UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANE DOE	:	
Plaintiff,	:	
v.	:	
	:	CIVIL ACTION NO.
	:	3:03-cv-1454 (JCH)
CITY OF HARTFORD,	:	
HARTFORD POLICE DEPARTMENT,	:	
OFFICER WILLIAM MEDINA,	:	
OFFICER MICHAEL ALLEN	:	MAY 13, 2004
Defendants.	:	

RULING RE:
DEFENDANTS' MOTION TO DISMISS [DKT. NO. 9]

The defendants, City of Hartford, Hartford Police Department and Officer Michael Allen, made a motion to dismiss Counts Thirteen, Fourteen, Fifteen, Sixteen, Eighteen, Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-three and Twenty-four of Jane Doe's complaint, on the grounds that the causes of action contained in these counts fail to state a claim upon which relief can be granted. For the reasons stated below, the defendants' motion is granted in part and denied in part.

I. FACTUAL ALLEGATIONS

The following facts are taken from the complaint. In September of 2001, Doe called 911 because her boyfriend was hitting and threatening her. Officers Medina and Allen responded to her call and arrested Doe's boyfriend. Officer Medina, with Allen's

knowledge, returned to Doe's apartment on the pretext of further investigation. The complaint alleges that Officer Allen knew or should have known that there was no legitimate police need for Officer Medina to re-enter Doe's apartment, but did not stop him.

Medina re-entered Doe's apartment, and threatened Doe and forced her to perform oral sex on him. Medina threatened Doe that, if she did not perform oral sex on him, he would cause the Department of Children and Family Services ("DCFS") to take Doe's children away from her. After performing oral sex on Officer Medina, Doe spit his semen into a white plastic bag, but Medina confiscated the bag. Doe spoke to a neighbor, whom she informed about the assault, and the neighbor gave Doe another plastic bag. Doe spit additional fluid into the plastic bag and placed it in a freezer. She then called the Police Department to report the assault.

Hartford Police Sergeants Poletta and Brooks responded to Doe's call. She gave them a statement and the plastic bag containing the fluid. The plastic bag was submitted to the Forensic Science Laboratory of the State of Connecticut's Department of Public Safety of Scientific Services.

Medina became aware of Doe's complaint against him and filed a warrant application seeking Doe's arrest for bribery of a police officer while in the performance of his duty, in violation of General Statutes § 53a-147. In the application, Medina lied under oath and claimed that Doe had offered him sexual favors, but that he had refused them and that no

sexual contact had occurred between them.

Medina also filed a report with the DCFS, in which he repeated the accusations from the warrant application. As a result of Medina's report, the DCFS initiated an investigation of Doe and visited her residence twice.

In November of 2001, the State Forensics Laboratory issued a report concluding that the substance in the plastic bag contained Officer Medina's DNA. Officer Medina was arrested and charged with first degree sexual assault, fabricating physical evidence, and tampering with physical evidence.

II. DISCUSSION

A. Standard

A motion to dismiss filed pursuant to Rule 12(b)(6) can be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See also Reed v. Town of Branford, 949 F. Supp. 87, 89 (D. Conn. 1996). In considering such a motion, the court accepts the factual allegations alleged in the complaint as true and draws all inferences in the plaintiff's favor. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984). "Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with

the allegations.'" Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984).

A Rule 12(b)(6) motion to dismiss cannot be granted simply because recovery appears remote or unlikely on the face of a complaint. Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Id. (quotation omitted). "In considering a motion to dismiss . . . a district court must limit itself to facts stated in the complaint or in documents attached to the complaint as exhibits or incorporated in the complaint by reference . . . [and review all allegations] in the light most favorable to the non-moving party." Newman & Schwartz v. Asplundh Tree Expert Co., Inc., 102 F.3d 660, 662 (2d Cir. 1996). "While the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice." Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). Rule 8 of the Federal Rules of Civil Procedure provides that a complaint "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

B. Analysis

Two aspects of the defendants' motion have not been contested by Doe. First, the defendants have moved to have the Hartford Police Department dismissed from this case on the grounds that it is not a suable entity and that the City of Hartford is liable for actions of

the Police Department. With no objection from Doe, the Hartford Police Department is dismissed from the instant case. Second, the defendants have moved to have Doe's claims, asserted as part of several counts, under the Fifth and Ninth Amendments, dismissed on the grounds that the Fifth Amendment only applies to the federal government and that the Ninth Amendment is not recognized as a source for constitutional relief. Doe concedes these points. Doe's Fifth and Ninth Amendments claims are therefore dismissed.

