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SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

THOMAS J. ANDERSON, and KAREN L. ANDERSON,	)	
Plaintiffs,	)	Civil No. 1-00-CV-10012
vs.	)	
JEFFREY L. LARSON, individually and as County Attorney for Shelby County, Iowa; DURWOOD EUGENE CAVANAUGH, individually and as Sheriff of Shelby County, Iowa; MARK HERVEY, individually and as Deputy Sheriff of Shelby County, Iowa; and TODD G. JONES, individually and as a Special Agent of the Iowa Division of Narcotics Enforcement, Shelby County, Iowa.	)	ORDER
Defendants.	)	

Before the Court are defendants' motions for summary judgment. Defendant Todd Jones filed his motion on July 16, 2001, and the other defendants filed a separate motion on the same day. Plaintiffs filed a brief in resistance to Jones' motion on August 2, and a separate resistance to the other defendants' motion on August 6. Jones filed a reply brief on August 13. The matters are considered fully submitted, and oral argument is unnecessary.

I. BACKGROUND

The follow facts are either undisputed or viewed in a light most favorable to plaintiffs. Thomas Anderson, plaintiff, is an attorney in Harlan, Iowa. Harlan is located in Shelby County. His wife, Karen Anderson, is the other plaintiff in this matter. Defendants are three law enforcement officers and the county attorney for Shelby County. The events pertinent to the

motions now before the Court involve the investigation and arrest of Thomas Anderson in 1998.

Special Agent Todd Jones of the Iowa Division of Narcotics Enforcement, a defendant in the present action, was the key law enforcement official involved in the investigation of Thomas Anderson. Jones reports that he first learned in 1995 that Anderson might be involved with narcotics. That investigation was not directed at Anderson, but rather centered on a man named "Mr. Reining."[1] As a part of that investigation, however, Jones learned that Anderson might have been involved in "switching properties out of one person's name to another, giving that kind of advice," and that local law enforcement "believe[d] Mr. Anderson was involved in narcotics, either used or whatever." *See* Defendant Todd Jones' Appendix in Support of Motion for Summary Judgment (hereinafter "Jones' App.") at 51. Jones indicated he was only involved for one day in the 1995 investigation. Jones stated that he was uncertain if Reining was ever prosecuted or convicted, or if Anderson was further linked with any illegal drug involvement at that time. *Id.*

Later, in 1997, Jones went undercover in an investigation in Shelby County, Iowa. One of the targets of the investigation was Steve Schuemann. Jones formed a relationship with Schuemann, and methamphetamine transactions were made between them on three occasions. During a conversation with Jones, Schuemann indicated that his attorney, Thomas Anderson, was willing to accept drugs as payment for his services. Schuemann reports he gave Anderson "between a sixteenth and an eight ball of cocaine" sometime in late 1997 in hopes that the bill he owed Schuemann would be reduced accordingly, and that Anderson accepted the drugs. *See* Jones' App. at 41-42. Schuemann reports that he told Jones that at the bottom of his bill from

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[1] Jones did not indicate Reining's first name in his deposition.

Anderson, it stated: "P.S. payment may be worked out in a variety of ways." *Id.* at 41. Schuemann reports that he shared this information with Jones, because he thought Jones "used to deal a lot of cocaine" and that he might need a lawyer someday. *Id.* at 42.

Jones had sufficient dealings with Schuemann by early 1998 to enable Shelby County Attorney Jeffrey Larson to bring numerous charges against him. Deputy Sheriff Mark Hervey arranged for a meeting with Schuemann where he was presented with the charges that would be filed against him. However, Schuemann was also presented with a chance to enter into an agreement with the Shelby County Sheriff's Office that would help him either reduce the charges against him or receive consideration for his cooperation during the sentencing phase of his case. The agreement required Schuemann's cooperation on a couple of matters, one of which was introducing undercover Special Agent Jones to Anderson.[2] Schuemann entered into this agreement with Shelby County authorities on February 9, 1998. *See* Jones' App. at 48-49.

After the agreement was reached, Schuemann contacted Anderson to tell him about his friend, Jones,[3] and related a fictitious story that Jones had been charged with operating a motor vehicle while intoxicated ("OWI") in another county. Schuemann told Anderson that Jones was from Sioux City, Iowa. *See* Jones' App. at 44-45. Schuemann indicated that Jones would speak with Anderson about having him represent him on the charge, and also indicated Jones would help pay for the bill he owed Anderson.

During this general time frame in early 1998, Anderson indicates that he thought Jones

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[2] At the time Schuemann entered into the agreement, it appears he was still in an attorney-client relationship with Anderson.

[3] Jones used an alias of Todd Mintz, as he continued to act in an undercover fashion with Anderson. The Court will continue to refer to him as Jones.

was a person who was suspected of murder. Anderson indicates he thought this because of things that his client, Schuemann, had shared with him. Schuemann had told him about another individual in addition to Jones, Doug Henderson. Schuemann told Anderson that he was supplied drugs by Henderson, and indicated that Henderson was generally suspected of a "chainsaw murder" in Council Bluffs that occurred in January 1998. *See* Jones App. at 44. Anderson asserts he believed Jones was affiliated with Henderson. Anderson claims that he believed because of the relationships between Jones, Schuemann and Henderson, that Jones might be the person who actually committed the "chainsaw murder." *See* Plaintiffs' Brief in Opposition to Jones' Motion for Summary Judgment, Exh. A at ¶ 4 (affidavit of Thomas Anderson).

On February 24, 1998, Jones was introduced to Anderson and they discussed the fictitious OWI charge. Later, on March 18, 1998, Jones contacted Anderson by phone at approximately 2:30 p.m. and tape-recorded the conversation. *See* Jones' App. at 74-88 (transcript of tape-recorded conversations between Jones and Anderson, March 18, 1998). During the phone conversation, Jones and Anderson discussed the charges against him. Jones also told Anderson that he owed Schuemann a favor and that they should talk about the attorney fees Shuemann owed Anderson. *Id.* at 75. Jones went on to state that he had a "half a z" on him, and asked Anderson if he understood what that meant. *Id.* Anderson stated he understood what the term meant. *Id.*[4] The tape then cut off at that point, but the record indicates Jones went to meet Anderson at his office soon thereafter.[5] Jones set up law enforcement surveillance outside

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[4] Jones indicated a "half a z" means a half of an ounce of cocaine.

[5] Anderson states that he did not agree to meet with Jones, but that Jones just showed up.

of Anderson's office before he entered.

At Anderson's office on March 18, 1998, Jones[6] recorded his conversation with Anderson via a microphone with a tape recorder in his pocket. Jones and Anderson discussed the fictitious OWI charge against him. Anderson placed a phone call on Jones' behalf related to the charge. Later, Jones directed the conversation to the topic of Schuemann's bill.[7] Anderson then went and got his files on Schuemann, and proceeded to explain in detail the work he had done for Schuemann and his wife, and the amount of money he was owed. *Id.* at 80-83. After Anderson was done explaining the amount he was owed, Jones proposed payment by asking Anderson if Schuemann had mentioned to him "any kind of powder stuff." *Id.* at 83. Anderson indicated that Schuemann had mentioned that to him. Jones then proceeded to give Anderson a baggie of powder cocaine, which he proposed would cover $500 of the bill Schuemann owed Anderson. *Id.* at 85. Based on the transcript of the tape-recorded conversation, Anderson did not audibly agree or disagree with that statement. Then, Anderson was tape-recorded stating that it smelled like "drywall," and the conversation generally indicates that he inspected the drugs at that time. *Id.* After the delivery, Anderson and Jones talked about future action on Jones' OWI charge and Jones left the office.

Anderson now states that he was so intimidated by Jones that he thought his "life was in

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[6] Jones was dressed in a "very intimidating" manner, "including leather apparel and long hair, and can best be described as 'motorcycle-gang style.'" *See* Plaintiffs' Brief in Opposition to Jones' Motion for Summary Judgment, Exh. A at ¶ 6 (affidavit of Thomas Anderson). Jones also had a bulge in his pants, and while it most likely was the tape recorder, Anderson now states that he believed it was a gun. *Id.* at ¶ 8.

[7] Anderson states that Jones closed the door to his office and acted nervous, pushy, and acted in a manner that made him uncomfortable. *See* Plaintiffs' Brief in Opposition to Jones' Motion for Summary Judgment, Exh. A at ¶ 7 (affidavit of Thomas Anderson).

imminent danger" unless he accepted the drugs, as he thought Jones was the individual who committed the "chainsaw murder," and that he did not have a reasonable opportunity to contact law enforcement officials regarding the matter. *See* Plaintiffs' Brief in Opposition to Jones' Motion for Summary Judgment, Exh. A at ¶¶ 10-11 (affidavit of Thomas Anderson). Within minutes of Jones' departure, police officers, including Deputy Hervey, entered Anderson's office and arrested him. Anderson voluntarily handed the officers the baggie of drugs when they entered his office.

At trial, a jury found Anderson guilty of the crime of solicitation of a felony under Iowa Code section 705.1.[8] The Iowa Supreme Court, however, reversed the decision of the trial court. *See Iowa v. Anderson*, 618 N.W. 2d 369 (Iowa 2000). The Court determined that nothing presented at the trial indicated Anderson solicited a felony, but rather the evidence showed he had simply responded to requests by Jones. The Supreme Court stated in a footnote, however, that it did not find Anderson innocent of all crimes, rather "whatever offense he committed, it was not solicitation of a felony." *Id.* at 374 n.2.

Anderson and his wife filed suit in this Court on March 16, 2000.[9] In Count I, Anderson has brought suit against all four defendants pursuant to 42 U.S.C. § 1983 and alleged that his constitutional rights under the 4th, 5th and 14th amendments were violated by the investigation, his arrest and imprisonment. In Count II, Anderson brings numerous claims under the laws of the state of Iowa: false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, outrageous conduct, invasion of privacy, negligence, gross negligence,

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[8] The particular felony Anderson was charged with "soliciting" was delivery of a controlled substance.

[9] Anderson filed this suit before the Iowa Supreme Court reversed his conviction.

negligent hiring and retention and supervision. In Count III, Anderson alleges an intentional interference of the contractual relationship between himself and his client, Steve Schuemann. Additionally, Karen Anderson alleges she is owed damages for loss of spousal consortium pursuant to her husband's claims.

II. APPLICABLE LAW & DISCUSSION

A. Standard of Review

Summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994). The moving party must establish its right to judgment with such clarity that there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis added). An issue is "genuine" if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248. "As to materiality, the substantive law will identify which facts are material. . . . Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

Further, "'whether summary judgment on grounds of qualified immunity is appropriate from a particular set of facts is a question of law.'" *Pace v. City of Des Moines*, 201 F.3d 1050, 1056 (8th Cir. 2000) (*quoting Lambert v. City of Dumas*, 187 F.3d 931, 935 (8th Cir. 1999)). "In

the event that a genuine dispute exists concerning predicate facts material to the qualified immunity issue, the defendant is not entitled to summary judgment on that ground." *Id.*

B. Section 1983 claims

Plaintiff may seek a civil remedy against "'any person who, under color of any [state law], subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]'" *See Braun v. Best*, 1998 WL 887270 (N.D. Iowa 1998) (quoting 42 U.S.C. § 1983). Section 1983 does not provide new rights, rather it provides a remedy for violations of substantive federal rights. *Id.* (citations omitted). A plaintiff must identify the rights upon which he alleges defendants have infringed, with reference to either a federal statute or constitutional provision. *Id.* (citing *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)). Generally, the first step in assessing a section 1983 claim is to identify the contours of the underlying right said to have been violated. *See Grahm v. Connor*, 490 U.S. 386, 394 (1989). However, the Court finds it is best to first address the question of immunity with respect to defendant Larson.

1. Claims Against Shelby County Attorney Jeffrey Larson

"If the prosecutor is acting as advocate for the state in a criminal prosecution, then the prosecutor is entitled to absolute immunity." *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1266 (8th Cir.), *cert. denied* 519 U.S. 867 (1996) (citing *Buckley v. Fitzsimmons*, 113 S.Ct. 2606, 2615 (1993)). Actions covered under this absolute immunity are the initiation and pursuit of a criminal prosecution, the presentation of the state's case at trial, and other conduct intimately associated with the judicial process. *Id.* (citations omitted). If the prosecutor acts in an investigatory or administrative capacity, however, he is only entitled to qualified immunity. *Id.*

(citation omitted).

Shelby County Attorney Jeff Larson drafted the agreement with Steve Schuemann, *see* Appendix in Support of County Defendants' Motion for Summary Judgment, Exh. 5 at 34, and he stated it was his decision to charge Anderson with solicitation of a felony. *Id.* at 33. Larson admits to being aware of the investigation, but asserted that he "was not calling the shots as to how they [law enforcement officials] conducted their investigation." *Id.* at 33-34. Larson further stated he never met with Schuemann. *Id.* at 34-35.

All of the above mentioned actions by Larson appear to fit within the scope of county attorney activities which are entitled to absolute immunity. The record does not support the existence of a material issue of fact regarding whether Larson engaged in any activity which can be labeled investigatory or administrative. *See Brodnicki*, 75 F.3d at 1266. The Court thus finds Larson entitled to absolute immunity.

2. Claims Against Law Enforcement Defendants

Plaintiffs have alleged that Anderson was wrongfully or falsely arrested and imprisoned in violation of the Fourth Amendment, and that his substantive due process rights and right to privacy under the Fourteenth Amendment were violated by the actions of law enforcement. While plaintiffs initially argued Thomas Anderson's Fifth Amendment rights were violated, plaintiffs appear to have abandoned any such argument as it has not been briefed.

a. Fourth Amendment

"'In Iowa, false arrest is indistinguishable from false imprisonment,' 'and [it] do[es] not state a distinct cause of action.'" *Sheridan v. City of Des Moines*, 2001 WL 901267, (S.D. Iowa August 8, 2001) (quoting *Barrera v. Con Agra, Inc.*, 244 F.3d 663, 666 (8th Cir. 2001) and *Fox v.*

McCurnin, 205 Iowa 752, 757 (1928)). Therefore, plaintiff's claims for false arrest and imprisonment will be jointly addressed by this Court. There are two essential elements to plaintiffs' claim: "(1) detention or restraint against one's will; and (2) unlawfulness of such detention or restraint." *Sheridan*, 2001 WL 901267 at *3 (citing *Valdez v. City of Des Moines*, 324 N.W.2d 475, 477 (Iowa 1982)). The question at issue in this case is the latter – whether the detention of Thomas Anderson was unlawful.

Generally, an arrest requires probable cause. *See Dunaway v. New York*, 442 U.S. 200 (1979) and *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 758 (8th Cir. 2001). "Probable cause exists if 'the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed . . . an offense' at the time of the arrest." *Smithson v. Aldrich*, 235 F.3d 1058, 1062 (8th Cir. 2000) (quotation omitted).

In this case, it is undisputed that Thomas Anderson accepted a baggie of cocaine from undercover agent Todd Jones. Deputy Hervey and other law enforcement personnel were informed by Jones that Anderson had accepted the drugs, and they then arrested him. The fact that his conviction for solicitation of a felony was reversed by the Iowa Supreme Court does not factor into the equation of whether law enforcement had probable cause at the time of Anderson's arrest, because all they needed to have at the time of arrest was information indicating that "a crime" had been committed. *See Smithson*, 235 F.3d at 1062. The fact that Anderson was charged with the wrong crime does not dissipate the existence of law enforcement personnel's probable cause at the time of his arrest. This Court thus finds plaintiffs cannot establish a violation of Thomas Anderson's Fourth Amendment rights nor can they maintain such a section 1983 claim.

b. Fourteenth Amendment

1. Substantive Due Process

The substantive due process clause of the Fourteenth Amendment to the United States Constitution protects against egregious behavior by government officials. *See generally County of Sacramento v. Lewis*, 523 U.S. 833 (1998). The goal of substantive due process protections is to prevent government power from being used to oppress. *See generally Howard v. Grinage*, 82 F.3d 1343, 1349-50 (6th Cir. 1996). Procedural due process protections under this amendment, on the other hand, ensure the process accorded prior to the deprivation of a right is constitutionally sufficient. *Id.* In this case, plaintiff alleges a substantive due process violation was committed by law enforcement.

A substantive due process violation is committed if the government official's activity "shocks the conscience." *See S.S. v. McMullen*, 225 F.3d 960, (8th Cir. 2000) (*en banc*), *cert. denied* 532 U.S. 904 (2001) (making alternative finding that state social workers' acts of putting child back into home where she was subjected to injurious contact with known pedophile did not rise to the level of shocking the conscience for the purposes of substantive due process analysis). Allegations of negligence, recklessness, and gross negligence are not sufficient to form the basis of a substantive due process violation claim. *Id.* at 964 (citing *Daniels v. Williams*, 474 U.S. 327, 332 (1986)).

In *County of Sacramento*, the Supreme Court of the United States addressed a case where a police officer engaged in a high speed chase with a speeding motorcycle. 523 U.S. at 836-37. The police chase resulted in the death of the motorcyclist and his passenger. *Id.* Representatives of the passenger's estate brought suit, and alleged the law

enforcement defendants had violated the passenger's substantive due process rights. *Id.* at 837. The Supreme Court determined that plaintiffs' claim "fails to meet the shocks-the-conscience test" as "police were faced with a course of lawless behavior for which the police were not to blame." *Id.* at 854-55. The Court indicated that, although it might have been better for the police officers not to engage in the high speed chase, the record failed to indicate the police had "improper or malicious motive" and their behavior did not shock the conscience. *Id.* at 855.[10]

Law enforcement's general actions in this case do not rise to the requisite level under the substantive due process standard. Law enforcement possessed information about Anderson as a part of an undercover investigation, and then law enforcement continued their undercover operation. Plaintiffs argue that "[c]onduct undertaken by law enforcement officials is offensive when it destroys the attorney-client relationship, [and] involves a lawyer's client in a scheme to cause the arrest of that lawyer on a felony charge while the client is still represented by the lawyer. . . ." *See, e.g.,* Plaintiff's Brief in Opposition to the Motion of Jeffrey Larson, Durwood Cavanaugh, and Mark Hervey (filed August 6, 2001), at 7-8. The fact that drugs were exchanged between Jones and Anderson in payment for the attorney fees of another client of Anderson's did not breach the attorney client privilege between Anderson and that client. It is a

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[10] Plaintiff cited *Moran v. Clarke*, 247 F.3d 799 (8th Cir. 2001) as authority for asserting that defendants' actions constitute a substantive due process violation. A police officer had been the alleged "target" of a high-profile investigation. The investigation centered on what happened where police incorrectly arrested a mentally-impaired teenager and caused harm to him. *Id.* at 801. The officer in *Moran* was criminally indicted, but a jury acquitted him of all charges. The Eighth Circuit held that the police officer had a plausible claim of a violation of his substantive due process rights. The officer had introduced evidence that the police department "publicly and financially committed itself to producing a culprit for an alleged wrongdoing before any such wrongdoing was actually established," that the police department "violated procedures" and "pressure[d] officers to corroborate the Department's official line." *Id.* at 804. However, this opinion was vacated and was reheard en banc in September 2001. *See Moran v. Clarke*, 258 F.3d 904 (8th Cir. 2001). An en banc decision has not yet been published.

common practice for someone other than the client to pay for an attorney's services,[11] and this action in and of itself does not breach the privilege. Further, plaintiffs argue that the "immediate arrest" was unfair. *Id.* at 8. While perhaps it would have been better had law enforcement allowed a little more time to elapse before arresting Anderson, thereby giving him ample opportunity to turn in the drugs to law enforcement, the Court does not find their decision to immediately arrest Anderson shocks the conscience.[12]

The Court recognizes that the allegations against Jones are different. Anderson asserts that Jones dress, behavior, and reputation forced him to accept the illegal drugs that he was offered because he was in fear of Jones. Viewing matters in a light most favorable to plaintiffs, the Court finds Jones may have demonstrated poor judgment by presenting himself to Jones in an intimidating fashion. However, the transcript of the conversation clearly indicates that Anderson was not so intimidated that Jones' undercover activity could possibly be labeled as shocking the conscience. *See* Jones App. at 74 - 88.

Therefore, the Court finds plaintiffs have not stated a plausible claim under the substantive due process clause.

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[11] Although someone besides a client may pay for an attorney's services as a part of a typical fee arrangement, obviously, legal tender is the typical and appropriate form of payment.

[12] The Court recognizes the reality of the relationships involved in this case. Anderson was an attorney who defended accused persons in a small Iowa town. There may have been a history, or perhaps even 'bad blood,' between law enforcement, the county attorney's office, and Anderson. However, nothing in the record beyond general allegations that defendants were "out to get" Anderson indicates that he was "targeted" because of his past advocacy role in the criminal justice system, and any kind of speculation by this Court in this regard would be inappropriate.

2. Privacy

Plaintiffs have not identified any privacy interest, nor do they explain how any of the law enforcement defendants violated that interest. Therefore, summary judgment on plaintiff's section 1983 claim in this regard will also be granted.

c. Qualified Immunity

Assuming plaintiffs had established a material question of fact regarding their rights under the Fourth or Fourteenth Amendments, the Court concludes that the law enforcement defendants would be entitled to qualified immunity from the section 1983 claims. *See Saucier v. Katz*, 121 S.Ct. 2151 (2001). The Court in *Saucier* indicated there are two inquiries when determining whether government officials, law enforcement officers in this case, are entitled to qualified immunity: *First*, whether a constitutional right would have been violated on the facts alleged, and *second,* assuming the violation is established, whether the right was clearly established must be considered on a very specific level. *Id.* at 2155. The second prong was further defined by the Court to mean that for an officer to be denied qualified immunity, the right he violated must have been "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* at 2156. As previously discussed, a constitutional right was not violated on the facts alleged, as officers simply conducted an undercover investigation that led to Anderson accepting drugs as payment for his legal services. However, even assuming such a right violation was established, the Court cannot conclude that reasonable law enforcement officials would have understood that what they were doing in investigating and arresting Anderson, in the manner in which they did, was violating any of Anderson's constitutional rights.

C. Plaintiffs' Remaining Claims

Under the "Second Cause of Action" in their complaint, plaintiffs allege numerous claims under state and common law. Plaintiffs allege defendants committed false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, outrageous conduct, invasion of privacy, negligence, gross negligence, negligent hiring and retention and supervision. In their "Third Cause of Action," plaintiffs allege defendants' actions constitute intentional interference with the contractual relationship between Anderson and his client, Schuemann. These remaining claims are barred as defendants are entitled to immunity.

Beyond the previous discussions in this Order of immunity afforded to defendants, the Court finds that the limited waiver of sovereign immunity granted by the Iowa Tort Claims Act, IOWA CODE §§ 669.1 *et seq.*, does not apply in this case. In *Hawkeye By-Products Inc. v. Iowa*, 419 N.W. 2d 410 (Iowa 1988), the Iowa Supreme Court addressed the Iowa Tort Claims Act and the breadth of the waiver of sovereign immunity granted by it. The plaintiffs sued the Department of Agriculture of the state and one of its employees for negligent misrepresentation, fraudulent misrepresentation, and promissory estoppel. *Id.* at 411. The plaintiffs were seeking a permit to operate an animal rendering plant, and plaintiffs alleged that defendants provided assurances that the permit would be forthcoming. *Id.* at 410. The plaintiff then relied on this assurance and expended $312,000 to prepare to operate the plant, only to later find out that it would not receive a permit. *Id.* at 411. The Iowa Supreme Court inspected the waiver of immunity granted by the Iowa Tort Claims Act, and noted that claims of misrepresentation, deceit, or interference with contract rights are not included in the waiver of immunity. *Id.* (citing IOWA CODE § 25A.14(4)).[13] Despite the fact that plaintiff had labeled its claims negligent

[13] The Iowa Tort Claims Act now appears at Chapter 669 of the Iowa Code.

misrepresentation, fraudulent misrepresentation, and promissory estoppel, the Court stated: "Here, the gravamen of plaintiffs' claim is misrepresentation, deceit and interference with contract rights. The district court was correct in concluding that such claims will not lie against the sovereign." *Id.* at 411- 12. The Court went on to note that plaintiff's promissory estoppel claim, although not specifically excepted from the waiver of sovereign immunity provided by the Iowa Tort Claims Act, was grounded in a claim of false or inaccurate representations by employees of the State and that this "shift of legal theory" did not save the claim. *Id.* at 412.

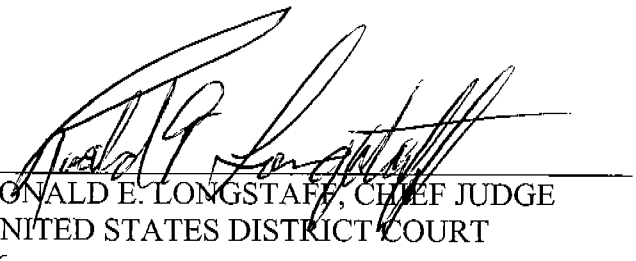
The provisions of the Iowa Tort Claims Act do not apply to "[a]ny claim arising out of . . . false imprisonment, false arrest, malicious prosecution, abuse of process . . . ." IOWA CODE § 669.14(4). The gravamen of all of plaintiffs' remaining claims in this case are for false imprisonment, false arrest, malicious prosecution and abuse of process. This case is similar to *Hawkeye By-Products* where the gravamen of the plaintiffs' complaint was misrepresentation, and therefore excepted from the waiver of sovereign immunity. Clearly, the exceptions to the waiver of immunity provided by the Iowa Tort Claims Act are directly applicable to all of plaintiffs' remaining state claims and defendants are immune from being sued on those claims.

III. CONCLUSION

For the above stated reasons, defendants' motions for summary judgment are granted. The Clerk of Court shall enter judgment in favor of defendants and against plaintiffs.

IT IS SO ORDERED.

Dated this 18th day of March, 2002.



RONALD E. LONGSTAFF, CHIEF JUDGE
UNITED STATES DISTRICT COURT