UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LUIS ROQUE, A Minor, by and through His Parent and Next Friend, AIDA ROSARIO, :

Plaintiff, :

vs. : No. 3:03cv136(WWE)

OFFICER P. FEOLA and THE CITY OF BRIDGEPORT, :

Defendants. :

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**Ruling on Defendants' Motion for Partial Summary Judgment [Doc. # 26]**

Defendants have moved this Court for summary judgment on counts two, four, six, seven, eight, nine, and ten of plaintiff's complaint. Plaintiff has conceded that defendants are entitled to summary judgment as to counts two, four, and six through nine. Thus, the only remaining count that needs to be addressed is plaintiff's § 1983 claim in count ten against the City of Bridgeport. For the reasons set forth below, defendants' motion will be granted.

**I. Summary Judgment Standard**

The standard for granting a motion for summary judgment is well-established. A moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact
and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden of establishing that there is no genuine factual dispute rests with the moving party. See Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1223 (2d Cir. 1994). In ruling on a summary judgment motion, the Court cannot resolve issues of fact. Rather, it is empowered to determine only whether there are material issues in dispute to be decided by the trier of fact. The substantive law governing the case identifies those facts that are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In assessing the record to determine whether a genuine dispute as to a material fact exists, the Court is required to resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party. Matsushita Electric Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

However, as the Supreme Court stated in Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986), "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an

element essential to that party's case, and on which that party will bear the burden of proof at trial." Where no such showing is made, "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof." Celotex, 477 U.S. at 323.

Additionally, when a motion is made and supported as provided in Fed. R. Civ. P. 56, the non-moving party may not rest upon mere allegations or denials of the moving party's pleadings, but instead must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). In other words, the non-moving party must offer such proof as would allow a reasonable jury to return a verdict in his favor at trial. Anderson v. Liberty Lobby, 477 U.S. at 256.

**II. Background**

Plaintiff, Luis Roque, has brought this civil rights action against Officer Feola of the City of Bridgeport Police Department and the City of Bridgeport arising out an incident that occurred on August 12, 2001, involving plaintiff and Officer Feola. Not surprisingly, their versions of what transpired that evening are strikingly different.

Plaintiff states that he was walking with friends along East Washington Avenue in Bridgeport when a dog, which was behind a fence, started barking at them. One of his friends kicked the fence, although plaintiff, who was "rapping" at the time, claims that he did nothing to provoke the dog. Officer Feola then pulled up in his police car and told the boys to stop kicking the fence. According to plaintiff, Officer Feola overheard plaintiff singing and thought that plaintiff had cursed at him. Officer Feola got out of his car and grabbed plaintiff, took a bag from plaintiff's hands and threw it against the wall of a building, and then grabbed plaintiff by the neck. After searching him, Officer Feola put plaintiff's hands behind his back and pushed him into the police car. When he pushed plaintiff into the car, plaintiff's head hit the top of the door frame, causing plaintiff to sustain a cut to his forehead. Additionally, his foot was caught in the car door. After they began to drive away, plaintiff told Officer Feola that his head was cut. Officer Feola stopped the car about two to three blocks away from where he had picked up plaintiff and released him.

Officer Feola, on the other hand, paints a far different picture of what happened that evening. He states that he stopped his police car when he observed the boys antagonizing

a dog. After he began to drive away, plaintiff began to yell profanities at him. Officer Feola asked him to lower his voice because they were in a residential area and it was late at night. When plaintiff resumed yelling, Officer Feola stopped again and told plaintiff that he was taking him home to his parents. Officer Feola placed him in the police car and drove toward plaintiff's house. After plaintiff began to cry and pleaded with the officer not to take him home, Officer Feola let him out of the police car.

**III. Discussion**

Even when the Court fully credits plaintiff's version of what transpired that evening, plaintiff cannot establish a violation of his constitutional rights by the City.

In order to establish the liability of the City under § 1983 for the acts of a city employee below the policy-making level, plaintiff must establish that the violation of his constitutional rights resulted from a municipal policy or custom. Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978); Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 403 (1997). The City's liability cannot be premised on a theory of respondeat superior. Oklahoma City v. Tuttle, 471 U.S. 808, 818 (1985); Jones v. City of Hartford, 285 F. Supp. 2d 174, 186 (D. Conn.

2003).

In this case, plaintiff's § 1983 claim against the City is based upon his contention that the Officer Feola used excessive force and that the use of such force was based upon a municipal custom and policy of using excessive force in the restraint of individuals and the failure of the City to rectify the use of excessive force after receiving notice thereof. (Pl.'s Compl., Ct. X, ¶ 3.)

In Vann v. City of New York, 72 F.3d 1040, 1049 (2d Cir. 1995), the Second Circuit held that a plaintiff injured by a police officer's use of excessive force might establish the pertinent custom or policy for purposes of a § 1983 Monell claim by showing that the municipality, alerted to the possible use of excessive force by its police officers, exhibited "deliberate indifference" thereto. See also Walker v. City of New York, 974 F.2d 293, 300 (2d Cir. 1992), cert. denied, 507 U.S. 961 (1993); Jeffes v. Barnes, 208 F.3d 49, 61-62 (2d Cir.), cert. denied, 531 U.S. 813 (2000). To prove such deliberate indifference, the plaintiff must show that it was obvious to the city that there was a need for more or improved supervision of police officers in order to protect against constitutional violations. Amnesty America v. Town of West Hartford, 361 F.3d 113, 128-30 (2d Cir. 2004). This

could be demonstrated through proof of repeated complaints of civil rights violations, followed by no meaningful attempt on the part of the city to investigate or forestall further incidents. Vann, 72 F.3d at 1049 (citing Canton v. Harris, 489 U.S. 378, 390 (1989); Ricciuti v. N.Y.C. Transit Authority, 941 F.2d 119, 123 (2d Cir. 1991)).

Here, plaintiff relies on a 1985 consent decree in Barros v. Walsh, No. B-482 (D. Conn. 1973), modified,(D. Conn. 1985), and a decision in the case of Bridgeport Guardians, Inc. v. Delmonte, No. 5:78cv00175 (D. Conn. Jan. 12, 2001), aff'd, 248 F.3d 66 (2d Cir.), cert. denied, 534 U.S. 950 (2001), to support his claim that the City of Bridgeport has been "unable to police its own police." (Pl.'s Mem. at 4.) Plaintiff also cites to the "fact" that disciplinary officers come from the rank and file, thus potentially being sympathetic to police officers in disciplinary matters and the "fact" that no standards or procedures exist for the investigation of individual complaints "other than the individual officers' whims." (Pl.'s Mem. at 4.) This evidence, plaintiff argues, supports his claim that the City has failed to properly supervise and discipline its officers, from which a "jury could reasonably conclude that this failure resulted in Officer Feola feeling he could escape punishment for

assaulting plaintiff and violating his civil rights." (Pl.'s Mem. at 4.)

After a careful review of the evidence submitted by plaintiff in opposition to the motion for summary judgment, the Court finds nothing to support plaintiff's claim that the City maintained a custom or policy of using excessive force to restrain individuals, as alleged in the complaint, or that any alleged lack of supervision or discipline rose to the level of deliberate indifference, so as to support a claim of municipal liability under § 1983. With respect to the two prior cases involving the Bridgeport Police Department on which plaintiff relies, neither involved a policy, practice or custom of permitting the use of excessive force. The Bridgeport Guardians case, filed in 1978, addressed racially discriminatory assignments and promotions within the police department. The stipulation of settlement in the Barros v. Walsh action, which dates back to 1972, involved, inter alia, the establishment of a citizens' complaint process for various types of complaints against the police department, including, inter alia, complaints concerning the use of unnecessary force. Plaintiff has provided no evidence that the City was deliberately indifferent to complaints of excessive force by police officers. Thus, other than the bare allegation in his

complaint of a municipal custom or policy, plaintiff has failed to present any factual evidence to support his claim that the City had a policy or custom permitting police officers to use excessive force or that the City failed to rectify the use of excessive force by its officers.

Additionally, plaintiff's § 1983 claim against the City must fail for a second reason. The law is well established that the municipal policy or custom must be the "moving force of the constitutional violation" in order for the municipality to have any liability under Monell. 436 U.S. at 694. In City of Canton v. Harris, 489 U.S. at 385, the Supreme Court held that there must be a "direct causal link" between the municipal policy or custom and the alleged constitutional deprivation. In Board of County Commissioners of Bryan County, where the plaintiff's Monell claim was based upon alleged deficiencies in conducting background checks on the deputy sheriff who violated plaintiff's rights, the Court held that the plaintiff had to demonstrate that the municipality's deliberate indifference was the "'moving force' behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights."

520 U.S. at 404; see generally Martin A. Schwartz & John E. Kirklin, 1B Section 1983 Litigation §§ 7.17, 7.18 (3d ed. 2004-2 Supp.).

There is no evidence in the record that could support a finding that the City's alleged lack of discipline and supervision of its police officers led to Officer Feola's use of excessive force because he thought he could get away with it, as plaintiff has alleged.

Therefore, the Court grants summary judgment in favor of defendant, the City of Bridgeport, on plaintiff's § 1983 claim, set forth in count ten of the complaint.

**IV. Conclusion**

Accordingly, defendants' motion for partial summary judgment [Doc. # 26] is GRANTED as to counts two, four, six, seven, eight, nine, and ten of plaintiff's complaint.

SO ORDERED, this 25th day of October, 2004, at Bridgeport, Connecticut.

__/s/_____
WARREN W. EGINTON,
Senior United States District Judge