IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHAUNCEY LOUIS PAYNE,	*	
Plaintiff,	*	Civil Action No.: RDB-07-583
v.	*	
CITY OF LAUREL, MARYLAND, *et al.*,	*	
Defendants.	*	

*   *   *   *   *   *   *   *   *   *   *   *   *

MEMORANDUM OPINION

Plaintiff Chauncey Louis Payne ("Payne") has brought this action against Laruel Police Officer John Proctor ("Proctor"), the City of Laurel, Maryland ("Laurel"), and Laurel's Chief of Police, David Crawford ("Chief Crawford") asserting claims under 42 U.S.C. § 1983, state common law, the Maryland Declaration of Rights and the Maryland Constitution. Pending before this Court are Defendants' Motion for Summary Judgment (Paper No. 51) and Plaintiff's Cross Motion for Summary Judgment (Paper No. 52). The issues have been fully briefed and a hearing was held on June 22, 2009, at which time counsel for the parties agreed that there are no genuine issues of material fact in dispute and this action is ripe for a decision by this Court as a matter of law. For the reasons stated below, Defendant's Motion for Summary Judgment is GRANTED and Plaintiff's Cross-Motion is DENIED.

BACKGROUND

Payne Approaches Lasheka Brown

Chauncey Louis Payne, currently 49 years of age, is employed as a full time mathematics teacher for the Prince George's County Public Schools. In addition, he has worked as a part time

reserve officer in the District of Columbia Metropolitan Police Department ("DCMPD") since 2003. (2d Am. Compl. ¶ 12.)

From December of 2005 until October of 2006, Payne resided in an apartment located at 9407 Springhouse Lane in Laurel, Maryland. (*Id.* ¶¶ 13.) His mother, Anabel Payne, signed the lease on the apartment and gave Payne money to pay rent and utilities, but she lived in New York and only visited the apartment on occasion. (Defs.' Mot. Summ. J. at Ex. 2 at 11-18.) It was not until March 13, 2006, that this Springhouse Lane address was listed as Payne's residence of record in Maryland Motor Vehicle Administration ("MVA") records. (Pl.'s Ex. 2.)

Payne has been a member of the Laurel Sport Fit Gym on Fort Meade Road since 2003. Upon registering with the gym, Payne submitted a DCMPD police badge in order to take advantage of a monthly discount provided to law enforcement officers and a photocopy of the badge was kept in gym records. Payne stated that the badge he submitted was a temporary replacement badge that the police department had given him after his original badge broke. (Defs.' Ex. 2 at 106-08, 147-49.) The replacement badge has the word "Reserve" inscribed on its top, but does not bear an identification number. (Defs.' Ex. 8.)

On March 11, 2006, after returning home from the police academy, Payne approached a woman named Lasheka Brown in the parking lot of the Springhouse Lane complex. (Defs.' Ex. 2 at 84-85) Payne was dressed in DCMPD issued police clothing and was wearing an emblem and holding a police radio. (*Id.* at 85.) After noticing that Brown's car had South Carolina license plate tags, he identified himself as a reserve officer in the DCMPD and showed her his badge and police identification card. Payne spoke with Brown for approximately five minutes and he advised her that she could receive a ticket if she failed to change her vehicle's registration. (*Id.* at 84-88.)

Payne stated that he next approached Brown a couple of days later when he was leaving his apartment in the morning for work. He greeted her as he was walking down his steps, and then entered his car and drove away. Payne claims that after this second, brief encounter, he never saw Brown again. (*Id.* at 90-91.)

Officer Proctor's Investigation and the Warrant Affidavit

On March 15, 2006, Lasheka Brown visited the Laurel Police Station and submitted an incident report to Officer Eric Lynn. (Pl.'s Ex. 6, at 4.) Brown claimed that on March 11, a man approached her near her residence and identified himself as "Chauncey." He advised her that he was a police officer and that he had been instructed by the Springhouse Lane apartment complex to issue warnings for vehicles not registered in Maryland and for vehicles with license plate covers. (*Id.*) He then told Brown that he had seen her on a prior occasion exercising in the Sport Fit on Fort Meade Road. Brown, however, claimed that she had never seen "Chauncey" before. Brown subsequently spoke with someone at Springhouse Lane's leasing office and was informed that there was no resident in the complex with the name of "Chauncey," and that they had never granted anyone the authority to issue vehicle warnings. (*Id.*) Brown also reported that on the morning of March 15, Payne ran after her car as she drove from her apartment. Lynn instructed Brown to contact the Laurel Police Department if she ever encountered "Chauncey" again. (*Id.*)

The investigation into Brown's complaint was assigned to John E. Proctor, currently 27 years of age, who has been employed as a patrol officer with the City of Laurel Police Department since approximately March of 2004. (Pl.'s Ex. 6, at 1-2.) During his investigation, Proctor reviewed Lynn's police incident report, which recorded Brown's initial complaint. (Pl.'s Ex.6, at 4.)

On March 28, 2006, Officer Proctor was dispatched to meet Brown at the Sport Fit on Fort Meade Road. (Pl.'s Ex. 6, at 4.) Proctor observed that Brown was "noticeably afraid" as she stated that she had seen "Chauncey" at the gym and described her earlier encounters with Payne. (*Id.* at 5.) After hearing from Brown, Proctor went to another Laurel Sport Fit location, where he obtained the gym's file on Payne. The file contained a photocopy of a badge bearing the District of Columbia emblem, and the word "Reserve" on it. However, Proctor noticed that the space on the badge where police officers' identification numbers are normally inscribed was left blank. (*Id.*) The file did not contain a copy of Payne's DCMPD identification card. (*Id.*)

To the best of his memory, Proctor believes that after meeting with Brown he ran Payne's driver's license and did a warrant check. (Pl.'s Ex. 6, at 5.) On March 28, 2006, a MVA return for Officer Payne's Maryland Driver's License was issued, which indicated that as of March 13, 2006, Payne lived at 9407 Springhouse Lane. (Defs.' Ex. 6.) Proctor apparently reviewed the results because he subsequently made handwritten notes on the face of the return. (*Id.*) However, Proctor claims that he did not remember receiving the results of the MVA return and that he never noted Payne's new address on the form. (Pl.'s Ex. 6, at 5.)

On or about April 5, 2006, Proctor contacted the personnel office of the District of Columbia Metropolitan Police Department ("DCMPD") in order to verify Payne's status as a police officer. (Pl.'s Ex. 6, at 5.) Proctor was informed that there was nobody named "Payne" in their computer database and that if this individual was a DCMPD officer, he would be listed in the system. (*Id.* at 6.) Finally, on April 18, Proctor spoke with a woman at Springhouse Lane's management office, who informed him that while Payne's mother was a tenant, they had no record of Chauncey Payne being a resident. She also noted that nobody associated with the apartment complex had been granted authority to issue tickets or tow vehicles. (*Id.*)

On April 20, 2006, Proctor drafted and filed an application for statement of charges (hereinafter "warrant affidavit") based on the information obtained in his investigation. At the top of the affidavit, Proctor stated that Payne resided at 8714 Cresthill Court in Laurel Maryland. (Pl.'s Ex. 1.) The body of the affidavit provides:

> Chauncey Payne approached witness Lasheka Monique Brown, who lived in this apartment building, and informed her that he was a police officer. The defendant was wearing what the witness stated to be a "big belt", a shirt with a law enforcement emblem, and was holding what appeared to be a police radio in his hand. Brown had South Carolina license plates on her vehicle, and Payne informed her that not only was he a police officer but he was authorized by the management of the apartment complex to issue tickets to vehicles that were not registered in Maryland. Payne then informed the witness that she had five days to get her license plates fixed. Brown then left.
>
> Then on March 14, 2006, at approximately 0740 hrs at 9407 Springhouse Lane, Laurel, Prince George's County, MD, the witness was walking to her vehicle and noticed that the defendant was walking behind her. Payne asked Brown if she remembered him and she answered that she did and entered her vehicle. The defendant then walked away but as doing so he continued to turn around and stare at her. Then the defendant without being asked by the witness ran towards Brown, who was still seated in her vehicle, and she drove away before he was able to reach her.
>
> On March 28, 2006, at approximately 2000 hrs, the witness was at the Laurel Sport Fit Gym, located at 204 Fort Meade Rd, Laurel, Prince George's County, MD, and saw the defendant there also. The witness then in fear for her safety contacted the Laurel Police Department and I responded and met with Brown. Upon my arrival the defendant was already gone from this location. I spoke to management and was informed that the defendant had a membership with this gym, which had been offered to him with a discount for being a law enforcement officer. The identification provided to this company by the defendant was filed at the location of 314 Marshall Avenue, Laurel, Prince George's County, MD. Upon my arrival at this location management provided me with a photocopy of a Washington DC Metropolitan Police Department badge with the word "Reserve" inscribed at the top of the badge, which had been provided by Payne as his law enforcement identification. On the bottom of the badge was a blank rectangle for where an officer's identification number is supposed to be engraved.
>
> On April 5, 2006, at approximately 1630 hrs I contacted via telephone the personnel division of the Washington DC Metropolitan Police Department and inquired if they had the defendant, Chauncey Louis Payne, anywhere in their records as being a Washington DC Police Officer. The personnel division specialist searched the Department's Database and found that there was no Chauncey Louis Payne listed as a police officer with the Washington DC Police

> Department. The specialist also informed me that if there was any such officer it would have positively shown up on the computer database that she was using.
>
> It should be noted that on April 18, 2006, at approximately 1730 hrs I visited the management officer of the above mentioned apartment complex and inquired about Chauncey Payne. I was informed by the manager that Payne did not live in this complex and was never authorized by management to issue any kind of ticket to residents of the complex or provide any service for the complex.

(Pl.'s Ex. 1.)

<u>Payne's Arrest and Subsequent Lawsuit</u>

On April 20, 2006, the District Court Commissioner issued an arrest warrant, which charged Payne with two counts of impersonation of a police officer under Md. Code Ann., Pub. Safety § 3-502(b), one count of wearing police articles under Md. Code Ann., Pub. Safety § 3-502(c), and one count of stalking under Md. Code Ann., Crim. Law § 3-802(b). (Defs.' Ex. 10.) Proctor noted that besides submitting the warrant affidavit, he played no role in the selection of charges against Payne, or in the decision as to whether to issue an arrest warrant or a critical summons. (Defs.' Ex. 12)

Payne was informed of his outstanding arrest warrant in September of 2006, when his wife, from whom he was separated at the time, called him. (Defs.' Ex. 2 at 40, 108-09.) On September 12, 2006, Payne turned himself in to the Prince George's County Sheriff's Office and he was held in overnight jail. (2d Am. Compl. ¶¶ 35-36.) Payne asked to be segregated from the general population of the jail due to safety concerns, but his request was denied because the jail officials had reason to believe he was not in fact a police officer given the charges against him. (*Id*. ¶¶ 37-38.) He was released on a $35,000 bond "conditioned upon no contact with the woman identified in [Officer] Proctor's complaint." (*Id*. ¶ 39.) In addition to incurring "several thousand dollars in bail bondsman's fees" (*Id*. ¶ 40), the terms of Payne's bond also forbade the use of his fitness center membership and police equipment (*Id*. ¶¶ 50-51).

On December 1, 2006, the first day of trial, the prosecutor declared a *nolle prosequi* as to all charges. (*Id.* ¶ 46.) As a result of the prosecution, Payne alleges that he suffered several setbacks. He claims he incurred "several thousand dollars in attorney's fees in his criminal defense . . . [and] was subject to the strict terms of his conditional release for several months." (*Id.* ¶¶ 47-48.) Payne was also suspended by the DCMPD and investigated by its Office of Internal Affairs. (*Id.* ¶¶ 52-53.) Finally, he was passed over for a promotion. (*Id.* ¶ 54.) Allegedly due to these difficulties, he decided to move out of Laurel (*Id.* ¶ 56), and his "wife served him with divorce papers on December 18, 2006, claiming desertion." (*Id.* ¶ 119.)

Payne brought suit against the City of Laurel in this Court on March 8, 2007. In his Second Amended Complaint, Plaintiff alleges, in Counts I-IV, that the Defendants deprived him of his constitutionally protected liberty and property interests. Counts V-IX allege several claims under Maryland common law: Count V - malicious prosecution; Count VI - false arrest or false imprisonment; Count VII - defamation; Count VIII - intentional infliction of emotional distress; and Count IX - reckless misconduct. Finally, Count X alleges that Proctor violated the Maryland Declaration of Rights and the Maryland State Constitution.

In its Memorandum Opinion dated February 19, 2008, this Court dismissed all of the common law claims (Counts V through IX) against the City of Laurel because of governmental immunity. In addition, the surviving claims against the City of Laurel and Chief Crawford were bifurcated as they were deemed to be derivative of Plaintiff's constitutional claims against Proctor. This Court determined that bifurcation would "maximize efficiency and fairness." Mem. Op. at 8 (Paper No. 21) (citing *Marryshow v. Bladensburg*, 139 F.R.D. 318, 319 (D. Md. 1991); *Gray v. Maryland*, 228 F. Supp. 2d 628, 638 (D. Md. 2002)). All claims against Proctor and Crawford were allowed to proceed.

On November 21, 2008, Defendants Laurel, Crawford and Proctor filed the pending Motion for Summary Judgment (Paper No. 51), which was followed by Payne's Opposition and Cross-Motion for Summary Judgment (Paper No. 52).

STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure 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." Fed. R. Civ. P. 56(c). A material fact is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue over a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* In considering a motion for summary judgment, a judge's function is limited to determining whether sufficient evidence exists on a claimed factual dispute to warrant submission of the matter to a jury for resolution at trial. *Id.* at 249. In that context, a court is obligated to consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *see also E.E.O.C. v. Navy Federal Credit Union*, 424 F.3d 397, 405 (4th Cir. 2005). However, Rule 56 mandates summary judgment 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 that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

When both parties file motions for summary judgment, as here, the court applies the same standards of review. *Taft Broad. Co. v. United States,* 929 F.2d 240, 248 (6th Cir. 1991); *ITCO Corp. v. Michelin Tire Corp.,* 722 F.2d 42, 45 n.3 (4th Cir. 1983) ("The court is not permitted to

resolve genuine issues of material fact on a motion for summary judgment – even where . . . both parties have filed cross motions for summary judgment.") (emphasis omitted), *cert. denied,* 469 U.S. 1215 (1985). The role of the court is to "rule on each party's motion on an individual and separate basis, determining, in each case, whether a judgment may be entered in accordance with the Rule 56 standard." *Towne Mgmt. Corp. v. Hartford Acc. & Indem. Co.*, 627 F. Supp. 170, 172 (D. Md. 1985). "[B]y the filing of a motion [for summary judgment] a party concedes that no issue of fact exists under the theory he is advancing, but he does not thereby so concede that no issues remain in the event his adversary's theory is adopted." *Nafco Oil & Gas, Inc. v. Appleman*, 380 F.2d 323, 325 (10th Cir. 1967); *see also McKenzie v. Sawyer*, 684 F.2d 62, 68 n.3 (D.C. Cir. 1982) ("[N]either party waives the right to a full trial on the merits by filing its own motion.").

However, when cross-motions for summary judgment demonstrate a basic agreement concerning what legal theories and material facts are dispositive, they "may be probative of the non-existence of a factual dispute." *Shook v. United States*, 713 F.2d 662, 665 (11th Cir. 1983) (citation omitted). In the present case, the parties agreed at the hearing of June 22, 2009, that there is no issue of material fact and that the related issues of probable cause and the qualified immunity of Officer Proctor are purely legal in nature and appropriate for this Court's determination as a matter of law. *See, e.g.*, *Stewart v. Sonneborn*, 98 U.S. 187, 194, 25 L. Ed. 116 (1878) (observing that whether facts alleged to show probable cause are true is a matter of fact, "but whether, supposing them to be true, they amount to a probable cause, is a question of law" (internal quotation marks omitted)); *Green v. City of Welch*, 822 F. Supp. 1236, 1239 (S.D.W.Va. 1993) ("disposition of qualified immunity questions upon motions for summary

judgment would seem appropriate in every case in which the court is able to make the legal determination based upon undisputed facts of record").

ANALYSIS

In Count I of his Second Amended Complaint, Payne alleges that his Fourth and Fourteenth Amendment rights were violated when he was arrested without probable cause and pursuant to Proctor's defective warrant affidavit. Defendant Proctor counters by asserting the affirmative defense of qualified immunity and by arguing that probable cause existed for Payne's arrest. The parties have agreed that if summary judgment is entered in favor of the Defendants on Count I, it will be dispositive of the case.

I. Qualified Immunity

"Law enforcement officers are entitled to qualified immunity from § 1983 liability arising from their official discretionary acts that do not 'violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Smith v. Reddy*, 101 F.3d 351, 355 (4th Cir. 1996) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). In determining whether an officer must be afforded qualified immunity, courts have traditionally engaged in a two-step analysis. *Wilson v. Layne*, 526 U.S. 603, 609 (1999). First, a court determines whether a constitutional right has been violated. Second, "assuming that the violation of the right is established, courts must consider whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right." *Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The United States Supreme Court has recently modified this approach in order to make it more flexible; courts no longer have to consider the two prongs of the analysis sequentially, but may now review them in the order deemed to be

most efficacious. *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009) ("[t]he judges of the district courts and courts of appeals should be 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").

Under the above standard, Payne may only overcome Proctor's assertion of qualified immunity if he can establish both (1) that there was no probable cause for his arrest; and (2) that "it would have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202. In the wake of the Supreme Court's recent opinion in *Pearson*, this Court is no longer required to address these two prongs in sequence—qualified immunity may attach upon a determination that Plaintiff cannot establish either one of the prongs. Nevertheless, in the instant case, this Court exercises its discretion to address both factors, as they both serve as independent justifications for granting qualified immunity to Proctor.

A. Probable Cause

It is well-established that "[t]he Fourth Amendment prohibits law enforcement officers from making unreasonable seizures, and seizure of an individual effected without probable cause is unreasonable." *Brooks v. City of Winston-Salem*, 85 F.3d 178, 183 (4th Cir. 1996). "In assessing the existence of probable cause, courts examine the totality of the circumstances known to the officer at the time of the arrest." *Taylor v. Waters*, 81 F.3d 429, 434 (4th Cir. 1996).

Payne claims that there was no probable cause for his arrest, as it was procured by means of Proctor's deficient and dishonest warrant affidavit. In order to show that the affidavit precipitated a deprivation of Payne's Fourth Amendment rights, he must show that Proctor

"deliberately, or with a reckless disregard for the truth made material false statements in his affidavit, or omitted from that affidavit material facts with the intent to make, or with reckless disregard of whether they made, the affidavit misleading." *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007) (internal citations and quotations omitted); *see also, Smith v. Reddy*, 101 F.3d 351, 355 (4th Cir. 1996) ("A reasonable officer cannot believe a warrant is supported by probable cause if the magistrate is misled by statements that the officer knows or should know are false.") The United States Court of Appeals for the Fourth Circuit has further explained that:

> "Reckless disregard" can be established by evidence that an officer acted "with a high degree of awareness of [a statement's] probable falsity," that is, "when viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." *Wilson v. Russo*, 212 F.3d 781, 788 (3d Cir. 2000) (internal quotation marks omitted); *see also, Forest v. Pawtucket Police Dep't*, 377 F.3d 52, 58 (1st Cir. 2004); *United States v. Clapp*, 46 F.3d 795, 801 n. 6 (8th Cir. 1995). With respect to omissions, "reckless disregard" can be established by evidence that a police officer "failed to inform the judicial officer of facts [he] knew would negate probable cause." *Beauchamp v. City of Noblesville, Inc.*, 320 F.3d 733, 743 (7th Cir. 2003); *see also Wilson*, 212 F.3d at 788; *United States v. Jacobs*, 986 F.2d 1231, 1235 (8th Cir. 1993).

Miller, 475 F.3d at 627.

Nevertheless, false or misleading statements and omissions may only support an action under the Fourth Amendment if they are material, or "necessary to the finding of probable cause." *Franks v. Delaware*, 438 U.S. 154, 156 (1978). In making this determination, courts are instructed to "'excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the 'corrected' warrant affidavit would establish probable cause.'" *Miller*, 475 F.3d at 628 (quoting *Wilson*, 212 F.3d at 789). If the court finds that probable cause is still established by the corrected affidavit, then the errors are not material and therefore cannot serve as a basis for a constitutional violation. *Id.*

This Court finds that under the totality of the circumstances, the warrant affidavit provided probable cause for a finding that Payne had committed a criminal offense. The affidavit exhibits the facts concerning Brown's interaction with Payne, which Proctor derived from his interview with her and from his review of Lynn's March 15 incident report. Proctor included the fact that Sport Fit's file on Payne included a photocopy of a police badge that lacked an identification number, which was shown as proof in order to obtain a discount at the gym. When Proctor contacted the personnel office of the District of Columbia Metropolitan Police Department he was informed that Payne was not listed in their computer system and that "if there was any such officer it would have positively shown up on the computer database that she was using." (Pl.'s Ex. 1.) Finally, the affidavit mentions that Proctor was informed by Springhouse Lane's management office that Chauncey Payne was not listed as a resident and that nobody had been granted the authority to issue tickets or warnings on their premises. All of this information, culled from Proctor's investigation and stated in the affidavit, provided probable cause for a judicial officer to determine—at a minimum—that Payne was misrepresenting himself as a police officer.

Payne argues that with respect to the three charges relating to false impersonation, Proctor's affidavit failed to include any reference to the element of the offense concerning a "fraudulent design on . . . property." However, this argument is misplaced. As an initial matter, an affiant is not required to explicitly identify each of the elements of an offense; certain elements, such as intent, may be inferred from the facts stated in the affidavit. In addition, the affidavit clearly sets forth facts supporting the charges under Md. Code Ann., Pub. Safety § 3-502(c), which merely prohibits the wearing of police articles, and under Md. Code Ann., Pub. Safety § 3-502(b), for impersonating a police officer with the intent to defraud Sport Fit in order

to receive a membership discount. As to the third false impersonation charge, the language of Md. Code Ann., Pub. Safety § 3-502(b) expressly prohibits the impersonation of a police officer "with fraudulent design on *person* or property." (emphasis added). Probable cause existed for an officer to conclude from the facts set forth in the affidavit that Payne was impersonating a police officer with fraudulent design upon Brown.[1] Finally, it is undisputed that the specific charges filed against Payne were selected solely by the District Court Commissioner. A police officer drafting a warrant affidavit is not required to anticipate every charge that may be entered by a judicial officer upon review of the warrant, nor is an affiant required to have foreknowledge of the elements of the charges ultimately rendered.

Payne's most pointed challenge to the probable cause determination concerns the issue of his address at the time of the underlying events. He contends that Proctor knew that he lived at 9407 Springhouse Lane, but that he purposefully omitted this information from his warrant affidavit, and instead listed his residence as 8714 Cresthill Court, Laurel, Maryland. The MVA return was issued on March 28, 2006, and on April 5, 2006, Proctor made handwritten notes on the face of the return that regarded his telephone call to the DCMPD. (Defs.' Ex. 6; Proctor Dep. at 145.) This shows that Proctor possessed and reviewed the return during the course of his investigation. Payne adds that the warrant affidavit also omitted the fact that "Anabel Payne" lived at the apartment complex.

In an Affidavit dated August 26, 2008, Proctor stated that after submitting his Answers to Interrogatories, he discovered a misfiled printout of the results of the MVA return that reflected that Payne's address as of March 13, 2006, was 9407 Springhouse Lane. (Defs.' Ex. 12.)

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[1] In Count One of the statement of charges, the District Court Commissioner stated that Payne "did falsely represent himself as being a police officer with fraudulent design upon the property of Lasheka Monique Brown." (Defs.' Ex. 10.) However, Proctor's claim that the affidavit established probable cause is not defeated by the fact that the District Court Commissioner may have mischaracterized one of the counts in the statement of charges.

Proctor stated that he did not recall whether he had this document when he prepared the warrant affidavit on April 20, 2006. (*Id.*) In the affidavit, Proctor listed Payne's address as 8714 Cresthill Court, because this was the most recent address listed in the Sport Fit file. Proctor added that in his "experience as a police officer, MVA records are often inaccurate, as far as addresses are shown." (*Id.*)

This Court finds that Proctor did not make any false statements or omissions with the deliberateness or "reckless disregard for the truth" that could result in a constitutional deprivation. In his Sport Fit file, Payne's most recent address was listed as 8714 Cresthill Court. Although the MVA record indicated that his address was 9407 Springhouse Lane, both Proctor and Brown had been separately advised by Springhouse Lane's management office that Chauncey Payne was not listed as a resident. As for the mention of "Anabel Payne," Proctor merely guessed that Anabel was the Plaintiff's mother, and the fact of her residence at the complex was not conclusive on the issue of whether or not the Plaintiff lived there.

In essence, the failure to note the new address in the MVA record and the fact that "Anabel Payne" was a listed resident, may perhaps represent a negligent mistake on Proctor's behalf. However, such shortsightedness does not evidence the sort of deliberateness or "reckless disregard for the truth" that are prerequisite to an actionable constitutional claim. *See, e.g.*, *Miller*, 475 F.3d at 627 ("[a] plaintiff's 'allegations of negligence or innocent mistake' by a police officer will *not* provide a basis for a constitutional violation") (emphasis in original) (quoting *Franks*, 438 U.S. at 171); *Morrill v. Prince George's County*, No. 95-3209, 1996 U.S. App. LEXIS 31090, at *7 (4th Cir. Dec. 4, 1996) (noting that in the Fourth Amendment context, "negligence, standing alone, is not a constitutional violation") (quotations omitted). There is no evidence proving that Proctor willingly concealed material information from the warrant

affidavit. Thus, Plaintiff's contentions in his briefs that the Defendants and their attorney engaged in a conspiracy to conceal information during discovery are entirely speculative and will not be entertained by this Court.

Furthermore, even assuming, *arguendo*, that Proctor acted with a reckless disregard for the truth by misstating or omitting information concerning the MVA record and "Anabel Payne," Plaintiff cannot establish that the inclusion of these facts would have negated probable cause. That is, even after including the information that an "Anabel Payne" was listed as a resident and the fact that Payne lived at 9407 Springhouse Lane (as opposed to 8714 Cresthill Court), the "corrected" warrant affidavit would still establish probable cause for—at minimum—the impersonation charge. A corrected version of the affidavit would preserve the information that the management office had informed Proctor that they had never granted anyone the authority to issue tickets or warnings on the premises, and that Proctor had been informed by the District of Columbia Metropolitan Police Department that Payne was not listed as an officer in their computer system. Sport Fit's file did not contain a police identification card, but instead included a photocopy of a police badge that lacked any identification number. Furthermore, Payne has failed to present any evidence that a District of Columbia police officer has legal authority to issue tickets for motor vehicle violations in Maryland. Accordingly, these facts are independently sufficient to support a finding of probable cause, and they are not negated by information indicating that Payne resided at 9407 Springhouse Lane. Therefore even if these alleged misstatements or omissions were viewed as recklessly stated or omitted, they could not be deemed material.

B. Reasonableness Inquiry

Because Payne has failed to establish a constitutional deprivation, he cannot overcome Proctor's assertion of qualified immunity. Nevertheless, this Court finds that Proctor is entitled to qualified immunity on the additional independent ground that it was reasonable for Proctor to believe, under the circumstances, that his warrant affidavit exhibited probable cause.

The Supreme Court has stated that when the assessment of a warrant affidavit is critical to a court's qualified immunity determination, courts must recognize that "[o]nly where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost." *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). This "additional level of protection," *Hughes v. Meyer*, 880 F.2d 967, 970 (7th Cir. 1989), is justified by the observation that:

> It is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and we have indicated that in such cases those officials—like other officials who act in ways they reasonably believe to be lawful—should not be held personally liable.

Anderson v. Creighton, 483 U.S. 635, 641 (1987) (citing *Malley*, 475 U.S. at 344-45). Courts are further advised not to analyze this issue "from the vantage point of 'skilled lawyers and learned judges,' but rather from the vantage point of 'an objectively reasonable official in similar circumstances at the time of the challenged conduct.'" *Williamson v. Grant*, No. 07-1147, 2009 U.S. Dist. LEXIS 49157, at *18 (D. Md. Jun. 9, 2009) (quoting *Iko v. Shreve*, 535 F.3d 225, 238 (4th Cir. 2008)).

It was reasonable for Proctor to conclude that the information he obtained in the course of his investigation provided probable cause to conclude that Payne had committed a criminal offense. *See Wadkins v. Arnold*, 214 F.3d 535, 539 (4th Cir. 2000) (noting that "the critical question is whether the officer *could have reasonably thought* there was probable cause to seek the warrant") (emphasis in original). The facts mentioned on the face of the affidavit (which this

Court has determined to support probable cause), were further reinforced by certain surrounding circumstances that Proctor perceived during his investigation. *See Wadkins*, 214 F.3d at 540 ("[s]urrounding circumstances, even circumstances that appear innocent when considered alone, may provide a basis for finding probable cause") (quotations and citation omitted). For instance, Proctor and Brown had both been informed by Springhouse Lane's management office that Payne was not a resident of the complex and that nobody had been granted the authority to issue tickets on the premises. When Proctor met with Brown, she appeared "noticeably afraid," and she provided information that was consistent with what she had previously reported to Officer Lynn. Not only did Proctor have cause to question the authenticity of the police badge, Payne's file at Sport Fit did not contain a police identification card, which is typically provided by officers to prove their law enforcement credentials. Moreover, Proctor's suspicion of unlawfulness was buoyed by his understanding that a DCMPD officer does not have any law enforcement authority in the State of Maryland. (Defs.' Ex. 2 at 96.)

Payne contends that when Proctor called the DCMPD to inquire into his existence or identity, he failed to specifically inquire into whether Payne was listed as a "reserve officer." However, Proctor maintains that he had no idea of what a "reserve officer" in the DCMPD was during the investigation, and it was understandable for him to rely upon the personnel division specialist's assurance that all DCMPD officers were listed in the computer. Proctor did not discover that Payne was actually a reserve DCMPD officer until early December of 2006, when the case was called for trial. (Pl.'s Ex. 6, at 6.) Proctor testified at his deposition that if he had been advised by the DCMPD that Payne was in fact a reserve officer, he probably never would have filed the warrant affidavit. (Defs.' Ex. 11 at 52-57, 115-19.) While the photocopy of the

police badge was labeled "Reserve," Proctor had a reasonable suspicion of the badge's authenticity due to the fact that it bore no identification number.

Proctor's investigation was not perfect; indeed, he could have sought additional evidence or pursued certain leads further. As for the issue of Payne's address, an especially circumspect police officer might have sought to confirm who lived at 9407 Springhouse Lane in order to exhaust every potential avenue that could lead to exculpatory evidence. However, the Fourth Circuit has stated that while "an officer may not disregard readily available exculpatory evidence of which he is aware, the failure to pursue a potentially exculpatory lead is not sufficient to negate probable cause." *Wadkins*, 214 F.3d at 541; *see also Reddy*, 101 F.3d at 356 (explaining that "an officer is not denied qualified immunity for making a mistake, as long as that mistake is reasonable under the circumstances"); *Torchinsky v. Siwinski*, 942 F.2d 257, 264 (4th Cir. 1991) ("judges cannot pursue all the steps a police officer might have taken that might have shaken his belief in the existence of probable cause"). As stated above, it was not unreasonable for Proctor to omit mention of the MVA record and the fact that "Anabel Payne" was a resident at the Springhouse Lane complex, because these facts were not material to the finding of probable cause. *See United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990) ("[a]n affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation"). Nor was it a grave error on Proctor's part to decide not to interview Payne before issuing the warrant affidavit. *See Torchinsky*, 942 F.2d at 294 ("[t]he decision of whether or not to interview is inescapably discretionary and [courts] are reluctant to imply an abrogation of immunity on the sole basis of the absence of an interview"). Finally, beyond providing the application for statement of charges, Proctor played no role in the selection of charges, or in the

decision as to whether to issue an arrest warrant or a critical summons—decisions that were independently made by the District Court's Commissioner.

II. Remaining Claims

A. Remaining Federal Claims

Based upon this Court's findings that there was probable cause for Payne's arrest and that Proctor was entitled to qualified immunity, summary judgment will be entered on behalf of the Defendants for Count One. Plaintiff's remaining federal constitutional claims[2] against Proctor must similarly be resolved in Defendants' favor as they could only succeed upon a finding that Payne's arrest was unconstitutional.

In its prior ruling on motion to dismiss, this Court bifurcated all of the federal claims against the City of Laurel and Chief Crawford because they were derivative of Plaintiff's constitutional claims against Proctor. *See* Mem. Op. at 8 (Paper No. 21) (citing *Marryshow v. Bladensburg*, 139 F.R.D. 318, 319 (D. Md. 1991); *Gray v. Maryland*, 228 F. Supp. 2d 628, 638 (D. Md. 2002)). Because Count One has been resolved in favor of Defendants, these additional claims are rendered moot, because any liability against the city or the chief would need to be predicated, in part, upon a finding of liability against Proctor.

B. State Law Claims

In Counts V-VIII Plaintiff has alleged the state common law torts of malicious prosecution, false arrest/false imprisonment, defamation, intentional infliction of emotional distress, and reckless misconduct. All of these claims are intentional in nature and require a showing that Payne was arrested without probable cause, or that Proctor's conduct was of a higher culpability than mere negligence. For instance, malicious prosecution and false

[2] In Count II, Plaintiff alleges that he was deprived of a liberty interest by being subjected to unreasonable bond conditions. In Counts III and IV, Plaintiff asserts that he was deprived of property interests as a result of his arrest.

arrest/false imprisonment require proof that a person was sued or deprived of liberty without probable cause or legal justification. *See, e.g.*, *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29, 37 (1997); *Green v. Brooks*, 125 Md. App. 349, 366 (1999). The tort of intentional infliction of emotional distress requires a showing of intentional or reckless behavior, *Valderrama v. Honeywell Tech. Solutions, Inc.*, 473 F. Supp. 2d 658, 666 n.20 (D. Md. 2007), and in Count VII, Plaintiff alleges that he was defamed because Proctor made false statements with knowledge or with a reckless disregard for the truth. Because this Court has determined that Payne's arrest was supported by probable cause and that Proctor's conduct was, at most, simply negligent, summary judgment will be entered in favor of the Defendants on the state tort law claims.

Finally, Plaintiff's allegations in Count X, asserting state constitutional claims pursuant to Articles 24 and 26 of the Maryland Declaration of Rights must be considered *in pari materia* to his Fourth Amendment claim in Count One. *Miller*, 475 F.3d at 631. Accordingly, summary judgment will also be entered for the Defendants on Count X.

CONCLUSION

For the foregoing reasons, this Court GRANTS Defendants' Motion for Summary Judgment (Paper No. 51) and DENIES Plaintiff's Cross-Motion for Summary Judgment (Paper No. 52). A separate Order follows.

Dated: June 29, 2009

/s/____________________________
Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHAUNCEY LOUIS PAYNE, *

Plaintiff, *

Civil Action No.: RDB-07-583

v. *

CITY OF LAUREL, MARYLAND, *et al.*, *

Defendants. *

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ORDER AND JUDGMENT

For the reasons stated in the foregoing Memorandum Opinion, it is this 29th day of June, 2009, ORDERED and ADJUDGED that:

1. Defendants' Motion for Summary Judgment (Paper No. 51) is GRANTED;
2. Plaintiff's Cross Motion for Summary Judgment (Paper No. 52) is DENIED;
3. That judgment BE, and it hereby IS, ENTERED in favor of the Defendants and against the Plaintiff;
4. The Clerk of the Court transmit copies of this Order and accompanying Memorandum Opinion to the parties;
5. The Clerk of the Court close this case

/s/_______________________________
Richard D. Bennett
United States District Judge