing reasons, the judgment of the Superior Court is Affirmed.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO

Clerk of the Court

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