No. _____

In the Supreme Court of the United States

Henry Hamilton,

Petitioner,

v.

City of Hayti, Missouri, Glenda Overbey, Calvin Ragland, Amy Leann Inman,

Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

APPENDIX

Jim R. Bruce, II
Counsel for Petitioner
P. O. Box 37
403 St. Francis St.
Kennett, Missouri 63857
(573) 888-9696
jrbruce@nwcable.net

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-3450

Henry Hamilton, individually and on behalf of others similarly situated

Appellant

v.

City of Hayti, Missouri, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Missouri - Cape Girardeau
(1:16-cv-00054-RLW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 01, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

948 F.3d 921
United States Court of Appeals, Eighth Circuit.

Henry HAMILTON, Plaintiff - Appellant

v.

CITY OF HAYTI, MISSOURI, et al., Defendants - Appellees

No. 18-3450

Submitted: September 24, 2019

Filed: January 28, 2020

Synopsis

Background: Arrestee filed § 1983 action against city, court clerk, complainant, and municipal judge alleging unlawful arrest, detention, and prosecution, setting of excessive cash-only bond, and civil conspiracy to arrest, detain, and prosecute him. The United States District Court for the Eastern District of Missouri, Ronnie L. White, J., dismissed some claims, 2017 WL 836558, and entered summary judgment in defendants' favor on remaining claims, 2018 WL 4466014. Arrestee appealed.

Holdings: The Court of Appeals, Loken, Circuit Judge, held that:

judge was entitled to judicial immunity from liability arising from issuance of arrest warrant;

judge was entitled to judicial immunity from liability arising from practice of setting bond schedule;

court clerk was entitled to quasi-judicial immunity;

city was not subject to liability for judge's allegedly unconstitutional bond practice; and

complainant was not state actor for § 1983 purposes.

Affirmed.

***924** Appeal from United States District Court for the Eastern District of Missouri - Cape Girardeau

Attorneys and Law Firms

Counsel who presented argument on behalf of the appellant and appeared on the brief was Jim R. Bruce, II, of Kennett, MO.

Counsel who presented argument on behalf of appellees City of Hayti, Missouri, Glenda Overbey, and Calvin Ragland, and appeared on the brief was Albert M. Spradling, III, of Cape Girardeau, MO.

Counsel who presented argument on behalf of appellee Amy Leeann Inman, and appeared on the brief was John Christian Steffens, of Cape Girardeau, MO. The following attorney(s) also appeared on appellee Amy Leeann Inman's brief; John William Grimm, of Cape Girardeau, MO.

Before LOKEN, COLLOTON, and KOBES, Circuit Judges.

Opinion

LOKEN, Circuit Judge.

On July 28, 2011, Amy Leeann Inman, manager of the Cleveland Apartments in Hayti, a small town in southeastern Missouri, called the police to report that Henry Hamilton "began cursing" and "threw an ink pen" at her while applying for public housing. Glenda Overbey, the police department receptionist and Inman's mother, radioed the two officers on duty. Officer David Inman, Inman's boyfriend and now her husband ("Officer Inman"), responded. Inman prepared a "notice against trespass" barring Hamilton from entering the apartment complex due to "assault on management" and signed a complaint at the Hayti Police station, witnessed by Overbey, charging Hamilton with Peace Disturbance and Assault.

The next day, a police officer in a neighboring town arrested Hamilton for "eluding a police officer." Officer Inman was dispatched and served Inman's notice against trespass. Hamilton was taken to the Pemiscot County Jail. Overbey, who also served as clerk and administrator for the Hayti municipal court, issued a warrant commanding that Hamilton be arrested and brought before the municipal court on the pending charges in Inman's complaint. Overbey signed the warrant for Municipal Judge Calvin Ragland, using a rubber stamp he provided, and faxed it to the County Jail. The warrant set as "conditions of release" the posting of a cash

bond in the amount of $1,022.50. Hamilton did not post the cash bond. On August 4, seven days after he was detained under the warrant, Hamilton made his initial appearance before Judge Ragland. Hayti City Attorney Lawrence Dorroh signed an information prepared by Overbey and agreed to dismiss the assault charge. Hamilton pleaded guilty to the peace disturbance charge. Judge Ragland sentenced Hamilton to time served and ordered his release.

Hamilton filed this action against the City of Hayti, Overbey, Judge Ragland, and Inman. Count I of the complaint sought damages and injunctive and declaratory relief under 42 U.S.C. § 1983, alleging unlawful arrest, detention, and prosecution, and the setting of an excessive cash-only bond that Hamilton was unable to pay due to indigency, in violation of his rights under the Fourth, Eighth, and Fourteenth Amendments. Count II alleged violations of the Missouri Constitution, a Missouri statute, and Missouri Supreme Court Rules. Count III alleged a civil conspiracy ***925** to arrest, detain, and prosecute Hamilton in violation of his statutory and constitutional rights.

The district court[1] dismissed all claims against Judge Ragland and Overbey based on judicial and quasi-judicial immunity. The court dismissed the state law claims against Hayti and Inman because the City had sovereign immunity and Inman, a private actor, could not be sued for violations of relevant Missouri law. Following discovery, the court granted summary judgment dismissing the remaining § 1983 damage claims, concluding (i) Hayti was not liable under Monell v. Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), because the alleged unconstitutional bond practice was not a final policy decision; and (ii) Inman was not liable under § 1983 because Hamilton failed to prove a "meeting of the minds" with state actors. In a separate order, the court dismissed the claims for injunctive and declaratory relief as moot because Missouri has amended its laws pertaining to bail in municipal courts.

1 The Honorable Ronnie L. White, United States District Judge for the Eastern District of Missouri.

Hamilton appeals, challenging the dismissal of his § 1983 damages claims against Judge Ragland, Overbey, Inman, and the City of Hayti. Reviewing the dismissal and summary judgment orders *de novo*, we affirm. Mick v. Raines, 883 F.3d 1075, 1078-79 (8th Cir. 2018) (standard of review).

I.

Hamilton's complaint alleged that Judge Ragland is liable in damages for his unconstitutional actions in allowing Overbey to issue arrest warrants and set bonds using his signature stamp, and in setting a schedule requiring cash-only bonds without regard to the arrested person's ability to pay. On appeal, Hamilton argues the district court erred in dismissing these claims based on Judge Ragland's judicial immunity.

Judicial immunity is immunity from suit. It is grounded in a "general principle of the highest importance," that "a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." Mireles v. Waco, 502 U.S. 9, 10, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991), quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347, 20 L.Ed. 646 (1871). The doctrine's broad protection yields in two circumstances: "First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12, 112 S.Ct. 286 (citations omitted). Allegations of malice or corruption do not defeat judicial immunity. Stump v. Sparkman, 435 U.S. 349, 355-56, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

Municipal judges in Missouri "have original jurisdiction to hear and determine all violations against the ordinances of the municipality." Mo. Rev. Stat. § 479.020(1). They are "municipal judges of the circuit court and shall be divisions of the circuit court of the circuit in which the municipality ... is located." Id. at § 479.020(5); see Mo. Const. Art. V, § 1 ("The judicial power of the state shall be vested in ... circuit courts"); Granda v. City of St. Louis, 472 F.3d 565, 569 (8th Cir. 2007).

A. The Arrest Warrant. There is no question that Missouri law authorized ***926** Municipal Judge Ragland to issue arrest warrants. See Mo. Rev. Stat. § 479.100. Missouri's Supreme Court Rules authorize a municipal judge to issue a warrant "[w]hen an information charging the commission of an ordinance violation and a statement of probable cause are filed," and the court finds "reasonable grounds ... to believe that the defendant will not appear." Rule 37.43 (2003). Here, no information had been filed when the warrant to arrest Hamilton issued. Therefore, Hamilton argues, without citation to relevant authority, Judge Ragland's issuance of the

warrant was a non-judicial act that invaded the prosecutor's exclusive jurisdiction to commence a prosecution.

This contention is without merit. "To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy ... the existence of probable cause [must] be decided by a neutral and detached magistrate whenever possible." Gerstein v. Pugh, 420 U.S. 103, 112, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). Prior to a suspect's arrest, an arrest warrant based upon judicial review of probable cause is preferable but not required. But when the suspect is in custody and the question is whether his liberty should be restrained pending trial, "probable cause for the issuance of an arrest warrant must be determined by [a neutral and detached magistrate] independent of police and prosecution." Id. at 118, 95 S.Ct. 854; see In re Harris, 593 S.W.2d 517, 517 (Mo. banc 1979) (invalidating a Supreme Court Rule that allowed circuit court clerks to issue warrants "upon complaint made by the prosecuting attorney").

Here, when the warrant issued, Hamilton was in custody on another charge. Inman's complaint witnessed by Overbey authorized his prosecution for violation of the municipal ordinances cited. See Mo. Rev. Stat. § 479.090. Without question, then, issuance of an arrest warrant authorizing his detention pending trial was a judicial act within Judge Ragland's jurisdiction as a municipal court judge. For judicial immunity to apply, "the relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself' "; we must "look to the particular act's relation to a general function normally performed by a judge." Mireles, 502 U.S. at 13, 112 S.Ct. 286. Given Judge Ragland's statutory authority to issue warrants, even if the warrant to arrest Hamilton was improper under the circumstances, it was an act in "excess of jurisdiction" that did not deprive him of judicial immunity. See Stump, 435 U.S. at 356-59, 98 S.Ct. 1099; Duty v. City of Springdale, Ark., 42 F.3d 460, 462-63 (8th Cir. 1994); Coleman v. Watt, 40 F.3d 255, 259 (8th Cir. 1994). Judicial immunity extends even to "the commission of grave procedural errors." Stump, 435 U.S. at 359, 98 S.Ct. 1099.

In this case, the warrant was not issued by Judge Ragland but by court clerk Overbey exercising authority delegated by Judge Ragland, including use of his signature stamp. This delegation likely made the warrant invalid because Overbey was not a neutral and detached magistrate who could make a constitutionally proper probable cause finding under Gerstein v. Pugh and In re Harris. But Overbey exercised authority delegated by Judge Ragland to perform the judicial act of issuing an arrest warrant. In Ledbetter v. City of Topeka, Kan., a person arrested and detained for failing to appear to answer a municipal violation brought a § 1983 damage action against the municipal judge who did not personally review or sign the arrest warrant. 318 F.3d 1183, 1186 (10th Cir. 2003). A court clerk had issued the warrant stamped with the judge's signature. The Tenth Circuit affirmed dismissal of this claim because the judge was entitled to ***927** absolute immunity. "[E]ven assuming that his acts violated Kansas law, Judge Roach did not act 'in the clear absence of all jurisdiction.' " Id. at 1189, quoting Stump, 435 U.S. at 356, 98 S.Ct. 1099; accord Newton v. Buckley, No. 96-4202, 1997 WL 642085, at *3 (10th Cir. Oct. 17, 1997) (granting judicial immunity for incorrectly issuing a bench warrant for failure to appear). We agree with this reasoning and therefore conclude that Judge Ragland is entitled to absolute judicial immunity from Hamilton's arrest and detention damage claims based on an invalid warrant issued by Overbey.

B. The Bond Schedule. Hamilton also argues that Judge Ragland is liable in damages because the arrest warrant required him to post a cash-only bond in an amount established by Judge Ragland's unconstitutional bond schedule. At the time of Hamilton's arrest, a person arrested for violating a City of Hayti ordinance was taken to the Hayti Police Department for processing and then, if the offense required posting a bond, would go to jail until the bond was posted. In September 2010, Judge Ragland issued an Order "author[izing] the court clerk and police officers to collect the following fines and cost bonds for ordinance and traffic violations." The schedule listed the amount of the fine or bond for each ordinance up to a maximum of $500. Every bond had to be paid in cash, not by a professional bondsman.

If the arrested person wished to plead guilty without a court appearance, the police department or court clerk collected the amount listed on the bond as the fine and court costs, and the case was closed. If he did not plead guilty, he could avoid further pretrial detention by paying the amount of the bond; otherwise, he was held in jail until his initial appearance in municipal court. If he paid the bond and failed to appear in court, the bond schedule stated that "the fine will be doubled and a warrant will be issued." Typically, Overbey and Judge Ragland testified, the bond payment was forfeited as satisfaction of the fine.

In this case, Hamilton was detained at the County Jail after his arrest on a different charge, with the Hayti ordinance violations charged in Inman's complaint pending. In this

relatively unusual situation, Judge Ragland and Overbey both testified, Overbey would advise Judge Ragland that the suspect was in custody and Judge Ragland would decide whether to issue an arrest warrant to detain the suspect until his municipal court appearance. However, neither recalled discussing Hamilton's detention at the County Jail before Overbey issued a warrant for Hamilton's arrest using Judge Ragland's signature stamp. It was Judge Ragland's practice to increase the fine to the maximum $500 for a municipal offense involving breach of the peace in a place of business. Therefore, in issuing the arrest warrant, Overbey set Hamilton's bond at $1,022.50, $500 for each of the two offenses at the Cleveland Apartments plus court costs.

Hamilton alleges that Judge Ragland's "established practice" denied indigent arrestees their constitutional right not to be imprisoned prior to trial solely because they cannot afford to pay the bond to secure their release. When the § 1983 plaintiff is seeking injunctive and declaratory relief, this can be a serious issue. See generally ODonnell v. Harris Cty., 892 F.3d 147 (5th Cir. 2018); Dixon v. City of St. Louis, No. 4:19-CV-0112, 2019 WL 2437026 (E.D. Mo. June 11, 2019), appeal pending, 8th Cir. Nos. 19-2251 and 19-2254. However, these claims have been dismissed as moot in this case; only Hamilton's damage claims are at issue. The district court concluded that Judge Ragland is entitled to absolute judicial immunity ***928** because "the imposition of conditions of release [including bail bonds] is subject to the discretion of the judge," citing Mo. Rev. Stat. § 544.455. We agree.

Municipal judges "shall have power and jurisdiction ... to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail." Mo. Rev. Stat. § 542.020. In John Chism Bail Bonds, Inc. v. Pennington, a § 1983 action against Arkansas judges who "announced in a general administrative order that the County's courts would no longer accept cash or professional bonds," the district court held that the judges were entitled to judicial immunity in setting the county's bond policy. 411 F. App'x 927, 929 (8th Cir. 2011), aff'g 656 F. Supp. 2d 929, 934 (E.D. Ark. 2009). On appeal, we held that the sheriff and jail administrator were entitled to quasi-judicial immunity because they "perform[ed] certain delegated judicial powers" in requiring a sheriff's bond after a county judge determined the amount of the bond. 411 F. App'x at 930. These authorities confirm that Judge Ragland's practice of setting a bond schedule conditioning the pretrial release of persons accused of municipal ordinance violations was a judicial act within his jurisdiction to which judicial immunity attaches.

II.

Hamilton further argues the district court erred in dismissing his damage claims against court clerk Overbey for issuing an invalid arrest warrant that included an unconstitutional cash bond requirement. The court concluded that Overbey is entitled to quasi-judicial immunity. This doctrine extends judicial immunity "to officials other than judges ... because their judgments are functionally comparable to those of judges -- that is, because they, too, exercise a discretionary judgment as a part of their function." Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 436, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993) (quotations omitted). Due to the presumption "that qualified, rather than absolute, immunity is sufficient to protect government officials in the exercise of their duties ... the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question." Robinson v. Freeze, 15 F.3d 107, 108 (8th Cir. 1994) (quotation omitted). The issue turns on "whether the official historically enjoyed such immunity at common law plus a practical analysis of the official's functions in modern times." Id.

For court clerks, absolute immunity has been extended to acts that are discretionary, taken at the direction of a judge, or taken according to court rules. See Antoine, 508 U.S. at 436, 113 S.Ct. 2167; Robinson, 15 F.3d at 109. Here, even assuming that Judge Ragland did not direct Overbey to issue the warrant to arrest Hamilton, it is undisputed that Judge Ragland authorized Overbey to use her discretion to issue and set warrants with bond conditions. In similar situations, we have extended quasi-judicial immunity to court clerks. See Boyer v. Cty. of Washington, 971 F.2d 100, 102 (8th Cir. 1992) (clerk entitled to quasi-judicial immunity for signing and issuing an invalid arrest warrant, regardless of whether judge instructed her to do so, because the acts were "integral parts of the criminal judicial process"), cert. denied. sub nom. Boyer v. DeClue, 508 U.S. 974, 113 S.Ct. 2966, 125 L.Ed.2d 666 (1993); Rogers v. Bruntrager, 841 F.2d 853, 856 (8th Cir. 1988) (clerk entitled to quasi-judicial immunity for issuing an arrest warrant at the direction of a judge); compare Geitz v. Overall, 62 F. App'x 744, 746 (8th Cir. 2003) (grant of immunity reversed where clerks' acts were ministerial, not discretionary, and not pursuant to court rules or instructions).

***929** Hamilton argues that Overbey is not entitled to quasi-judicial immunity because both she and Judge Ragland lacked

authority to issue a warrant under the circumstances. We rejected that argument in Martin v. Hendren because "quasi-judicial immunity would afford only illusory protection if it were lost the moment an officer acted improperly." 127 F.3d 720, 722 (8th Cir. 1997). Instead, we applied the Supreme Court's test for determining the parameters of judicial immunity, which emphasizes "the nature of the function being performed, not the particular act itself." Id., citing Mireles, 502 U.S. at 12-13, 112 S.Ct. 286. Applying that test here, the district court correctly concluded that Overbey is entitled to quasi-judicial immunity for her challenged actions.

