

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

CHRISTOPHER SHERIDAN, et al.,

Plaintiffs,

v.

CITY OF DES MOINES, et al.,

Defendants.

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4:00-CV-90024

ORDER

Before the Court is Defendants' Motion for Summary Judgment filed May 1, 2001. The Plaintiffs filed their resistance on May 29, 2001. The Defendants replied on June 22, 2001. Briefs have been submitted by both parties in support of their positions and an oral argument has been requested by the Plaintiffs. In the Court's opinion, an oral argument is unnecessary and it is therefore denied. The matter is fully submitted. For the following reasons, the Court grants the Defendants' Motion.

I. FACTS

The Motion before the Court stems from a twelve-count lawsuit commenced by Plaintiffs Christopher Sheridan ("Mr. Sheridan"), Merle Bensley ("Mr. Bensley"), and Rocksanna Sheridan ("Ms. Sheridan") on October, 9 1999. All three Plaintiffs are residents of Polk County, Iowa.

On April 26, 1999, Mr. Sheridan entered a branch of Firststar Bank ("Firststar") in Des Moines, Iowa, to inquire about the authenticity of what appeared to be a ten thousand dollar bill. Mr Sheridan and his partner, Bensely, had found the bill while remodeling a house. An employee of the Firststar branch office told Mr. Sheridan that he would have to contact Firststar's main office in Des Moines. Mr. Sheridan immediately went to Firststar's main office. Once there,

Mr. Sheridan asked Firststar's teller if the bill was real or not. In the teller's view it was not. Dissatisfied with the answer, Mr. Sheridan requested that the teller get a second opinion. While Mr. Sheridan was waiting for a response, Firststar's employees contacted the United States Secret Service ("Secret Service")¹ because they could not verify the authenticity of the bill. The Secret Service could not verify the genuineness of the bill either. It advised Firststar to contact the Des Moines Police Department ("DMPD") immediately to investigate the matter. Firststar did so.

Police officers Edward P. Kirkman and James Oleson ("Defendants" or "officers") are employed by the DMPD. On April 26, 1999, while on duty, the officers received and responded to the DMPD dispatcher's call to investigate potential criminal activity at Firststar's main office. The dispatcher briefly described the suspect and told the officers that "a man was trying to pass a \$10,000.00 bill – the Secret Service says there is no such bill." Oleson Aff. at para. 4. When the officers arrived at the scene they quickly located the suspect sitting in a chair in Firststar's lobby. The suspect was Mr. Sheridan. The officers approached Mr. Sheridan and began to question him about the bill. Soon afterward they handcuffed him. To assure the public's and their own safety, the officers performed a "pat-down" of Mr. Sheridan's outer clothing. No weapon was found. The officers then obtained the bill and began to fold and bend it. They also attempted to peel what appeared to be lamination on the bill. Eventually, the officers confiscated the bill in order to deliver it to the Secret Service. They released Mr. Sheridan when the teller informed the officers that he did not actually do anything illegal. Because Mr. Sheridan was scared he urinated in his pants. Mr. Sheridan received his bill back later that week when the Secret Service

¹ The Secret Service is the enforcement wing of the United States Treasury Department, which oversees these matters.

determined its authenticity.

On the basis of the aforementioned events, Mr. Sheridan, Mr. Bensley, and Ms. Sheridan filed a twelve-count lawsuit naming Firststar, its employees, the police officers, and the City of Des Moines as defendants. Firststar and its employees moved for summary judgment and it was granted by this Court as to all counts. Now the City of Des Moines and its police officers move to dismiss all of the Plaintiffs' charges against them in the present Motion for Summary Judgment. In particular, the Defendants ask this Court to dismiss the following charges: (1) wrongful (false) arrest; (2) false imprisonment; (3) assault; (4) use of excessive force; (5) 42 U.S.C. § 1983; (6) intentional infliction of emotional distress; (7) trespass to chattels; (8) intentional destruction of property; and (9) wrongful conversion.

The Court will initially set forth the legal standard for summary judgment and then will address each claim individually.

II. SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." An issue is "genuine[,] . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if the dispute over it might affect the outcome of the suit under the governing law. *Id.*

The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Anderson*, 477 U.S. at 248. In

meeting its burden, the moving party may support its motion with affidavits, depositions, answers to interrogatories, and admissions. *Celotex*, 477 U.S. at 323. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate the specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *Celotex Corp.*, 477 U.S. at 322-23; *Anderson*, 477 U.S. at 257. In order to survive a motion for summary judgment, the nonmoving party must present enough evidence for a reasonable jury to return a verdict in his or her favor. *Anderson*, 477 U.S. at 257.

On a motion for summary judgment, the Court is required to “view the evidence in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences.” *United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990). The Court does not weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 252. The Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *Id.*

III. ANALYSIS

A. Wrongful (False) Arrest and False Imprisonment

The first count of the Plaintiffs’ Complaint alleges the Defendants wrongfully arrested Mr. Sheridan. The second count of the Plaintiffs’ Complaint alleges the Defendants falsely imprisoned Mr. Sheridan. “In Iowa, false arrest is indistinguishable from false imprisonment,” “and [it] do[es] not state [a] distinct cause[] of action.” *Barrera v. Con Agra, Inc.*, 244 F.3d 663, 666 (8th Cir. 2001); *Fox v. McCurnin*, 205 Iowa 752, 757 (1928). Therefore, the Court will address Count One and Count Two of the Plaintiffs’ Complaint jointly as a claim of false

imprisonment.

The tort of false imprisonment is defined as “an unlawful restraint on freedom of movement or personal liberty.” *Valadez v. City of Des Moines*, 324 N.W.2d 475, 477 (Iowa 1982). There are two essential elements that must be proven to maintain a claim for false imprisonment. They are: (1) detention or restraint against one’s will; and (2) unlawfulness of such detention or restraint. *Id.* There is no dispute in this case that Mr. Sheridan was detained by the Defendants against his will. The issue, therefore, is whether such detention was unlawful. To answer this question, it needs to be initially determined if Mr. Sheridan was arrested or subjected to investigative, *Terry*-type detention. Then, it must be determined if such an arrest or investigative stop was lawful.

“Under well-settled Fourth Amendment case law, both investigative stops and arrests are ‘seizures.’” *United States v. Miller*, 974 F.2d 953, 956 (8th Cir. 1992). A valid investigative stop requires “reasonable [and] articulable suspicion that criminal activity may be afoot.” *Id.* To be constitutionally valid, an arrest requires probable cause. *Dunaway v. New York*, 442 U.S. 200 (1979). Therefore, to survive the summary judgment motion on the claim of false imprisonment, the evidence presented by Mr. Sheridan must show that the officers had neither a reasonable and articulable suspicion for his detention nor probable cause for his arrest.

In his brief, Mr. Sheridan agrees with the Defendants that a police officer has a right to make an investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). Moreover, Mr. Sheridan states that in his case “the officers had a right to investigate the incident.” Pls.’ Br. at 3. Thus, it appears that Mr. Sheridan does not challenge the validity of his detention under *Terry*. The Court, therefore, will not discuss the validity of Mr. Sheridan’s investigative detention and

will assume that it was lawful.

Instead, the Court will address Mr. Sheridan's claim of unlawful arrest. Mr. Sheridan seems to suggest that the use of handcuffs by officers during his investigative detention constitutes a *de facto* arrest. It must be noted that "[t]here is no bright line of demarcation between investigative stops and arrests" because "[t]here is . . . no 'litmus-paper test' or 'sentence or paragraph' rule to determine when, given the 'endless variations in facts and circumstances,' police-citizen encounters exceed the bounds of mere investigative stops [and become arrests]." *Miller*, 974 F.2d at 957; *United States v. Jones*, 759 F.2d 633, 636 (8th Cir. 1985) (quoting *Florida v. Royer*, 460 U.S. 491, 506-07 (1983)). Even though "[a]n investigative stop may become an arrest if it lasts for an unreasonably long time or the officers use unreasonable force in executing it . . . officers may check for weapons and may take any additional steps 'reasonably necessary to protect their personal safety and maintain the status quo during the course of the stop.'" *Miller*, 974 F.2d at 956 (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). However, the officers "must employ the least intrusive means of detention reasonably necessary to achieve the *Terry* stop's purposes." *Miller*, 974 F.2d at 957. "[T]he determination of whether an arrest has occurred for Fourth Amendment purposes does not depend upon whether the officers announced that they were placing the suspects under arrest." *Dunaway*, 442 U.S. at 212. Rather, "[a]n action tantamount to arrest has taken place if the officers' conduct is more intrusive than necessary for an investigative stop." *United States v. Rose*, 731 F.2d 1337, 1342 (8th Cir. 1984).

In *United States v. Jones*, the Eight Circuit Court of Appeals held that police actions do not elevate an investigative stop into an arrest if such actions are "reasonable under the

circumstances.” *United States v. Jones*, 759 F.2d 633, 638 (8th Cir. 1985). In *Jones*, the Court articulated several factors that govern the reasonableness of police actions during investigative detentions. These factors are: (1) the number of officers and police cars involved; (2) the nature of the crime and whether there is reason to believe the suspect might be armed; (3) the strength of the officers’ articulable, objective suspicions; (4) the erratic behavior of or suspicious movements by the persons under observation; and (5) the need for immediate action by the officers and lack of opportunity for them to have made the stop in less threatening circumstances. *Id.* at 639-40.

The Court does not believe that the use of handcuffs by the officers during Mr. Sheridan’s detention elevate a lawful investigative stop into an arrest because, under the circumstances, the use of handcuffs was reasonable and not excessive. In other words, during his encounter with police officers Kirkman and Oleson on April 26, 1999, Mr. Sheridan was not arrested.

The actions of the officers did not amount to an arrest for several reasons. First, Mr. Sheridan has not presented any evidence suggesting that his detention lasted for an unreasonably long time. On the contrary, the record indicates that Mr. Sheridan was only handcuffed and detained for a relatively brief period of time. Second, use of handcuffs by the officers did not constitute unreasonable force; rather, under the circumstances, they were reasonably necessary to protect the personal safety of the officers and were used primarily to maintain the status quo during the course of the stop.

“Numerous cases have held that a police officer’s use of handcuffs can be a reasonable precaution during a *Terry* stop.” *Miller*, 974 F.2d at 957.² In this case, the officers exercised

² See e.g., *United States v. Naverrete-Barron*, 192 F.3d 786, 791 (8th Cir. 1999); *United States v. Bautista*, 684 F.2d 1286, 1289 (9th Cir. 1982) (holding that police officer’s use of handcuffs during investigatory stop was not

“reasonable precaution” when they handcuffed Mr. Sheridan. First, the officers arrived at the scene informed only that “a man was trying to pass a \$10,000.00 bill – the Secret Service says there is no such bill.” Second, an attempt to pass counterfeited U.S. currency is a serious public offense punishable by lengthy incarceration. *See* 18 U.S.C. § 472. Third, in addition to their own safety, the officers had to be concerned about the safety of the public. Inside Firststar, the members of the public were vulnerable to becoming hostages. Fourth, the officers could reasonably suspect that Mr. Sheridan was armed and that he had an accomplice nearby. Because of these factors, the Court concludes that the use of handcuffs was “the least intrusive means reasonably necessary to achieve” the purposes of lawful investigation and it did not convert a lawful investigative stop into an arrest.³

There was no arrest of Mr. Sheridan on April 26, 1999 under the law of Iowa as well. In Iowa, arrest is defined as “the taking of a person into custody when and in the manner authorized by law, including restraint of the person or person’s submission to custody.” Iowa Code Section 804.14. Section 804.14 provides the manner of making arrest. It states:

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person’s custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that

excessive under the circumstances and it did not automatically convert the stop into an arrest); *United States v. Purry*, 545 F.2d 217, 220 (D.C. Cir. 1976) (holding that police officer’s use of handcuffs during investigatory stop was “an appropriate method of maintaining the status quo while further inquiry was made”); *United States v. Laing*, 889 F.2d 281, 285 (D.C. Cir. 1989); *United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989); *United States v. Hastamorir*, 881 F.2d 1551, 1557 (11th Cir. 1989); *United States v. Glenna*, 878 F.2d 967, 971-73 (7th Cir. 1989).

³ The officers allege that among other reasons, Mr. Sheridan was handcuffed because he appeared to be nervous. Mr. Sheridan denies this allegation. Assuming that Mr. Sheridan is correct, which the Court must do under the standard of summary judgment, the use of handcuffs was still reasonable and not excessive under the circumstances.

there is no time or opportunity to do so

Iowa Code § 804.14.

There is no evidence before this Court that the officers made explicit statements required by Section 804.14 when they handcuffed Mr. Sheridan. “Although the use of formal words of arrest is not required to effectuate an arrest, it is a factor to consider.” *State v. Rains*, 574 N.W.2d 904, 910 (Iowa 1998). Looking at the “totality of the facts and circumstances,” the Court concludes that by failing to comply with the familiar Section 804.14, the officers did not effectuate an arrest of Mr. Sheridan.

Since the lawfulness of Mr. Sheridan’s investigative stop is not an issue here and because Mr. Sheridan was not arrested, the Court grants the Defendants’ motion on Count One and Count Two of the Plaintiffs’ Complaint because there is no genuine issue of material fact necessary for Mr. Sheridan to prevail on these counts.

B. Assault

In Count Three of the Complaint, the Plaintiffs claim the Defendants committed the tort of assault. Specifically, Mr. Sheridan asserts that the unwarranted use of handcuffs by the officers constitutes an assault. Even though it appears that Mr. Sheridan pleads battery rather than assault in Count Three, the Court, nevertheless, will address the pleaded claim.⁴

“Iowa courts have sometimes looked to the [Iowa] criminal code’s definition of assault as defining the elements of assault in civil actions for damages or other relief.” *Doe v. Hartz*, 52 F. Supp. 2d 1027, 1052 (N.D. Iowa 1999); *see also Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa

⁴ In Iowa, one commits battery when his intentional act results in: (1) bodily contact causing physical pain or injury, or (2) bodily contact a reasonable person would deem insulting or offensive. *Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 39, n.5 (Iowa 1993).

1997). Section 708.1 of the Iowa Code defines assault. This section states in pertinent part that:

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is . . . intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act. . . .

Iowa Code § 708.1.

In *Holdorf v. Holdorf*, the Iowa Supreme Court summarized the elements of assault as “acts threatening violence [or offense] to the person of another; coupled with the means, ability, and intent to commit the violence threatened” *Holdorf v. Holdorf*, 185 Iowa 838, 841 (1918). Therefore, to prevail on a claim of assault, Plaintiffs must establish that the officers performed an act which was intended to result in a physical contact which would be (1) insulting or offensive to Mr. Sheridan, or (2) which intended to put him in fear of immediate injurious or offensive physical contact.

It is unreasonable to assert that by handcuffing Mr. Sheridan, in the exercise of their lawful investigatory duty, the officers intended to cause Mr. Sheridan insulting or offensive physical contact or intended to put him in immediate fear of injurious or offensive physical contact. The substantial evidence in this case indicates that the sole reason Officers Kirkman and Oleson handcuffed Mr. Sheridan was to control and secure the scene for a lawful investigatory purpose. Mr. Sheridan has not presented any evidence which would suggest that the officers used excessive force or acted unreasonably, maliciously, or in bad faith in their action.

For these reasons, the Defendants’ motion as to Count Three is granted.

C. Use of Excessive Force and 42 U.S.C. § 1983

In Counts Four and Five of the Complaint, Plaintiffs allege that the Defendants violated Mr. Sheridan's rights under the Fourth Amendment of the United States Constitution and under federal law. In particular, the Plaintiffs claim that the officers arrested Mr. Sheridan without probable cause, used excessive force upon him, and violated 42 U.S.C. § 1983 ("§ 1983"). In response to these charges, the Defendants assert the defense of qualified immunity. For the reasons set forth in Section A of this Order (Wrongful (False) Arrest and False Imprisonment), the Court concludes that on April 26, 1999 officers Edward P. Kirkman and James Oleson did not violate Mr. Sheridan's Fourth Amendment right to be free from arrest without probable cause.

Moreover, since "[t]he typical procedural vehicle for asserting claims of constitutionally excessive force is [§ 1983], . . ." and because § 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes[.]" the Court will address Count Four (excessive force) and Count Five (§ 1983) of the Plaintiffs' Complaint jointly. Christopher Lyle McIlwain, *The Qualified Immunity Defense in the Eleventh Circuit and Its Application to Excessive Force Claims*, 49 Ala. L. Rev. 941, 945 (1998); *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979).

"In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force." *Graham v. Connor*, 490 U.S. 386, 394 (1989). "Where, as here, the excessive force claim arises in the context of an . . . investigatory stop of a free citizen, it is most properly

characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right ‘to be secure in their persons . . . against unreasonable . . . seizures’ of the person.” *Id.* Therefore, a claim brought by a free citizen under § 1983, that a law enforcement official used excessive force in the course of his investigatory stop, should be analyzed under the Fourth Amendment’s “objective reasonableness” standard “[b]ecause the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct” *Id.* at 388, 395.

“Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment[,] requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” *Id.* at 396 (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)). “[T]he ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Graham*, 490 U.S. at 397. “Excessive force claims . . . are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred.” *Saucier v. Katz*, —U.S.—, —, 121 S.Ct. 2151, 2159 (2001).

“The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.” *Id.* (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). “Because ‘police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation,’ the reasonableness of the officer’s belief as to the appropriate level of force should be judged from . . . [the] perspective of a reasonable officer on the scene, rather than with

the 20/20 vision.” *Saucier*, 121 S.Ct. at 2158 (quoting *Graham*, 490 U.S. at 397).

Even though “*Graham* does not always give a clear answer as to whether a particular application of force will be deemed excessive by the courts[,] . . . [it] sets forth a list of factors relevant to the merits of the constitutional excessive force claim, ‘requir[ing] careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.’” *Saucier*, 121 S.Ct. at 2158 (quoting *Graham*, 490 U.S. at 396).

The “Fourth Amendment jurisprudence has long recognized that the right to make an . . . investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham*, 490 U.S. at 396. “‘Not every push or shove [by officers], even if it may later seem unnecessary in the peace of a judge’s chambers,’ violates the Fourth Amendment.” *Id.* “If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.” *Saucier*, 121 S.Ct. at 2158.

Looking at the facts of this case in the light most favorable to Mr. Sheridan, the Court concludes that the amount of force used by the officers during the investigative detention of Mr. Sheridan was objectively reasonable and not excessive under the circumstances. There is simply no evidence in the record sufficient to generate a factual question on whether the officers used excessive force. Mr. Sheridan does not allege that he was pushed, pulled, or otherwise jostled about. Rather, he simply alleges that the officers placed him in handcuffs without justification. As the Court has discussed, the use of handcuffs in this case, while an annoyance to Mr. Sheridan, was perfectly lawful. The lawful placement of handcuffs on an individual, without

more, is inadequate to sustain Plaintiffs' claim for excessive force. Having determined that the officers did not violate Mr. Sheridan's constitutional rights and that an action under § 1983 cannot be maintained, the Court does not need to address the issue of qualified immunity. *See Saucier v. Katz*, 121 S.Ct. 2151, 2156 (2001) ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity."). The Defendants' motion as to Counts Four and Five is granted.

D. Intentional Infliction of Emotional Distress

In Count Six of the Complaint, Plaintiffs allege the Defendants committed the tort of intentional infliction of emotional distress. Specifically, Mr. Sheridan claims that the officers' failure to investigate the situation prior to handcuffing him constitutes outrageous conduct. Because of this alleged outrageous conduct, Mr. Sheridan suffered claims to have suffered emotional distress.

To establish a prima facie claim for intentional infliction of emotional distress in Iowa, Mr. Sheridan must establish the following four elements: (1) outrageous conduct by the defendant; (2) the defendant intentionally caused, or recklessly disregarded the probability of causing emotional distress; (3) the plaintiff suffered severe or extreme emotional distress; and (4) the defendant's outrageous conduct was the actual and proximate cause of the emotional distress. *Amsden v. Grinnell Mut. Reinsurance Co.*, 203 N.W.2d 252, 255 (Iowa 1972) (citing Restatement (Second) of Torts § 46 (1965)).

Conduct is outrageous when it is "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against an [sic] the actor, and lead him to

exclaim, ‘Outrageous!’” *Roalson v. Chaney*, 334 N.W.2d 754, 756 (Iowa 1983) (quoting Restatement (Second) of Torts § 46, Comment d (1965)). Outrageous conduct must be established by substantial evidence. *Vinson v. Linn-Mar Community Sch. Dist.*, 360 N.W.2d 108, 118 (Iowa 1984). “It is for the court to determine, in the first instance, whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. . . .” *Roalson v. Chaney*, 334 N.W.2d 754, 756 (Iowa 1983) (quoting Restatement (Second) of Torts § 46, Comment h (1965)).

Viewing the evidence in the light most favorable to Mr. Sheridan, the Court concludes that there was nothing “outrageous” about the officers’ conduct during their encounter with Mr. Sheridan on April 26, 1999. Questioning, handcuffing, and “patting down” a suspect in a peaceful manner by police officers during a lawful investigatory stop do not constitute the type of conduct which is “so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” In this case, an average member of the community or a reasonable juror would not characterize the officers’ conduct as “Outrageous!”

Moreover, because of the insubstantial evidence, the Court concludes that Mr. Sheridan did not suffer from “severe or extreme emotional distress.” Emotional distress, in general, “includes all highly unpleasant mental reactions.” *Poulsen v. Russell*, 300 N.W.2d 289, 297 (Iowa 1981) (quoting Restatement (Second) of Torts § 46, Comment j (1965)). However, “[i]t is only when it is extreme or severe that it is compensable.” *Id.* Mr. Sheridan alleges that as a result of the officer’s conduct, he involuntarily urinated in his pants because he was very scared. However, in the absence of other direct evidence of “severe or extreme emotional distress,” being scared, or even feeling humiliated or uncomfortable, is not sufficient to establish compensable

emotional distress. *Steckelberg v. Randolph*, 448 N.W.2d 458, 461-62 (Iowa 1989).

In Iowa, plaintiff can establish the substantial evidence of emotional harm either by direct evidence of “physical symptoms of the distress or [by] a clear showing of a notably distressful mental reaction caused by the outrageous conduct.” *Id.* at 462. Mr. Sheridan experienced neither of these. The physical symptom (involuntary urination) Mr. Sheridan experienced does not rise to the level of compensable emotional harm found in other compensable cases. *See e.g., Meyer v. Nottger*, 241 N.W.2d 911, 915-16 (Iowa 1976) (plaintiff was nauseous, had difficulty breathing, and was hospitalized for acute heart spasm); *Northrup v. Miles Homes, Inc. of Iowa*, 204 N.W.2d 850, 855 (Iowa 1973) (plaintiff cried frequently, lost weight, and suffered abdominal cramps); *Randa v. U.S. Homes, Inc.*, 325 N.W.2d 905, 908 (Iowa App.1982) (plaintiff was hospitalized with a near nervous breakdown, fear, and shock).

Likewise, Mr. Sheridan failed to produce any evidence of “notably distressful mental reaction.” A bald assertion, without more, that a Plaintiff has experienced emotional distress is not sufficient to maintain a claim for intentional infliction of emotional distress. *See e.g., Poulsen v. Russell*, 300 N.W.2d 289, 297 (Iowa 1981) (plaintiff must present more evidence than that he felt bad for a month); *Bethards v. Shivvers, Inc.*, 355 N.W.2d 39, 44 (Iowa 1984) (quoting Restatement (Second) of Torts § 46, Comment j (1965)) (“[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.”).

Because Mr. Sheridan failed to establish outrageousness and “severe or extreme emotional distress,” there is no genuine issue as to any material fact. Consequently, the Defendants’ motion as to Count Six of the Plaintiffs’ Complaint is granted.

E. Trespass to Chattles, Intentional Destruction of Property, and Wrongful Conversion

In Counts Nine, Ten, and Eleven of the Complaint, the Plaintiffs allege the Defendants

committed the following property torts: trespass to chattels, intentional destruction of property, and wrongful conversion. For the reasons stated in this Court's Order of August 10, 2000, this Court now grants the Defendants' motion as to Counts Nine, Ten, and Eleven.

F. Respondent Superior

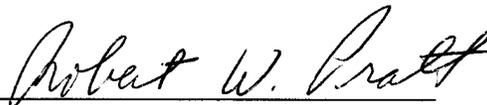
Plaintiffs' Count Twelve pleads respondent superior. Respondent superior is not an actionable claim for relief; rather, it is assertion of an agency principle. Therefore, the Court will not address it.

IV. CONCLUSION

In light of the foregoing discussion, the Court does not believe that Plaintiffs have presented evidence sufficient to generate a factual dispute on any counts in the Complaint. Accordingly, the Summary Judgment Motion by all remaining Defendants is GRANTED on all counts.

IT IS SO ORDERED.

Dated this ___8th___ day of August, 2001.



ROBERT W. PRATT
U.S. DISTRICT JUDGE