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United States District Court, N.D. Texas, Dallas Division.

Oscar D. WILLIAMS, Jr., et al., Plaintiffs,
v.
KAUFMAN COUNTY and Kaufman County Sheriff Robert Harris, Defendants.

No. CIV.A. 397CV0875L. | March 29, 2002.

Opinion

MEMORANDUM OPINION AND ORDER

LINDSAY, District J.

***1** Plaintiffs Thomas Gene Brown ("Brown"), Cecil Wayne Jackson ("Jackson"), and L.B. Brumley ("Brumley") (collectively, "Plaintiffs") filed this action pursuant to 42 U.S.C. § 1983, contending that Defendants Kaufman County and Kaufman County Sheriff Robert Harris ("Sheriff Harris") (collectively, "Defendants") unlawfully searched and detained them in violation of their rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution.

The original Plaintiffs were seventeen individuals who were detained and searched at the Classic Club, also known as the Sugar Shack (the "Club"), in Terrell, Texas, on the evening of April 21, 1995. Only three Plaintiffs remain. By Memorandum Opinion and Order dated February 7, 2000, the court granted in part and denied in part Defendants' Supplemental Motion for Summary Judgment. *See Williams v. Kaufman County, Texas,* 86 F.Supp.2d 586 (N.D.Tex.2000) (Lindsay, J.). Specifically, the court granted summary judgment on Plaintiffs' verbal harassment and invasion of privacy claims, and granted summary judgment on certain unlawful detention claims made by Plaintiffs who were located inside the Club when the officers arrived to execute the warrant. The court denied summary judgment on Plaintiffs' illegal strip search claims. The court also denied summary judgment on any unlawful detention claims made by Plaintiffs who were not present on the premises when the officers arrived.

The court held a bench trial on Plaintiffs' remaining claims from September 12–15, 2000. By this Memorandum Opinion and Order, the court makes its findings of fact and conclusions of law as required by Fed.R.Civ.P. 52(a).[1]

[1] Plaintiffs filed their Amended Proposed Findings of Fact and Conclusions of Law on August 31, 2001; Defendants filed their Amended Proposed Findings of Fact and Conclusions of Law August 29, 2001. Plaintiffs moved for leave to file a post trial brief on September 19, 2001. The parties filed their respective post trial briefs on October 19, 2001.

I. Findings of Fact[2]

[2] The facts contained herein are either undisputed or the court has made the finding based on the credibility or believability of each witness. In doing so, the court considered all of the circumstances under which the witness testified which include: the relationship of the witness to Plaintiffs or Defendants; the interest, if any, the witness has in the outcome of the case; the witness's appearance, demeanor, and manner of testifying while on the witness stand; the witness's apparent candor and fairness, or the lack thereof; the reasonableness or unreasonableness of the witness's testimony; the opportunity of the witness to observe or acquire knowledge concerning the facts to which he or she testified; the extend to which the witness was contradicted or supported by other credible evidence; and whether such contradiction related to an important factor in the case or some minor or unimportant detail.

This lawsuit arises from Defendants' execution of a search warrant on the premises of a club located in Kaufman County, Texas. Robert Harris was the sheriff of Kaufman County, Texas at the time the search was executed. As sheriff, Harris acted as the final policymaker with respect to law enforcement for Kaufman County, and was responsible for the training and supervision of all law enforcement personnel within his command. On the night in question, Sheriff Harris and a team of law enforcement officers detained and strip searched every man and woman who happened to be on or near the premises of the Club.[3]

[3] Although Sheriff Harris may have not personally detained or strip searched anyone, the entire operation took place at his insistence and direction, and under his control. In other words, he was the ramrod of the whole shebang.

On April 21, 1995, with information from a confidential informant, Sheriff Harris completed a sworn affidavit, requesting the issuance of a search warrant for a building known as the "Classic Club," located in Terrell, Texas. The affidavit identified five individuals, Ronnie "Fat"

Jackson, "Head" Jackson, Harold Jackson, Kirk Martin, and Carron Brown, as persons suspected of dealing rock cocaine. Additionally, the affidavit included as suspects "all other person or persons whose names, identities, and descriptions are unknown to the affiant." The affidavit did not identify Plaintiffs by name or description, or otherwise implicate them in criminal activity.

***2** A magistrate judge signed the warrant based on the information contained in Sheriff Harris's affidavit. The warrant authorized law enforcement officials to "enter the suspected place described in [the affidavit] and to there search for the personal property described ... and to seize same and to arrest and bring before [the magistrate] each suspected party named in [the affidavit]." The warrant did not authorize or command a strip search, or authorize the search of anyone other than those specifically identified in the warrant.

Around 9:45 p.m., April 21, 1995, Sheriff Harris and approximately forty law enforcement officials arrived at the Club to execute the warrant. Sheriff Harris was the commanding officer and was on the premises during the execution of the warrant. Pursuant to his orders, law enforcement officials secured an outer perimeter around the Club. This outer perimeter enclosed a small courtyard and the entire exterior of the building. All person and property located within the perimeter constituted the "search area." The "search area" extended from the interior of the building into the parking lots, and included the entire city block up to the public roadway.

