UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARKOS PAPPAS, PLAINTIFF,	:	
v.	:	CIV. NO. 3:98 CV 981 (HBF)
NEW HAVEN POLICE DEPARTMENT, ET AL., DEFENDANTS	:	

RULING ON DEFENDANT'S MOTION FOR RECONSIDERATION

On November 14, 2001, this court denied the City of New Haven's motion for partial summary judgment on plaintiff's municipal liability count. [Ruling, doc. # 66.][1] The City of New Haven ("City") now moves this court for reconsideration of that ruling. For the reasons stated herein, the court **GRANTS** the motion for reconsideration [doc. # 67], but **DENIES** the relief apparently[2] sought therein.

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[1] This ruling was docketed by the Clerk's office on November 16, 2001. Pursuant to D. Conn. L. Civ. R. 9(e), the City had ten days, excluding weekends and holidays, see Fed. R. Civ. P. 6(a), to file its motion for reconsideration. Accordingly, the City's motion is timely.

[2] The court uses the term "apparently" because nowhere in the City's two-and-a-half-page motion does the City request any particular relief. The court assumes that the City would have this court vacate its November 14 opinion and grant the City's motion for partial summary judgment.

Preliminarily, the City has failed to submit a memorandum of law in support of its motion for reconsideration. Pursuant to Local Rule 9(e), all "[m]otions for reconsideration ... shall be accompanied by a memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court overlooked in the initial decision or order." D. Conn. L. Civ. R. 9(e)(1). The "[f]ailure to submit a memorandum may be deemed sufficient cause to deny the motion." D. Conn. L. Civ. R. 9(a)(1). See also D. Conn. L. Civ. R. 9(e)(2) ("motions for reconsideration shall proceed in accordance with Rule 9(a)").

While the motion can be denied on these grounds alone, the court will not do so. Instead, the court grants the motion, but adheres to its original ruling because the City has not set forth any controlling decisions or new facts which would alter the outcome of the court's November 14 ruling. In its motion, however, the City did make several brief arguments, which the court will address.

Initially, the City characterizes the court's ruling as holding "that the plaintiff has asserted a sufficient claim that the City of New Haven engaged in at least a tacit custom or policy of deliberate indifference, due [sic] inadequate training, for the specific potential that New Haven Police Officers would knowingly or recklessly disregard a judge's decision that no probable cause exists." [Mot. Recons. at 1 (emphasis in original).] Although it is

unclear what the City means by "policy of deliberate indifference ... for the specific potential," the court nevertheless believes that the City misunderstands the opinion. To the extent the City implies that this court held that plaintiff is entitled to *prevail* on the municipal liability count, the City is incorrect and, in fact, the court specifically disclaimed such an interpretation in its November 14 ruling.

In a motion for summary judgment, the burden is on the moving party to establish that there are *no genuine issues of material fact in dispute* and that it is entitled to *judgment as a matter of law*. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Engineering Corp., 221 F.3d 293, 300 (2d Cir. 2000). In determining whether the moving party has met that burden, the court "must first resolve all ambiguities and draw all inferences in favor of the non-moving party, and then determine whether a rational jury could find for that party." Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000). "If reasonable minds could differ as to the import of the evidence, . . . and [i]f . . . there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment." R.B. Ventures, Ltd. v. Shane, 112 F.3d 54, 59 (2d Cir. 1997) (internal quotation marks and citation omitted). In addition, where one party

is proceeding pro se, the "court[] must construe pro se pleadings broadly, and interpret them 'to raise the strongest arguments that they suggest.'" Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000)(quoting Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996)). In its November 14 ruling, the court simply held that "the City has not met [its] burden." [Ruling at 7.]

The City also argues that the court held that plaintiff "asserted a sufficient claim ... despite uncontradicted (and even conceded) evidence that training in the New Haven Police Department meets and even exceeds all training required by law." [Mot. Recons. at 1-2.] Putting aside the City's mischaracterization of the court's holding, the court notes that the United States Constitution is a source of "law" - indeed, the *supreme* source of law - to which police officers must conform their conduct. See U.S. Const. art. VI ("This Constitution ... shall be the supreme Law of the Land"); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) (Marshall, C.J.) (holding that the Constitution is the "supreme Law of the Land" and "the fundamental and paramount law of the nation"). Thus, to the extent the City criticizes the court for holding that a municipality may be held liable for the "deprivation of ... rights, privileges, or immunities secured by the Constitution and laws" of the United States, 42 U.S.C. § 1983, despite the municipality's conformity with state and local laws regarding police training, the City's criticism

is unfounded and the court stands by its original opinion.

