

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NATASHA JONES,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:99CV1523(CFD)
	:	
CITY OF BRIDGEPORT et al.,	:	
Defendants.	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

I. Introduction

The plaintiff, Natasha Jones (“Jones”) brings this action pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988. She alleges that the defendants, who are Bridgeport police officers, violated her rights under the Fourth, Fifth, Ninth and Fourteenth Amendments when they obtained and executed a warrant to search her apartment based on incorrect information. She also claims that the defendants intentionally and negligently inflicted emotional distress upon her as a result. Finally, Jones asserts a claim against the City of Bridgeport for engaging in a custom, practice or policy which caused the improper search.

The defendants have moved for summary judgment [Doc. # 28], arguing that they are entitled to judgment as a matter of law on all the counts of the plaintiff’s complaint. For the following reasons, their motion is GRANTED.

II. Background¹

On July 7, 1997, the Bridgeport Police Department’s Division of Narcotics and Vice

¹The recited facts are taken from the parties’ Local Rule 9(c)(1) statements and the materials appended thereto. They are undisputed unless indicated.

received information through a telephone call to the Narcotics Hotline² that narcotics were being sold from Apartment 216 of Building 12 of the Marina Village Housing Project in Bridgeport, Connecticut by Andrew Gardner (“Gardner”). In light of this information, defendants Detective Richard DeRiso (“DeRiso”) and Detective Lawrence Ciambriello (“Ciambriello”) of the Narcotics and Vice Division directed a confidential informant (“CI”) to make two controlled “buys” from Apartment 216 of Building 12. Based on the information provided by the anonymous call and the success of the two controlled buys, Detectives DeRiso and Ciambriello applied for and obtained a state search warrant. The search warrant was subsequently executed, but it turned out that the drugs were being sold out of Apartment 214, not 216. Plaintiff lived in Apartment 216.

The affidavit submitted by the detectives in support of the search warrant application described their investigation. It recounted the telephone call to the hotline and included a description of the two controlled buys. The detectives also stated in the affidavit that the dealer was Gardner. The affidavit did not state that the detectives could see the CI enter Apartment 216 for either buy. However, it did recite that they specifically directed the CI to Apartment 216 of Building 12, but that he disappeared from view as he approached Building 12.³ Following both buys, the affidavit went on to say, the CI confirmed that he purchased the narcotics from a black male in Apartment 216. The narcotics were confirmed to be crack cocaine through field tests. The affidavit also stated that on September 8, 1997, before the second controlled buy, the detectives checked with the United Illuminating Company Security Division to determine the

²The defendants explain that the hotline “permits anonymous calls to assist the Narcotics and Vice Division of the Bridgeport Police Department.”

³Building 12 of the Marina Village Housing Project is described as “a two story, brick building”

electrical service subscriber for Apartment 216 of Building 12 at Marina Village. The information they received indicated that the subscriber was Natasha Jones, the plaintiff here. The affidavit also explained:

[N]arcotics traffickers often purchase and/or title their assets in fictitious names, aliases or the names of relatives, associates or business entities to avoid detection of these assets by government agencies. That even though these assets are in the names of others than that of the narcotic traffickers, the narcotic trafficker actually own and continue to use these assets and exercise dominion and control over them.

Defs.' Ex. A at ¶12.

A Connecticut Superior Court judge signed the search warrant on September 18, 1997. See id. It permitted a search of Apartment 216 at Marina Village for evidence of narcotics distribution.

On September 25, 1997, several of the defendant officers assisted in the search of Apartment 216. When the officers entered the apartment, no one was present. However, several officers observed a man later identified as Gardner run out of the rear door of Apartment 214. They later apprehended Gardner.

An individual who observed this police activity telephoned the plaintiff, the lessee of Apartment 216, to tell her of the search. Shortly thereafter, Jones returned to her apartment. The police were still there when she arrived, but the search had been completed, and no drugs had been found.

At this time, Jones also observed Gardner, who had been arrested, and recognized him as a resident in the same building. He lived next door to Jones, in Apartment 214. A search of Apartment 214 then revealed narcotics and paraphernalia related to narcotics. The doors to

Apartments 214 and 216 are side-by-side in an adjoining entryway, and they have no distinguishing marks, although Jones apparently had written the number of her apartment in pen near the door. The confusion occurred because the affidavit and warrant incorrectly named Apartment 216 as the intended subject of the search and the place where illegal narcotics activity was taking place. That activity, and the sales to the confidential informant, had actually occurred in Apartment 214.

The defendants in this action are the City of Bridgeport, Sgt. Kevin Zwierlein, Sgt. Carl Leonzi, Detective Richard DeRiso, Detective Lawrence Ciambriello, Detective Angel Duran, Detective Pedro Laluz, Detective Darwin Hill, Detective William Heckley, Detective Daniel Domkowski, Detective Garthalia Johnson, Officer Antonio Brown, Officer Victor Diaz, Officer Edgar Perez, and Officer Jose Bahr. As explained above, Detectives DeRiso and Ciambriello were the officers who applied for the warrant. According to an Office of Internal Affairs report obtained by the plaintiff, all of the named individual defendants participated in the search. However, the defendants maintain that the police officers were involved to varying degrees, and in particular, that Detectives Darwin Hill and Garthalia Johnson were not part of the search team. See Defs.' Exs. H, I.

In Count One, Jones claims pursuant to 42 U.S.C. § 1981, 1983, 1985, 1986, and 1988, that all of the defendant officers deprived her of her rights and privileges and immunities under the Fourth, Fifth, Ninth, and Fourteenth Amendments. Specifically, she claims that the defendants (presumably, Detectives DeRiso and Ciambriello) should have further investigated before applying for and executing the warrant, particularly because a check of the Bridgeport Housing Authority and other sources would have confirmed that Jones, not Gardner, was the

lessee of Apartment 216. Jones also maintains that the officers should have known to do this because of a jury verdict in a case, Calovine v. City of Bridgeport, which had been handed down on July 25, 1997. In that case, the jury awarded both punitive and compensatory damages to plaintiffs whose apartment had been erroneously searched by members of the Bridgeport Police Department.⁴

In Count Two, Jones claims that the individual defendants negligently or intentionally inflicted emotional distress upon her as a result of the incident.

Finally, in Count Three against the City of Bridgeport (the “City”), Jones claims that the City had a custom, practice or policy of condoning and encouraging civil rights violations by its officers, which “is well known to the individual defendants.” Further, Jones claims that the City failed to properly train individual defendants with regard to searches and that the City knew the officers were conducting improper searches.

III. Standard

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). A court must grant summary judgment ““if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact.”” Miner v. City of Glen Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine ““if the evidence is such that a reasonable

⁴The plaintiff does not appear to challenge the manner in which the officers conducted the search here.

jury could return a verdict for the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting Anderson, 477 U.S. at 248). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The Court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992). Additionally “where . . . the non-movant bears the burden of proof at trial, the movant can satisfy its burden of production by pointing out an absence of evidence to support an essential element of the non-movant’s case.” Ginsberg v. Healey Car & Truck Leasing, Inc., 189 F.3d 268, 270 (2d Cir. 1999) (citing Celotex, 477 U.S. at 323-24 and Tops Mkts., Inc. v. Quality Mkts., Inc., 142 F.3d 90, 95 (2d Cir. 1998)).

IV. Discussion

As noted above, the defendants have moved for summary judgment on all the counts and claims of the plaintiff’s complaint.

A. Civil rights claims against individual defendants

1. 42 U.S.C. § 1981

Section 1981 provides,

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

“To establish a claim under § 1981, a plaintiff must allege facts in support of the following elements: (1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute (i.e., make and enforce contracts, sue and be sued, give evidence, etc.).” Mian v. Donaldson, Lufkin & Jenrette Securities Corp., 7 F.3d 1085, 1087 (2d Cir. 1993).

The complaint states that the plaintiff is a member of a racial minority. Jones maintains that based on the allegations of the complaint, “a jury could find that the race of the [plaintiff] and the project in which she was living made it easier for the defendants to act in as reckless a manner as they did in violating her home.” However, the plaintiff does not allege that the defendants intentionally discriminated against Jones because of her race, and points to no evidence to support such a proposition. Accordingly, defendants’ motion for summary judgment on plaintiff’s claim under § 1981 is granted.⁵

2. 42 U.S.C. § 1983

The plaintiff alleges that the defendant police officers lacked probable cause for the search of her home, which the Court interprets as an allegation that the warrant permitting that

⁵Given this conclusion, the Court will not address whether the plaintiff has alleged that she was the victim of discrimination concerning one of the activities enumerated in § 1981 or whether such a claim is properly directed at public officials.

search was issued without probable cause. The defendants argue that the police officers named in the complaint are shielded from liability by qualified immunity.