After securing the perimeter, law enforcement officials searched and detained everyone on the premises. Plaintiffs Brumley and Jackson were on the premises at the time the perimeter was established. Jackson, although unknown to the officers, arrived at the scene only moments before the law enforcement officials arrived. In fact, Jackson was initially detained outside of the building before having even entered the Club. Brown approached the premises from outside the perimeter and attempted to make entry. Officer Knapp intercepted Brown, and advised him at least three times to leave the area. Brown persisted, so Knapp arrested him, and included him in the searches.

Sheriff Harris testified that in April 1995, the Kaufman County Sheriff's Department had a written policy concerning "tactical entries" and "hazardous warrants." These written policies did not address the circumstances in which law enforcement official may conduct a strip search. Sheriff Harris further testified, however, that between the years 1985 and April 1995, he developed certain unwritten standard operating procedures and policies with respect to the execution of hazardous search warrants. It was Defendants' policy and practice, according to Sheriff Harris, to detain and strip search every person found within the perimeter of the search area when executing a "hazardous warrant," even in the absence of individualized probable cause or reasonable suspicion.

Pursuant to these policies, law enforcement officials handcuffed Plaintiffs and placed them in the "prone position," face down on the ground with their hands behind their backs. The officials then conducted a pat-down search of each person, emptied his or her pockets, and checked him or her for outstanding warrants. After conducting these initial searches, the officials then proceeded to strip search everyone on the premises, including Plaintiffs in this action.

***3** Pursuant to Sheriff Harris's blanket strip search policy, law enforcement officials conducted approximately one hundred strip searches on the night in questions. Plaintiffs were required to remove all of their clothing and manipulate their penises so law enforcement officers could inspect the underside of their genitalia. Officers strip searched approximately fifteen to twenty women pursuant to Sheriff Harris's policy. Women were required to manipulate their breasts and allow law enforcement officers to inspect their vaginas from a distance of four or five feet. Plaintiffs were further required to spread their buttocks, allowing law enforcement officers to inspect visually the area around their anus. It took the law enforcement officials approximately three hours to complete the strip search of everyone on the premises.

II. Issues Presented and Contentions of the Parties

A. Plaintiffs' Contentions

Collectively, Plaintiffs contend Sheriff Harris violated their rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution by directing law enforcement personnel to strip search them without individualized probable cause or reasonable suspicion. Plaintiffs sue Sheriff Harris in his individual and official capacities. Plaintiff Brown brings an additional constitutional claim based on the circumstances of his detention.[4] Plaintiffs request Kaufman County be held liable for the injuries they sustained as a direct result of the County's adoption of these unconstitutional policies. Finally, Plaintiffs seek declaratory relief regarding Defendants' alleged violation of Article I, Section 9 of the Texas Constitution.

[4] As noted above, the court determined Sheriff Harris is entitled to qualified immunity regarding Jackson and Brumley's unlawful detention claims. *See Williams,* 86 F.Supp.2d 596. The court granted summary judgment in favor of Sheriff Harris on these claims in light of the Supreme Court's holding in *Michigan v. Summers,* 452 U.S. 692, 705 (1981) (determining occupants of a premises being searched pursuant to a valid warrant

may be lawfully detained while the search is being conducted). Plaintiff Brown, however, was not inside the Club or on the premises when Defendants executed the search warrant. Accordingly, only Brown's unlawful detention claim remains before the court.

B. Defendants' Contentions

Sheriff Harris contends the doctrine of qualified immunity shields him from liability on all of Plaintiffs' § 1983 claims. With respect to the strip search, Sheriff Harris contends his conduct was objectively reasonable. With respect to Brown's unlawful detention claim, Sheriff Harris contends he detained and searched Brown pursuant to a lawful arrest, and in any event, the detention of Brown was objectively reasonable given Brown's behavior on the night in question.

Defendant Kaufman County contends there is no evidence that its policies were adopted with deliberate indifference to the constitutional rights of others.

III. Conclusions of Law

A. Section 1983

Section 1983 provides that any person who acts under color of state law to deprive another of a constitutional or federally protected right may be required to pay money damages. 42 U.S.C. § 1983.[5] To recover under this section, Plaintiffs must demonstrate, by a preponderance of the evidence, that the search and detention deprived them of a constitutionally protected right, that Defendants are legally responsible for the deprivation, and that such deprivation was the proximate cause of their injuries. Based on the evidence adduced at trial, the court finds Defendants Sheriff Harris and Kaufman County liable under § 1983.

[5] Section 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

B. Plaintiffs' Illegal Strip Search Claims

***4** The Fourth Amendment prohibits unreasonable searches and seizures. *See Terry v. Ohio,* 392 U.S. 1, 20 (1968). Specifically, the Warrant Clause of the Fourth Amendment provides that a warrant must "particularly describe the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. The scope of a lawful search is thus "defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Maryland v. Garrison,* 480 U.S. 79, 84 (1987). These constitutional requirements assure citizens subject to search and seizure that such intrusions are not the random or arbitrary acts of government agents.

In *Ybarra v. Illinois,* the Supreme Court clarified the scope of a lawfully obtained warrant. Specifically, the Court held that the search or seizure of a person must be supported by "probable cause particularized with respect to that person." 444 U.S. 85, 91 (1979). In other words, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* In *Ybarra,* a judge authorized the search of a tavern and "the person of 'Greg,' the bartender, a male with blondish hair appx. 25 years." The search warrant was based upon the testimony and affidavit of a confidential informant. *Id.* at 88. The warrant authorized the police to search for evidence of possession of a controlled substance. *Id.*

When the police arrived to execute the search, the officers proceeded to pat-down all of the customers in the establishment. *Id.* The law enforcement officers "knew nothing in particular about Ybarra, except that he was present" when the search warrant was executed. The Supreme Court determined the officers lacked probable cause at the time the search warrant was issued to believe that every person at the tavern, with the exception of the person specifically named in the warrant, would be or had been violating the law. *Id.* at 90. The Court stated "[w]here the standard is probable cause, a search or seizure of a person *must be particularized* .... This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize *another* or to search *the premises where the person may happen to be.*" *Id.* at 91 (emphasis added).

The court believes *Ybarra* controls in this case. Sheriff Harris obtained a warrant authorizing law enforcement officials to "enter the suspected place described in said Affidavit and to there search for the personal property described in said Affidavit and to seize same and to arrest and bring before [the magistrate] each suspected party named in the Affidavit." The Affidavit defined the "suspected place" as the Club, and described the "suspected party" to include the names and descriptions of five individuals. The evidence adduced at trial demonstrated that none of the Plaintiffs in this action was specifically named or otherwise identified in the search warrant or in the Sheriff's Affidavit. Further, the Sheriff testified he had no individualized probable cause to search Plaintiffs. Lacking such probable cause, the officers

nevertheless detained and searched every customer in the establishment, including the three plaintiffs in this action. Based on these facts, the court finds Defendants violated the Fourth Amendment.[6]

[6] Defendants distinguish *Ybarra* from the facts of this case by pointing out that their warrant mandated the search of "all other person or persons whose names, identities, and descriptions are unknown to the affiant." The court finds Defendants' distinction of no moment. The Supreme Court has uniformly held "open ended" or "general" warrants unconstitutional. *Ybarra,* 444 U.S. at 92 n. 4. In *Ybarra,* the Court stated, "[i]t follows that a warrant to search a place cannot normally be construed to authorize a search of each individual in that place.... Consequently we need not consider situations where the warrant itself authorizes the search of unnamed persons in a place and is supported by probable cause to believe that persons who will be in the place at the time of the search will be in possession of illegal drugs." *Id.* In this case, Sheriff Harris candidly admitted he had no probable cause to search any of the Plaintiffs. Thus, even if *Ybarra* permitted such "open ended" searches, the court would nevertheless find a violation of the Fourth Amendment based on Sheriff Harris's lack of probable cause.

***5** Defendants nevertheless contend the searches were reasonable in light of the Club's "notorious" history.[7] They argue *Terry* authorized them to search every one on the premises to ensure their safety as they executed the warrant. Defendants read the *Terry* exception too broadly. Under *Terry,* an officer may conduct a pat-down search to find weapons when he reasonably believes that person possesses a weapon. 392 U.S. at 30. In *Ybarra,* however, the Supreme Court stated the " 'narrow scope' of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion *directed at the person to be frisked,* even though the person happens to be on premises where an authorized narcotics search is taking place." *Ybarra,* 444 U.S. at 94 (emphasis added). Sheriff Harris and Officer Knapp confessed at trial that they had no evidence to support their belief or suspicion that the individual plaintiffs in this action were in possession of a concealed weapon or contraband. Instead, Sheriff Harris and Officer Knapp repeatedly testified they searched every person who happened to be on the premises whether or not they had any individualized probable cause or reasonable suspicion.

[7] Defendants produced evidence at trial that in March 1994, law enforcement officers executed a search warrant at the Club and found large quantities of marijuana and crack cocaine. Defendants further alleged at trial that other dangerous and violent activity had occurred prior to the events giving rise to this lawsuit. Defendants contend this history caused them to believe that the occupants of the premises were most likely armed and dangerous on the night in question.

Moreover, even if Sheriff Harris and his officers had established individualized probable cause or reasonable suspicion, it would still not justify such an intrusive and outrageous search. In *Terry,* the Supreme court stated, "[t]he scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." 392 U.S. at 20 *(quoting Warren v. Hayden,* 387 U.S. 294, 310 (1967)). In *Bell v. Wolfish,* the Supreme Court explained:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

441 U.S. 520, 558–559 (1979). In determining whether a search is reasonable, the court must thus balance the goals of law enforcement, including the legitimate interest in the safety of the officers, against the Plaintiffs' interest in privacy and personal liberty.

Not surprisingly, courts have uniformly recognized the unusually intrusive character of strip searches. *See, e.g., Wolfish,* 441 U .S. at 560; *Arruda v. Fair,* 710 F.2d 886, 887 (1st Cir.1983) (noting the "severe if not gross interference with a person's privacy that occurs when [officials] conduct a visual inspection of body cavities."); *Marybeth G. v. City of Chicago,* 723 F.2d 1263, 1273 (7th Cir.1983) (noting body cavity searches are "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission."); *Kennedy v. Los Angeles Police Dept.,* 901 F.2d 702, 711 (9th Cir.1989) (recognizing "the intrusiveness of a body cavity search cannot be overstated"). Strip searches of this character represent an extreme intrusion into personal liberty and affront to individual dignity. *See Wolfish,* 441 U.S. at 576–77 (noting visual body cavity searches "represent one of the most grievous offenses against personal dignity and common decency") (Marshall, J., dissenting).