The City makes three brief additional points in its motion for reconsideration. It first argues that this court's "sweeping conclusion ... is inconsistent with numerous rulings in this judicial district." [Mot. Recons. at 2.] Because the City did not file a memorandum of law, no analysis of these cases is provided. The city did note, however, that it "append[ed] ..., and incorporate[d] by reference, three rulings involving the City of New Haven" on purportedly similar issues. Despite the City's lack of analysis of these apparently unpublished decisions, the court has considered each one.[3]

First, the City cites and appends the case of Kenneth Smith v. City of New Haven, et al., Civil No. 3:99CV157 (EBB), Ruling on Defendant's Motion for Summary Judgment, filed August 20, 2001, pages 13-14. In that case, Judge Burns held, inter alia, that the city's

[3] While a decision from one judge within the District of Connecticut is not binding on another judge in that district, see In re Carrozzella & Richardson, 255 B.R. 267, 272 (Bankr. D. Conn. 2000) (citing Threadgill v. Armstrong World Industries, Inc., 928 F.2d 1366 (3d Cir. 1991)), it would be considered persuasive. See F.D.I.C. v. Healey, 991 F. Supp. 53 55 n.1 (D. Conn. 1998) ("While this Court must follow circuit court precedent, decisions of other district judges within the district are not binding or authoritative, although such decisions do have persuasive effect...; [but, a]lthough district judges within a particular circuit will frequently find each other's decisions persuasive, they remain free to disagree") (citing Spear v. Town of West Hartford, 789 F. Supp. 80, 84 (D. Conn. 1992); Hawkins v. Steingut, 829 F.2d 317, 321 (2d Cir.1987)). In fact, the City cites no "controlling decisions," D. Conn. L. Civ. R. 9(e)(1), with which this court's decision is allegedly inconsistent.

affidavit made it clear that the city did not have a custom or policy of racial profiling, of arresting or prosecuting individuals without probable cause, of detaining individuals without reasonable suspicion, or of violating citizens' constitutional rights. Id. at 13. The court believed that "it would be an insurmountable barrier for [the plaintiff] to produce admissible evidence on his claims against the City." Id. at 13-14. That case is distinguishable on its facts.

Unlike the plaintiff in Smith, who apparently attempted to show that the city was liable for its alleged policies condoning various affirmative acts, plaintiff in this case bases his claim on municipal *inaction* and a policy or custom of *failing* to train in a specific area that warrants training. Indeed, plaintiff relies on the City's very inability to produce specifically relevant training documents as evidence that no such training existed. The plaintiff in Smith appears to have made no such claims and, therefore, the court had no occasion to discuss the Walker factors in that case.[4] Unlike the plaintiff in Smith, who produced no affirmative evidence to support his affirmative claims, plaintiff in this case has demonstrated an absence of documentation that arguably supports his negative claims.

The City next cites Thomas Daniels v. City of New Haven, et

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[4] See Walker v. City of New York, 974 F.2d 293, 297-98 (2d Cir. 1992).

al., Civil No. 3:97CV564 (RNC), Ruling and Order, filed April 28, 2001, pages 10-12. In Daniels, the plaintiff originally alleged in his complaint that the city "maintained and condoned a custom of depriving individuals, such as the plaintiff, of their constitutional rights." Id. at 10. In response to the city's motion for summary judgment, however, the plaintiff changed his theory of liability to one in which the city would be liable for inadequate training, as opposed to affirmative actions. See id. at 10, 11. Yet, the plaintiff relied on conclusory claims in his brief. Judge Chatigny specifically noted that plaintiff showed "no evidence that the City failed to train its police officers to avoid violations of Fourth Amendment rights or that such violations were so pervasive as to imply deliberate indifference on the part of policymakers." Id. at 11. This court, in its November 14 ruling, likewise noted that plaintiff "may not rely on mere conclusory allegations concerning the existence of a municipal policy," and that he was required to "proffer at least some credible evidence of the failure to train or supervise." [Ruling at 8-9.] Unlike the plaintiff in Daniels, however, plaintiff here submitted a detailed affidavit listing all the allegedly policy-related documents that he received in discovery from the city and averring that none of these documents demonstrated any training with respect to the specific issue in this case. Therefore, this court cannot say with the confidence of the

Daniels court that defendant has met its burden of showing that it is entitled to judgment as a matter of law.

Finally, the City cites Anthony McBride v. City of New Haven, et al., Civil No. 3:97CV1475 (AWT), Ruling on Motion for Summary Judgment, filed March 30, 2000, pages 15-17. Like the plaintiffs in the other cases mentioned by the City, the plaintiff in McBride did "no more than simply assert that such a policy existed." Id. at 16. Accordingly, Judge Thompson, relying on the rule that a "non-moving party may not rely on mere conclusory allegations," which this judge also acknowledged (but held inapplicable based on Pappas's factual showing), decided that the defendant there was entitled to judgment as a matter of law.

In addition to arguing the relevance of the aforementioned cases, the City contends that "the Court's theory would effectively require a municipality to anticipate and give precise training with respect to literally every conceivable eventuality and officer." [Mot. Recons. at 2.] Because this sentence is the City's second argument in its entirety, it is not clear which "theory" the City references or why it requires what the City suggests. The court assumes the City is still referring to its erroneous interpretation of the court's holding.

However, the court did not approve any theory of liability; it simply held that this issue could not be resolved by way of summary

judgment. A jury will eventually decide this issue, and it may decide that the City should not be held liable. In fact, this court attempted to explain to both the pro se plaintiff and the City that a finding for the City by the jury might even be *likely*. The court stated:

> Of course, this Court is not deciding that Pappas is entitled to prevail on his municipal liability count. On the contrary, Pappas may indeed find it difficult to prevail on a theory largely unsubstantiated by affirmative tangible evidence. The Court merely holds that neither party is entitled as a matter of law to prevail on Count Six. The fact finder must eventually determine whether, as a factual matter, the police officers' training and supervision was inadequate. Cf. Turpin, 619 F.2d at 201 ("The issue of authorization, approval or encouragement is generally one of fact, not law"). Pappas has shown only that he is entitled to present this issue before a jury.

[Ruling at 15.] Given these cautions, it is difficult to understand how this court's decision to allow a jury to decide this issue will have the tremendous negative impact on the law that the City claims.

Finally, the City argues that:

> [I]t is undisputed that New Haven Officers received numerous hours of training in all police procedures and requirements of law for, but not limited to, stops searches and arrests, and that such training meets and often exceeds State law requirements, and further, that it is the very essence of law enforcement and law enforcement training that law enforcement officers enforce and obey the laws. Indeed, they are sworn to uphold the laws and constitutions of the United States and the State of Connecticut.
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> Thus it would be superfluous to require separate training to inform an officer that once a Judge specifically rules that probable cause is absent the individual officer

cannot unilaterally disregard the Judge's ruling.

[Mot. Recons. at 3 (emphasis in original).]

The City seems to be claiming that because law enforcement officers enforce laws and because they are sworn to uphold laws, they need not be trained on any specific aspect of constitutional law. In the alternative, the City may be claiming that, given the existing training, no police officer might think it best to stop and/or arrest a target of a search warrant in the face of a judge's limitation on the search or seizure of the person in that warrant. However, a jury could conclude that training in this area is not "superfluous" given the facts of this case. Moreover, the City has brought nothing to the attention of the court that shows, as a matter of law, that a plaintiff cannot prevail on a claim that a municipality failed to train its officers on a specific and important area of the law. In any event, these arguments were specifically addressed by this court in applying the Walker test in its November 14 ruling. The City provides no new facts or controlling authority to demonstrate that this analysis is incorrect.

The issue of whether to award summary judgment on the municipal liability count was a close one, hence the court's caution that its ruling did not imply that plaintiff was likely to prevail at trial. However, drawing all inferences in favor of this pro se plaintiff, the court could not hold that *no* reasonable minds could differ as to

the import of the evidence. There is at least some evidence in the record from which a reasonable inference in plaintiff's favor could be drawn, thereby precluding summary judgment. See R.B. Ventures, 112 F.3d at 59.

A court should grant or award relief on a motion for reconsideration "only if the moving party presents [factual] matters or controlling decisions the court overlooked that might materially have influenced its earlier decision." Horsehead Resource Development Co., Inc. v. B.U.S. Environmental Services, Inc., 928 F. Supp. 287, 289 (S.D.N.Y. 1996) (quotation marks and citations omitted; brackets in original). "Moreover, a motion for reconsideration may not be used to plug gaps in an original argument ... or 'to argue in the alternative once a decision has been made.'" Id. (quotation marks and citations omitted). In this case, the City has submitted no memorandum of law, presents no overlooked controlling authority, supplies no new facts, and attempts to rely on unpublished decisions that could have been submitted prior to the court's original decision but simply were not. While the court **GRANTS** the motion for reconsideration **[doc. # 67]**, upon reconsideration, the court **DENIES** any relief sought by the City, and adheres to its earlier decision, which denied summary judgment on count six.

SO ORDERED.

Entered this _____ of June 2002 at Bridgeport, Connecticut.

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HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE