

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 9, 2016)

HAKEEM PELUMI

V.

C.A. No. PC 10-3875

CITY OF WOONSOCKET, alias John Doe; THOMAS BRUCE, alias John Doe in his official capacity as Treasurer for the City of Woonsocket; THOMAS S. CAREY, alias John Doe, individually and in his official capacity as the Chief of Police for the City of Woonsocket; RICHARD FINNEGAN, alias John Doe, individually and in his official capacity as the Bail Commissioner for the State of Rhode Island; EDWARD DOURA, alias John Doe, individually and in his capacity as Patrol and Arraigning Officer for the City of Woonsocket; JOHN DOE (1), alias John Doe, individually and in his official capacity as a Patrol Officer for the City of Woonsocket

DECISION

VAN COUYGHEN, J. Before the Court is a Motion for Summary Judgment filed by Defendants City of Woonsocket; Thomas Bruce, in his official capacity as Treasurer of the City of Woonsocket; Thomas S. Carey, in his official capacity as Chief of Police for the City of Woonsocket; and Edward Doura, in his capacity as Patrol and Arraigning Officer for the City of Woonsocket (collectively, Defendants or Woonsocket Defendants).<sup>1</sup> Plaintiff Hakeem Pelumi (Plaintiff), a self-represented litigant, objects to the Motion. Jurisdiction is pursuant to Super. R. Civ. P. 56 and G.L. 1956 § 8-2-14.

<sup>1</sup> Although the caption names Mr. Carey and Mr. Doura in both their individual and official capacities, this Court already has determined that they cannot be held individually liable because Plaintiff does not name them in their individual capacities in the body of the Amended Complaint. See Pelumi v. City of Woonsocket, C.A. No. PC 2010-3875, \*1-2, n.2 (filed Jan. 12, 2015).

## I

### Facts and Travel

On July 3, 2007, the Woonsocket police arrested Plaintiff and charged him with disorderly conduct in violation of G.L. 1956 § 11-45-1.<sup>2</sup> On the following day, July 4, 2007, Plaintiff was released on bail after appearing before Bail Commissioner Richard Finnegan (Mr. Finnegan) at the Woonsocket Police Station. (Dep. of Hakeem Pelumi (Pelumi Dep.) at 27; Aff. of Richard Finnegan at 2.) On July 23, 2007, Plaintiff pled nolo contendere to the underlying charge and received a six-month suspended sentence, with probation. See Crim. Compl. He also was ordered to pay court costs. Id.

Thereafter, Plaintiff embarked on a number of lawsuits in the United States District Court for the District of Rhode Island. In those cases, he accused Mr. Finnegan of willfully and intentionally stealing money from him at the July 4, 2007 bail hearing. He asserted that such actions violated his civil rights—both federal and state.

In the Amended Complaint of his first federal action, Plaintiff filed suit against Mr. Finnegan, individually and in his official capacity as Bail Commissioner for the City of Woonsocket, the City of Woonsocket, and the Woonsocket Police Department. Ultimately, the First Circuit Court of Appeals affirmed the District Court's dismissal of his 42 U.S.C. § 1983 allegations for failure to state a viable claim. It also affirmed the dismissal of Plaintiff's state claim for lack of diversity jurisdiction.

In his second federal suit, Plaintiff realleged his 42 U.S.C. § 1983 claims against essentially the same defendants as in the first suit. The First Circuit Court of Appeals again affirmed the District Court's dismissal of his federal claims, with prejudice—this time, under the

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<sup>2</sup> For a more detailed recitation of the underlying facts, see Pelumi v. City of Woonsocket, C.A. No. PC 2010-3875 (filed Jan. 12, 2015).

doctrine of res judicata.

On July 1, 2010, Plaintiff filed the instant action. His subsequent Amended Complaint contained six counts: Negligence (Count I); Intentional Infliction of Emotional Distress (Count II); Larceny (Count III); and various violations of 42 U.S.C. § 1983 (Counts IV-VI). The Woonsocket Defendants were named in all six counts; whereas, Mr. Finnegan was only named in the first three counts.

On April 8, 2014, Mr. Finnegan filed a Motion to Dismiss and a Motion for Summary Judgment. The Woonsocket Defendants then filed a Motion for Summary Judgment on April 10, 2014. Mr. Finnegan joined in Defendants' Motion. After conducting a hearing on the motions and after reviewing all of the evidence, this Court issued a written Decision on January 12, 2015.

In its Decision, the Court dismissed all of the claims against Mr. Finnegan based upon the doctrine of judicial immunity. With respect to the Woonsocket Defendants' Motion for Summary Judgment, the Court dismissed the negligence claim for failure to state a claim (Count I) and dismissed the 42 U.S.C. § 1983 claims under the doctrine of res judicata (Counts IV-VI). However, it denied the Motion with respect to the claims for intentional infliction of emotional distress (Count II) and for larceny (Count III). The Defendants now move to dismiss those claims pursuant to Super. R. Civ. P. 56.

Additional facts will be provided, as needed, in the Analysis portion of this Decision.

## II

### Standard of Review

It is "long recognized that '[s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" Laplante v. R.I. Hosp., 110 A.3d 261, 264 (R.I. 2015) (quoting Beauregard v. Gouin, 66 A.3d 489, 493 (R.I. 2013)). The moving party "bears the initial burden of demonstrating the absence of questions of material fact." Mills v.

State Sales, Inc., 824 A.2d 461, 467 (R.I. 2003). To satisfy its burden, the moving party must “submit[] evidentiary materials, such as interrogatory answers, deposition testimony, admissions, or other specific documents, and/or point[] to the absence of such items in the evidence adduced by the parties.” Id.

It is only when “the moving party satisfies this initial burden[] [that] the nonmoving party then must identify any evidentiary materials already before the court or present its own evidence demonstrating that factual questions remain.” Id. Thus, after the movant’s initial burden is satisfied, “[t]he burden rests upon the nonmoving party to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” Laplante, 110 A.3d at 264 (quoting Mut. Dev. Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 323 (R.I. 2012)).

The Court will grant the motion “if the nonmoving party ‘fails to make a showing sufficient to establish the existence of an element essential to that party’s case \* \* \*.’” Beauregard, 66 A.3d at 493 (quoting Lavoie v. Ne. Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007)); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (“When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.”). It follows, therefore, that “a ‘[c]omplete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.’” Beauregard, 66 A.3d at 494 (quoting Lavoie, 918 A.2d at 228).

### III

#### Analysis

#### A

##### Preliminary Matters

In its previous Decision, the Court found that although the Amended Complaint was “not the most artfully drafted document,” Count II sounded in a claim for intentional infliction of emotional distress and Count III sounded in a claim for larceny. See Pelumi v. City of Woonsocket, C.A. No. PC 2010-3875, \*\*19-20 and 23 (filed Jan. 12, 2015). It then denied Defendants’ Motion for Summary Judgment on those claims for failure to meet their burden of proving that there existed no genuine issues of material fact. Id. at 22 and 26. After expanding the record through discovery, Defendants now have renewed their Motion for Summary Judgment.

Ordinarily, the law of the case doctrine would preclude the Court from entertaining successive motions for summary judgment. See Ferguson v. Marshall Contractors, Inc., 745 A.2d 147, 151 (R.I. 2000) (observing that law of the case doctrine is “particularly applicable when the rulings under consideration pertain to successive motions for summary judgment . . .”). However, said doctrine “is a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record.” Berman v. Sitrin, 101 A.3d 1251, 1262 (R.I. 2014) (quoting Lynch v. Spirit Rent–A–Car, Inc., 965 A.2d 417, 424 (R.I. 2009)); see also Kirby v. P. R. Mallory & Co., 489 F.2d 904, 913 (7th Cir. 1973) (“If good reason is shown why a prior denial of a motion for summary judgment is no longer applicable or should be departed from, the trial court may, in the exercise of sound discretionary power, consider a renewed motion for summary judgment, particularly when the renewed motion is based on an expanded record.”).

In the instant matter, the Court finds that there has been a sufficient expansion of the record such that the law of the case doctrine would not preclude its consideration of Defendants' renewed Motion for Summary Judgment. Consequently, the Court will exercise its discretion and consider Defendants' Motion.

However, before considering the merits of the parties' arguments, the Court first will discuss the significance of Mr. Finnegan's dismissal from the suit as it pertains to the surviving claims. Although not specifically alleged in his Amended Complaint, Plaintiff appears to suggest that Defendants should be held vicariously liable for Mr. Finnegan's alleged wrongful conduct. However, considering that Mr. Finnegan was not employed by the City of Woonsocket, any such argument would be misplaced.

Our Supreme Court has declared that "[a]n employer, such as a municipality, can be held liable for an employee's intentional tort committed against a third party only if the misconduct falls within the scope of employment." Cruz v. Town of North Providence, 833 A.2d 1237, 1240 (R.I. 2003) (emphasis added) (citing Drake v. Star Market Co., 526 A.2d 517, 519 (R.I. 1987)). Clearly, a threshold requirement is that the alleged tortfeasor must be employed by the municipality before any liability can attach.

In this case, however, the City of Woonsocket did not employ Mr. Finnegan. Rather, he was appointed by the Chief Judge of the District Court, pursuant to G.L. 1956 § 12-10-2(a)(1), to "serve an important function in controlling the District Court's caseload by accepting [misdemeanor] pleas [of not guilty] as authorized by § 12-10-2 outside of the normal court day." City of Warwick v. Adams, 772 A.2d 476, 479 (R.I. 2001). Thus, assuming, arguendo, that Plaintiff is seeking to hold the City of Woonsocket vicariously liable for Mr. Finnegan's alleged wrongful conduct, the fact that Mr. Finnegan was not an agent or employee of the City of Woonsocket during the relevant period necessarily means that the argument would not have had

merit.

## B

### **Intentional Infliction of Emotional Distress**

Defendants contend that Plaintiff's factual allegations against them do not support a claim for intentional infliction of emotional distress. In addition, they contend that Plaintiff cannot establish his prima facie case because he has not provided any medically established evidence of physical symptomology to support his claim.

This jurisdiction has "recognized a cause of action for the intentional infliction of emotional distress, and in doing so, [it] adopted the standard set forth in § 46 of the Restatement (Second) Torts." Swerdlick v. Koch, 721 A.2d 849, 862 (R.I. 1998). For liability to be imposed upon a defendant for intentional infliction of emotional distress, the following elements must be satisfied: "(1) the conduct must be intentional or in reckless disregard of the probability of causing emotional distress, (2) the conduct must be extreme and outrageous, (3) there must be a causal connection between the wrongful conduct and the emotional distress, and (4) the emotional distress in question must be severe." Id. In addition, a plaintiff is required to provide "at least some proof of medically established physical symptomatology for both intentional and negligent infliction of mental distress." Id. at 863.

The Court finds that Plaintiff has failed to raise any genuine issues of material fact with respect to the essential elements of his claim. See Beauregard, 66 A.3d at 494 (stating that "a [c]omplete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial") (internal quotations omitted). To begin with, Plaintiff has failed to provide a genuine issue of material fact with respect to the severity of his alleged distress.

Severe emotional distress “includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea[;]” however, “[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.” Restatement (Second) Torts, § 46 cmt. j; see also Kennedy v. Town of Billerica, 617 F.3d 520, 530 (1st Cir. 2010) (declaring that the distress must rise to a level “that no reasonable man could be expected to endure, as opposed to mere emotional responses including anger, sadness, anxiety, and distress, which, though blameworthy, are often not legally compensable”) (citations and quotations omitted).

In Kennedy, the United States First Circuit Court of Appeals reversed a jury verdict in favor of two minor plaintiffs on their claims for intentional infliction of emotional distress. Kennedy, 617 F.3d at 540-41. One of the minors asserted that he had been falsely arrested at the age of fourteen, and that this incident, as well as others, “had made him generally ‘nervous,’ afraid of police sirens, and had sometimes given him ‘nightmares’ that produced sweating and a racing pulse . . . .” Id. at 531. The other minor claimed that he had been emotionally traumatized after the chief of police filed an allegedly baseless complaint against him when he was just nine years old, thus causing his “loss of sleep for an unspecified period before his court appearance, and his generalized fear of going to court . . . .” Id.

Although the federal court recognized that “children and other particularly susceptible persons are likely to be more vulnerable to emotional harm,” it nevertheless held:

“A minor’s fear of going to court and a fear of the police, nightmares, and the loss of sleep, after arrest or after the filing of an application for a complaint against a minor, do not meet the severity of harm requirements under state law to find liability on IIED [intentional infliction of emotional distress] claims.” Id. at 524 and 530.

In his Amended Complaint, Plaintiff alleged that he had “suffered Fright, Humiliation, and the likes, as well as any physical illness, which may result from them in addition to the prior alleged damages.” (Am. Compl. at ¶ 18.) The Amended Complaint states that such damages include “[h]umiliation, . . . emotion[al] distress, . . . fear, . . . loss of confidence, and police phobia[.]” Id. at ¶ 11.

At his deposition, Plaintiff testified that after he was released on bail he “was trembling [and] sweating, too.” (Pelumi Dep. at 43.) However, Plaintiff later undermined his claim of police phobia and loss of confidence when he testified that, since his bail hearing, he has initiated multiple contacts with the police. See Pelumi Dep. at 55-56 (testifying that since the incident, Plaintiff calls the police “all the time. We are customers[.]” and that “I think it is my right to call the cop whenever I believe that the cop is needed to look into whatever . . . I’m known to them. They know me”).

Thereafter, each time defense counsel requested Plaintiff to describe his damages, Plaintiff insisted he only could do so with the help of a dictionary. See id. at 59, 60, 61, 62 and 63. At one point defense counsel asked Plaintiff: “In your own words, what are your damages. Describe them for me.” Id. at 59-60. In his response, Plaintiff simply quoted directly from his Amended Complaint:

“These are my damages right here. ‘On or after July 4, 2007, the plaintiff sustained damages some of which are continuing in nature including the following, humiliation, emotional distress, fear, loss of confidence and police phobia,’ and that is what it is. You want any more detail, . . . I need a dictionary. Id. at 60 (quoting Am. Compl. at ¶ 11.)

Later, in response to yet another request to describe his damages, Plaintiff stated:

“I’ll tell you what, I have explanation in this position. If this is a tactic, it will not work with me. You are a lawyer. You know the meaning of those words I put right there and you are asking me

more details on it. You provide me a dictionary or I don't have an answer." (Pelumi Dep. at 62.)

It is clear from the foregoing that Plaintiff has failed to raise a genuine issue of material fact to demonstrate that his alleged emotional distress was severe. Indeed, his deposition demonstrates that he refused to describe, in his own words, any symptoms of his alleged distress. See Laplante, 110 A.3d at 264 (prohibiting nonmoving party from simply "rest[ing] on allegations or denials in the pleadings or on conclusions or legal opinions"). Consequently, Plaintiff has failed to satisfy the severity element of his claim for purposes of the instant Motion.

Furthermore, in addition to requiring a plaintiff to prove that his or her emotional distress is severe, he or she also must present medically established evidence of physical symptomology. See Francis v. Am. Bankers Life Assur. Co. of Fla., 861 A.2d 1040, 1046 (R.I. 2004) ("Both the torts of negligent and intentional infliction of emotional distress require that plaintiff allege and prove that medically established physical symptomatology accompany the distress.") (emphasis added) (citing Swerdlick, 721 A.2d at 863; Clift v. Narragansett Television L.P., 688 A.2d 805, 813 (R.I. 1996); Reilly v. United States, 547 A.2d 894, 896 (R.I. 1988)). The purpose of requiring medically established evidence of physical symptomology is "to safeguard against bogus or exaggerated emotional-damage claims . . . ." Hawkins v. Scituate Oil Co., 723 A.2d 771, 773 (R.I. 1999) (reiterating that "plaintiffs seeking to recover a monetary award for the tortious infliction of emotional distress must establish, among other elements, that they experienced physical symptoms of their alleged emotional distress, and that expert medical testimony supports the existence of a causal relationship between the putative wrongful conduct and their injuries").

In this case, Plaintiff did not provide a scintilla of medically established evidence to demonstrate any physical symptomology. Indeed, not only did he fail to provide such evidence,

he actually admitted that he did not seek medical attention for his alleged symptoms in the first instance. See Pelumi Dep. at 45 (“I think I explain clear enough that I did not seek any medical attention regarding this incident.”). Plaintiff’s failure to provide medically established evidence of physical symptomology, standing alone, would be a sufficient reason for the Court to grant Defendants’ Motion for Summary Judgment on his emotional distress claim. Nevertheless, Plaintiff also failed to provide a genuine issue of material fact concerning the other elements of this particular claim.

With respect to the element requiring that the conduct be extreme and outrageous, a plaintiff must show that the defendant’s “conduct [was] 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.” Jalowy v. Friendly Home, Inc., 818 A.2d 698, 707 (R.I. 2003) (quoting Swerdlick, 721 A.2d at 863). Thus, the allegation must be “one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’” Jalowy, 818 A.2d at 707. Conversely, “liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” Restatement (Second) Torts, § 46 cmt. d.

In the instant matter, Plaintiff alleges that Defendants engaged in conduct that was “malicious, willful, reckless, and/or wicked as to amount to a criminality[,]” and proximately caused him to “suffer[] Fright, Humiliation, and the likes, as well as any physical illness, which may result from them . . . .” (Am. Compl. at ¶¶ 18 and 20.) In support of this claim, he alleges:

“On July 4, 2007, inside Woonsocket Police Station, in the City of Woonsocket, State of Rhode Island, Defendant Richard Finnegan, a white man, and the Bail Commissioner for the City of Woonsocket, unlawfully, willfully, negligently, and discriminatingly stole money from the Plaintiff, Hakeem Pelumi, a black man, in broad daylight while other ‘officers’ are watching and laughing, during a bail hearing.” (Am. Compl. at ¶ 10.)

Thus, the specific conduct that would support Plaintiff's emotional distress claim against the Woonsocket Defendants would be that "other 'officers' [were] watching and laughing" while Mr. Finnegan allegedly took money from Plaintiff. Id.

It is undisputed that the officers did not touch Plaintiff at the bail hearing. See Pelumi Dep. at 35 ("Q. You remember the officers laughing?[,] A. They didn't touch me."). Nevertheless, Plaintiff implied that he had felt intimidated by the officers who were present at said hearing. See id. at 30 (stating "he [Mr. Finnegan] had three cops there to jump on me . . . And then big chest and stuff like that"); id. at 35 ("They were laughing, gesturing (indicating).").

However, when Plaintiff was asked to recall what specific actions the officers may have taken, see id. at 34-40, 41-42 and 58, many of his responses were vague and evasive, and he repeatedly stated that he needed a video tape of the bail hearing to show exactly what happened. See id. at 35-37, 39-42, and 58.<sup>3</sup> For example, when Plaintiff was asked: "The only thing you remember the officers in the room doing that day is laughing; is that correct?" he responded by stating: "They may do more and that is the reason why I want to question that video . . . In order to get a detail of what happened that day, I want the video . . . Not only laughing, whatever they are doing, to get a detail we need a video." Id. at 35-36. Thereafter, the following colloquy took place:

"Q. Okay. So again I ask: Is it [to the] best of your memory that the only thing the police officers in the room did was laugh, to the best of your memory?

"A. I will repeat that I put it in my complaint. In order to get a detail of what happened on that day, I need to see the video. It's right in my complaint.

"Q. I understand that you are looking for the video, Mr. Pelumi, but that does not answer my question.

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<sup>3</sup> Defendants have represented to the Court that they no longer possess a copy of the video tape for the near decade-old proceeding.

“A. It is the video that can answer all this question and take all guesses out. I don’t want to be guessing.

“Q. I’m not asking [you to] guess. I am asking for your memory . . . Did the officers in the room do anything other than laugh, to the best of your memory?

“A. I don’t know how best to answer your question. Besides the video speak for itself. Let’s see the video.

...

“Q. . . . Do you remember the police officers doing anything other than laughing?”

“A. I -- there’s no way I can know. There’s no way that I would know everything.

“Q. Do you remember anything else? It’s a yes or no answer.

“THE WITNESS: Do I remember anything else that happened inside the station?

“[DEFENSE COUNSEL]: That the police officers in the room during the bail hearing, any actions or words that they did.

“A. No.

“Q. Do you remember?

“A. Nothing.

“Q. Nothing?

“A. (Shakes head in the negative).” Id. at 36-38.

Defense counsel later reminded Plaintiff of an affidavit that Defendants had filed with the Court, stating “that there is not a video at this time,” and he informed Plaintiff that “all I can do is ask you questions about your memory.” Id. at 41.

However, Plaintiff refused to answer, stating “I am not going to rely on my memory. I want the video.” Id. at 42. The Plaintiff also suggested that problems with his hearing restricted his ability to recount what the police officers said at the bail hearing. See id. at 40 (“I have hearing problem, so whatever is there, all these fine details, the video, I think that fair enough, the video.”) Conversely, Plaintiff later admitted that he had been wearing hearing aids at the bail hearing and that when he wears them, he can hear at a normal range. See id. at 42.<sup>4</sup>

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<sup>4</sup> Regardless of how well Plaintiff could hear at the time, his testimony clearly reveals the only thing he specifically could remember about the police officers’ conduct was that they laughed and gestured.

Towards the end of the deposition, defense counsel pointedly asked Plaintiff if there was “anything else that you can recall about the officers’ behavior during the bail hearing.” Id. at 58. Plaintiff responded: “I don’t know how many times I have to repeat this. I cannot remember anything from memory until you guys produce the video that I’m asking.” Id.

It is undisputed that Plaintiff had been arrested and charged with disorderly conduct on the day before the bail hearing. Thus, at the time of the bail hearing, Plaintiff was still in police custody. Although it is possible that Plaintiff may have felt intimidated by the officers’ presence at the hearing, his only allegation was that they were watching and laughing, and he readily admitted that none of them physically touched him. During his deposition, Plaintiff was given ample opportunity to describe how the officers conducted themselves at the hearing. Nevertheless, despite the fact that Plaintiff was present at the hearing, wearing his hearing aids, and could hear at a normal range, Plaintiff essentially refused to specify what it was about the officers’ conduct that allegedly caused him to suffer emotional distress.

This Court is mindful of the summary judgment standard. However, even accepting Plaintiff’s allegations on their face—that the police officers at the bail hearing had been “watching and laughing” when the alleged larceny occurred—the Court finds that even if such inappropriate conduct in fact did occur, it would not satisfy the extreme and outrageous element of a claim for intentional infliction of emotional distress. See Rogala v. Dist. of Columbia, 161 F.3d 44, 57-58 (D.C. Cir. 1998) (finding police officer’s conduct did not satisfy extreme and outrageous requirement where plaintiff alleged that officer threatened the previously arrested plaintiff, yelled at her, laughed at her hearing impairment, and detained her for an unnecessary length of time in the police station); Farrar v. Bracamondes, 332 F. Supp. 2d 1126, 1131 (N.D. Ill. 2004) (finding “Defendant [Police] Officers’ laughter and inappropriate comments, while uncalled for, are precisely the types of trivialities that are not actionable . . .”). In viewing the

facts in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to raise a genuine issue of material fact on the issue of whether the officers' conduct was extreme and outrageous.

Considering that Plaintiff has failed to satisfy his burden of demonstrating that his alleged distress was severe and that the officers' conduct was extreme and outrageous, it follows that Plaintiff cannot satisfy his burden of demonstrating the other two elements of his prima facie case. See Swerdlick, 721 A.2d at 862 (requiring that "the conduct must be intentional or in reckless disregard of the probability of causing emotional distress," and that there is "a causal connection between the wrongful conduct and the emotional distress"); Garretson v. City of Madison Heights, 407 F.3d 789, 799 (6<sup>th</sup> Cir. 2005) (faulting nonmoving party for "not offer[ing] proof that the officers intended to subject her to emotional distress . . . .") (emphasis in original); Bryant v. Thalhimer Bros., Inc., 437 S.E.2d 519, 526 (N.C. App. 1993) (standing alone, outrageous conduct "would confer no cause of action on the [P]laintiff in the case until [he] suffered extreme emotional distress caused by [said] actions").

Consequently, the Court finds that Plaintiff has failed to raise a genuine issue of material fact with respect to each and every element of his claim. Moreover, the Court finds that Plaintiff's failure to present medically established evidence of his physical symptomology, standing alone, would necessitate the granting of Defendants' Motion for Summary Judgment as to Count II of the Amended Complaint. See Beauregard, 66 A.3d at 493 (affirming the grant of summary judgment where the nonmoving party failed to sufficiently establish the existence of an essential element). Consequently, the Court grants Defendants' Motion for Summary Judgment as to Count II of the Amended Complaint.

## C

### Larceny

As this Court previously determined, Count III of the Amended Complaint sounds in a civil action for the alleged larceny that took place at the July 4, 2007 bail hearing, pursuant to G.L. 1956 § 9-1-2 (“Civil liability for crimes and offenses”). See Pelumi v. City of Woonsocket, C.A. No. PC 2010-3875, \*23 (filed Jan. 12, 2015). The Defendants contend that they are entitled to summary judgment with respect to Count III because Plaintiff has failed to specifically allege that Defendants committed a larceny. They further assert that even if he had properly alleged larceny against Defendants, he failed to submit any evidence in support of that contention.

Pursuant to § 9-1-2, a plaintiff may “recover civil damages for injury to his or her estate that results from the commission of a crime or offense, irrespective of whether charges have been filed against the offender.” Morabit v. Hoag, 80 A.3d 1, 4 (R.I. 2013); see also § 9-1-2 (stating “it shall not be any defense to such action that no criminal complaint for the crime or offense has been made”). In order to recover under the statute, the plaintiff “is required to prove his [or her] case by a preponderance of the evidence.” Cady v. IMC Mortg. Co., 862 A.2d 202, 215 (R.I. 2004).

Our Supreme Court has defined larceny as “essentially a wrongful taking without right and a carrying away of another’s personal property with a felonious intent to steal.” State v. Briggs, 787 A.2d 479, 487 (R.I. 2001) (quoting State v. Holley, 604 A.2d 772, 774 (R.I. 1992)). Thus, “[t]he crime of larceny is completed when a defendant, having possession and control of the property, moves it from its customary location with the intent to deprive the owner of permanent possession . . .” In re Timothy, 442 A.2d 887, 890 (R.I. 1982).

In Count III of his Amended Complaint, Plaintiff alleges that all of the Defendants intentionally deprived him of his property. Specifically, he asserts:

“22. At all material times, the Defendant [sic] knew or would have known that their conduct would result in an offensive deprivation of or trauma upon the Plaintiff, either directly or indirectly by setting in force certain events which in their ordinary course were likely to result in an offensive deprivation of or trauma upon the Plaintiff.

“23. At all material times, the Defendants [sic] conduct did result in an offensive deprivation of or trauma upon the Plaintiff.” (Am. Compl. at ¶¶ 22-23.)

As previously stated, the only factual allegation leveled against Defendants in the body of the Amended Complaint was that the officers present at the bail hearing were “watching and laughing” while Defendant Mr. Finnegan purportedly “unlawfully, willfully, negligently, and discriminatingly stole money from the Plaintiff. . . .” Id. at ¶ 10.

At his deposition, Plaintiff testified: “There was a table, a man sitting right here, three cops there . . . And I don’t know who it was. It was later that I know that the Bail Commissioner that went and stole my money.” Pelumi Dep. at 27. Again referring specifically to Mr. Finnegan, Plaintiff stated: “This guy went into my money, took one hundred dollar bill out, put it on the side, and say here, ‘Take your money and get out of here.’” Id. at 32.

Thereafter, the following colloquy took place:

“Q. Did any of the police officers touch your belongings or your money that you had in your sock?

“THE WITNESS: On the table, that money?

“[DEFENSE COUNSEL]: Yes.

THE WITNESS: At the bail hearing?

“[DEFENSE COUNSEL]: Yes.

“A. No. No. Just me and him.

“Q. The only person -- when you say -- you just said, ‘just me and him,’ you’re referring to Mr. Finnegan?

“A. That’s correct.

“Q. So to be clear, no police officer took any money from you at the time of the bail hearing; is that correct?

“A. I repeat, in order to get a fine detail of what happened that day I need the video.” Id. at 38-39.

It is clear from the foregoing that Plaintiff's own deposition testimony does not support an allegation of larceny against the Woonsocket Defendants. See id. at 35 ("They may do more and that is the reason why I want . . . that video."). Indeed, despite Plaintiff's innuendos, when defense counsel specifically asked Plaintiff: "Is it your allegation in the complaint that Mr. Finnegan stole \$100 from you; is that correct?" Plaintiff categorically responded: "That's correct." Id. at 51.

Considering that Plaintiff has accused only Mr. Finnegan of larceny, and considering that Defendants cannot be held vicariously liable for that alleged conduct, see supra at 6, the Court finds that Plaintiff has failed to raise an issue of material fact to support an accusation of larceny against any of the Woonsocket Defendants. Consequently, the Court grants Defendants' Motion for Summary Judgment as to Count III of the Amended Complaint.

#### IV

#### **Conclusion**

For the foregoing reasons, the Court finds that Plaintiff has failed to present any genuine issues of material fact to demonstrate a single element of a prima facie case of intentional infliction of emotional distress. The Court further finds that Plaintiff has failed to present any genuine issues of material fact to demonstrate that the Woonsocket Defendants are civilly liable to Plaintiff for any purported larceny. Accordingly, the Court grants Defendants' Motion for Summary Judgment as to Count II and Count III of the Amended Complaint.

Counsel shall submit an appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Pelumi v. City of Woonsocket, et al.

**CASE NO:** PC 10-3875

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** May 9, 2016

**JUSTICE/MAGISTRATE:** Van Couyghen, J.

**ATTORNEYS:**

**For Plaintiff:** Hakeem Pelumi, pro se

**For Defendant:** Krista J. Schmitz, Esq.  
                          Arthur M. Read, II, Esq.