III.

Hamilton further appeals the dismissal of his § 1983 damage claim against the City of Hayti because Judge Ragland's "unconstitutional bond practice is fairly attributable to the City of Hayti." He argues that bond practices adopted by Judge Ragland, an elected city official, violated the Eighth and Fourteenth Amendments because indigent defendants "received jail sentences simply because of their lack of financial resources and inability to pay." The district court dismissed this claim because Judge Ragland's decision to impose a cash-only bond as a condition of Hamilton's pretrial release was a judicial decision subject to review by a higher court, see Mo. Sup. Ct. Rule 33.09, not a policy decision of the City.

In Monell, the Supreme Court held that a municipality may not be held liable under § 1983 for the constitutional violations of its employees on a theory of *respondeat superior*, but may be liable if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that [municipality's] officers." 436 U.S. at 690, 98 S.Ct. 2018. Municipal liability "may be imposed for a single decision by municipal policymakers" who possess "final authority to establish municipal policy with respect to the action ordered." Pembaur v. City of Cincinnati, 475 U.S. 469, 480-81, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (plurality opinion).

Under Missouri law, municipal courts are divisions of circuit courts that are state entities. Mo. Const. Art. V, § 1; Mo. Rev. Stat. § 479.020(5). If a municipal court judge sets an "excessive" condition for release, the person accused may file an application in the circuit court, which can "make an order setting or modifying conditions for the release." Mo. Sup. Ct. Rule 37.22. Judge Ragland's judicial order establishing a bond schedule was not a City of Hayti policy. See Woods v. City of Michigan City, Ind., 940 F.2d 275, 279 (7th Cir. 1991) (municipal judges in setting a bond schedule were "judicial officers of the State judicial system," not final municipal policymakers). And the setting of Hamilton's bond in his arrest warrant was a judicial act subject to review or reversal by higher state courts. Therefore, we agree with the district court that neither the adoption of the bond schedule nor the setting of Hamilton's bond was a final decision by a municipal policymaker establishing municipal policy with respect to the action ordered. See Granda, 472 F.3d at 569 (municipal judge detention order was not a final policy decision creating § 1983 municipal liability); accord King v. City of Crestwood, Missouri, 899 F.3d 643, 649 (8th Cir. 2018).

Hamilton argues that Judge Ragland's unconstitutional bond practice is attributable to the City because it was ***930** "adopted" by Hayti's chief of police, like the municipal judge's impoundment order that led to excessive delay in returning the § 1983 plaintiff's vehicle in Coleman, 40 F.3d at 262. But our decision in Coleman simply reversed the dismissal of a procedural due process claim and remanded for the development of "key issues," including "the role of municipal officials in adopting Judge Watt's order as official policy." Id. Here, Hamilton presented no evidence showing how the "adoption" of Judge Ragland's bond schedule by the City of Hayti police caused the deprivation of Hamilton's rights as an indigent arrestee. "A municipality cannot be liable for judicial conduct it lacks the power to require, control, or remedy, even if that conduct parallels or appears entangled with the desires of the municipality." Eggar v. City of Livingston, 40 F.3d 312, 316 (9th Cir. 1994), cert. denied, 515 U.S. 1136, 115 S.Ct. 2566, 132 L.Ed.2d 818 (1995).

Hamilton further argues that, even if Judge Ragland's bond practice was not an official policy, it was an unconstitutional municipal custom "so permanent and well settled as to constitute a 'custom or usage' with the force of law." Monell, 436 U.S. at 691, 98 S.Ct. 2018. To prevail on this theory, he must demonstrate (1) "[t]he existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees"; (2) "[d]eliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct;" and (3) "proof that the custom was the moving force behind the constitutional violation." Mettler v. Whitledge, 165 F.3d 1197, 1204 (8th Cir. 1999) (quotation omitted). "[O]nly 'deliberate' action by

a municipality can meet the 'moving force' requirement." Id., citing Bd. of Cty. Comm'rs v. Brown, 520 U.S. 397, 400, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). Applying this standard, even if we considered Judge Ragland's judicial bond practice to be part of municipal custom or usage, given Hamilton's right to challenge his conditions of release, we would affirm the dismissal of the municipal liability claim because there is no evidence that Judge Ragland, Overbey, or any City employee set the cash-only bond condition with deliberate indifference to Hamilton's rights as an indigent arrestee.

IV.

Finally, Hamilton argues the district court erred in granting summary judgment on his § 1983 claim that Inman conspired with the other defendants to deprive Hamilton of his federal constitutional rights. Although a § 1983 conspiracy claim requires proof of action under color of state law, "[i]t is enough that [a private party] is a willful participant in joint action with the State or its agents." Dennis v. Sparks, 449 U.S. 24, 27, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). To survive summary judgment, a plaintiff must point to sufficient evidence for a reasonable jury to find that "there was a mutual understanding, or a meeting of the minds, between the private party and the state actor." Mershon v. Beasley, 994 F.2d 449, 451 (8th Cir. 1993), cert. denied, 510 U.S. 1111, 114 S.Ct. 1055, 127 L.Ed.2d 376 (1994).

Hamilton argues that the requisite meeting of the minds can be inferred from the fact that Inman instigated his arrest, defendants share "close family, romantic, and personal relationships," and Overbey employed "extremely irregular" procedures in opening the municipal court case, making the decision to arrest Hamilton, and setting an enhanced cash-only bond without involving the city prosecutor.

***931** Inman's calling the police and filing a complaint do not establish a meeting of the minds. "[A] private party's mere invocation of state legal procedures does not constitute state action." Youngblood v. Hy-Vee Food Stores, Inc., 266 F.3d 851, 855 (8th Cir. 2001), cert. denied, 535 U.S. 1017, 122 S.Ct. 1606, 152 L.Ed.2d 621 (2002); see Miller v. Compton, 122 F.3d 1094, 1097-98 (8th Cir. 1997). Hamilton presented no evidence that Inman played any part in issuing the arrest warrant, setting the bond, or preventing Hamilton's release from jail before his court appearance. We agree with the district court that Inman's "familial and romantic" relationships with Overbey and Officer Inman "on their own, are not sufficient to prove a 'meeting of the minds' by either direct or circumstantial evidence." As we have explained, Hamilton simply failed to prove that Overbey took "extremely irregular" actions as municipal court clerk in witnessing Inman's complaint and in issuing the arrest warrant and setting Hamilton's bond. This particular warrant may have been infirm because Judge Ragland's personal involvement was constitutionally required, but it is undisputed that Overbey believed she was exercising authority the judge had delegated.

For the foregoing reasons, the judgment of the district court is affirmed.

All Citations

948 F.3d 921

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2018 WL 4466014
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United States District Court,
E.D. Missouri, Eastern Division.

Henry HAMILTON, individually and on behalf of others similarly situated, Plaintiff,

v.

CITY OF HAYTI, MISSOURI, et al., Defendants.

No. 1:16CV54 RLW
|
Signed 09/18/2018

Attorneys and Law Firms

Jim R. Bruce, II, Jim R. Bruce, Attorney at Law, Kennett, MO, for Plaintiff.

A. M. Spradling, III, Spradling & Spradling, John W. Grimm, John C. Steffens, Limbaugh Firm, Cape Girardeau, MO, for Defendants.

MEMORANDUM AND ORDER

RONNIE L. WHITE, UNITED STATES DISTRICT JUDGE

***1** This matter is before the Court on separate motions for summary judgment filed by each of the remaining parties: Defendant City of Hayti, Missouri ("Hayti"), has filed a Motion for Summary Judgment on Counts I and III (ECF No. 57); Defendant Amy Leeann Inman has filed a Motion for Summary Judgment on all claims against her (ECF No. 60); and Plaintiff Henry Hamilton has filed a Motion for Partial Summary Judgment as to Liability under the Eighth and Fourteenth Amendments (ECF No. 65). The parties' individual motions for summary judgment are fully briefed and ready for disposition. After careful consideration, the Court will grant Hayti's and Inman's motions for summary judgment and deny Plaintiff's motion for partial summary judgment as to liability.[1]

1 Hayti has also filed a filed a Motion to Strike portions of Plaintiff's Declaration filed in support of his Motion for Partial Summary Judgment (ECF No. 76) and Inman has filed a Motion to Strike Arguments in Plaintiff's Reply in Support of His Motion for Summary Judgment (ECF No. 85). Because the Court grants summary judgment in favor of each defendant, these separate motions to strike are denied as moot.

BACKGROUND

On March 18, 2016, Plaintiff filed a Complaint against Defendants Hayti, Calvin Ragland, Glenda Overbey, and Inman. Count I of Plaintiff's Complaint alleges the Defendants violated his civil rights under 42 U.S.C. § 1983 for conspiring to deprive him of his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Count II alleges constitutional and statutory violations under Missouri law. Finally, Count III asserts a claim of civil conspiracy for acting jointly and agreeing to prosecute Plaintiff, have him illegally arrested and incarcerated, deny bond by setting the amount unreasonably high, and refusing to release him on his own recognizance. The Court stated the background of this case in its Memorandum and Order of March 2, 2017, primarily addressing motions to dismiss filed by each Defendant.[2] The Court incorporates those facts by reference as if fully set forth herein.

2 Hayti had filed a Motion to Dismiss Counts II and III (ECF No. 9). Defendants Ragland and Overbey each filed separate Motions to Dismiss all counts against them (ECF Nos. 11, 24). Inman also filed a Motion to Dismiss Count II against her (ECF No. 18). The Court granted Hayti's Motion to Dismiss as to the claims for monetary damages in Counts II and III on the basis of sovereign immunity. The Court also granted Ragland's and Overbey's separate motions to dismiss, finding any claims against them were barred by the doctrine of judicial immunity. Finally, the Court dismissed Count II against Inman after Plaintiff failed to provide support for his proposition that a private actor could be liable for the claims brought under the Missouri law. Consequently, Hayti and Inman are the only remaining defendants.

Subsequent to the Court's Memorandum and Order of March 2, 2017, Hayti filed a Motion for Summary Judgment on Counts I and III (ECF No. 57) and Inman filed a Motion for Summary Judgment on all claims against her (ECF No. 60). Plaintiff also filed a Motion for Partial Summary Judgment as to Liability under the Eighth and Fourteenth Amendments (ECF No. 65). Finally, Hayti filed a Motion to Strike Portions of Plaintiff's Declaration (ECF No. 76) filed in support of

his Motion for Partial Summary Judgment and Inman filed a Motion to Strike Arguments in Plaintiff's Reply in Support of His Motion for Summary Judgment (ECF No. 85).

LEGAL STANDARD

*2 The Court may grant a motion for summary judgment 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 judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Citrate*, 477 U.S. 317, 322 (1986); *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011). The substantive law determines which facts are critical and which are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Only disputes over facts that might affect the outcome will properly preclude summary judgment. *Id.* Summary judgment is not proper if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.*

A moving party always bears the burden of informing the Court of the basis of its motion. *Celotex Corp.*, 477 U.S. at 323. Once the moving party discharges this burden, the nonmoving party must set forth specific facts demonstrating that there is a dispute as to a genuine issue of material fact, not the "mere existence of some alleged factual dispute." Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248. The nonmoving party may not rest upon mere allegations or denials of his pleading. *Id.*

In passing on a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in his favor. *Celotex Corp.*, 477 U.S. at 331. The Court's function is not to weigh the evidence but to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Torgerson*, 643 F.3d at 1042 (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

DISCUSSION

I. Hayti's Motion for Summary Judgment

Plaintiff claims Hayti violated his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution by Ragland imposing an excessive bail for the municipal charges of peace disturbance and assault and requiring cash payment. Hayti argues Plaintiff's claims against it fail because he has not shown the city violated his rights.

Before addressing the grounds on which Plaintiff claims Hayti violated his constitutional rights, the Court must first consider under which circumstances the city can be liable under § 1983. A plaintiff can bring a § 1983 claim against a municipality

> only if a constitutional violation has been committed pursuant to an official custom, policy, or practice of the city, *See Monell v. N.Y. City Dep't of Social Servs.*, 436 U.S. 658, 690-92, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978); *Williams v. Butler*, 863 F.2d 1398, 1400 (8th Cir.1988), or is so pervasive among non policymaking employees of the municipality so "as to constitute a custom or usage with the force of law." *Kuha v. City of Minnetonka*, 365 F.3d 590, 603 (8th Cir. 2003). Although a single act of a city official "whose acts or edicts may fairly be said to represent official policy" may give rise to municipal liability under § 1983, *Monell*, 436 U.S. at 694, 98 S. Ct. 2018, a municipality will only be liable under § 1983, where a city official "responsible for establishing final policy with respect to the subject matter in question" makes a deliberate choice among competing alternatives that results in the violation of constitutional rights. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-84, 106 S. Ct. 1292, 89 L.Ed.2d 452 (1986).

*3 *Granda v. City of St. Louis*, 472 F.3d 565, 568 (8th Cir. 2007).

Plaintiff argues Hayti's "long established practice of setting cash-only bonds" should be considered a custom or usage and, therefore, make the city liable under § 1983. Ragland imposed a bond amount of $1,022.50 for Plaintiff, which was comprised of the maximum fine for each charged offense[3] plus $22.50 for court costs. According to Overbey's deposition testimony, it was Ragland's practice to set cash bonds for every defendant charged with municipal violations. (Overbey Depo. 39:17-25; 40:1) Ragland testified requiring cash bond "has normally always been that way" and it was "[s]omething that I inherited that way." (Ragland Depo.

27:6-12) City Marshall Paul Sheckell also testified bond was set at the same amount as the maximum fine for the charged offense plus court costs. (Sheckell Depo. 8:12-23) Further, Sheckell testified if a person paid the set cash bond, he or she would be released from custody and told the bond would be forfeited if they failed to appear in court, at which time the case would be considered closed. (*Id.* at 9:16-24)

3 $500 for the peace disturbance charge and $500 for the assault charge because it happened in a business establishment.

In *King v. City of Crestwood, Missouri*, 899 F.3d 643, 645 (8th Cir. 2018), a man successfully defended himself against a municipal charge. He subsequently brought a § 1983 claim against the city and the municipal judge after the judge denied his motion for costs and attorney's fees. *Id.* The Eighth Circuit affirmed the district court's conclusion that the plaintiff had failed to identify a municipal policy. *Id.* at 648. "The municipal court is a division of the state circuit court, and review of a judge's decisions is to be sought in that court." *Id.* at 649 (quoting *Granda*, 472 F.3d at 569). Accordingly, the Eighth Circuit held the municipal judge's order was "a judicial decision that is subject to review or reversal by higher state courts" and not a policy decision by the city. *Id.* (quoting *Granda*, 472 F.3d at 569); *See also City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) ("[T]he authority to make municipal policy is necessarily the authority to make *final* policy."). "[B]ecause the decision was appealable, it did not establish a *final* policy as required under § 1983." *Id.* (citing *Granda*, 472 F.3d at 569).

In Missouri, municipal judges have the same authority to impose conditions of pretrial release as associate circuit judges and circuit judges. Mo. Rev. Stat. § 544.455.8. Missouri judges have discretion when determining whether a defendant may be released on his or her personal recognizance pending trial or if conditions should be imposed in order to assure the defendant's appearance in court. *Id.* at § 544.455.1. Possible conditions include "[r]equir[ing] the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof." *Id.* at § 544.455.1(3).

The Court previously held in its Memorandum and Order of March 2, 2017, that Ragland was acting within the scope of his judicial function and jurisdiction and, therefore, entitled to absolute immunity. Further, as a municipal judge, Ragland was subject to the rules of the 34th Judicial Circuit and the general administrative authority of the circuit's presiding judge, Mo. Rev. Stat. § 479.020.5, and any defendant tried before him would have the statutory right of a trial *de novo* in the circuit court. Mo. Rev. Stat. § 479.200.2.

***4** Additionally, there is a specific process by which a defendant can seek a higher court's review of a trial court's failure to set conditions of release or imposition of inadequate or excessive conditions. Mo. Sup. Ct. Rule 33.09. "If the higher court finds that the accused is entitled to be released and no conditions therefor have been set, or that the conditions are excessive or inadequate, the court shall make an order setting or modifying conditions for the release of the accused." *Id.* at 33.09(b); *see generally Lopez-Matias v. State*, 504 S.W.3d 716, 720 (Mo. 2016) (en banc). These state provisions demonstrate that a municipal judge's decision regarding conditions of pretrial release are subject to review by higher courts and, therefore, are not "final" for purposes of establishing municipal liability under § 1983. *See King*, 899 F.3d at 649; *Granda*, 472 F.3d at 569.

It is clear Ragland's decision to impose cash-only bond was a judicial decision and not a policy decision of Hayti. "The municipal court is a division of the state circuit court, and review of a judge's decisions is to be sought in that court." *Granda*, 472 F.3d at 569. Consequently, Hayti is entitled to judgment as a matter of law on Counts I and III, and the Court grants its motion for summary judgment. Conversely, the Court denies Plaintiff's motion for partial summary judgment as to liability. Because the Court finds the issue of municipal liability dispositive, it need not address the other asserted grounds related to the constitutional validity of Ragland's imposition of cash-only bond raised by the parties.

Inman's Motion for Summary Judgment

Next, Inman seeks summary judgment on the remaining charges against her. Inman previously moved to dismiss Count II against her related to the state law claims. In response, however, Plaintiff relied on case law pertaining to § 1983 claims and presented no legal authority related to the state law claims raised in Count II. Consequently, the Court granted Inman's motion to dismiss Count II in its Memorandum and Order of March 2, 2017. Count I alleging a violation of § 1983 and Count III alleging a civil conspiracy between the defendants remain to be adjudicated.

To state a claim under § 1983, a plaintiff must allege (1) the defendant acted under the color of state law and (2) the defendant's alleged conduct deprived the plaintiff of a

federally-protected right. *Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009). Generally, a private person's conduct is beyond the reach of § 1983 "no matter how discriminatory or wrongful" that conduct may be. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999).

> The Supreme Court has recognized a number of circumstances in which a private party may be characterized as a state actor, such as where the state has delegated to a private party a power traditionally exclusively reserved to the State, where a private actor is a willful participant in joint activity with the State or its agents, and where there is pervasive entwinement between the private entity and the state.

Wickersham v. City of Columbia, 481 F.3d 591, 597 (8th Cir. 2007) (citations and internal quotation marks omitted). In order to defeat a motion for summary judgment in a § 1983 claim against a private party, a plaintiff "must offer evidence sufficient to support the conclusion that the defendants 'directed themselves toward an unconstitutional action by virtue of a mutual understanding,' and provide facts which would establish a 'meeting of the minds.' " *DuBose v. Kelly*, 187 F.3d 999, 1003 (8th Cir. 1999) (quoting *White v. Walsh*, 649 F.2d 560, 561 (8th Cir. 1981)). "A private person does not conspire with a state official merely by invoking an exercise of the state official's authority." *Young v. Harrison*, 284 F.3d 863, 870 (8th Cir. 2002) (quoting *Tarkowski v. Robert Bartlett Realty Co.*, 644 F.2d 1204, 1208 (7th Cir. 1980)).

***5** Inman's mere calling for a police officer is not enough for her to be liable under § 1983. *See Young*, 284 F.3d at 870. During his deposition, Plaintiff admitted he has no evidence that would suggest a "meeting of the minds" between Inman and any of the other defendants.

> Q ... Do you have any information that LeeAnn Inman had anything to do with setting the amount of the bond?
>
> A No.
>
> Q Okay. Do you have any information that LeeAnn Inman ever talked with Judge Ragland regarding these charges?
>
> A No.
>
> ...
>
> Q ... Mr. Hamilton, do you have any information that Ms. Inman did anything to prevent you from being released from jail after you were arrested?
>
> A I don't know.
>
> Q So, and it's kind of a yes or no, either you do or you don't have information?
>
> A I don't.
>
> Q Do you have any information that Ms. Inman ever talked with the City Prosecutor about these charges, do you know one way or the other?
>
> A No.

(Hamilton Depo. 73:13-20; 74:12-22) Rather, he points to the fact that Overbey is Inman's mother and the police officer who responded after Inman called the Hayti Police Department was her boyfriend (now husband), David Inman, as circumstantial evidence of a "meeting of the minds" to violate his rights. Familial and romantic relationships, on their own, are not sufficient to prove a "meeting of the minds" by either direct or circumstantial evidence.[4] Because Plaintiff has failed to make specific allegations supporting his conspiracy claim against Inman, the Court grants her motion for summary judgment on Counts I and III.

4 Plaintiff claims, "Courts often look at factors such as relationships between parties, their employment and work history, acceptance of statements of a party by without independent investigation, and any unexplained irregularities to accomplish the common goal." (ECF No. 78, p. 16) However, he fails to provide any authority for his proposition that familial, romantic, or employment relationships in and of themselves are sufficient grounds for a court to deny summary judgment.

II. Hayti's and Inman's Motions to Strike

Finally, Hayti and Inman have each filed motions to strike portions of separate filings submitted by Plaintiff. Specifically, Hayti has filed a filed a Motion to Strike paragraphs 4, 6, and 8 of Plaintiff's Declaration filed in support of his Motion for Partial Summary Judgment (ECF No. 76) and Inman has filed a Motion to Strike Arguments in Plaintiff's Reply in Support of His Motion for Summary Judgment (ECF No. 85).

Paragraphs 4, 6, and 8 of Plaintiff's Declaration filed in support of his Motion for Partial Summary Judgment (ECF No. 71) relate to Plaintiff's alleged inability to pay the cash-only bond or have his family members pay it on his behalf.

Hayti contends Plaintiff's deposition testimony refutes these claims and admits he was capable of posting cash bond but chose not to. Accordingly, Hayti moves for the Court to strike those paragraphs from his declaration and disregard their assertions.

Inman additionally moves for the Court to strike Plaintiff's argument in his Reply in Support of His Motion for Summary Judgment (ECF No. 84) related to his claims against her. Inman suggests Plaintiff's arguments against her in his Reply in Support of His Motion for Summary Judgment (ECF No. 84) should be considered an unauthorized surreply[5] to her own motion for summary judgment as Plaintiff's arguments respond to those Inman raises in her Motion for Summary Judgment (ECF No. 60) rather than her Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (ECF No. 68).

5 Local Rule 7-4.01 establishes the procedure by which a party may file a motion, response, and reply. "Additional memoranda may be filed by either party only with leave of Court." *Id.* at 7-4.01(C). "[A] Court may choose to strike a filing that is not allowed by local rule, such as a surreply filed without leave of court." *Shea v. Peoples Nat'l Bank*, No. 4:11-CV-1415 CAS, 2013 WL 74374, at *1 n.1 (E.D. Mo. Jan. 7, 2013) (internal quotation marks omitted).

***6** Because the Court's granting of Hayti's and Inman's separate motions for summary judgment disposes of Plaintiff's claims against them, these motions to strike are denied as moot.

Accordingly,

IT IS HEREBY ORDERED that Hayti's Motion for Summary Judgment on Counts I and III (ECF No. 57) is **GRANTED.**

IT IS FUTHER ORDERED that Inman's Motion for Summary Judgment on all claims against her (ECF No. 60) is **GRANTED.**

IT IS FUTHER ORDERED that Plaintiff's Motion for Partial Summary Judgment as to Liability under the Eighth and Fourteenth Amendments (ECF No. 65) is **DENIED.**

IT IS FURTHER ORDERED that Hayti's Motion to Strike Portions of Plaintiff's Declaration (ECF No. 76) is **DENIED as moot.**

IT IS FINALY ORDERED that Inman's Motion to Strike Arguments in Plaintiff's Reply in Support of His Motion for Summary Judgment (ECF No. 85) is **DENIED as moot.**

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United States District Court,
E.D. Missouri, Eastern Division.

Henry HAMILTON, individually and on behalf of others similarly situated, Plaintiff,

v.

CITY OF HAYTI, MISSOURI, et al., Defendants.

No. 1:16CV54RLW
|
Signed 03/02/2017

Attorneys and Law Firms

Jim R. Bruce, II, Jim R. Bruce, Attorney at Law, Kennett, MO, for Plaintiff.

A. M. Spradling, III, Spradling & Spradling, John W. Grimm, John C. Steffens, Limbaugh Firm, Cape Girardeau, MO, for Defendants.

MEMORANDUM AND ORDER

RONNIE L. WHITE, UNITED STATES DISTRICT JUDGE

*1 This matter is before the Court on separate motions to dismiss filed by each of the Defendants. Defendant City of Hayti, Missouri ("Hayti") has filed a Motion to Dismiss Counts II & III (ECF No. 9). In addition, Defendants Calvin Ragland ("Ragland") and Glenda Overbey[1] ("Overbey") filed Motions to Dismiss all counts against them (ECF Nos. 11, 24). Defendant Amy Leeann Inman ("Inman") filed a Motion to Dismiss Count II of Plaintiff's Complaint (ECF No. 18). Defendants Hayti and Ragland have also filed a Motion to Deny Certification of Class Action Status to Plaintiff and Dismiss Plaintiff's Class Claims (ECF No. 13). Finally, Plaintiff Henry Hamilton has filed a Motion to Deny Defendant City of Hayti's Motion to Dismiss as to Counts II and III or, in the Alternative, to Stay Disposition (ECF No. 35). Defendants' individual motions to dismiss are fully briefed and ready for disposition. Plaintiff did not respond to the motion to deny class certification and dismiss class claims. Defendant Hayti filed a response to Plaintiff's motion to stay; however, Plaintiff did not file a reply brief, and the time for doing so has expired.

1 The record reflects that the correct spelling is "Overbey" not "Overby" as written by both counsel for Plaintiff and Defendant Overbey. The Court will address the motion to dismiss using the correct spelling of Ms. Overbey's name. (*See* Pet. Exs. 3 & 4, ECF Nos. 1–3, 1–4; Summons to Glenda Overbey, ECF No. 1–8)

I. Background

This case stems from the alleged actions by Defendants of unreasonably and unlawfully seizing, arresting, and imprisoning Plaintiff, and denying bail by imposing an excessive bond restriction. (Compl. pp. 1–2, ECF No. 1) Plaintiff brings this cause of action on behalf of himself and a putative class of individuals. (*Id.* at ¶¶ 8–9) Plaintiff contends that on July 28, 2011, he went to the office of Cleveland Apartments in Hayti to apply for public housing. (*Id.* at ¶ 17) After completing and submitting his application, the apartment manager, Defendant Inman, questioned Plaintiff and accused him of falsifying the application. (*Id.* at ¶ 18) Inman later filed a complaint in municipal court for peace disturbance and assault, alleging that Plaintiff cursed at her and threw a pen at her. (Compl. Ex. C, ECF No. 1–3) In addition, Plaintiff contends Inman prepared a "Notice Against Trespass" prohibiting him from entering the premises of Cleveland Apartments. (Compl. ¶ 20) According to Plaintiff, Hayti police officers detained and arrested Plaintiff for a traffic violation because they did not yet have an arrest warrant. (*Id.* at ¶ 24)

Plaintiff was subsequently transferred to the Pemiscot County Jail, as set forth in a letter from Defendant Overbey, the Court Administrator of the City of Hayti Municipal Court. (Compl. Ex. D, ECF No. 1–4) A warrant for assault in the third degree and peace disturbance was then issued on July 29, 2011, requiring Plaintiff to post a cash bond in the amount of $1,022.50 and appear before the court on August 4, 2011. (Compl. Ex. B, ECF No. 1–2) Plaintiff contends that Defendant Judge Ragland provided Overbey with a signature stamp and authorized her to set bonds and issue warrants without his review. (Compl. ¶ 28) Plaintiff further alleges that the actions of Ragland and Overbey of setting excess bond and holding Plaintiff in jail for 7 days were done solely to punish Plaintiff and prevent him from being released on bond. (*Id.* at ¶ 30)

*2 In addition, Plaintiff maintains that the bond schedule for Hayti is discriminates against poor individuals. (*Id.* at ¶ 31A) Plaintiff contends that he was unlawfully imprisoned for 7 days and that he was then released by Ragland on Plaintiff's own recognizance. (*Id.* at ¶ 32) Ultimately, the Hayti prosecutor voluntarily dismissed the assault charge with prejudice, and the court ruled in favor of Plaintiff on the peace disturbance charge without imposition of any fine or period of incarceration. (*Id.* at ¶ 33)

On March 18, 2016, Plaintiff filed a Complaint against Defendants, alleging a violation of Plaintiff's civil rights under 42 U.S.C. § 1983 (Count I) for conspiring to deprive Plaintiff of his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Plaintiff maintains that Defendants violated his right to be free from unreasonable seizure, custodial arrest, and imprisonment for the alleged ordinance violations; to be free from prosecution not based on probable cause; to be released from imprisonment; to have his case heard and adjudicated before being compelled to plead guilty or prepay fines and court costs under the guise of a cash only bond; and to promptly be brought before a judge for an initial appearance and released at the time of arrest. In addition, Plaintiff alleges violations of the Missouri Constitution and Missouri Statute (Count II) for the reasons contained in Count I of the Complaint. Finally, Plaintiff brings a claim of civil conspiracy (Count III) for acting jointly and agreeing to prosecute Plaintiff, have him illegally arrested and incarcerated, deny bond by setting the amount unreasonably high, and refusing to release him on his own recognizance. Plaintiff seeks to pursue his case as a class action. He also seeks declaratory and injunctive relief, as well as monetary damages in excess of $1,000,000. The Defendants have filed individual motions to dismiss in this cause of action.

Legal Standards

With regard to motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed if it fails to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating the "no set of facts" standard set forth in *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)). While the Court cautioned that the holding does not require a heightened fact pleading of specifics, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. In other words, "[f]actual allegations must be enough to raise a right to relief above the speculative level ...." *Id.* This standard simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556.

Courts must liberally construe the complaint in the light most favorable to the plaintiff and accept the factual allegations as true. *See Id.* at 555; *see also Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008) (stating that in a motion to dismiss, courts accept as true all factual allegations in the complaint); *Eckert v. Titan Tire Corp.*, 514 F.3d 801, 806 (8th Cir. 2008) (explaining that courts should liberally construe the complaint in the light most favorable to the plaintiff). Further a court should not dismiss the complaint simply because the court is doubtful that the plaintiff will be able to prove all of the necessary factual allegations. *Twombly*, 550 U.S. at 556. However, "[w]here the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." *Benton v. Merrill Lynch & Co.*, 524 F.3d 866, 870 (8th Cir. 2008) (citation omitted). Courts " 'are not bound to accept as true a legal conclusion couched as a factual allegation.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). When considering a motion to dismiss, a court can "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. Legal conclusions must be supported by factual allegations to survive a motion to dismiss. *Id.*

A. Defendant Hayti's Motion to Dismiss Counts II & III

*3 Defendant Hayti argues that Counts II and III should be dismissed because they are barred by the doctrine of sovereign immunity. "Under Mo. Rev. Stat. § 537.600, public entities enjoy sovereign immunity ... unless immunity is waived, abrogated, or modified by statute." *Richardson v. City of St. Louis*, 293 S.W.3d 133, 136 (Mo. Ct. App. 2009) (citation omitted). "A municipality has sovereign immunity from actions at common law tort in all but four cases." *Bennartz v. City of Columbia*, 300 S.W.3d 251, 259 (Mo. Ct. App. 2009). These four exceptions include:

> (1) where a plaintiff's injury arises from a public employee's negligent operation of a motor vehicle in the course of his employment (section 537.600.1(1)); (2) where the injury is caused by the dangerous condition

of the municipality's property (section 537.600.1(2)); (3) where the injury is caused by the municipality performing a proprietary function as opposed to a governmental function (*State ex rel Board of Trustees of the City of North Kansas City Memorial Hospital*, 843 S.W.2d 353, 358 (Mo. banc 1993)); and (4) to the extent the municipality has procured insurance, thereby waiving sovereign immunity up to but not beyond the policy limit and only for acts covered by the policy (section 537.610).

Id. at 259. "When bringing claims against a public entity, a plaintiff 'bears the burden of pleading with specificity facts giving rise to an exception to the rule of sovereign immunity[.]' " *Wann v. St. Francois Cty., Missouri*, No. 4:15CV895 CDP, 2016 WL 866089, at *7 (E.D. Mo. Mar. 7, 2016) (quoting *Richardson*, 293 S.W.3d at 136–37).

Here, Plaintiff asserts that he has raised tort claims in Counts II and III. (PL's Response p. 10, ECF No. 32) Construing the complaint in the light most favorable to the plaintiff and accepting the factual allegations as true, the Court finds that Plaintiff's claims for monetary damages on the tort claims should be dismissed on the basis of sovereign immunity. While Plaintiff argues that he has alleged an exception to sovereign immunity, namely the existence of insurance, this allegation is insufficient to waive sovereign immunity on the part of Defendant Hayti.

Plaintiff contends that Defendant Hayti has an insurance policy to cover tort liability such that Hayti has waived sovereign immunity. However, Hayti has attached the MOPERM policy, which limits coverage to injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motorized vehicles within the course and scope of employment or injuries caused by the condition of a public entity's property which the plaintiff establishes was in a dangerous condition at the time of the injury. (Def.'s Ex. 2 p. 3, ECF No. 39–2) Indeed, the policy explicitly cites to Mo. Rev. Stat. § 537.600 and limits coverage to actions specified in that statute. (*Id.*) As Plaintiff's state law tort claims in Counts II and III do not pertain to injuries stemming from the operation of motorized vehicles or the condition of Hayti's property, sovereign immunity applies, and Plaintiff is unable to demonstrate that Hayti has waived such immunity. Thus, to the extent that Plaintiff seeks monetary damages for these state law claims, the claims will be dismissed as barred by the doctrine of sovereign immunity. *Epps v. City of Pine Lawn*, 353 F.3d 588, 595 (8th Cir. 2003) (finding city did not waive its sovereign immunity where the MOPERM policy specifically provided when and for what type of injury the policy would pay and noted that liability would not be broadened beyond the limitations of Missouri's sovereign immunity statutes).

*4 The Court notes, and the parties agree, that Plaintiff also seeks declaratory judgment and injunctive relief on the state law claims, which are not subject to sovereign immunity. Further, to the extent that Plaintiff's civil conspiracy claim pertains to the alleged federal violations under § 1983, the federal claim remains. As such, the Court will dismiss Plaintiff's state law claims for monetary damages in Counts II and III of the Complaint.

B. Defendant Ragland

Next, Defendant Ragland asserts that all claims against him should be dismissed on the basis of absolute immunity, as he was performing his duties in his official capacity. Plaintiff claims that Judge Ragland had a policy of setting bonds for cash only and in excess of the amounts for offenses set forth in the fine/bond schedule. Further, Plaintiff contends that Ragland had a practice of denying defendants the opportunity to be released on their own recognizances or through surety bonds. Finally, Plaintiff maintains that Ragland allowed the clerk of the court to set bonds and issue warrants without requiring his review or hand-written signature. (Compl. ¶¶ 12–16, 28–31) Thus, Plaintiff asserts that Ragland's actions were non-judicial such that absolute immunity does not apply. Defendant Ragland argues that the Complaint alleges facts related to Ragland's performance while acting as a municipal judge in Hayti.

Claims against a judge for wrongs he allegedly committed in the course of his judicial duties are subject to dismissal because judges are entitled to absolute immunity from such suits. *Harris v. Sullivan*, No. 1:16CV235 ACL, 2017 WL 476628, at *2 (E.D. Mo. Feb. 3, 2017) (citing *Imbler v. Pachtman*, 424 U.S. 409, 434–35 (1976)); *see also Butz v. Economou*, 438 U.S. 478, 511 (1978) ("Judges have absolute immunity ... because of the special nature of their responsibilities."). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 501 U.S. 9, 11 (1991) (citation omitted); *see also Imbler v. Pachtman*, 424 U.S. 409, 419 n. 13 (1976) ("[a]bsolute immunity defeats a suit at the outset so long as the official's actions were within the scope of the immunity."). Further, allegations of bad faith or malice do not overcome judicial immunity. *Id.* "Judicial immunity is not available in

only two circumstances: a judge is not immune from liability (1) for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity; and (2) for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *T.Y.B.E. Learning Ctr. v. Bindbeutel*, No. 4:09–CV–1463 (CEJ), 2011 WL 1676065, at *3 (E.D. Mo. May 2, 2011) (citing *Mireles*, 502 U.S. at 11–12).

The Court finds that Defendant Ragland is entitled to absolute immunity in this case. In Plaintiff's response to the motion to dismiss, Plaintiff acknowledges that judges have absolute immunity from requests for monetary damages stemming from the exercise of judicial discretion. (PL's Resp. p. 16, ECF No. 37). Plaintiff contends, however, that judges are not immune from injunctive relief or suit for statutory attorneys' fees. The Court disagrees. The Supreme Court previously held that judicial immunity did not apply where a plaintiff sought injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984). However, in 1996, "Congress legislatively reversed *Pulliam* by enacting the Federal Courts Improvement Act (FCIA)...." *Bindbeutel*, 2011 WL 1676065, at *4 (citations omitted). The FCIA amended § 1983 by adding, "except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." FEDERAL COURTS IMPROVEMENT ACT OF 1996, PL 104–317, October 19, 1996, 110 Stat 3847. None of the limitations apply in this case, and, absent a showing of non-judicial actions or actions taken in complete absence of jurisdiction, judicial immunity bars Plaintiff's claims for both monetary damages and injunctive relief. *Bindbeutel*, 2011 WL167065, at *4; *see also Dancer v. Haltom*, No. 4:100cv–4118, 2010 WL 5071230, at *4 (finding that plaintiff could not overcome judicial immunity and dismissing claims for declaratory and injunctive relief against state court judge).

***5** However, Plaintiff contends that Ragland's actions were non-judicial and/or in absence of all jurisdiction. Defendant correctly notes that the imposition of conditions of release, including the requirement of "the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof," is subject to the discretion of the judge. Mo. Rev. Stat. § 544.455. Likewise, a municipal judge has the authority to "cause to be kept all laws made for the preservation of the public peace, to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail. ..." Mo. Rev. Stat. § 542.020.

"[T]he scope of the judge's jurisdiction is broadly construed when considering the issue of judicial immunity." *Peak v. Richardson*, No. 1:06cv0176 TCM, 2008 WL 762110, at *9 (E.D. Mo. Mar. 19, 2008) (citation omitted). "In determining whether a judicial act occurs in the complete absence of jurisdiction, 'the nature of the function performed, not the particular act itself, controls the ... inquiry.' " *Bugg v. Boots*, No. 2:08–4277–CV–C–NKL, 2009 WL 900736, at *4 (W.D. Mo. Apr. 1, 2009) (quoting *Martin v. Hendren*, 127 F3d 720, 722 (8th Cir. 1997)). Claims against a judge for issuing an arrest warrant are barred by judicial immunity. *Denoyer v. Dobberpuhl*, 208 F.3d 217 (8th Cir. 2000) (unpublished per curiam) (citation omitted). Further, and contrary to Plaintiff's contention that only a prosecutor can commence a proceeding on a peace disturbance and assault charge, Missouri law provides:

> Whenever complaint shall be made in writing, and upon oath, to any such associate circuit judge, that any person has threatened or is about to commit any offense against the person or property of another, specifying the offense and person complained against, it shall be the duty of the associate circuit judge to issue a warrant, under his hand, reciting the complaint, and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such associate circuit judge.

Mo. Rev. Stat. § 542.030; *see also Smith v. Slay*, No. 4:14CV1373 CDP, 2015 WL 1955018, at *2 (E.D. Mo. Apr. 29, 2015) ("Missouri authorizes a felony arrest warrant to issue upon a probable cause finding by the court."). Here, Inman issued a complaint against Plaintiff for cursing at her and throwing a pen, and Defendant Ragland issued a warrant on that complaint. (Compl. Exs. B, C, ECF Nos. 1–2, 1–3) Indeed, Plaintiff presents no legal authority for the proposition that Ragland acted outside the scope of his judicial function and jurisdiction. Thus, the Court finds that Defendant Ragland is entitled to absolute immunity, and Plaintiff's claims against Ragland in Counts I, II, and III will be dismissed. *Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016) ("Where an official's challenged actions are protected by absolute immunity, dismissal under Rule 12(b)(6) is appropriate.") (citation omitted).

C. Defendant Overbey

Next, Defendant Overbey seeks dismissal of all claims against her on the basis of quasi-judicial immunity. Overbey asserts

that as the Clerk of the Municipal Court of Hayti, acting within the scope of her statutory duties, she is entitled to absolute immunity from suit. Plaintiff, on the other hand, contends that Overbey acted outside the scope of her position and that her actions were without authority or jurisdiction such that absolute immunity does not apply. Specifically, Plaintiff claims that Overbey prepared the arrest warrant and set Plaintiff's bond at and excessive amount and for cash only, stamping Defendant Ragland's signature on the warrant. (Compl. ¶ 25)

*6 "Clerks of court have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's direction." *Rogers v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (internal quotations omitted). "[T]he clerk of the court is entitled to judicial immunity, at least as to claims related to the issuance and signing of warrants." *Smith*, 2015 WL 1955018, at *2; *see also Boyer v. Cty. of Washington*, 971 F.2d 100, 102 (8th Cir. 1992) (finding clerk of the court was "entitled to absolute immunity for signing and issuing the arrest warrant regardless of whether [the judge] instructed her to do so because these acts are integral parts of the criminal judicial process"). Even if Overbey "exceeded her authority when she issued the warrant, she did not act in the complete absence of all jurisdiction. She is therefore entitled to quasi-judicial immunity for issuing the warrant." *Boyer*, 971 F.2d at 102.

Further, as stated above, a judge has the authority to set the conditions of bond and to issue warrants and has judicial immunity from suits for wrongs he allegedly committed in the course of his judicial duties. " '[I]t is simply unfair to spare the judges who give orders while punishing the officers who obey them. Denying these officials absolute immunity for their acts would make them a light[ ]ning rod for harassing litigation aimed at judicial orders.' " *White v. Camden Cty. Sheriff's Dep't*, 106 S.W.3d 626, 633 (Mo. Ct. App. 2003) (quoting *Valdez v. City & Cty. of Denver*, 878 F.2d 1285, 1288–89 (10th Cir. 1989) (internal quotation omitted)). Thus, the judicial immunity extends to Defendant Overbey as the Municipal Court Clerk for Hayti, and Overbey is entitled to absolute immunity for all actions related to the issuance of the warrant, including the bond conditions set forth in the warrant. *Smith*, 2015 WL 1955018, at *2. Because Overbey is immune from suit, the Court will dismiss all claims against her set forth in Counts I, II, and III of Plaintiff's Complaint.

D. Defendant Inman

Last, Plaintiff has filed claims against Defendant Inman for conspiring to deprive him of his rights under the United States Constitution, the Missouri Constitution, and Missouri law. Defendant Inman asserts that Count II of the Complaint against her should be dismissed for failure to state a claim. Count II alleges that Defendants caused the arrest and custodial detention of Plaintiff by "causing an arrest warrant to be issued and requi[r]ing a cash bond for the maximum amount of the fines for each offense and court costs" in violation of his rights under the Missouri Constitution, Mo. Rev. Stat. § 544.455, and various Missouri Supreme Court Rules. (Compl. ¶ 39) Inman argues that, as a private party, she had no authority, duty, or obligation in setting cash bonds. In response, Plaintiff relies on case law pertaining to § 1983 claims, not the state law claims raised in Count II. *See, e.g., Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980) ("Private persons, jointly engaged with state officials in the challenged action, are acting see 'under color' of law for purposes of § 1983 actions."); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970) (finding that a private party involved in an alleged conspiracy can be liable under § 1983). Plaintiff presents no legal authority for the proposition that a private actor can be liable for joint actions for violations of the Missouri Constitution, Missouri statute, and Missouri Supreme Court Rules. Thus, the Court will grant Defendant Inman's motion to dismiss with respect to Count II.

E. Motion to Deny Class Certification and Dismiss Class Claims

Defendants Hayti and Ragland have also filed a Motion to Deny Certification of Class Action Status to Plaintiff and Dismiss Plaintiff's Class Claims (ECF No. 13). The Court will deny the motion at this time. While Plaintiff purports to bring this action on behalf of himself and a putative class, the Court notes that Plaintiff has not yet filed a motion for class certification under Fed. R. Civ. P. 23. Thus, Defendants' motion is premature, and the Court will deny the motion without prejudice, subject to refiling should Plaintiff file a motion for class certification.

F. Plaintiff's Motion to Deny Defendant Hayti's Motion to Dismiss or to Stay

*7 Finally, Plaintiff has filed a Motion to Deny Defendant City of Hayti's Motion to Dismiss as to Counts II and III or in the Alternative to Stay Disposition (ECF No. 35). The basis for Plaintiff's motion is that Hayti has liability insurance coverage and that discovery is required to obtain information related to the insurance policy and the issue of waiver of sovereign immunity. As set forth above, Hayti has provided the insurance policy, which provides coverage only for specific negligent actions not alleged in Plaintiff's Complaint. Thus, the Court will deny Plaintiff's motion as moot.

Accordingly,

IT IS HEREBY ORDERED that the Motion to Dismiss on Behalf of Defendant City of Hayti, Missouri as to Counts II & III (ECF No. 9) is **GRANTED** as to the claims for monetary damages. Plaintiff's claims for declaratory and injunctive relief set forth in Counts II and III, as well as any federal § 1983 claims under Count III, remain pending.

IT IS FURTHER ORDERED that the Motion to Dismiss on Behalf of Defendant Calvin Ragland (ECF No. 11) is **GRANTED** and Counts I, II, and III as to Defendant Ragland are **DISMISSED.**

IT IS FURTHER ORDERED that the Motion to Dismiss on Behalf of Defendant Glenda Overbey (ECF No. 24) is **GRANTED** and Counts I, II, and III as to Defendant Overbey are **DISMISSED.**

IT IS FURTHER ORDERED that Defendant Amy Leeann Inman's Motion to Dismiss Count II of Plaintiff's Complaint (ECF No. 18) is **GRANTED.**

IT IS FURTHER ORDERED that the Motion of Defendant City of Hayti, Missouri, and Calvin Ragland to Deny Certification of Class Action Status to Plaintiff and Dismiss Plaintiff's Class Claims (ECF No. 13) is **DENIED** without prejudice.

IT IS FINALLY ORDERED that Plaintiff's Motion to Deny Defendant City of Hayti's Motion to Dismiss as to Counts II and III or in the Alternative to Stay Disposition (ECF No. 35) is **DENIED** as **MOOT.**

All Citations

Not Reported in Fed. Supp., 2017 WL 836558

End of Document

STATE OF MISSOURI	**COMPLAINT** 1621	CASE NUMBER 30098

IN THE CIRCUIT COURT OF PEMISCOT COUNTY, MUNICIPAL DIVISION

CITY / COUNTY OF

(PLAINTIFF)

Lannie, Amy L /dba/ Cleveland Apts

VS.

Hamilton, Henry L

(DEFENDANT)

DEFENDANT'S ADDRESS:

1001 North Oates
Hayti, MO 63851

ORDINANCE VIOLATION(S) CHARGED:

Peace Disturbance
Assault

PLAINTIFF'S EXHIBIT

7/6/18 2 ck

COURT ADDRESS:

2ND FLOOR, CITY HALL BUILDING, HAYTI, MISSOURI

COMES NOW Amy L. Lannie AND BEING DULY SWORN ON OATH COMPLAINS THAT ON OR ABOUT THE 28 DAY OF July, 2011, WITHIN THE JURISDICTION OF THIS COURT THE ABOVE NAMED DEFENDANT DID THEN AND THERE UNLAWFULLY:

come into my office, cursed me and tossed an threw and ink pen at me striking me in my left arm.

IN VIOLATION OF THE ORDINANCES OF HAYTI, MISSOURI

A. Leeann Lannie Leeann Lannie
COMPLAINANT

SUBSCRIBED AND SWORN TO ME ON THIS DATE:

7-28-11
DATED

Glenda Overbey
CLERK / NOTARY PUBLIC

2102006

STATE OF MISSOURI	WARRANT FOR ARREST	CASE NUMBER: 30098

IN THE CIRCUIT COURT OF PEMISCOT COUNTY, MUNICIPAL DIVISION

STATE OF MISSOURI CITY OF HAYTI (PLAINTIFF) vs. Hamilton, Henry I (DEFENDANT)	YOU ARE COMMANDED TO ARREST: Henry L Hamilton ADDRESS: 306 North 2nd Hayti, MO 63851	ORDINANCE VIOLATION(S) CHARGED: Assault 3rd Peace Disturbance PLAINTIFF'S EXHIBIT 4 7/6/18 CL

IDENTIFYING INFORMATION	D.O.B.	SEX	SOCIAL SECURITY NUMBER	HEIGHT	WEIGHT	BOND SET AT:
	9/19/1953	M	486-60-9866	601	165	$1,022.50

PLACE OF EMPLOYMENT	CONDITIONS OF RELEASE
	Must Post Cash Bond

THE CITY OF HAYTI, MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURI
YOU ARE COMMANDED TO ARREST THE ABOVE INDIVIDUAL WHO IS CHARGED WITH THE ABOVE ORDINANCE VIOLATION(S) WHICH IS ALLEGED TO HAVE BEEN COMMITTED WITHIN THE JURISDICTION OF THIS COURT, AND TO CAUSE HIM TO BE BROUGHT BEFORE THIS COURT TO BE DEALT WITH IN ACCORDANCE WITH THE LAW.

YOU, THE OFFICER SERVING THIS WARRANT, SHALL EXECUTE IN WRITING A RETURN OF THIS WARRANT TO THE COURT.

ISSUED THIS DATE: July 29, 2011

Calvin Rayford

JUDGE/CLERK AS SPECIFICALLY AUTHORIZED

RETURN

I CERTIFY THAT I HAVE SERVED THE WITHIN WARRANT IN THE CITY/COUNTY OF HAYTI // PEMISCOT MISSOURI, ON 7/29/11 BY:

[x] ARRESTING THE ABOVE NAMED DEFENDANT AND CAUSING HIM TO BE BROUGHT BEFROE THE COURT ON 08-04-2011 at 5pm
DATE

[ ] ARRESTING THE ABOVE NAMED DEFENDANT AND TAKING BOND IN THE SUM OF $_____ AS SECURRITY FOR HIS APPEARANCE BEFORE COURT.

Lt. David Inman 28
ARRESTING OFFICER

STATE OF MISSOURI	21 **INFORMATION** 1621	CASE NUMBER 30098

IN THE CIRCUIT COURT OF PEMISCOT COUNTY, MUNICIPAL DIVISION

CITY OF HAYTI, MISSOURI (PLAINTIFF) **City of Hayti** vs. **Henry L. Hamilton** (DEFENDANT)	ORDINANCE VIOLATION(S) CHARGED: **Ordinance 631 Section 215.010 Assault** **Ordinance 631 Section 215.210 Peace Disturbance**
	PENALTY:
	CHAPTER SECTION
	DATE OF VIOLATION(S): **07/28/11**

Lawrence Dorroh PROSECUTOR FOR THE CITY OF HAYTI, MISSOURI, ON HIS OWN KNOWLEDGE OR INFORMATION AND BELIEF OR A VERIFIED COMPLAINT CHARGES THAT ON THE DATE, TIME, AND LOCATION STATED BELOW THE ABOVE DEFENDANT(S) DID UNLAWFULLY:

Enter Leeann Lannie's office of Maco Management, cursed her and tossed an ink pen at her striking her in the left elbow.

PLAINTIFF'S EXHIBIT 6 7/6/18 dl

15.010 Assault - A Person commits the offense of assault if the person knowingly causes physical contact with another person knowing the other person will regarg the contact as offensive or provocative.

15.210 Peace Disturbance - A Person commits the offense of peace disturbance if He/She unreasonably and knowingly disturbs or alarms another person of persons by offensive language addresses in a face to face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient.

IN VIOLATION OF THE ORDINANCE(S) STATED ABOVE

ATE: 8-4-11	PROSECUTOR'S SIGNATURE: 78