***6** The court must, however, weigh against this intrusion the legitimate interests of law enforcement. Under *Bell,* strip searches and visual inspections must be justified by at least a reasonable suspicion that the individual is

concealing weapons or contraband. *See Stewart v. Lubbock County, Texas,* 767 F.2d 153, 156 (5th Cir.1985). Sheriff Harris testified his officers handcuffed, patted-down, and conducted background checks on every person on the premises *before* conducting the strip searches. Despite taking these precautions, the officers nonetheless forced Plaintiffs to disrobe, manipulate their genitalia, spread their buttocks, and allow officers to inspect the private areas of their bodies. Moreover, the officers conducted these searches in an atmosphere of questionable privacy. Under the facts of this case, the court cannot conclude that the security interests of the law enforcement personnel outweighed Plaintiffs' privacy interests. On the contrary, the court finds Sheriff Harris's behavior shocking and outrageous, and in gross violation of the Fourth Amendment.

C. Doctrine of Qualified Immunity

Sheriff Harris contends the doctrine of qualified immunity protects him from all section 1983 liability. Government officials who perform discretionary functions are entitled to the defense of qualified immunity, which shields them from suit as well as liability for civil damages, if their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982).

In *Williams,* this court held Plaintiffs possess a Fourth Amendment right to be free from unreasonable searches in the absence of probable cause or reasonable suspicion. 86 F.Supp.2d at 593. The court further held that this right was clearly established in April of 1995. *Id.* The court stated: "Based on *Ybarra* and *Watt,* which were decided fifteen and seven years, respectively, before the search in this case occurred, the court finds that the right to be free from an unreasonable strip search was clearly established." *Id.* at 594. Sheriff Harris nevertheless contends the testimony and evidence adduced at trial demonstrate his conduct was objectively reasonable under the applicable standards.

In *Anderson v. Creighton,* the Supreme Court held the relevant question on this issue is whether a reasonable officer or public official *could have believed* that his conduct was lawful in light of clearly established law and the information possessed by him. If public officials or officers of "reasonable competence could disagree [on whether an action is illegal], immunity should be recognized." *Malley v. Briggs,* 475 U.S. 335, 341 (1986); *Gibson v. Rich,* 44 F.3d 274, 277 (5th Cir.1995) *(citing Babb v. Dorman,* 33 F.3d 472, 477 (5th Cir.1994)). Qualified immunity is designed to protect from civil liability "all but the plainly incompetent or those knowingly violate the law." *Malley,* 475 U.S. at 341. Conversely, an official's conduct is not protected by qualified immunity if, in light of clearly established pre-existing law, it was apparent the conduct, when undertaken, would be a violation of the right at issue. *Foster,* 28 F.3d at 429. Thus, the court must determine whether, after making its findings of fact, "all reasonable officials in the defendant's circumstances would have then known that the defendant's conduct violated" Plaintiffs' constitutional rights. *See Cozzo v. Tangipahoa Parish Council–President Gov't,* 262 F.3d 501, 511 (5th Cir.2001) (citations omitted). With this standard in mind, the court considers Sheriff Harris' qualified immunity defense.

1. Plaintiffs' Strip Search Claims

***7** The court concludes, based on the evidence adduced at trial, that no reasonable officer could have believed that requiring a strip search in these circumstances, without probable cause or reasonable suspicion, was objectively reasonable. As stated before, the evidence at trial demonstrated that neither the search warrant nor the Sheriff's Affidavit identified Plaintiffs as suspects. Sheriff Harris repeatedly admitted he maintained the policy of strip searching every person, whether or not he had probable cause or reasonable suspicion to do so. Sheriff Harris further admitted he strip searched Plaintiffs merely because they happened to be on the premises during the execution of the warrant. In fact, when questioned by the court, Sheriff Harris conceded that under his policy and practices, anyone who happened to be on the premises, including the judge himself, would be searched regardless of his purpose for being there. "Certainly," as this court previously held, "our Constitution would not permit such a degrading and humiliating search to be conducted against one who by mere coincidence appeared at the Club under the circumstances previously described." *Williams,* 86 F.Supp.2d at 595. The court finds Defendants' conduct patently unreasonable. The court therefore holds that the qualified immunity doctrine does protect Sheriff Harris from liability on Plaintiffs' strip search claims.

2. Brown's Unlawful Detention Claim

The court concludes Sheriff Harris is entitled to qualified immunity on Brown's unlawful detention claim. As noted elsewhere, Brown was not initially on the premises when law enforcement officers secured the perimeter. Deputy Sheriff Michael Knapp testified at trial that he was stationed at the perimeter when Brown approached and attempted to enter the premises. Knapp advised Brown no fewer than three times that he would not be allowed to enter the Club during the search, and that he should vacate the premises. Brown nevertheless persisted, so Knapp arrested him for interfering with the duties of a public servant.

Admittedly a close call, the court nevertheless holds Brown's detention was not objectively unreasonable under existing law. Under *Michigan v. Summers,* 452 U.S. 692, 705 (1981), the occupants of a premises being searched for contraband pursuant to a valid warrant may be lawfully detained while the search is being conducted. Although Brown was not initially "an occupant" of the premises, he carried himself within the perimeter of the search area, despite being given repeated warnings by law enforcement officials to vacate the area. Under these facts, the court cannot conclude that all reasonable officials in the Defendants' circumstances would have then known that the this conduct was unconstitutional.

These facts and conclusions, however, do not preclude Brown from recovering on his illegal strip search claim. Even assuming Officer Knapp made a lawful custodial arrest, law enforcement officers "must [still] be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." *United States v. Edwards,* 415 U.S. 800, 808 n. 9 (1974) (*quoting Terry,* 392 U.S. at 20). Numerous courts have since held that *Robinson* does not authorize a full strip and visual bodily cavity search. *See, e.g., Fuller v. M.G. Jewelry,* 950 F.2d 1437, 1446 (9th Cir.1991); *Mary Beth G. v. City of Chicago,* 723 F.2d 1263, 1271 (7th Cir.1983). Thus, as the court explained above, each of the three Plaintiffs may recover damages on their illegal strip search claims.

D. Municipal Liability

***8** Plaintiff' suit against Sheriff Harris in his official capacity is treated as a claim against Kaufman County, the governmental entity of which Harris is an employee, representative, or official. *See Hafer v. Melo,* 502 U.S. 21, 25 (1991); *Brooks v. George County,* 84 F.3d 157, 165 (5th Cir.1996). A governmental entity can be sued and subjected to monetary damages and injunctive relief under 42 U.S.C. section 1983 only if its official policy or custom causes a person to be deprived of a federally protected right. *Board of the County Commissioners v. Brown,* 520 U.S. 397, 403 (1997); *Monell v. New York City Dept. of Social Services,* 436 U.S. 658 (1978). A governmental entity *cannot* be liable for civil rights violations under a theory of respondeat superior or vicarious liability. *Id.; see also Baskin v. Parker,* 602 F.2d 1205, 1208 (5th Cir.1979). Official policy is defined as:

> 1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the [county] lawmaking officers or by an official to whom the lawmakers have delegated policy making authority; or,
>
> 2. A persistent, widespread practice of [county] officials or employees which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents [county] policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the [county] or to an official to whom that body had delegated policy-making authority.

Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir.1984); *Bennett v. City of Slidell,* 735 F.2d 861, 862 (5th Cir.1984). A plaintiff must identify the policy, connect the policy to the governmental entity itself and show that his injury was incurred because of the application of that specific policy. *Bennet,* 728 F.2d at 767. A plaintiff must establish that the governmental entity through its deliberate conduct was the moving force behind the injury or harm suffered and must establish a direct causal link between the governmental entity's action and the deprivation of a federally protected right. *Bryan County v. Brown,* 520 U.S. at 403–04.

Liability must rest on official policy, meaning the governmental entity's policy, and not the policy of an individual official. *Bennet,* 728 F.2d at 769. The official complained of must possess

> Final authority to establish [county] policy with respect to the action ordered.... the official must also be responsible for establishing final governmental policy respecting such activity before the [county] can be held liable...[W]hether an official had final policymaking authority is a question of state law.

Pembaur v. City of Cincinnati, 475 U.S. 469, 481–82 (1986). An employee, agency, or board of a governmental agency is not a policymaker unless the governmental entity, through its lawmakers, has delegated exclusive policymaking authority to that employee agency or board and *cannot* review the action or decision of the employee, agency, or board. *See St. Louis v. Praprotnik,* 485 U.S. 112, 127 (1988); *Worsham v. City of Pasadena,* 881 F.2d 1336, 1340–41 (5th Cir.1989).

***9** The court first looks to state law to determine if Sheriff Harris possessed final decision making authority with respect to law enforcement decisions. "[I]t has long been recognized that, in Texas, the county sheriff is the county's final policymaker in the area of law enforcement." *Colle v. Brazos County, Texas,* 981 F.2d 237, 244 (5th Cir.1993) (*quoting Turner v. Upton County,* 915 F.2d 133, 136 (5th Cir.1990)); *see also Familias Unidas v. Briscoe,* 619 F.2d 391, 404 (5th Cir.1980). By virtue of being elected to office, Sheriff Harris has the exclusive policymaking authority in the area of law enforcement. *Turner,* 915 F.2d at 136 ("Because of the

unique structure of county government in Texas ... elected county officials, such as the sheriff ... hold[ ] virtually absolute sway over the particular tasks or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters from his conduct therein.") (*quoting Familias Unidas,* 619 F.2d at 404). Sheriff Harris conceded at trial that no Kaufman County body or official can review his actions or decisions in the area of law enforcement. The court thus concludes that Sheriff Harris is a final policymaker for the purposes of determining municipal liability. As such, Kaufman County may be held liable for the illegal or unconstitutional actions or policies of Sheriff Harris.

Moreover, Sheriff Harris coordinated the execution of the warrant, was physically present on the night in question, and was the ranking officer when the search warrant was executed. Sheriff Harris's decision to strip search all of the Plaintiffs because of their mere presence at the Club and to detain them for more than three hours while the strip searches took place was the official policy, practice, or custom of Kaufman County because Sheriff Harris was the final policymaker in the area of law enforcement. Based on the facts adduced at trial and outlined above, the court embraces the unavoidable conclusion Plaintiffs suffered injury as a result of this unconstitutional policy. The court also concludes these policies and procedures were adopted with callous and deliberate indifference to the constitutional rights of those affected. The Sheriff intentionally adopted the strip search policy, and in light of existing law, it was apparent to any reasonable law enforcement officer that such searches violated the United State Constitution. It was likewise apparent that the adoption of such a policy would likely result in the deprivation of Plaintiffs' constitutional rights. The court therefore holds Defendant Kaufman County liable under section 1983.

E. Monetary Damages

Damage awards in actions brought under section 1983 should "provide fair compensation for injuries caused by the deprivation of rights." *Carey v. Piphus,* 435 U.S. 247, 258 (1978). Compensatory damages pursuant to section 1983 are governed by common law tort principles. *See Sockwell v. Phelps,* 20 F.3d 187, 192 (5th Cir.1994). Damages for emotional harm, however, are recoverable "only when a sufficient causal connection exists between the alleged injury" and "only when claimants submit proof of actual injury." *Patterson v. P.H.P. Healthcare Corp.,* 90 F.3d 927, 938 (5th Cir.1996). In *Patterson,* The Fifth Circuit explained

> ***10** [i]n order to establish tangible loss, we recognize that *Carey v. Piphus* requires a degree of specificity which may include corroborating testimony or medical or physcological evidence in support of the damage award. Hurt feelings, anger and frustration are a part of life. Unless the cause of action manifests some specific discernible injury to the claimant's emotional state, we cannot say that the specificity requirement of *Carey* has been satisfied."

Id. at 940; *see also Brady v. Fort Bend County,* 145 F.3d 691, 718 (5th Cir.1998) ("Neither conclusory statements that the plaintiff suffered emotional distress nor the mere fact that a constitutional violation occurred supports an award of compensatory damages."); *Ryland v. Shapiro,* 708 F.2d 967, 976 (5th Cir.1983) ("Mere proof of the violation of a right will not support an award of compensatory damages.").

In this case, Plaintiffs failed to prove a specific and discernible injury to their emotional state. Plaintiffs offer no evidence that corroborates or quantifies the extent of their injuries. Instead, Plaintiffs support their claims for mental damages with their own testimony. Jackson, for example, testified he still gets "a little upset" by the searches, and that he sometimes "feels a little down about it." Brumley stated he was "extremely hurt" and that his "pride was totally destroyed." Brown generally intimates the incident affected his reputation in the community, and that he may have lost contracting jobs as a result. Yet on cross-examination, Brown admitted he had been arrested on four separate occasions, and could identify no contracting jobs he lost as a result of Defendants' actions.[8] Although the court recognizes the brazen and reckless violation of Plaintiffs' rights, and is mindful of their understandably strong feelings, their testimony alone simply does not "speak to the nature, extent, and duration" of the harm "in a manner that portrays a specific and discernable injury." *Brady v. Fort Bend County,* 145 F.3d 691, 720 (5th Cir.1998). Although the result is harsh, Supreme Court and Fifth Circuit case law simply will not allow an award of compensatory damages based on these facts.

[8] Brown also testified that on one occasion, he was arrested at his home and brought to the police station in his underwear. The Fifth Circuit has held, in the context of a false imprisonment claim, that while "[e]ven a minimal sort of penal confinement may be debilitating to many ... this mental anguish may be much less for the recidivist than for one incarcerated for the first time." *See Bryan v. Jones,* 519 F.2d 44, 46 (5th Cir.1975).

Plaintiffs contend that they are entitled to recover "compensatory damages which include the stigma,

humiliation, fright, emotional trauma, and mental anguish which the Plaintiffs suffered, including pain and suffering, by reason of the actions of the Defendants." Pls' Motion for Judgment and Pls' Post Trial Brief in Support of Motion for Judgment at 17. In support of this proposition, Plaintiffs rely on *Martin v. City of New Orleans,* 678 F.2d 1321 (5th Cir.1982), *cert. denied,* 459 U.S. 1203 (1983). Plaintiffs reliance on *Martin* is misplaced. In *Martin,* the plaintiff was struck in the back of his neck by a bullet fired by a city police officer who was trying to stop a reckless and speeding driver. The bullet was not removed because it was "a fraction of an inch from [Martin's] spinal cord," and removal was therefore considered too dangerous. *Id.* at 1327. Martin suffered a physical injury which was specific and discernible that could have had serious consequences in the future; however, Plaintiffs have suffered no such injuries in this case. Moreover, Plaintiffs offer no evidence or suggestion as to what would be an appropriate amount of compensatory damages.

***11** In the Fifth Circuit, a Section 1983 plaintiff who proves a constitutional violation is nonetheless entitled to nominal damages in the absence of actual injury. *See Louisiana ACORN Fair Housing v. LeBlanc,* 211 F.3d 298, 302 (5th Cir.2000); *see also Memphis Comm. Sch. Dist. v. Stachura,* 477 U.S. 299, 308 n. 11 (1986) ("[N]ominal damages ... are the appropriate means of 'vindicating' rights whose deprivation has not caused actual, provable injury"). "By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey,* 435 U.S. at 266. The court thus awards nominal damages in the amount of $100 per Plaintiff.[9]

[9] Black's Law Dictionary defines nominal damages as "[a] trifling sum awarded when a legal injury is suffered but when there is no substantial loss or injury to be compensated." Black's Law Dictionary 396 (7th ed.1999). Given the value of today's dollar, the court considers $100 to be a nominal amount.

Plaintiffs cannot recover punitive damages against Kaufman County or Sheriff Harris in his official capacity as a matter of law. *See City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247 (1981). The court, however, may award punitive damages against Sheriff Harris in his individual capacity for his "reckless and callous indifference to the federally protected rights of others." *Smith v. Wade,* 461 U.S. 30, 56 (1983). Moreover, punitive damages are available to punish violators of constitutional rights "even in the absence of actual injury." *Ryland v. Shapiro,* 708 F.2d 967, 976 (5th Cir.1983) (citations omitted). The purpose of punitive damages under section 1983 is to punish as well as to deter future egregious conduct in violation of constitutional rights. *See Creamer,* 752 F.2d at 1319. The trier of fact may award punitive damages in its discretion when it deems it necessary to punish and deter the defendant. *See Sockwell,* 20 F.3d at 192.

The court believes punitive damages are appropriate in this case. Sheriff Harris' conduct reflects a reckless indifference to the constitutional rights of others. The evidence adduced at trial unequivocally demonstrated that Sheriff Harris ordered these Plaintiffs to be strip searched without individualized probable cause or reasonable suspicion. Further, he admitted having searched these Plaintiffs, and approximately *one hundred other citizens,* based on their mere propinquity to others suspected of criminal activity. The testimony of Officer Mike Knapp perhaps best characterizes the nature and extent to which Sheriff Harris disregarded the civil liberties guaranteed by the Fourth Amendment. When questioned by court with respect to the scope of the search warrant, Officer Knapp stated "if you don't want to be considered a duck, you shouldn't walk or talk like one either." Sheriff Harris's egregious behavior demonstrated a total lack of concern for the constitutional rights of Plaintiffs and approximately one hundred other citizens. No official, neither high nor petty, is above the law. When public officials break the law, they must be held accountable. Our Constitution requires nothing less. Moreover, when public officials, who are entrusted with enforcing the law, break the law, it breeds contempt and disrespect for the law. The conduct of Sheriff Harris on the occasion in question simply cannot be tolerated in a civilized society. Punitive damages should be assessed against Sheriff Harris to punish him for his flagrant violation of Plaintiffs' constitutional rights, and to serve as a deterrent to any other law enforcement officer who might be inclined to engage in conduct similar to that of Sheriff Harris. The court thus exercises its discretionary authority and finds the goals of both punishment and deterrence are served by an award of punitive damages in this case. The court concludes that an award of punitive damages in the amount of $15,000 per Plaintiff is necessary to accomplish these goals. Accordingly the court assesses punitive damages against Sheriff Harris in the amount of $15,000 per Plaintiff.[10]

[10] The court received limited input on the issue of punitive damages, as this issue was not adequately briefed by the parties. For example, Plaintiffs and Defendants, combined, addressed the issue of punitive damages with fewer than three hundred words in their respective posttrial motions for judgment. Moreover, the parties failed to incorporate into the record any suggestion of what an appropriate punitive damage award would be in this case, other than Defendants' assertion that Plaintiffs are entitled to no punitive damages at all. The court therefore uses its discretion to set what it believes is the appropriate amount of

punitive damages, considering the particularly egregious nature of Defendants' conduct in this case.

The court believes the amount of punitive damages awarded in this case falls well within the constitutional limits on such damages as established by the Supreme Court in *BMW of N. Am. Inc. v. Gore,* 517 U.S. 559 (1996), and by the Fifth Circuit in *Rubinstein v. Adms' of Tulane Educ. Fund, 218 F.3d 392 (5th Cir.2000), Deffenbaugh–Williams v. Wal–Mart,* 156 F.3d 581 (5th Cir.1998), *reh'g en banc granted,* 169 F.3d 215 (5th Cir.1999) *panel opin. reinstated in relevant part,* 182 F.3d 333 (5th Cir.1999), and *Patterson,* 90 F.3d at 927. In assessing the amount of punitive damages, the court must consider "(1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the harm suffered and the damage award; and (3) the difference between the damages awarded in this case and comparable cases." *BMW,* 517 U.S. at 575. In *Deffenbaugh–Williams,* the Fifth Circuit explained "perhaps the most important indicium of the reasonableness of a punitive damages award is the *degree of reprehensibility* of the defendant's conduct." 156 F.3d at 597 (*quoting BMW,* 517 U.S. at 575) (emphasis by Fifth Circuit). As explained above, the court finds an exceptionally high degree of reprehensibility in this case, and thus gives greater weight to this factor over the others. *See, e.g., Blackburn v. Snow,* 771 F.2d 556, 573 (1st Cir.1985) (noting "higher damage awards are appropriate" where official "makes strip searches a matter of routine practice").

With respect to the second *BMW* factor, the Eighth Circuit held in several cased decided before *BMW,* that there is no "requirement that the punitive damage award bear a reasonable relationship to nominal damages. To apply the proportionality rule to a nominal damages award would invalidate most punitive damages awards because only a very low punitive damages awards could be said to bear a reasonable relationship to the amount of a nominal damages award." *Hicks v. Brown Group, Inc.,* 902 F.2d 630, 653 n. 52 (8th Cir.1990). The court has found no cases where the Fifth Circuit has considered this rule; however, it has held "punitive damages awards, absent an actual damages award, [should be limited] to cases where a violation of a constitutional right has occurred." *Louisiana ACORN,* 211 F.3d at 302. Thus, the Fifth Circuit clearly recognizes the availability of punitive damages in cases where a constitutional right is violated. To enforce the proportionality rule in such cases, however, would render the ability to award punitive damages in the absence of compensatory damages a nullity.

Finally, the court notes, with respect to the third *BMW* factor, that its award of punitive damages in this case is well within the range of punitive damages imposed in comparable cases. *See, e.g., Kennedy v. Dexter Consol. Sch.,* 10 P.3d 115 (N.M.2000) (assessing punitive damage awards ranging from $25,000 to $50,000 per plaintiff in case involving unconstitutional strip searches of high school students); *McKinley v. Trattles,* 732 F 2d 1320 (7th Cir.1984) (finding $6,000 appropriate punitive damages award involving the oppressive strip search of a prisoner). The court thus believes the award in this case is reasonable give the nature and scope of Defendants' illegal conduct.

F. Declaratory Relief

***12** Plaintiffs seek declaratory relief pursuant to Article I, Section 9 of the Texas Constitution.[11] Texas courts have held that while recognizing that the Fourth Amendment analysis is no longer always harmonious with an Article I, Section 9 analysis under the Texas Constitution, Section 9 provides at least as much protection as the Fourth Amendment of the United States Constitution. *See State v. Wagner,* 821 S.W.2d 288, 291 (Tex.App.-Dallas 1991, writ ref'd); *Shankle v. Texas City,* 885 F.Supp. 996, 1004–05 (S.D.Tex.1995). Because this court has determined Defendants Robert Harris and Kaufman County violated Plaintiffs' Fourth Amendment rights, this court also finds that they violated Plaintiffs' rights under Article I, Section 9 of the Texas Constitution. Accordingly, this court declares Defendants' conduct, in the precise facts of this case, as violative of Article I, Section 9 of the Texas Constitution.

[11] Article I, Section 9 of the Texas Constitution provides, "[t]he people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation." Tex. Const. art I, § 9.

G. Injunctive Relief

Plaintiffs seek injunctive relief pursuant to Fed.R.Civ.P. 65. Specifically, Plaintiffs request the court "enjoin Kaufman County from detaining, during the execution of a search warrant, any citizen for more than a brief investigatory stop unless (i) that citizen is specifically named, identified or described in the warrant; or (ii) the law enforcement officer observes individualized specific facts from which the officer may reasonably conclude that probable cause exist [sic] to believe that the specific citizen is engaged in criminal activity; that Kaufman County be further enjoined from strip searching during the execution of a hazardous warrant any citizen unless (i) the citizen is specifically named ... in the Search Warrant or (ii) the law enforcement officer observes individualized specific facts from which the officer may reasonably conclude ... the specific citizen is concealing evidence

that a strip search will disclose." Pls.' Motion for Judgment and Pls.' Post Trial Brief in Support of Motion for Judgment at 19.

The court finds injunctive relief unnecessary because Plaintiffs' have an adequate remedy at law. Moreover, the court sees no purpose in enjoining Kaufman County and its Sheriff from violating the United States Constitution when they already have a duty to obey and enforce it. The court also notes that Sheriff Harris is no longer in office. The court does not believe the new Sheriff or Kaufman County would have the effrontery to conduct illegal strip searches in light of this court's opinion. To ensure Kaufman County and its new Sheriff are aware of this court's memorandum opinion and order, the court hereby orders Defendants' counsel to provide a copy of this decision to the current Sheriff of Kaufman County, to each of the current commissioners of Kaufman County, and to the county judge by April 9, 2002.

IV. Attorney's Fees

Under § 1988, the court "may allow the prevailing party ... a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988. The court determines that Plaintiffs are the prevailing parties because they have obtained an enforceable judgment against Defendants Robert Harris and Kaufman County which materially alters the legal relationship between them. *See Farrar v. Hobby,* 506 U.S. 103, 111 (1992). A prevailing party may recover only those fees that are reasonably expended on the litigation. *See Hensley v. Eckerhart,* 461 U.S. 424, 433–34 (1983); *Watkins v. Fordice,* 7 F.3d 453, 458 (5th Cir.1993). A party is not entitled to attorney's fees for the prosecution of an unsuccessful claim unless it involves common facts or derives from related legal theories of another claim that is successfully prosecuted. *See Hensley,* 461 U.S. at 434.

***13** In light of the finality of this matter regarding the merits, the court recognizes the possibility of resolution of the attorney's fee issue without court intervention. The Supreme Court has admonished that "[a] request for attorney's fees should not result in a second major litigation." *Id.* at 437. Ideally, the attorney's fee issue should be resolved by the parties. The court recognizes that this will not always be the case, but the parties should exhaust all reasonable efforts to resolve the attorney's fee issue. Before the court expends scarce judicial resources on the application for attorney's fees, however, the parties are directed to inform the court in writing by April 16, 2002, whether the attorney's fee issue can be settled by the parties or whether the parties believe mediation can resolve the matter.

V. Conclusion

For the reasons stated herein, the court finds Plaintiffs established a violation of the Fourth and Fourteenth Amendments, actionable pursuant to § 1983. In light of the court's findings and conclusions herein, it will render judgment against Defendants Kaufman County and Robert Harris by separate document as required by Fed.R.Civ.P. 58.

With respect to costs, Fed.R.Civ.P. 54(d)(1) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Rule 54(d) creates a strong presumption that the prevailing party will be awarded costs. *Schwarz v. Folloder,* 767 F.2d 125, 131 (5th Cir.1985). Accordingly, all allowable and reasonable costs are assessed against Defendants.