UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANE DOE,	:	
	:	
Plaintiff,	:	
	:	SEALED CASE
V.	:	CASE NO. 3:97CV205 (RNC)
	:	
CITY OF HARTFORD, et al.,	:	
	:	
Defendants.	:	

RULING AND ORDER

Jane Doe brings this action pursuant to 42 U.S.C. § 1983 against Harold Pu'Sey, a Hartford police officer, Joseph Croughwell, formerly Hartford's Chief of Police, and the City of Hartford, alleging violations of her rights under the First Amendment and Fourteenth Amendments, the Violence Against Women Act (VAWA), 42 U.S.C. § 13981, and state law. The action arises from Pu'Sey's alleged sexual assault of the plaintiff and his alleged stalking of her after she complained about the assault. Croughwell and the City have moved for summary judgment on the claims against them. For the reasons stated below, the motion is granted in part and denied in part.

I. Facts

On July 2, 1994, plaintiff encountered Pu'Sey at the Rum Keg Lounge in Hartford. Some time later, they left together and drove to Pu'Sey's apartment in separate cars. Plaintiff alleges that after they entered Pu'Sey's apartment, he raped her; he asserts that they

had consensual sex. On July 21, 1994, Pu'Sey was arrested on charges of sexual assault and unlawful restraint and suspended from the police department without pay. Five months later, the charges against him were nolled. After a departmental hearing the following month, he was reinstated.

Plaintiff alleges that from the time of Pu'Sey's arrest on July 21, 1994 and continuing into 1995, Pu'Sey engaged in a pattern of conduct designed to intimidate her. She alleges that Pu'Sey drove by her apartment building and stared at her on a number of occasions, and that he confronted her once at a Hartford restaurant and stared at her until she left. She states that she complained about these incidents to the police, and that her complaints were sometimes made directly to Croughwell.

II. Discussion

Summary judgment may be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court reviews the record as a whole, credits all evidence favoring the nonmovant, gives the nonmovant the benefit of all reasonable inferences, and disregards all evidence favorable to the movant that a jury would not have to believe. See Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150-51 (2000). If the evidence offered in support of a claim is such that no reasonable jury could return a verdict for the

nonmoving party, summary judgment serves to avoid a needless trial of the claim.

A. Sexual Assault Claims

The third, fourth, fifth, eighth and ninth counts of the amended complaint are based wholly or in part on the allegation that Pu'Sey sexually assaulted the plaintiff. The moving defendants argue that none of these claims can be the basis of a finding of liability against them. I agree.

The third and fourth counts allege that Hartford and Croughwell had a policy of treating victims of sexual misconduct by police officers differently from other crime victims, that they had a policy of covering up such crimes, and that they treated her differently from other sexual assault and crime victims. Defendants contend that summary judgment is appropriate on these counts because plaintiff has provided no evidence to support her allegations.[1] Plaintiff's affidavit states that when she lodged the criminal complaint against Pu'Sey, accusing him of sexual assault, the police treated her in a manner that implied hostility to her complaint (Doe Aff. ¶¶ 83-84). Accepting her statement as true, she provides no evidence to link this treatment to Croughwell, or to show that it was the product of a

[1] In moving for summary judgment against a party who will bear the burden of proof at trial, the movant's burden is satisfied if he can point to an absence of evidence to support an essential element of the nonmoving party's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

municipal policy or custom.[2] Summary judgment on these claims is therefore appropriate.

The fifth count of the complaint alleges that Croughwell and the City are liable under § 1983 for failing to prevent Pu'Sey from committing the sexual assault. This claim fails because the alleged assault does not provide plaintiff with a valid § 1983 claim against Pu'Sey. Conduct creates § 1983 liability if it is committed by a person acting under color of state law. Parratt v. Taylor, 451 U.S. 527, 535 (1981). Because Pu'Sey was off duty at the time of the alleged assault, (Def.'s Mem. Ex. F.), he acted under color of state law only if he invoked the power of the police, performed duties prescribed for police officers, or otherwise showed that his actions were not a personal pursuit. Pitchell v. Callan, 13 F.3d 545, 548 (2d Cir. 1994). Plaintiff has not alleged any of these things, and the evidence fails to establish a nexus between Pu'Sey's position as a police officer and the alleged assault.[3] A claim of inadequate

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[2] The evidence of police misconduct she does provide bears no relation to the specifics of her complaint. (Pl.'s Mem. Ex. 15, 16.)

[3] Compare Roe v. Humke, 128 F.3d 1213, 1216-18 (8th Cir. 1997)(police officer who worked at elementary school did not act under color of state law when he molested eleven-year-old student while off-duty at his home because there was no nexus between his position as a police officer and the sexual abuse); and Mooneyhan v, Hawkins, 1997 WL 685423, *5 (6th Cir. Oct. 29, 1997)(unpublished)(off-duty officer did not act under color state law when he raped woman he had known for ten months) with G.M. v. Beltrami, 2002 WL 31163131, * 5 (D. Minn.

(continued...)

training and supervision under § 1983 cannot succeed against a supervisor or municipality without a finding of a constitutional violation by the person supervised. Ricciuti v. N.Y.C. Transit Auth., 124 F.3d 123, 132 (2d Cir. 1997). Thus, summary judgment on this claim is appropriate.