Government officials such as police officers performing discretionary functions are entitled to qualified immunity insofar as 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), or insofar as “it [is] objectively reasonable for them to believe that their acts d[o] not violate those rights,” Velardi v. Walsh, 40 F.3d 569, 573 (2d Cir.1994). A determination of whether a defendant is entitled to qualified immunity, which is an entitlement not to stand trial or face the other burdens of litigation, “should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive.” Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 2155-56 (2001).

The first inquiry asks whether the facts alleged show the officers’ conduct violated a constitutional right, and must be “undertaken in the specific context of the case, not as a broad general proposition.” Saucier, 121 S. Ct. at 2156. In this case, the defendant officers concede that entry into a home to search without probable cause is a constitutional violation; defendants’ counsel also represented at oral argument there is no dispute as to whether Jones had such a clearly established right.⁶

⁶In Samuels v. Smith, 839 F. Supp. 959 (D. Conn. 1993), the defendant police officers mistakenly executed a valid and correct search warrant at the wrong apartment. Then-District Court Judge Cabranes characterized the constitutional right involved as the “right not to be subject to the mistaken execution of an otherwise valid search warrant” and concluded that it was “by no means clearly established at the time of the search.” Samuels, 839 F.2d at 967. The facts of the instant action differ from those in Smith. Here, the technical execution of the search warrant is not at issue: the warrant permitted a search of Apartment 216 and the officers correctly did so.

The parties instead have focused their arguments on the second inquiry: whether it was objectively reasonable for the officers to have believed that their acts did not violate Jones' right not to have her home searched without probable cause. Plaintiff's arguments on this point, however, are not entirely clear. Jones appears to contend that the officers are not entitled to qualified immunity for two reasons: (1) the warrant lacked probable cause for the search and thus the officers who executed the search should not have relied upon it; and (2) Detectives DeRiso and Ciambriello deliberately misled the judge who signed the warrant by failing to verify the location and occupants of the apartment at issue. More specifically, the plaintiff argues that the detectives should have checked with the Bridgeport Housing Authority, mail deliverers, the building superintendent, and maintenance workers before applying for the warrant, as the plaintiff argues that all of these sources "knew the difference between the two apartments." Compl. ¶ 8. At oral argument, plaintiff's attorney also suggested that the detectives should have observed the informant enter the apartment in which the "buys" were made to assure that the informant's information was correct.

In Malley v. Briggs, 475 U.S. 335 (1986), the U.S. Supreme Court addressed the issue of whether police officers are entitled to qualified immunity for warrants issued without probable cause. The Court explained that the issue is "whether a reasonably-trained officer in [the defendants'] position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." Malley, 475 U.S. at 345. It concluded that the officer "will not be immune if, on an objective basis, it is obvious that no reasonably competent officer could have concluded that a warrant should issue; but if officers of reasonable competence could disagree on this issue, immunity should be recognized." Id. at 341. The Second Circuit has

articulated a similar standard, explaining:

A police officer who relies in good faith on a warrant issued by a neutral and detached magistrate upon a finding of probable cause is presumptively shielded by qualified immunity from personal liability for damages. Golino v. City of New Haven, 950 F.2d 864, 870 (2d Cir.1991). Police activity conducted pursuant to a warrant rarely will require any deep inquiry into reasonableness because a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith. United States v. Leon, 468 U.S. 897, 922 (1984). However, “the officer’s reliance on the magistrate’s probable-cause determination and on the technical sufficiency of the warrant he issues must be objectively reasonable.” Id. The court’s inquiry into reasonableness is limited to determining whether a reasonably well-trained officer would have known that the warrants were illegal despite the magistrate’s authorization. Id. at 922 n.23.

Simms v. Village of Albion, New York, 115 F.3d 1098, 1106 (2d Cir. 1997). In other words, “judicial review of a probable cause determination by a magistrate on the basis of truthful affidavits . . . must be deferential, and it is therefore limited to ensuring that a ‘substantial basis’ underlay the magistrate’s conclusion that probable cause existed.” Velardi, 40 F.3d at 574 n.1.⁷

Here, a judge of the Connecticut Superior Court signed the search warrant on September 18, 1997, determining that probable cause existed for the search and therefore presumptively shielding the defendant officers from personal liability from damages. Golino, 950 F.2d at 870. The Court next must determine whether the officers’ reliance on the judge’s probable-cause determination and on the technical sufficiency of the warrant was objectively reasonable. Id. This inquiry involves an examination of whether a reasonably well-trained officer would have known that the warrant was illegal despite the judge’s authorization.

The defendant officers had substantial evidence that an individual was selling drugs

⁷It is important to note that the plaintiff does not contend that Detectives DeRiso and Ciambriello *knowingly* lied to the judge in their affidavits supporting the search warrant. Instead, although she contends that they “falsely reported” to the judge that the sales were made at Apartment 216, she does not maintain that this misrepresentation was intentional.

from Apartment 216, all of which was outlined in the search warrant. This evidence included the information provided in the telephone call to the narcotics hotline, as well as the report of the confidential informant that he had engaged in two controlled buys from Apartment 216.⁸ While the electric service for Apartment 216 was not in Gardner's name, as Detectives DeRiso and Ciambriellos explained in their affidavit, drug dealers often register apartments and other property in names other than their own.

Under these circumstances, a reasonably well-trained officer would not have known that the warrant was illegal. See Simms, 115 F.3d at 1106. This is particularly true in light of the United States Supreme Court's statement in Maryland v. Garrison that it had "recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult task of making arrests and executing search warrants." 480 U.S. 79, 87 (1987). Thus, keeping in mind the deferential review given to a judge's probable cause determination, there was a substantial basis underlying the judge's conclusion that probable cause existed. See Velardi, 40 F.3d at 574 n.1. Assuming the officers named in the complaint all executed the search, they are entitled to qualified immunity.

There also is no indication that DeRiso and Ciambriello misled the judge who signed the warrant.

"Where an officer knows, or has reason to know, that he has materially misled a magistrate on the basis for a finding of probable cause, . . . the shield of qualified

⁸The affidavit submitted with the search warrant application by Detectives DeRiso and Ciambriello stated that the confidential informant who made the two buys was "reliable" and "credible"; that the informant has provided information in the past that "has lead to over 36 Superior Court authorized Search and Seizure warrants, the seizure (sic) large quantities of assorted narcotics and the arrests and convictions of the persons involved in the illegal sales and or possession."

immunity is lost.” Golino v. City of New Haven, 950 F.2d 864, 871 (2d Cir.1991), cert. denied, 505 U.S. 1221 (1992) (citations omitted). A section 1983 plaintiff challenging a warrant on this basis must make the same showing that is required at a suppression hearing under Franks v. Delaware, 438 U.S. 154, 155-56 (1978): the plaintiff must show that the affiant knowingly and deliberately, or with a reckless disregard of the truth, made false statements or material omissions in his application for a warrant, and that such statements or omissions were necessary to the finding of probable cause. Golino, 950 F.2d at 870-71; see Franks, 438 U.S. at 171-72. Unsupported conclusory allegations of falsehood or material omission cannot support a Franks challenge; to mandate a hearing, the plaintiff must make specific allegations accompanied by an offer of proof. See Franks, 438 U.S. at 171. Moreover, when police officers move for summary judgment on the basis of qualified immunity, “[p]laintiffs may not unwrap a public officer’s cloak of immunity from suit simply by alleging even meritorious factual disputes relating to probable cause, when those controversies are nevertheless not material to the ultimate resolution of the immunity issue.” Cartier v. Lussier, 955 F.2d 841, 845 (2d Cir.1992). Disputed issues are not material if, after crossing out any allegedly false information and supplying any omitted facts, the “corrected affidavit” would have supported a finding of probable cause. Soares v. State of Connecticut, 8 F.3d 917, 920 (2d Cir.1993); Cartier, 955 F.2d at 845.

Velardi, 40 F.3d at 573-74.

Here, there is no evidence that the misrepresentation as to the apartment number was either knowing or deliberate; nor does the plaintiff make such an allegation. In their affidavit, the detectives described the telephone call to the hotline number specifically identifying Apartment 216 and the two buys that the informant claimed to have made at Apartment 216. However, they also revealed that the electrical service for Apartment 216 was not in the name of Gardner, the alleged drug dealer, but Natasha Jones. Further, the officers also explained that they had not actually observed the confidential informant enter the apartment to make a purchase.⁹ In sum, the

⁹Although not recited in the search warrant application or affidavit, a second telephone call to the narcotics hotline was received on July 14, 1997, indicating Apartment 216 as the location for the narcotics activity. This information was also given to Detectives DeRiso and Ciambriello at that time and supports their good faith belief in Apartment 216 as the correct location.

superior court judge was presented with all of the facts—positive and negative—known to the officers at the time, and there is no indication that the officers knowingly made any misrepresentations or that they intentionally failed to present the judge with any additional facts known to them at the time they applied for the warrant.

Further, there is no indication that the officers acted with a reckless disregard for the truth. They gathered significant evidence of drug dealing activity in Apartment 216 and attempted to verify its lessee. While the plaintiff argues that the officers should have done further investigation by checking with other sources, their failure to do so is at most a result of negligence—not recklessness, and negligent or innocent mistakes do not violate the Fourth Amendment. See Franks, 438 U.S. at 171 (1978). As the Supreme Court stated in Franks, its “reluctance . . . to extend the rule of exclusion beyond instances of deliberate misstatements, and those of reckless disregard, leaves a broad field where the magistrate is the sole protection of a citizen’s Fourth Amendment rights, namely, in instances where police have been merely negligent in checking or recording the facts relevant to a probable-cause determination.” Id. at 170. Here, the plaintiff’s allegations amount to a charge that the officers did not check the facts relevant to the probable cause determination, and this is not sufficient to warrant a Franks hearing or to survive the motion for summary judgment.¹⁰

¹⁰Because the Court has determined that DeRiso and Ciambriello are entitled to qualified immunity for the warrant, the other defendants may not be found liable for constitutional violations as there is no evidence they were involved in the application process and there is no claim asserted concerning the execution of the warrant. Accordingly, the Court need not address the defendants’ argument that the § 1983 allegations are insufficient as to many of the police officers named in the complaint on other bases. Further, the plaintiff’s § 1983 claims based upon violations of the Ninth Amendment must fail. See Doe v. Episcopal Social Svcs., No. 94 Civ. 9171 (DAB), 1996 WL 51191, at *1 (S.D.N.Y. Feb. 7, 1996) (“Because § 1983 claims must be premised upon specific constitutional guarantees, Daniels v. Williams, 106 S.Ct. 662, 666 (1986);

In short, “[s]ubmitting the wrong address in the application for the warrant is a mistake that was reasonable under the circumstances.” Torian v. City of Beckley, 963 F. Supp. 565, 569 (S.D.W. Va. 1997) (holding that a police officer who had applied for and executed a search warrant on an incorrect address was entitled to qualified immunity because he reasonably could have thought there was probable cause to seek the warrant). This case is quite different from those in which the officer signing the affidavit supporting the search warrant made no effort to verify the accuracy of an address at which allegedly illegal activity was taking place. See, e.g., Gonzalez v. Romanisko, 744 F. Supp. 95, 98-99 (M.D. Pa. 1990). Similarly, it is distinguishable from those cases in which factual issues remained at the summary judgment stage as to how a police officer verified particular information given to him, or the care that he took in verifying that information. See, e.g., Williams v. City of Detroit, 843 F. Supp. 1183, 1185-86 (E.D. Mich. 1994).

3. 42 U.S.C. §§ 1985 and 1986

The four elements of a section 1985(3) claim are: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right of a citizen of the United States. . . . Furthermore, the conspiracy must also be motivated by some racial or perhaps otherwise class based, invidious discriminatory animus behind the conspirators’ actions.

Mian, 7 F.3d at 1087 (citation and quotation omitted). Again, there are no allegations in the complaint that any discriminatory conduct took place because of the plaintiff’s race, and no

Paul v. Davis, 424 U.S. 693, 700-01 (1976), of which the Ninth Amendment provides none, this portion of the motion will be granted.”). Finally, while the plaintiff references the Fifth and Fourteenth Amendments in her complaint, she makes no specific allegations referencing any due process violations, and the Court thus will presume that she is not pursuing those grounds.

evidence tending to support this conclusion, and therefore this claim therefore must fail.

Section 1986 “provides a cause of action against anyone who having knowledge that any of the wrongs conspired to be done and mentioned in section 1985 are about to be committed and having power to prevent or aid, neglects to do so.” Mian, 7 F.3d at 1087 (citation and quotation omitted). Because the plaintiff’s § 1985 claim fails, this one must as well.

B. Claim against the City

Although a city may not be liable under § 1983 for the unconstitutional actions of its employees under the doctrine of respondeat superior, it may be held responsible for its own conduct caused by unconstitutional policies. “It is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978). Thus, to impose liability on a municipality, the plaintiff must prove that a municipal policy or custom caused a deprivation. See Wimmer v. Suffolk County Police Dept., 176 F.3d 125, 137 (2d Cir. 1999). This policy or custom “need not be contained in an explicitly adopted rule or regulation,” but actions by an official whose edicts or acts represent official policy may result in municipal liability under § 1983. Id.

To establish a municipal policy of inadequate training, a plaintiff “must put forward some evidence that the City itself has acted or consciously not acted.” Walker v. City of New York, 974 F.2d 293, 296 (2d Cir. 1992) (citing Oklahoma City v. Tuttle, 471 U.S. 808, 832 (1985)). A municipality will be liable for inadequate training only where the failure to train amounts to deliberate indifference to the rights of the plaintiff. See City of Canton v. Harris, 489

U.S. 378, 389 (1989). A municipality's failure to train or supervise constitutes deliberate indifference to the constitutional rights of its citizens when three requirements are met: (1) the plaintiff must show that a city—through its “policymakers”—knows to a moral certainty that its employees will confront a given situation; (2) the plaintiff must show that the situation either presents the employee with a difficult choice of the sort that training or supervision will make less difficult or that there is a history of employees mishandling the situation; and (3) the plaintiff must show that the wrong choice by the city employee will frequently cause the deprivation of a citizen's constitutional rights. See Walker, 974 F.2d at 297-98.

As to Monell liability of the City, the plaintiff first alleges that the City inflicted injury on the plaintiff because it has a custom, policy, or practice “of condoning and encouraging civil rights violations by its police officers,” see Compl., Third Count, ¶2. Plaintiff then cites two prior incidents involving Bridgeport police officers—who are not defendants here—to support this allegation. The evidence presented shows these two incidents to be the following:

(1) In 1984, two Bridgeport police officers were found guilty of reckless endangerment in connection with injuries suffered by a criminal accused while they were transporting him. Some time before 1996, these two officers were promoted to sergeant, but the 1984 convictions were not considered during the promotions process; and

(2) Some time before 1992, ten Bridgeport police officers were accused of stealing items during searches. When first confronted by the state prosecutor, they chose not to give statements.

These incidents do not give rise to an inference that they caused the harm plaintiff complains of here and do not support the existence of the policy asserted by the plaintiff, even when considered with the circumstances of the Calovine case, discussed infra. The prior

convictions of the two police officers from 1984 and the failure to consider them when they were promoted to sergeant has nothing to do with the Bridgeport police department search policies or training in 2001 and are insufficient and too remote to raise a genuine issue of material fact as to whether a policy of condoning civil rights violations existed in 2001.¹¹ As to the other Bridgeport police officers' refusal to give statements to the prosecutor when first interviewed, that too is completely unrelated. Moreover, a grand juror was appointed to investigate the theft claims and that grand juror—then Superior Court Judge William Sullivan and now Chief Justice of the Connecticut Supreme Court—concluded in April 1992 that there was no “credible evidence” to support the allegations against the officers.

Even construing all ambiguities and drawing all inferences in favor of the plaintiff, Jones has not made a sufficient showing as to this claim of “custom, practice or policy” she asserts to create a genuine issue of material fact. Celetex, 477 U.S. at 323; Aldrich, 963 F.2d at 523.

As to the plaintiff's allegations of inadequate training, she has not demonstrated that the City has “acted or consciously not acted” as required by the Second Circuit in Walker. In other words, she has not shown that the City either failed to train officers in proper investigatory or search techniques, that the training they received was inadequate, or that it caused the incident here.¹² Instead, she essentially asks the Court to infer from the circumstances of Calovine that the

¹¹Plaintiff also mentions an unspecified incident involving another Bridgeport police officer who was subsequently promoted, but that incident apparently occurred even earlier—in 1977—and has no relevance here.

¹²In applying the three criteria of Walker, it is clear that proper search warrant application procedures and analysis are matters that would certainly require some training of those officers responsible for that aspect of police work. Searches occur frequently, they present difficult

City's training must be inadequate and caused the events here. While certain aspects of the Calovine case may be similar, the fact that different Bridgeport police officers on one previous occasion obtained a warrant to search the wrong apartment is simply not sufficient evidence from which the Court or a trier of fact can conclude that the City is liable here for failure to adequately train its officers under Monell. In Calovine,

Defendants [Bridgeport police officers] Carlson and Curet applied for a search warrant to search "the condominium apartment unit #405 of 1488 Capital Avenue, which is a second floor unit in a blue two story multi-unit building" which they claim was occupied by a drug dealer. The application had several errors. It incorrectly described the address at which they had conducted the surveillance, gave the wrong number of the apartment of the drug dealer (which was 406 not 405) and stated that unit 405 was on the second floor when it was on the first floor. It appears that the application for the warrant was submitted with six others executed at the same time upon a single neighborhood describing drug trafficking activity in the neighborhood.

Calovine v. City of Bridgeport, No. 3:94CV379(WWE) (D. Conn. Sept. 26, 1997).

Unlike the instant action, the officers in Calovine apparently did not rely upon a confidential informant that had been reliable in the past, but principally based the warrant application on information supplied by the building superintendent. They also did not supervise any controlled buys in an effort to confirm the information. The warrant application also apparently gave the incorrect floor of the building on which the apartment was located. Finally, the report of the search falsely stated that items were seized from the apartment identified in the warrant, and the officers later misrepresented that they had obtained the wrong address from the

choices, and can cause constitutional deprivations. However, unlike some Monell-type cases, this case does not prevent the issue of whether some training is required, but was nonexistent, but whether sufficient proof of "deliberate indifference" by the City to a pattern of search misconduct to show inadequate training has been presented to withstand summary judgment. See Erwin Chemerinsky, Federal Jurisdiction § 8.5 (3d ed. 1999).

building superintendent. Calovine, No. 3:94CV379(WWE), at 3. While here and in Calovine the police entered the wrong apartment, the reasons for the mistake were quite different, the detectives took more steps to determine the appropriate search location, and presented all the material information to the issuing judge. Also, no other evidence has been presented to show that the City was “deliberately indifferent” to those who might be subject to police searches or to proper procedures for obtaining search warrants. While a history of a municipality’s failure to respond to complaints of particular civil rights violations may in some circumstances be a sufficient basis to hold municipalities accountable for inadequate training, Gentile v. County of Suffolk, 926 F.2d 142, 153 (2d Cir. 1991), the situation in Calovine is not sufficiently related or enough by itself to trigger Monell liability for the conduct at issue here under the high standard of “deliberate indifference.” As Walker instructs, one prior incident involving different officers under different circumstances is typically not sufficient to show “a history . . . of mishandling the situation” or a “pattern of police misconduct” so as to create a genuine issue of material fact as to whether the City itself caused the alleged misconduct here, and is not sufficient here to withstand summary judgment. 947 F.2d at 298.

C. State law claims

In light of the Court’s ruling on the plaintiff’s other claims, the Court declines to exercise jurisdiction over her claims of negligent and intentional infliction of emotional distress. See 28 U.S.C. § 1367(c) (“district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction”). Although the district court has the discretion to retain jurisdiction, “in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the

pendant jurisdiction doctrine--judicial economy, convenience, fairness and comity--will point toward declining jurisdiction over the remaining state-law claims.” In re Merrill Lynch Ltd. Partnerships Litig., 154 F.3d 56, 61 (2d Cir.1998) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988)). The Court concludes that declining jurisdiction over the state law claims is appropriate here.

V. Conclusion

For the foregoing reasons, the defendants’ motion for summary judgment [Doc. # 28] is GRANTED and the Clerk is ordered to close this case.

SO ORDERED this 19th day of February 2002, at Hartford, Connecticut.

/s/
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE