

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

RACHEL E. STOCKWELL,

Plaintiff,

v.

CASE NO. 8:15-cv-951-T-23TBM

ANTWAN NELSON, et al.,

Defendants.

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**ORDER**

Rachel E. Stockwell sues (Doc. 1) both officer Antwan Nelson in his individual capacity and the City of Tampa after allegedly sustaining injuries during an arrest. Specifically, Stockwell sues Nelson under 42 U.S.C. § 1983 for the use of excessive force (Count I) and under Florida law for battery (Count II). Also, Stockwell sues the City of Tampa under Florida law for battery (Count III) and for negligent retention (Count IV). The City of Tampa moves (Doc. 8) to dismiss Count IV and argues that Stockwell “fails to state a cause of action because the officer was not acting outside the course and scope of his employment as is required to maintain this claim against the City of Tampa.”

“Florida law requires that a claim for negligent retention allege acts committed outside the course and scope of employment.” *Belizaire v. City of Miami*, 944 F. Supp. 2d 1204, 1215 (S.D. Fla. 2013) (Moreno, J.); *see also Watson v. City of*

*Hialeah*, 552 So. 2d 1146, 1148 (Fla. 3d DCA 1989) (Jorgenson, J.) (“By its very nature, an action for negligent retention involves acts which are *not* within the course and scope of employment and allows recovery even when an employer is not vicariously liable under the doctrine of respondeat superior.”). As the City of Tampa correctly argues, the complaint “alleges that Officer Nelson was on duty, in uniform, and was in the process of investigating an incident which involved a friend of [Stockwell’s] at the time [Nelson] made contact with [Stockwell].” (Doc. 8 at 4) Thus, the complaint fails to allege any fact demonstrating that Nelson acted outside the course and scope of his employment. Accordingly, the City of Tampa’s motion (Doc. 8) to dismiss is **GRANTED**, and Count IV is **DISMISSED**.

ORDERED in Tampa, Florida, on August 19, 2015.



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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE