

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MAURA CAVANAUGH SMITHIES,	:	
	:	
Plaintiff,	:	
	:	
V.	:	CASE NO. 3:01CV1511 (RNC)
	:	
PHILIP BIALOGLOWY and	:	
CHRISTOPHER NICHOLS,	:	
	:	
Defendants.	:	

RULING AND ORDER

Plaintiff brings this action under 42 U.S.C. § 1983 claiming that her right to due process was violated when defendant Bialoglowy, a police officer, threatened to have her arrested for larceny if she did not pay \$400 to defendant Nichols, the owner of a sporting goods store, who had accused plaintiff of failing to return a \$400 item she had borrowed from his store. The complaint also includes state law claims for infliction of emotional distress and theft by extortion. Both defendants have moved to dismiss the § 1983 cause of action. For the reasons summarized below, the motions to dismiss are granted.

Bialoglowy contends that plaintiff's procedural due process claim fails to state a claim for relief in light of Parratt v. Taylor, 451 U.S. 527 (1981), and Hudson v. Palmer, 468 U.S. 517 (1984), because (1) the alleged deprivation of property (i.e. the extorted payment of \$400 dollars, which plaintiff paid to avoid arrest) was caused not by state law, policy or custom, but by

action on his part that was "random and unauthorized" within the meaning of those cases and (2) Connecticut tort law provides plaintiff with an adequate post-deprivation remedy. I agree that Parratt and Hudson must be applied to defeat plaintiff's procedural due process claim. The issue under Parratt and Hudson is not whether Bialoglowy was authorized to apply for arrest warrants, as plaintiff seems to contend, but whether he was authorized to threaten people with false arrest in order to extort money from them. Plaintiff's allegations concerning the close relationship between Nichols and the Police Department (Complaint, ¶ 4) and Nichols' connections with Bialoglowy (Complaint, ¶ 10) do not provide a basis for finding that Bialoglowy's allegedly unlawful conduct was authorized by the state or that the state could have predicted or prevented his alleged misconduct in this case. Plaintiff's reliance on Honey v. Distelrath, 195 F.3d 531 (9th Cir. 1999), is misplaced. There, the Ninth Circuit found that Parratt and Hudson did not bar the plaintiff's claim because the defendants "had the authority to effect the very deprivation complained of, and the duty to afford Honey procedural due process." 195 F.3d at 533. With regard to the second prong of Bialoglowy's argument, plaintiff does not deny that Connecticut tort law gives her an adequate post-deprivation remedy. Accordingly, her procedural due process claim must be dismissed.

Bialoglowy contends that plaintiff's substantive due process

claim also must be dismissed because the alleged misconduct does not "shock the conscience" and thus does not reach the level of offensiveness actionable under County of Sacramento v. Lewis, 523 U.S. 833, 855 (1998). I agree. Crediting the allegations of the complaint, Nichols claimed that plaintiff had failed to return the borrowed item, demanded that she return it or pay for it, and when she refused, went to the police and caused Bialoglowy to threaten her with arrest for larceny, which prompted her to pay the disputed sum (Complaint, ¶¶ 9-11). These allegations do not depict conduct so arbitrary and irrational as to violate substantive due process.

Because the complaint fails to state a viable due process claim against Bialoglowy, it necessarily also fails to state such a claim against his co-defendant, Nichols.

Accordingly, the motions to dismiss filed by both defendants are hereby granted. Plaintiff's § 1983 claims are dismissed with prejudice. The court declines to exercise jurisdiction over the pendent state law claims, which are hereby dismissed without prejudice. The Clerk may close the file.

So ordered.

Dated at Hartford, Connecticut this 19th day of December 2001.

Robert N. Chatigny
United States District Judge