The remaining claims are asserted under the Fourth and Fourteenth Amendments, as well as under various state laws. The court will now analyze the defendant's motion count by count.

1. Count 13

Count 13 alleges violations of Doe's Fourth and Fourteenth Amendment rights by Officer Allen. It also alleges violations of §§ 1983 and 1988 of Title 42 of the U.S. Code. The court will begin with Doe's Fourth Amendment claims.

There are two possible violations of the Fourth Amendment in Doe's complaint, but they both fail to state a claim. First, Doe alleges that Officer Allen should have stopped the sexual assault by Officer Medina. However, the Fourth Amendment is not the proper source for Doe's claim stemming from a sexual assault; instead, claims of rape or assault by a police officer are properly analyzed under the Fourteenth Amendment. See Jones v. Wellham, 104 F.3d 620, 628 (4th Cir. 1997). Nor is the Fourth Amendment the

appropriate constitutional provision for violations occurring outside of a police investigation. Poe v. Leonard, 282 F.3d 123, 136 (2d Cir. 2002).

Second, Doe alleges that Officer Allen should have stopped Officer Medina from filing the false arrest warrant application. However, there is no allegation that the filing of the false arrest warrant ever led to her arrest. Attempted searches and seizures are beyond the scope of the Fourth Amendment. County of Sacramento v. Lewis, 523 U.S. 833, 845 n.7 (1998). In the present case, Doe has alleged only an attempted seizure with regard to the false arrest warrant application.

Doe has failed to state a claim upon which relief may be granted under the Fourth Amendment. Her claims under the Fourth Amendment are therefore dismissed.

Doe has, however, stated a claim upon which relief may be granted under the Fourteenth Amendment. In order for the Defendants to prevail, they must show that "no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). Defendants have failed to do that. There are multiple consistent factual scenarios in which Officer Allen could be implicated in Officer Medina's behavior. For instance, Allen could have known that Medina was going to do something improper. If Doe cannot prove any of them, summary judgment is the proper place to dispose of this claim. For purposes of this motion, the court must assume that Doe

will be able to prove her allegations. Doe's allegation that Officer Allen "knew or should have known that there was no legitimate police need for Medina to reenter Jane Doe's apartment, but he did nothing to stop Medina from reentering . . ." is enough to sustain a motion to dismiss. Defendants' motion with regard to Doe's claims under the Fourteenth Amendment is therefore denied.

2. Counts 14 and 18

Count Fourteen alleges that Allen violated Doe's rights under the Connecticut Constitution, and Count Eighteen repeats the allegations against the City of Hartford. In particular, Doe alleges that Allen violated the rights guaranteed by Article 1, Sections 7, 8, and 9. Sections 7 and 9 provide constitutional protection from unreasonable searches and seizures, and are similar to the provisions of the Fourth Amendment. See State v. Conely, 31 Conn. App. 548, 554 (1993). As discussed above, Doe does not allege a search or seizure under the Fourth Amendment. Therefore, Doe's claim under the Connecticut Constitution Article 1 Sections 7 and 9 is also dismissed.

Section 8 of Article 1 of the Connecticut Constitution however, is different. Section 8 provides that "no person shall be deprived of life, liberty or property without due process of law[.]" Currently, no appellate courts in Connecticut have recognized Section 8 as providing a basis for recovering monetary damages. See, e.g., Kelley Property v. Lebanon, 226 Conn. 314 (1993) (finding no cause of action for money damages under section 8

where there is a reasonably adequate statutory remedy). However, the Connecticut Supreme Court has established a cause of action for monetary damages under sections 7 and 9 of the First Article to the state constitution. Binette v. Sabo, 244 Conn. 23 (1998). In that case, the court held that "whether to recognize a cause of action for alleged violations of other state constitutional provisions in the future must be determined on a case-by-case basis." 244 Conn. at 48.

The court is not prepared to conclude that the Connecticut Supreme Court would not allow a cause of action for monetary damages under Section 8. Therefore, the defendants' motion to dismiss Doe's claims under Section 8 of Article 1 of the Connecticut State Constitution is denied, without prejudice to renew if the pertinent case law develops to the contrary in the state appellate courts.

3. Count 15 and 16

Counts Fifteen and Sixteen incorporate the allegations of Count Thirteen, but also claim that Allen was negligent or negligently inflicted emotional distress on Doe, or both. Doe's allegation that Allen knew or should have known that Medina was returning to the apartment for inappropriate activity, is sufficient to survive this motion to dismiss as well. If Allen knew Medina was going to injure Doe, he would have known she was in danger. Therefore, defendants' motion to dismiss Counts Fifteen and Sixteen is denied.

4. Counts 19, 20 and 21

Counts Nineteen, Twenty and Twenty-one are pendant state claims directed towards the City of Hartford for failure to train, supervise, and hire its police officers correctly. A municipality is immune from liability for negligent acts that are discretionary in nature. Conn. Gen. Stat. § 52-557n(a)(2)(B); see also Golnik v. Amato, 299 F. Supp. 2d 8, 18 (D. Conn. 2003). The "operation of a police department" is the sort of function that requires a great deal of discretion, and " ordinarily do[es] not give rise to liability on the part of a municipality." Gordon v. Bridgeport Hous. Auth., 208 Conn. 161, 180 (1988); see also Stiebitz v. Mahoney, 144 Conn. 443, 446 (1957). The City is thus, according to the provisions of § 52-557n, not liable for Doe's claims against it for negligence. Counts 19 through 21, sounding in negligence, are therefore dismissed.

5. Count 22

Count Twenty-two of the complaint seeks to impose vicarious liability on the City under Conn. Gen. Stat. § 7-465. That section provides, in relevant part:

> Any town, city or borough... shall pay on behalf of any employee of such municipality... all sums which the employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property... if the employee, at the time of the occurrence... was acting in the performance of his duties and within the scope of his employment, and if such occurrence... was not the result of any wilful or wanton act of such employee in the discharge of such duty.

Count Twenty-two attempts to state a claim of indemnification as to Medina. While the facts may show that Medina was not acting within the scope of his duty, or that this occurrence was the result of a wilful or wanton act, the plaintiff has alleged within Count Twenty-two that it was within the scope and was not wilful or wanton. Compl. at § 71-72. A plaintiff is permitted to plead inconsistently. See also Fed. R. Civ. P. 8(d). The defendants' motion to dismiss Count Twenty-two is thus denied.

6. Count 23

Count Twenty-three is identical to Count Twenty-two except that it involves Allen, rather than Medina. The plaintiff has also properly pled this indemnification claim; as a result, the defendants' motion to dismiss Count Twenty-three is denied.

7. Count 24

Count Twenty-four alleges that the City is liable for the actions of Medina and Allen pursuant to Conn. Gen. Stat. § 52-557n which provides in pertinent part:

> (a) ...(2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct...

As discussed above, the plaintiff alternatively alleges the nature of Medina's conduct. If she prevails on her negligence count, the City could be liable under § 52-557n. The Motion to Dismiss the claim against the City for Medina's behavior is denied. Further, it is not clear that, as alleged, Allen's conduct falls under this exception. The Motion to Dismiss Doe's claim against the City for Allen's behavior is therefore denied.

III. CONCLUSION

For the foregoing reasons, the Motion to Dismiss is GRANTED as to: Count 1 as to the Fourth, Fifth, and Ninth Amendments; Count 14 as to Sections 7 and 9 of the Connecticut Constitution; Counts 19, 20, and 21. The remainder of the Motion to Dismiss is DENIED.

SO ORDERED.

Dated at Bridgeport, Connecticut this 13th day of May, 2004.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge