UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO. 3:20-CV-406-BJB-CHL

WILLIENE SISTRUNK **PLAINTIFF**

vs.

DEFENDANTS, CITY OF HILLVIEW, CHRISTOPHER BOONE, AND CHARLES MCWHIRTER'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

CITY OF HILLVIEW, *et al.* **DEFENDANTS**

Come the Defendants, City of Hillview, Christopher Boone, and Charles McWhirter, by counsel, and for their Memorandum in Support of Motion for Summary Judgment, state as follows:

INTRODUCTION

This case arises from the execution of search and arrest warrants on May 31, 2019, at the home of Plaintiff, Williene Sistrunk ("Ms. Sistrunk"),[1] located at 121 N. 36th Street in Louisville, Kentucky. In her Complaint, Ms. Sistrunk, who was 86 years old at the time, alleges that two named officers of the City of Hillview ("Hillview") Police Department ("HPD"), Detective Christopher Boone ("Boone") and Lieutenant Charles McWhirter ("McWhirter"), and unknown officers the Louisville Metro Police Department ("LMPD") forced entry into her home "without a search warrant and/or without probable cause for a search warrant" while she was in bed, and "forced her out of her home shoeless and wearing only her undergarments." Complaint [DN1-2], Preliminary Statement, p. 1, and paras. 12-14. Ms. Sistrunk claims that the officers "searched her

[1] Counsel for Plaintiff recently advised counsel for Defendant that Ms. Sistrunk is now deceased and that he will soon file an Unopposed Motion to Substitute the Administrator of Ms. Sistrunk's estate as party-Plaintiff.

home, purportedly to find her grandson [Cedric Alexander]," "who did not live with her and never did." *Id*., pp. 1-2, and para. 15. She claims that the officers "significantly damaged her home and removed and damaged her property without a right to do so." *Id*., para. 16.

Ms. Sistrunk makes state law claims for conversion, trespass to chattel, negligence, and gross negligence (id., paras. 21-23), false imprisonment, infliction of emotional distress, the tort of outrage, and battery (*id*., paras. 40-46), and Fourth Amendment federal civil rights claims under 42 U.S.C. §1983 against the officers, Louisville Metro Government and the City of Hillview. *Id*., paras 25-36. As demonstrated below, Ms. Sistrunk cannot delineate which individual, individuals, or municipal entity is responsible for her alleged claims.

Louisville Metro filed a Motion to Dismiss for Failure to State a Claim [DN 4] on June 9, 2020. On April 23, 2021, this Court granted Louisville Metro's motion to dismiss the *Monell* policy-or-custom claim against it without prejudice and granted its motion to dismiss the punitive and state-law claims against it with prejudice. [DN 11].

For the reasons set forth herein, Hillview, Boone, and McWhirter are entitled to summary judgment on all claims filed against them.

STATEMENT OF FACTS

A. Hotel Robbery and Investigation

On May 3, 2019, Plaintiff's grandson, Cedric Alexander ("Alexander"), committed a robbery of an employee of the Hampton Inn in Brooks, Bullitt County, Kentucky.[2] HPD was dispatched to the hotel and conducted an on-scene investigation. See Exhibit 1, KYIBRIS Report: Narrative, p. 5. The hotel clerk, Shawn Scott (female), reported that Alexander had a gun when he committed the robbery. Boone Depo., p. 40. Hotel surveillance cameras captured the robbery and

[2] Alexander pled guilty to an amended charge of Robbery, 2nd Degree – 515.030 on May 24, 2022 in Bullitt Circuit Court Action No. 19-CR-00286 and was sentenced to 10 years (5 years suspended).

"getaway" car, a 2015 white Ford Mustang, on video. *Id.*

HPD officers reported to the Hampton Inn and interviewed the hotel clerk. The Suspect was described as a black male in his twenties, wearing blue jeans and a red shirt and driving a newer model white Ford Mustang. The Suspect left with $258.78 from the cash drawer and a set of keys. Fingerprints were lifted but proved to be unusable. The surveillance tape was retrieved and sent to the AFIS lab for analysis. See Exhibit 1, KYIBRIS Report: Narrative, p. 5

Detective Boone was assigned to investigate the robbery and requested assistance from LMPD in identifying the "getaway" car and robbery suspect. LMPD detectives used the surveillance video images to perform a vehicle search using the LMPD records management system and traced the 2105 Ford Mustang to its registered owner, Cedric Alexander. Alexander used his grandmother's address of 121 N. 36th Street on the vehicle registration. LMPD also obtained a Kentucky Operator's License for Alexander, issued the day before the robbery. Alexander's operator's license showed the 121 N. 36th Street address. In addition, the operator's license photo depicted Alexander wearing the same or similar orange t-shirt worn by the Suspect in the hotel surveillance video. Boone Depo., pp. 39-40. Exhibit 1, KYIBRIS Report: Narrative, pp. 5-6; Exhibit 2, LMPD Email Dated May 16, 2019; Exhibit 3, Robbery Suspect Photos; and Exhibit 4, White Ford Mustang Photos. As a result, Boone issued a Warrant of Arrest for Alexander, which Bullitt District Court Judge J. Potter signed on May 29, 2019. See Exhibit 5, Warrant of Arrest – Complaint Warrant.

B. Obtaining the Search Warrant

Based upon the auto registration and operator's license address information, Boone sought a search warrant for the residence at 121 N. 36th Street. Boone Depo., pp. 36-7. He prepared a Search Warrant Affidavit for the subject premises, the 2015 Ford Mustang, and Alexander.

Seeking to find Alexander, the Mustang registered in his name, clothing and a backpack worn during the robbery, and a cash drawer and keys removed from the hotel during the robbery. See Exhibit 6, Search Warrant Affidavit, p. 1, and Boone Depo., pp. 39, 41-42.

On May 30, 2019, Boone took the search warrant to Hon. Rodney Burress, Judge, Bullitt Circuit Court. *Id*., p. 59. After a discussion and questioning by Judge Burress regarding the relationship of the property address to Alexander, Boone added the following hand-written Statement to the Search Warrant Affidavit: "The address listed on the search warrant is the listed address on Cedric Alexanders OL and the same address the car is registered to." *Id*. Judge Burress signed the warrant on May 30, 2019, at 10:46 a.m. See Exhibit 7, Search Warrant.

C. Risk -Assessment and Matrix

Because the 121 N. 36th Street residence is located in Louisville, Jefferson County, Kentucky, and outside the jurisdiction (Bullitt County) of HPD, departmental policy required HPD to enlist the aid of LMPD to execute the search warrant. Boone Depo., pp. 42, 67-68. Knowing that the hotel clerk reported that Alexander used a gun in the commission of the robbery, Boone performed a background check on Alexander and determined from a report that Alexander had fired a gun inside a house during a domestic situation in the early 2000s. Boone Depo., pp. 40-41.

Next, Boone and HPD Detective Scott Barrow went to the subject residence and took photographs around the house. *Id*., p. 53-54; see also Exhibit 8, Residence Photos. Boone perceived that a residence breach would likely require using a ram or sledgehammer because the front and back doors had heavy bar security doors. *Id*. pp. 55-57, 66-67, 76-78.

Per HPD procedure, Boone prepared an HPD Risk Assessment Matrix and discussed the matrix with Lieutenant McWhirter. Next, after discussing the matrix with McWhirter, Boone determined that policy would dictate using a SWAT team to execute the warrant. See Exhibit 9,

HPD Risk Assessment Matrix, and Boone Depo., pp. 48-59. Twenty-five (25) or more total points require LMPD SWAT for service and execution of an out-of-jurisdiction warrant. *Id*. See also HPD Chief William Mahoney ("Mahoney") Depo., p. 63-64.

Boone and McWhirter discussed the propriety of checking certain boxes on the threat matrix, specifically under "Category 3," where Boone improperly checked more than one box, per the instructions. See Exhibit 9, HPD Risk Assessment Matrix, Boone Depo., pp. 48-59, and Mahoney Depo., p. 65. Had Boone checked "the choice with the highest points" (10) under Category 3, the point total would still have exceeded 25. Mahoney Depo., pp. 65-66.

D. Service and Execution of Search Warrant by LMPD

Boone subsequently contacted LMPD for assistance in serving and executing the Search Warrant. Boone Depo., pp. 67-69. LMPD prepared a Risk Assessment Matrix, conducted its own surveillance, and determined that LMPD would utilize a SWAT team in executing the warrant. *Id*., pp. 68-69. On the morning of May 31, 2019, Boone and McWhirter met with the LMPD SWAT team, which devised a plan wherein the LMPD SWAT team would breach the front and back doors of the residence, enter the premises, secure the scene, and turn the scene over to HPD for the search. *Id*. pp. 60-62, 68-69. Boone had nothing to do with LMPD's operational plan. *Id*., p. 69.

Later that day, LMPD and HPD carried out the plan accordingly. *Id*., pp. 69-70. The LMPD SWAT team executed the search warrant and breached the doors of the residence without assistance from HPD. Ms. Sistrunk testified that several police officers "covered up in this military get-up" entered her house. Sistrunk Depo., p. 18. One officer pointed a shotgun at her and motioned for her to raise her hands. *Id*. An officer then motioned for her to go outside, partially dressed. *Id*., pp. 18-19. She went out the front door, and the officers were "very nice helping [her] down the steps. *Id*., p. 19.

While LMPD breached the two entryways into the house and secured the scene, Boone, McWhirter, and Officer Emily Cruz (non-party), wearing a body-worn camera,[3] waited outside next to the large SWAT "Bearcat" vehicle. LMPD removed Ms. Sistrunk from the residence and brought her to the SWAT vehicle. Boone Depo., pp. 71-72. Sistrunk Depo., pp. 16-18, 25. Boone does not know what the LMPD Swat team did while inside the house, except that they "cleared" room to room and ensured nobody else was inside the house. Boone Depo., p. 70.

E. Search of the Residence by Hillview Police Department

Ms. Sistrunk sat on the rear bumper of the SWAT vehicle until LMPD turned over the scene to HPD. *Id*., p. 72, Sistrunk Depo., pp. 19, 26. Ms. Sistrunk was upset about her clothing, but after a couple of minutes, her granddaughter showed up. HPD allowed her granddaughter to approach and stand with them and permitted her to get a blanket out of a vehicle to cover Ms. Sistrunk's legs. Sistrunk Depo., p. 19. Ms. Sistrunk testified that after being taken to the bumper of the SWAT vehicle, the officers did not confine her in any way. *Id*., p. 56. Ms. Sistrunk was never handcuffed. Boone Depo., pp. 72-73.

After LMPD cleared the scene, they turned the scene over to HPD for the search. Boone Depo., p. 73. When Boone entered the house, it did not appear "ransacked." *Id*. Boone then escorted Ms. Sistrunk into the house (*id*.), and the two sat on a living room sofa. Sistrunk Depo., pp. 19, 27-28. Ms. Sistrunk remembers being shown some paperwork but does not remember what it was. *Id*., pp. 28, 31-32. She testified that she did not know one way or the other whether the police had a search warrant. *Id*., p. 31.

Ms. Sistrunk was concerned that her pet dog "Handsome" was missing. *Id*., p. 73. Boone and Cruz postponed the search for a few minutes and looked for the dog. *Id*., p. 73, 81-83. Cruz

[3] See discussion of Cruz body-worn camera evidence, below.

eventually found him hiding under Ms. Sistrunk's bed. *Id*., p. 81-82. Although Ms. Sistrunk does not remember, Boone testified that he read the search warrant to Ms. Sistrunk, as required, and explained that HPD was looking for her grandson. *Id*., p. 74, and Sistrunk Depo., p. 20. Ms. Sistrunk explained that Alexander did not live with her but that he and other family members sometimes used her address to receive mail. *Id*., Sistrunk Depo., pp. 9-10. Alexander used her mailing address for approximately one year before the search. *Id*. Boone then searched the entire house with McWhirter and Cruz present but did not find Alexander or the evidence of the hotel robbery he was seeking. Boone Depo., pp. 73, 79-80.

F. Property Damage and Alleged Theft of Cash

Ms. Sistrunk had a difficult time differentiating between the LMPD and HPD officers. Sistrunk Depo., pp. 21-23, 28, 53. She is unsure which of the officers allegedly damaged her home but recalled that "[SWAT] were the only ones in there." *Id*. pp. 35-36. She has no complaints about the conduct of the police between the time the police told her she could go back in the house and the time the police left her house. Id., pp. 23, 27.

Boone testified that neither he nor any member of HPD ransacked the house, caused any damage to the residence, or removed any property from the residence. *Id*., p. 70, see also Exhibit 7, Search Warrant, p. 2 (inventory notation). He testified that he was polite and respectful. *Id*., p. 74.

As the search concluded, Ms. Sistrunk was not critical; instead, she was very complimentary of the HPD officers' conduct. *Id*., pp. 74-75. She thanked Boone for talking to her and explaining things to her. *Id*. The HPD officers then left without incident and heard no complaints from Ms. Sistrunk until they were served with a summons and Complaint.

Ms. Sistrunk complains that "the Officers significantly damaged her home and removed and damaged property without a right to do so." Complaint, para. 16. When asked whether she could identify the officers who damaged her home, she testified, "[n]o. All I know is the S.W.A.T went in there - - the ones all covered up…they were the only ones in there. Sistrunk Depo., pp. 35-36. Specifically, Ms. Sistrunk complains that the unspecified "officers" damaged the doors of her house, her garage door, and her car. *Id*., pp. 43.

Ms. Sistrunk also testified that someone removed $77,000.000 in cash from a small safe in a living room fireplace covered with logs and located behind a recliner. Sistrunk Depo., pp. 43-47, 62-71. She testified that the safe was functional and locked on the date of the search. *Id*., pp. 69-70. She could not identify the officer or officers who allegedly stole her money. *Id*., p. 47.

G. Cruz Body-Worn Camera Evidence

Hillview Officer Cruz arrived at the scene after Ms. Sistrunk, and her two family members were removed from the house by LMPD and activated her body-worn camera. A copy of the 37-minute, 35-second video has been conventionally filed as Exhibit 10, Cruz Body-Worn Camera Video. The video depicts much of the Hillview officer's involvement and interaction with Ms. Sistrunk and corroborates the deposition testimony of Boone. At 0:23, Officer Cruz arrives at the scene.

At 0:48, Ms. Sistrunk is seen sitting on the rear bumper of the SWAT vehicle next to her son. Boone (in khaki pants) and McWhirter (in HPD uniform, vest, and sunglasses) are present. Numerous LMPD SWAT officers (in full green SWAT gear) appear throughout the video. Between 0:48 and 14:38, Ms. Sistrunk is shown seated on the bumper conversing with Boone and McWhirter. Ms. Sistrunk was not handcuffed.

At 15:21, Boone is shown assisting Ms. Sistrunk up the front steps and into the residence. Between 16:00 and 32:00, the video shows Cruz and other officers searching for the dog and Boone conversing with Ms. Sistrunk while seated on a living room sofa. Boone is seen and/or heard explaining to Ms. Sistrunk that HPD had no control over LMPD's breach of the residence (18:30), and reading the search warrant to Ms. Sistrunk (21:20). Ms. Sistrunk makes a positive identification of Alexander from a cell phone photograph (25:17) and Boone repeatedly asks Ms. Sistrunk to have Alexander turn himself into HPD voluntarily.

On at least two occasions (28:00 and 31:00), Ms. Sistrunk is shown telling Boone that she appreciated his talking to her. At 31:51, Ms. Sistrunk acknowledges that Alexander used her address because he had "no place to stay" and that Alexander and other family members used her address to receive mail. At 32:18, Boone is seen beginning his search of the premises, which ends at 37:35.

SUMMARY JUDGMENT STANDARD

In ruling on a motion for summary judgment, the Court must determine whether the pleadings, together with the depositions, interrogatories, affidavits and other evidence, establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c).* The moving party bears the initial burden of identifying both the basis for his motion and the portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). Once this burden is satisfied, the non-moving party must provide the Court with specific facts demonstrating that a genuine issue of fact does exist. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)

The Court reviews the record in the light most favorable to the non-moving party. The non-moving party must do more than simply show some "metaphysical doubt" about the existence of

a dispute. *Matsushita Elec. Indust. Co. v. Zenith Radio Co.*, 475 U.S. 574, 586 (1986). He must present "specific facts showing that there is a genuine issue for trial." *Fed. R. Civ. P. 56(e).* The mere existence of a scintilla of evidence supporting the non-moving party's position is not sufficient; there must be evidence that the jury could reasonably find in his favor. *Anderson*, 477 U.S. at 252. If "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial'" and summary judgment must be granted. *Matsushita*, 475 U.S. at 587.

Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial." *Id.* at 322. Summary judgment plays a pivotal role when dealing with immunities since qualified official immunity affords immunity from suit, not just immunity from liability. R*owan County v. Sloas*, 201 S.W.3d 469, 474 (Ky. 2006). In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Court rejected the subjective or "good faith" test for immunity, opting instead for an "objective reasonableness standard" to avoid the numerous subjective factual issues to permit the early resolution of many qualified immunity issues as possible before trial. *Id.* at 818.

LAW AND ARGUMENT

I. QUALIFIED IMMUNITY

A. Federal Law Claims

The doctrine of qualified immunity provides that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). See also *Pearson v. Callahan*, 555 U.S. 223 (2009), *Stanton v. Sims*, 571 U.S. 3, 4-5 (2013), and *White v. Pauly*,

580 U.S. 73 (2017). Qualified immunity ordinarily applies unless it is obvious that no reasonably competent official would have concluded that the actions taken were unlawful. *Ewolski v. City of Brunswick*, 287 F.3d 492, 501 (6th Cir. 2002). Qualified immunity "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Qualified immunity applies irrespective of whether the officer's error was a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact. *Pearson* at 231.

The Supreme Court has established a two-prong inquiry for resolving the question of an officer's qualified immunity. "First, a court must decide whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Second, if a plaintiff has satisfied this first step, the Court must decide whether the right at issue was 'clearly established' at the time of the defendant's alleged misconduct." *Id*. Courts are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Id*. at 236. See also *Baynes v. Cleland*, 799 F.3d 600, 610 (6th Cir. 2015). Where there is no showing of a constitutional violation, an officer is cloaked with qualified immunity, and the Court need not address the second prong in the analysis. *Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 992 (6th Cir. 2017).

Qualified immunity is an affirmative defense. Therefore, the Defendant bears the burden of pleading it in the first instance. *Sheets v. Mullins*, 287 F. 3d. 581, 586 (6th Cir. 2002). The burden then shifts to the Plaintiff, who must show that the official violated a right so clearly established "that every reasonable official would have understood that what he [was] doing violate[d] that right." *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2083 (2011); *Dominque v. Telb*, 831 F.2d. 673, 676-

77 (6th Cir. 1987). The Plaintiff "bears the ultimate burden of proof to show that the [officer is] not entitled to qualified immunity." *Garretson v. City of Madison Heights*, 407 F.3d. 789, 798 (6th Cir. 2005).

The United States Supreme Court has held that "all but the plainly incompetent or those who knowingly violate the law" are protected by qualified immunity. *Malley v. Briggs*, 475 U.S. 335, 341 (1986). "Immunity applies if reasonable officials could disagree on whether the public official could have reasonably believed that his conduct was lawful." *Waters*, 242 F.3d at 361 citing *Caldwell v. Moore*, 968 F.2d 595, 599 (6th Cir. 1992).

Qualified immunity is a question of law. *Dickerson v. McClellan*, 101 F.3d 1151, 1157 (6th Cir.1996). For the reasons set forth below, the Defendant officers are entitled to qualified immunity, and Ms. Sistrunk's federal claims for violations of 42 U.S.C §1983 must fail as a matter of law.

B. State Law Claims

Under Kentucky law, qualified official immunity is afforded "to the discretionary acts of peace officers performed in an official capacity, thereby shielding them 'from liability for good faith judgment calls made in a legally uncertain environment.'" *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App., 2007) quoting *Yanero v. Davis*, 65 S.W.3d 510, 521-523 (Ky. 2001). The burden is on Miller to prove that the officers' discretionary acts were not performed in good faith. *Yanero*, 65 S.W.3d at 523. To meet this burden, "the complainant must demonstrate that the officer[s] '*knew or reasonably should have known* that the action [they] took within his sphere of official responsibility would violate' the complainant's rights or that the officer 'took the action *with the malicious intention* to cause a deprivation of constitutional rights or other injury....'" *Haugh*, 242 S.W.3d at 686 quoting *Yanero*, 65 S.W.3d at 523. (Emphasis in original.)

"The power to exercise an honest discretion necessarily includes the power to make an honest mistake of judgment." *Franklin County, Ky. v. Malone*, 957 S.W.2d 195, 201 (Ky. 1997) (overruled on other grounds). The Kentucky Supreme Court has also noted "that the law affords qualified immunity to the discretionary acts of peace officers performed in an official capacity, thereby shielding them 'from [] liability for good faith judgment calls made in a legally uncertain environment." *Haugh*, 242 S.W.3d at 686 quoting *Yanero*, 65 S.W.3d at 521-523.

For the reasons set forth below, Boone and McWhirter are entitled to qualified official immunity on Ms. Sistrunk's state law claims, and her claims outlined in Paragraphs 21-23 and 39-48 fail as a matter of law.

II. INDIVIDUAL CAPACITY CIVIL RIGHTS CLAIMS AGAINST BOONE AND MCWHIRTER

42 U.S.C. §1983 creates civil liability for public officials who violate a person's constitutional rights while acting under color of law. "In any action under Section 1983, the plaintiff must prove that (1) he or she has been deprived of a right secured by the United States Constitution or laws; (2) the defendants who allegedly caused that deprivation acted under color of state law; and (3) the deprivation occurred without due process of law. *Scott v. Clay County, TN*, 205 F.3d 867, 871 FN 1 (6th Cir. 2000) citing *O'Brien v. City of Grand Rapids*, 23 F.3d 990, 995 (6th Cir. 1994). The first step in a **§**1983 claim is identifying the "specific constitutional right allegedly infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) citing *Graham v. Connor*, 490 U.S. 386, 394 (1989); and *Baker v. McCollan*, 443 U.S. 137, 140 (1979).

"Only officers with direct responsibility for the challenged action [that] may be subject to § 1983 liability." *Wilson v. Morgan*, 477 F.3d 326, 337 (6th Cir. 2007). " Mere presence at the scene of a search, without a showing of direct responsibility for the action, will not subject an officer to liability." *Bey v. Falk*, 946 F.3d 304, 315 (6th Cir. 2019) citing *Burley* v. *Gagacki*, 729

F.3d 610, 620 (6th Cir. 2013). An officer who is merely present at a scene but is not directly responsible for the complained of is entitled to qualified immunity from suit under § 1983. *Ghandi v. Police Dep't,* 747 F.2d 338, 352 (6th Cir.1984).

For the reasons set forth below, Ms. Sistrunk's claims for violations of 42 U.S.C §1983 must fail because he has failed to establish a Constitutional violation. In the alternative, Boone and McWhirter are entitled to qualified immunity. Therefore, Boone and McWhirter are entitled to Summary Judgment in their favor as a matter of law, pursuant to *Fed. R. Civ. P. 56.*

A. Obtaining the Search Warrant

The Fourth Amendment states that "no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "[A]s long as the magistrate in fact performs the substantive tasks of determining probable cause and authorizing the issuance of the warrant, the [Fourth] [A]mendment is satisfied." *Brown and Ball v. Wassus*, 234 F.3d 1267 (6th Cir. 2000), citing *United States v. Turner,* 558 F.2d 46, 50 (2d Cir.1977).

In this case, Bullitt Circuit Judge Rodney Burress reviewed Boone's Search Warrant Affidavit (Exhibit 6) and determined that probable cause existed for the issuance of the search warrant. There is no evidence whatsoever that McWhirter participated in obtaining the warrant. Before signing the search warrant, Judge Burress asked Boone about the connection between Alexander and the residence to be searched. As a result, Boone made a hand-written addendum to the Search Warrant Affidavit (Exhibit 6). Boone Depo., pp. 59-60. Ms. Sistrunk has not made a showing that any of the information contained in the search warrant affidavit, particularly information regarding Alexander's known address (driver's license and vehicle registration), was inaccurate. In fact, Ms. Sistrunk admits that Alexander used her address as his own for a year

preceding the search warrant issuance. Sistrunk Depo., pp. 9-10. The uncontroverted record evidence demonstrates that the search warrant was valid and not violative of the Fourth Amendment's prohibition against unreasonable searches and seizures. Therefore, there is no constitutional violation on the part of Boone or McWhirter in obtaining the search warrant.

B. Execution of the Search Warrant

It is apparent that before the filing of suit, neither Ms. Sistrunk nor her counsel had reviewed the search warrant or supporting affidavit, nor were they even sure whether a warrant had been issued.[4] Counsel then took a "shotgun" approach in preparing the Complaint, making allegations against Louisville Metro, Hillview, two named HPD officers (Boone and McWhirter), and unknown Louisville Metro Defendants without specifying which of the Defendants committed the egregious acts about which Ms. Sistrunk complains. Her case against Louisville Metro was so weak and poorly pled that this Court dismissed such claims.[5] Having had over two and one-half years to conduct discovery and develop proof to flesh out her claims against Hillview, Boone, and McWhirter, she has failed to do so.

There is now irrefutable record evidence that the Louisville Metro SWAT team was solely responsible for the execution of the search warrant, *i.e.*, (a) Hillview could not execute the warrant outside Bullitt County; (b) LMPD prepared a risk assessment matrix; (c); LMPD developed an operational plan to execute the warrant; (d) LMPD breached the doors of the residence; (e) LMPD removed the occupants of the house; and (f) LMPD "cleared" the scene before turning the scene over to HPD for the search of the premises. In the meantime, the record evidence demonstrates that Boone, McWhirter, and Cruz waited outside. Therefore, there is no constitutional violation on the part of Boone or McWhirter in executing the search warrant.

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[4] See Complaint, Preliminary Statement, p. 1, and para. 16.
[5] Order [DN 11]; Plaintiff never developed proof to revive those claims dismissed without prejudice.

C. Search of the Residence and Alleged Theft of Cash

Although Ms. Sistrunk is unsure which police department or officers searched her residence, the record evidence establishes that Boone, McWhirter, and Cruz entered the premises after LMPD executed the warrant and conducted a search. They did not find Alexander or the items specified in the warrant and removed no such items from the property. The record evidence indicates that neither LMPD nor HPD "ransacked" the house. Although she made no mention in her Complaint, Ms. Sistrunk testified that someone stole $77,000.00 in cash from a locked safe located in her fireplace, behind a recliner, and under some logs. Ms. Sistrunk acknowledges that she does not know who allegedly stole the money.

Similar allegations of theft against eleven police officers were made and disposed of in *Gordon v. Louisville/Jefferson Cnty. Metro Government*, 486 Fed. Appx. 534, 540–41 (6th Cir. 2012). In affirming summary judgment in favor of the officers, the Sixth Circuit held:

> First, we address plaintiffs' claims that police took $5,000 and pictures of Smith from the safe. Law-enforcement activities that unreasonably damage or destroy personal property, therefore "seizing" it within the meaning of the Fourth Amendment, can give rise to liability under § 1983. *Soldal v. Cook Cnty., Ill.*, 506 U.S. 56, 61–62, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992). Each defendant's liability is assessed individually, according to his own actions. *Dorsey v. Barber*, 517 F.3d 389, 399 n. 4 (6th Cir.2008) (citing *Ghandi v. Police Dep't of Detroit*, 747 F.2d 338, 352 (6th Cir.1984)). An officer who is "present at a scene [of a § 1983 violation] but is not directly responsible for the complained of action is entitled to qualified immunity under § 1983." *Wilson*, 477 F.3d at 337.
>
> On appeal, Gordon argues that the district court erred in holding that Gordon's claim failed as a matter of law because he was unable to prove who allegedly stole the money or the pictures. However, the rule that a plaintiff bears the burden of establishing individual officer liability in § 1983 claims is well established in our Circuit. *See, e.g., Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir.2010) ("Each defendant's liability must be assessed individually based on his own actions.") (citing *Ghandi*, 747 F.2d at 352 ("As a general rule, mere presence at the scene of a search, without a showing of direct responsibility for the action, will not subject an officer to liability [under § 1983].")).

Ms. Sistrunk has not pointed to evidence indicating that any particular officer, including Boone and McWhirter, was responsible for the unreasonable seizure of her property during the search. Therefore, Ms. Sistrunk has failed to prove a constitutional violation by Boone or McWhirter. They are otherwise entitled to qualified immunity if such a claim is based solely on their presence at the scene.

D. Unlawful Detention Claim

From a reading of Ms. Sistrunk's Complaint, it is unclear whether she is making a federal claim for unlawful detention.[6] To the extent she makes such a claim, her claim fails as a matter of law. The *Gordon* Court considered such a claim as well, stating:

> Limited or routine detention of residents pursuant to a valid search warrant is lawful. *Summers,* 452 U.S. at 705, 101 S.Ct. 2587. The right has more recently been held to be "categorical." *Muehler,* 544 U.S. at 98, 125 S.Ct. 1465; *see also Bletz v. Gribble,* 641 F.3d 743, 755 (6th Cir.2011) ("[E]ven absent particularized reasonable suspicion, innocent bystanders may be temporarily detained where necessary to secure the scene of a valid search or arrest and ensure the safety of officers and others.").
>
> Nevertheless, while a detention is a smaller encroachment on liberty than the search itself, the detention is "admittedly a significant restraint on [the resident's] liberty." *Summers,* 452 U.S. at 701, 101 S.Ct. 2587. Therefore, the manner and scope of the detention must be reasonable. *See Bletz,* 641 F.3d at 755 (it is "expected that any detention under these circumstances would be limited or routine.") (internal quotation marks omitted); *Binay v. Bettendorf,* 601 F.3d 640, 652 (6th Cir.2010) (holding that it is "clearly established that the authority of police officers to detain the occupants of the premises during a proper search for contraband is 'limited' and that the officers are only entitled to use 'reasonable force' to effectuate such a detention.") (quoting *Summers,* 452 U.S. at 705, 101 S.Ct. 2587). A determination of reasonableness hinges on "the law enforcement interest and the nature of the 'articulable facts' supporting the detention." *Summers,* 452 U.S. at 702, 101 S.Ct. 2587. Preventing flight, minimizing the risk of harm to the officers, a suspicion of wrongdoing regarding the detained resident, and promoting the orderly completion of the search were the specific factors named in *Summers,* with the Court noting that residents' "self-interest may induce them to open locked doors or locked containers...." *Id.* at 702–04, 101 S.Ct. 2587.

[6] Ms. Sistrunk makes a state law claim for false imprisonment. Complaint, para. 41.

486 Fed. Appx. At 542.

Boone escorted Ms. Sistrunk back into her home after the LMPD SWAT team executed the warrant, cleared the scene, read the search warrant to her, searched the premises, and left without any complaint from Ms. Sistrunk. McWhirter merely stood by. In this case, Ms. Sistrunk has failed to put forth evidence suggesting that Boone or McWhirter engaged in an unreasonable detention of Ms. Sistrunk or, if they did, that they should not be entitled to qualified immunity.

III. CIVIL RIGHTS CLAIMS AGAINST HILLVIEW

For many of the same reasons this Court dismissed Ms. Sistrunk's municipal liability claims against Louisville Metro on its Motion to Dismiss [DN 4], the Court should likewise dismiss her liability claims against Hillview on summary judgment, but with prejudice. See Memorandum Opinion and Order ("Order") [DN11].

Ms. Sistrunk seeks to hold Hillview responsible for its officers' actions at her house on May 31, 2019, "because it maintains a custom of unconstitutional searches based on its failure to adequately train officers in obtaining and executing search and arrest warrants." See Order, p. 1, and Complaint, paras. 32-35. Sistrunk sued Hillview under 42 U.S.C. § 1983, a federal statute authorizing a lawsuit against any "person" who, under color of law, "subjects" someone else ("or causes [someone else] to be subjected") to the violation of her constitutional or other federal rights. The "person" may be a city. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978) ("Local governing bodies, therefore, can be sued directly under § 1983 …."") (footnote omitted). See Order [DN 11], pp. 1-2.

The Supreme Court has recognized that a municipal government is not automatically liable for "an injury inflicted solely by its employees or agents." *Monell*, 436 U.S. at 694; *id.* at 691 ("[A] municipality cannot be held liable *solely* because it employs a tortfeasor.") (emphasis in original);

see also Gregory v. City of Louisville, 444 F.3d 725, 752 (6th Cir. 2006) (no vicarious liability for constitutional violations committed by city employees). Instead, the municipality may be liable only if the government itself is to blame for the unconstitutional acts—that is, if it adopted or ratified a policy or custom that caused the harm inflictedby its officers or employees. *Monell*, 436 U.S. at 694 ("the government as an entity is responsible under § 1983" only "when execution of a government's policy or custom … inflicts the injury"). Congress did not render municipalities liable, in other words, "unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Id.* at 691.

In order to prevail on a *Monell* claim against a municipality, a plaintiff must show: (1) a violation of his constitutional rights; (2) an injury; and (3) that the injury and violation of rights was directly caused by the city's own action or inaction that carried the requisite degree of fault. *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658 (1978); *Board of County Commissioners of Bryan County, Oklahoma*, 520 U.S. 397, 403-04 (1997). If there is no constitutional deprivation, the §1983 claim must fail. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Smith v. Thornburg*, 136 F.3d 1070, 1078, n.12 (6th Cir. 1998); *Monday v. Oullet*, 118 F.3d 1099, 1105 (6th Cir. 1997).

For the reasons set forth above, Ms. Sistrunk has failed to demonstrate that there has been a constitutional violation; therefore, her *Monell* claims must fail. Assuming for purposes of this motion only that Ms. Sistrunk did establish a constitutional violation, she has failed to establish that such violation resulted from a custom, policy, or practice of Hillview.

A. Sistrunk's Inadequate Pleadings

Monell requires a plaintiff to "point to a municipal 'policy or custom' and show that it was the 'moving force behind the constitutional violation." *Monell*, 436 U.S. at 694. The pleadings

must set forth the specific policy or custom allegedly adopted by the government by pointing to "(1) the municipality's legislative enactments or official agency policies; (2) actions taken by officials with final decision-making authority; (3) a policy of inadequate training or supervision; or (4) a custom of tolerance or acquiescence of federal rights violations." *Jones v. Clark County*, 959 F.3d 748, 761 (6th Cir. 2020) (quoting *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005)).

The four paragraphs of Sistrunk's Complaint, which encompass her *Monell* claim, contain legal conclusions based "upon information and belief," not factual allegations. See Complaint, paras. 32-34. Bare-bones assertions of liability offer no basis on which the Court could infer that Hillview's training, or lack thereof, violated the Constitution, and therefore, "stripped of legal language," the Complaint cannot satisfy § 1983's requirements as the Supreme Court has interpreted the statute. *See Birgs v. City of Memphis*, 686 F. Supp. 2d. 776, 780 (W.D. Tenn. 2010), Although a complaint must provide only "a short and plain statement of the claim showing that the [plaintiff] is entitled to relief," Fed. R. Civ. P. 8(a)(2), "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).[7]

B. Failure to Train

While allegations of *respondeat superior* in §1983 cases have long since been refuted by the United States Supreme Court, the Court in 1989 held that the adequacy, or inadequacy, of a police training program can be the basis for §1983 liability "only where the failure to train amounts to a deliberate indifference to the rights of persons with whom the police come into contact." *Canton v. Harris*, 489 U.S. 378, 388-89 (1989). In *Connick v. Thompson*, 563 U.S. 51, 61 (2011),

[7] In Paragraph 30 of her Complaint, Ms. Sistrunk alleges that her allegations of "unreasonable and excessive" conduct will be "further borne out in discovery." This she has also failed to demonstrate.

the Supreme Court explained that it is only in "limited circumstances" that a local government will be liable under a theory of failure to train:

> "A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train. See *Oklahoma City* v. *Tuttle*, 471 U. S. 808, 822–823 (1985) (plurality opinion) ('[A] 'policy' of 'inadequate training' is 'far more nebulous, and a good deal further removed from the constitutional violation, than was the policy in *Monell*')."

In *Jackson v. City of Cleveland*, 925 F.3d 793 (6th Cir. 2019), the Sixth Circuit held:

> "In order to show that a municipality is liable for a failure to train its employees, a plaintiff 'must establish that: (1) the City's training program was inadequate for the tasks that officers must perform; (2) the inadequacy was the result of the City's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury.'"

Id. at 834, quoting *Ciminillo v.Streicher*, 434 F.3d 461, 469 (6th Cir. 2006) citing *House v. Hodous*, 953 F.3d 402, 410-11 (6th Cir. 2020), citing *Walker v. Madison Cty.*, 893 F.3d 877, 902 (6th Cir. 2018).); see also *Gambrel v. Knox County, Ky.*, 25 F.4th 391, 408-411 (6th Cir. 2022).

In order to make a showing on the first element of a failure-to-train claim, allegations must focus on the "adequacy of the training program in relation to the tasks the particular officers must perform." *Canton*, 489 U.S. at 390. Ms. Sistrunk's Complaint[8] contains no such factual allegations, and the Sixth Circuit has recognized that the type of "conclusory allegations or legal conclusions" offered by Ms. Sistrunk will not suffice. See *Verble v. Morgan Stanley Smith Barney*,676 F. App'x 421, 424 (6th Cir. 2017) (quoting *Bright v. Gallia County*, 753 F.3d 639, 652 (6th Cir.2014).

Ms. Sistrunk points to no specific Hillview legislative enactments or official HPD policies that were allegedly violated and makes no assertion that officials enacted such a policy with final decision-making authority. Furthermore, "[a] failure to train claim requires evidence that 'the municipality received notice of a pattern of unconstitutional acts committed by its employees,'"

[8] See Complaint, paras. 33 and 34 (general failure to train allegations).

which Ms. Sistrunk has failed to prove. See *Garcia v. City of New Hope*, 994 F. 3d 655, 670 (8th Cir. 2021).

Ms. Sistrunk has failed to adequately plead or develop proof that Hillview's training program was inadequate or that any inadequacy in its training program led to her constitutional injuries.

C. Deliberate Indifference

Remarkably, Ms. Sistrunk fails to plead deliberate indifference on the part of Hillview.[9] Regardless, to constitute a "policy" of deliberate indifference, Hillview must have taken a "course of action consciously chosen from among various alternatives" to adopt an inadequate training regimen for its officers." *Oklahoma City v. Tuttle*, 471 U.S. at 823. The sufficiency of training for any individual officer does not give rise to liability for the entire program of training that a municipality might offer. *Canton* 489 U.S. at 390-391. This imposes "a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his actions," which Ms. Sistrunk cannot meet. See *Bd. of Cty. Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 410 (1997).

To make that showing, a plaintiff must allege either "prior instances of unconstitutional conduct demonstrating that the City had notice that the training was deficient and likely to cause injury but ignored it" or else "evidence of a single violation of federal rights, accompanied by a showing that the City had failed to train its employees to handle recurring situationspresenting an obvious potential for such a violation." *Campbell v. City of Springboro*, 700 F.3d 779,794 (6th Cir. 2012). Further, [t] o show this deliberate indifference, a plaintiff must prove that the violation of a clearly established right was a 'known or obvious consequence' of the lack of training or

[9] In her Complaint, Para. 35, she alleges only that "Metro" is deliberately indifferent.

supervision," *Gambrel*, 25 F.4th at 408-11, quoting *Connick*, 563 U.S. at 61. The risk of a constitutional violation arising as a result of the inadequacies in the municipal policy must be "plainly obvious." *Gregory v. City of Louisville*, 444 F.3d 725, 752 (6th Cir. 2006), citing *Brown*, 520 U.S. at 412 and *Stemler v. City of Florence*, 126 F.3d 856, 865 (6th Cir.1997).

In addition to Ms. Sistrunk's failure to plead deliberate indifference on the part of Hillview, she also fails to identify in her pleadings either 1) prior instances of unconstitutional conduct that put the City of Hillview on notice or 2) a single violation stemming from an obvious potential for recurrence. *See Campbell*,700 F.3d at 794; and *Connick v. Thompson*, 563 U.S. 51, 61–68 (2011). It is not sufficient for Ms. Sistrunk to merely suggest "that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct." *Canton*, 489 U.S. at 391. Ms. Sistrunk has failed to adequately plead or establish that Hillview engaged in a policy of deliberate indifference in training its officers.

D. Causation

Finally, a failure-to-train claim requires that the government's shortcomings were "closely related to or actually caused the [plaintiff's] injury." *Jackson*, 925 F.3d at 834. "This causation requirement is 'rigorous.'" *House*, 953 F.3d at 411, citing *Bd. Of Comm'rs of Bryan Cty. V. Brown,* 520 U.S. 397, 415 (1997).

Ms. Sistrunk's bare assertion that Hillview's "policy or custom regarding obtaining and/or executing search warrants" caused a deprivation of his constitutional rights is not enough. See Complaint, para. 32; *Ransom v. Louisville– Jefferson County Metro. Gov't*, No. 3:19-cv-631, 2020 WL 5944283, at *6 (W.D. Ky. October 7, 2020) (granting motion to dismiss because the Plaintiff did not "plausibly alleg[e] that Louisville Metro's deliberate indifference 'created a training regimen so deficient that it was the actual *cause* of Defendant Officers' unconstitutional conduct").

Ms. Sistrunk has failed to establish that Boone and/or McWhirter violated her constitutional rights pursuant to the policies and practices of the Hillview Police Department, including the failure to adequately train, supervise, and discipline officers in such regard, as alleged in his Complaint. Therefore, Ms. Sistrunk's *Monell* claims should be dismissed.

IV. STATE LAW CLAIMS FOR "DAMAGE TO PROPERTY"

In Paragraphs 21-23 of her Complaint, Ms. Sistrunk makes claims for conversion, trespass to chattel, negligence, and gross negligence. For the same reasons outlined in Section II. B. (Execution of the Search Warrant) and Section II. C (Search of the Residence and Alleged Theft of Cash), Ms. Sistrunk's state law claims must be dismissed.

V. ADDITIONAL STATE LAW CLAIMS

A. False Imprisonment

For the same reasons outlined in Section II. D. (Unlawful Detention Claim), Ms. Sistrunk's claim for false imprisonment, *i.e.*, that "the officers" "restrained, confined and held Plaintiff against her will, depriving her of liberty without consent," as alleged in her Complaint, Paragraph 40, must be dismissed.

B. Tort of Outrage and Infliction of Severe Emotional Distress

In Paragraphs 43-45 of her Complaint, Ms. Sistrunk alleges that "the officers'" conduct "amounts to the tort of outrage" and "caused severe emotional distress to Plaintiff." The tort of intentional infliction of emotional distress, or outrage, was first recognized by the Kentucky Supreme Court in *Craft v. Rice*, 671 S.W.2d 247, 251 (Ky., 1984). The elements are: (1) Defendant's conduct was intentional and reckless; (2) the conduct was outrageous and intolerable in that it offends against generally accepted standards of decency and morality; (3) there was a causal connection between the Defendant's conduct and the emotional distress; and (4) the

emotional distress was severe. *Gilbert v. Barkes*, 987 S.W.2d 772 (Ky., 1999). The Kentucky courts take a restrictive approach to this tort, covering only outrageous, intolerable conduct. *Kroger Co. v. Willgruber*, 920 S.W.2d 61 (Ky., 1996).

The tort of intentional infliction of emotional distress, or outrage, is a "gap-filler providing redress for extreme emotional distress in those instances in which the traditional common law actions did not." *Rigazio v. Archdiocese of Louisville,* 853 S.W.2d 295, 299 (Ky. App., 1993). "[W]here an actor's conduct amounts to the commission of one of the traditional torts such as assault, battery, or negligence for which recovery for emotional distress is allowed, and the conduct was not intended only to cause extreme emotional distress in the victim, the tort of outrage will not lie." *Rigazio*, 853 S.W.2d at 299.

Because traditional common law actions are available to Ms. Sistrunk, which provide redress for the conduct complained of, her claims for outrageous conduct and intentional infliction of emotional distress must be dismissed. Furthermore, Ms. Sistrunk has failed to develop evidence to support such claims, she has failed to make a showing of extreme emotional distress, and the officers are otherwise entitled to qualified immunity.

C. Battery

Next in Ms. Sistrunk's "bag of torts" is a claim for battery. Under Kentucky law, a claim for battery requires a showing of "an actual unwanted touching." *Brewer v. Hillard,* Ky.App., 15 S.W.3d 1, 8 (1999. Ms. Sistrunk has failed to make such a showing as to Boone or McWhirter; therefore, her battery claim must be dismissed.

D. Official Misconduct (KRS 522.020 and KRS 446.070)

KRS 446.070 provides that "[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or

forfeiture is imposed for such violation." The purpose of this statute is to permit a person injured by the violation of a statute to recover damages by reason of the violation. *Allen v. Lovell's Adm'x*, 197 S.W.2d 424, 426-27 (Ky. 1946). Under this doctrine, and for the purposes of KRS 446.070, the "violation must have been a substantial factor in causing the Plaintiff's injury." *Christensen v. ATS, Inc.*, 24 F.Supp.3d 610, 613-14 (E.D. Ky. 2014).

Further, the injury must be proximately caused by the violation of the statute. *Kentucky Laborers Dist. Council Health and Welfare Trust*, 24 F.Supp.2d 755, 774 (W.D. Ky. 1998); *Bays v. Summitt Trucking, LLC*, 691 F.Supp.2d 725, 733 (E.D. Ky. 2010); *Phillips v. Scott*, 71 SW.2d 662 (Ky. 1934); *Pirtle's Adm'x v. Harris Trust Bank*, 44 S.W.2d 541 (Ky. 1932). KRS 446.070 applies only "when the alleged offender violates a statute" and the plaintiff is within "the class of persons intended to be protected by the statute." *St. Luke Hosp., Inc. v. Straub*, 354 S.W.3d 529, 534 (Ky. 2010).

Evaluating conduct alleged to constitute official misconduct necessarily requires reference to some other rule, regulation, or statute. See *Wright v. Beard*, 2014 WL 12769265 at *3 (W.D. Ky. Oct. 24, 2014), and *Wright v. Beard*, 2015 WL 1726419 (W.D. Ky. Apr. 15, 2015)(dismissing state claim of official misconduct under KRS 522.020 and KRS 522.030 in conjunction with KRS 446.070).

Ms. Sistrunk has failed to plead or prove sufficient facts or statutory violations adequately. Therefore, her official conduct claims must be dismissed.

E. State Constitutional Claims

In Paragraph 48 of her Complaint., Ms. Sistrunk claims that unspecified Defendants "have violated Section 10 of the Bill of rights of the Kentucky Constitution to be free from unreasonable search and seizure and to be free from warrants without probable cause, and without description

as nearly as may be." However, Kentucky does not recognize a private cause of action for alleged violations of state constitutional rights. See *Tallman v. Elizabethtown Police Dept.,* 344 F.Supp. 2d 992, 997 (W.D. Ky. 2004) (neither the Kentucky Constitution nor any Kentucky statute contains an enabling clause which would allow for private prosecution of state constitutional violations), and *Klotz v. Shular*, 2015 WL 4556267 at *6 (W.D. Ky. July 27, 2015). Therefore, her state constitutional claim must be dismissed.

VI. OFFICIAL CAPACITY CLAIMS AGAINST BOONE AND MCWHIRTER

Ms. Sistrunk's claims against Boone and McWhirter in their official capacities are merely claims against Hillview. See *Lane v. City of LaFollette, Tenn.,* 490 F.3d 410, 423 (6th Cir. 2007) ("[C]laims against Defendants in their official capacity, are, in effect, claims against the City"). Ms. Sistrunk's official capacity claims against Boone and McWhirter must be dismissed for the same reasons her claims against Hillview must be dismissed

VII. PUNITIVE DAMAGE CLAIM AGAINST HILLVIEW

In Paragraphs 36 and 49 of her Complaint and her prayer for relief, Ms. Sistrunk seeks punitive damages against "the Defendants," presumably including Hillview. As noted in its Order [DN 11] (p. 9), the U.S. Supreme Court has made clear that punitive damages are unavailable against a municipality in a § 1983 suit. *City of Newport v. Fact Concerts, Inc.*, 453 U.S.247, 271 (1981). And "several courts in this circuit have considered this issue and found that a municipality, like Louisville Metro, is immune from punitive damages in state-law claims." Id., citing 495 F. Supp. 3d 513, 520 (W.D. Ky. 2020), *Daugherty v. Louisville-Jefferson Cty. Metro Gov't*, 495 F. Supp. 3d 513 (W.D. Ky. Oct. 20, 2020) (collecting cases). See also D.*H. v. Matti*, 2015 WL 4530419 (W.D. Ky. 2015). Therefore, Ms. Sistrunk's punitive damages claim against Hillview must be dismissed.

CONCLUSION

For the reasons set forth above, all of Ms. Sistrunk's claims against Hillview, Boone, and McWhirter fail as a matter of law. Therefore, her Complaint filed against them should be dismissed with prejudice in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing served via ECF on this the 14th day of February, 2023, upon:

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