

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**KEVIN MARTEL BUFORD, II,
and DIANNA WALKER**

PLAINTIFFS

v.

CASE NO. 3:10CV00247 BSM

**ALBERT WRIGHT, Chief of Police,
Luxora Police Department, et al.**

DEFENDANTS

ORDER

The complaint and amended complaint [Doc. Nos. 2, 17] filed by plaintiffs Kevin Buford, II, and Dianna Walker (collectively “Plaintiffs”) are dismissed as frivolous and for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B). Walker’s remaining state law claim for political intimidation is dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3). All pending motions are denied as moot.

I. BACKGROUND

In 2010, plaintiff Dianna Walker, Buford’s mother, ran for Mayor of Luxora, Arkansas. [Doc. No. 17 at 1]. During her campaign, she informed defendant Albert Wright, Chief of the Luxora Police Department, that if she won, she would not reappoint him as police chief. [*Id.* at 2].

On September 5, 2010, the Mississippi County Sheriff notified Chief Wright that a Luxora resident, Peggy Wright, reported the previous day that three men broke into her home, tied her up, and robbed her. [*See* Doc. No. 9 at 3, 6]. The men fled in Mrs. Wright’s 1993 Chevrolet Corsica, and after a high speed chase, officers with the Caruthersville,

convicted of a crime. The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 262 (1989); *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). The Eighth Amendment only protects those convicted of a crime. *See Browning-Ferris*, 492 U.S. at 262; *Ingraham*, 430 U.S. at 664; *Hott v. Hennepin Cnty., Minn.*, 260 F.3d 901, 905 (8th Cir. 2001). This claim is therefore dismissed.

c. Fourteenth Amendment Rights

Walker fails to state a Fourteenth Amendment claim. The Fourteenth Amendment protects against the government or a state actor depriving a person of life, liberty, or property without due process of law. *Sitzes v. City of West Memphis, Ark.*, 606 F.3d 461, 475 (8th Cir. 2010). The Due Process Clause confers both substantive and procedural rights. *See Albright v. Oliver*, 510 U.S. 266, 272 (1994). Substantive due process protects certain fundamental rights. Walker fails to state a substantive due process claim because she has failed to show that a fundamental right was violated and that the conduct shocks the conscience. *Missouri Roundtable for Life v. Carnahan*, 676 F.3d 665, 678 (8th Cir. 2012); *Schmidt v. Des Moines Pub. Sch.*, 655 F.3d 811, 816 (8th Cir. 2011). Procedural due process guarantees fair procedures when deprivations of life, liberty, or property occur. Walker fails to state that she was unfairly deprived of life, liberty or property. This claim is therefore dismissed.

C. Joint Claim for “Neglect of Duties”

Plaintiffs neglect of duties claim is dismissed because this it is not a cognizable claim under 42 U.S.C. § 1983. Indeed, to state a § 1983 claim, plaintiffs must show more than negligence. *Daniels v. Williams*, 474 U.S. 327, 335-336 (1986).

D. Joint Claim for “Official Misconduct”

Plaintiffs’ “official misconduct” claim is dismissed for failure to state facts to support it.

E. Buford’s Separate Claim for Malicious Prosecution

To the extent that Buford attempts to assert a malicious prosecution claim, it is dismissed. A malicious prosecution claim can be alleged under § 1983 only if defendants’ conduct also violates some constitutional provision or federal law. *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 758 (8th Cir. 2001). Nothing in the record indicates that defendants violated the Constitution or federal law.

F. Buford’s Separate Claim for False Imprisonment/ False Arrest

Buford’s false imprisonment/false arrest claim is dismissed. In the amended complaint [Doc. No. 17 at 18], Buford states he would like to change his claim of false arrest to one of false imprisonment. In Arkansas, “false imprisonment” is also referred to as “false arrest.” *See McIntosh v. Ark. Republican Party-Frank White Election Comm.*, 766 F.2d 337, 341 (8th Cir. 1985); *Headrick v. Wal-Mart Stores, Inc.*, 293 Ark. 433, 435 (1987). A false arrest claim under § 1983 fails as a matter of law where the officer had probable cause to make the arrest. *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 758 (8th Cir. 2001). Furthermore, “[a]n arrest

executed pursuant to a facially valid warrant generally does not give rise to a cause of action under 42 U.S.C. § 1983 against the arresting officer.” *Fair v. Fulbright*, 844 F.2d 567, 569 (8th Cir. 1988). Buford was arrested pursuant to a facially valid warrant. Therefore, he fails to state a claim for false arrest or false imprisonment.

G. Walker’s Separate State Law Claim of Political Intimidation

Walker brings a separate claim of political intimidation which arises under Arkansas state law. *See* Ark. Code § 7-1-104. Because Plaintiffs’ federal claims are hereby dismissed, the only basis for jurisdiction over Walker’s remaining state law claim would be supplemental jurisdiction under 28 U.S.C. § 1367. Under Subsection (c)(3) of Section 1367, a federal district court can decline to exercise supplemental jurisdiction over a claim “if [it] has dismissed all claims over which it has original jurisdiction.” Pursuant to that authority, Walker’s remaining state law claim is hereby dismissed without prejudice. *See* 42 U.S.C. § 1367(c)(3).

IV. CONCLUSION

The complaint and amended complaint [Doc. Nos. 2, 17] are dismissed as frivolous and for failure to state a claim upon which relief may be granted. Dianna Walker’s state law claim for political intimidation is dismissed without prejudice. All pending motions are denied as moot. It is hereby certified, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this order and the accompanying judgment would not be taken in good faith. An appropriate judgment shall accompany this order.

IT IS SO ORDERED this 21st day of September 2012.

Brian S. Miller

UNITED STATES DISTRICT JUDGE