Plaintiff brings her eighth and ninth counts against Croughwell and the City under the VAWA, claiming that their acts or omissions helped bring about the alleged sexual assault. The Supreme Court has determined that the VAWA's civil remedy is unconstitutional. U.S. v. Morrison, 529 U.S. 598, 602 (2000). Summary judgment is therefore appropriate on these counts as well.[4]

B. Retaliation Claims

The second, fifth and sixth counts of the complaint allege that Pu'Sey's alleged stalking of plaintiff violated her rights under the First Amendment because it was done in retaliation for her filing of the criminal complaint accusing him of sexual assault. Plaintiff

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[3](...continued)
Sept. 23, 2002)(evidence raised issue of fact as to whether police officer acted under color of state when he sexually assaulted woman he was supervising on probation) and Gelfant v. Riley, 1993 WL 172290, *8 (N.D. Cal. May 19, 1993)(sexual assaults by police officer were committed in course and scope of his employment because he used his identity as a police officer to gain entry to plaintiff's apartment).

[4] For the same reason, dismissal is also proper with regard to the seventh count, which seeks civil penalties against Pu'Sey under the VAWA.

claims that Croughwell, and thus the City, are liable for the violation because Croughwell deliberately failed to stop the stalking after plaintiff reported it. She also alleges that the failure to prevent the stalking was itself motivated by an intent to retaliate against her for complaining about Pu'Sey.

Plaintiff has a triable § 1983 retaliation claim against Pu'Sey. A state actor's retaliation against a person for making a criminal complaint violates the right to petition guaranteed by the First and Fourteenth Amendments and is actionable under § 1983. Graham v. Henderson, 89 F.3d 75, 80 (2d Cir. 1996). Stalking can constitute such retaliation, Marczeski v. Brown, No. 3:02-CV-894, 2002 WL 31682175, at *6 (D. Conn. Nov. 21, 2002), and plaintiff has presented enough evidence to create an issue of fact as to whether Pu'Sey stalked her while acting under color of state law. Her affidavit states that Pu'Sey stalked her after he was reinstated and that on at least some of these occasions he was on duty, in uniform, driving a police cruiser, and carrying his gun. (Doe Aff. ¶¶ 51-55.)

Plaintiff also has a triable § 1983 claim against Croughwell for deliberately failing to stop the stalking. Her affidavit asserts that Croughwell personally received complaints about the stalking and that stalking incidents occurred after he was informed of it. (Doe Aff. ¶¶ 46, 50-51, 85.) It is a natural inference that the chief of

police could have prevented Pu'Sey from stalking, and thus the continued stalking itself tends to show that Croughwell failed to stop the retaliation although it was specifically called to his attention more than once.[5] On the current record, the City may be liable for Croughwell's alleged decision to refrain from intervening to protect her against Pu'Sey's retaliatory conduct because a reasonable jury could find that he acted as the final policymaker on this issue.[6]

C. Emotional Distress Claims

Plaintiff also brings two claims under Connecticut law that need to be addressed: negligent infliction of emotional distress (NIED) against Croughwell (twelfth count), and intentional infliction of emotional distress (IIED) against both Croughwell and the City (fourteenth count). The defendants contend that they are shielded from these claims by municipal and official immunity under state law. I conclude that the City is immune but Croughwell is not.

Hartford is immune from suit for IIED by its employees under

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[5] Because the right not to be subjected to retaliation for petitioning for redress of grievances was clearly established in 1994-95, see Franco v. Kelly, 854 F.2d 584, 589-90 (2d Cir. 1988), Croughwell does not have qualified immunity against this claim. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

[6] Apart from this aspect of the First Amendment claims against Croughwell and the City, these claims are not supported by admissible evidence and therefore do not survive the motion for summary judgment.

Conn. Gen. Stat. § 52-557n(a)(2), which provides that a political subdivision of the state is not liable for damages caused by the wilful misconduct of its employees. In Connecticut, a wilful act is one done intentionally or with reckless disregard of its consequences. Bauer v. Waste Mgmt., 239 Conn. 515, 527 (1996). A claim for IIED is a claim of intentional misconduct. Carrol v. Allstate Ins. Co., 262 Conn. 433, 442-43 (2003).

Croughwell, however, is not immune from suit for either NIED or IIED. Defendants claim that he is immune because his alleged failure to stop Pu'Sey's stalking was a discretionary rather than a ministerial act. However, Connecticut law provides an exception to the immunity granted officials for discretionary acts where "the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm." Burns v. Bd. of Educ. of Stamford, 228 Conn. 640, 645 (1994). Viewing the record most favorably to the plaintiff, a reasonable jury could infer that once Croughwell was made aware of Pu'Sey's stalking, it was apparent to him that he needed to intervene to protect plaintiff from further stalking by Pu'Sey.

III. Conclusion

Accordingly, the motion for summary judgment is granted as to the second, third, fourth, sixth, eighth and ninth counts in the amended complaint; and the fifth count except as to the claim against

Croughwell and the City for failing to stop Pu'Sey's alleged stalking after Croughwell was informed of it. The motion is denied in all other respects. The seventh claim is dismissed sua sponte. The remaining claims against Croughwell and the City are the claims for failure to stop the alleged stalking within the fifth, twelfth and fourteenth counts.

So ordered.

Dated at Hartford, Connecticut this 28th day of May 2004.

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Robert N. Chatigny
United States District Judge