UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AALIYAH AZEEM, Plaintiff,	:	
v.	:	No. 3:99-cv-222(EBB)
TOWN OF BETHEL and BETHEL POLICE DEPARTMENT, JOHN DOES 1,2,3,4,5,6 Defendants.	:	

RULING ON MOTION TO DISMISS

INTRODUCTION

Plaintiff Aaliyah Azeem ("Plaintiff" or "Azeem") brings this six-count Amended Complaint against the Town of Bethel, its Police Department and Officers John Doe one through six. In the First Cause of Action, the Plaintiff alleges that the Defendants acted unreasonably, unlawfully, and with intentional malice and/or with wanton disregard for Plaintiff's rights, in that they allegedly had no probable cause to detain or bring criminal charges against the Plaintiff and that Defendants did so in violation of Plaintiff's Fourth Amendment rights.[1]/ In the second cause of action, Plaintiff alleges that the Defendants intentionally assaulted Plaintiff in violation of the Fourth and Fourteenth Amendments to the Constitution, Title 42 U.S.C. §§ 1983 and 1988. The third cause of action is a substantive due process claim in violation of the Fourteenth Amendment, Sections 1983 and 1988. The Plaintiff's fourth cause of action alleges

[1]/ Plaintiff was never arrested on any charges resulting from the search of her home.

state law claims of assault and battery, false imprisonment, malicious prosecution, intentional infliction of emotional distress, and negligence. The fifth and sixth causes of action are identical and Plaintiff alleges, first, municipal liability against the Town of Bethel, for the acts of its employees, and second, the failure of the Bethel Police Department to properly train its officers in the execution of a search warrant. In particular, Plaintiff asserts that it is the custom and policy of the Town of Bethel and the Bethel Police Department to execute search warrants in an unlawful manner.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion.

In the Amended Complaint, Plaintiff claims damages arising from the execution of a search warrant at her home. The Plaintiff alleges that, without provocation, the Defendant police officers "attacked Plaintiff by pushing her, pointing a gun at her head, and holding her at gunpoint as the search was being executed." She further alleges that officers pulled her mattress off her bed and went through her personal belongings. No contraband was found in Plaintiff's home.

Defendant police officers have raised the defense of qualified immunity, claiming that their conduct was objectively

reasonable and their conduct did not violate a clearly established right.

The Town asserts that under the controlling precedent of Monell v. Department of Social Services, 436 U.S. 658 (1978), they cannot be held liable because Plaintiff has failed to demonstrate a municipal custom or policy and that one alleged single incident will not suffice to raise an inference of custom or policy. The Police Department argues the identical defense.

LEGAL ANALYSIS

I. The Standard of Review

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. Spalding, 467 U.S. 69, 73 (1984). "The function of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) *quoting* Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980).

Pursuant to a Rule 12(b)(6) analysis, the Court takes all well-pleaded allegations as true, and all reasonable inferences are drawn and viewed in a light most favorable to the plaintiff. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996).

The proper test is whether the complaint, viewed in this manner, states **any** valid ground for relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

II. The Standard As Applied

A. Officers John Doe 1-6

The privilege of qualified immunity generally shields government officials from liability for damages on account of their performance of discretionary, official functions "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); *accord* Ying Jing Gan v. City of New York (2d Cir. 1993). The availability of the defense generally turns on the "objective reasonableness" of the allegedly unlawful action "assessed in the light of rules that were 'clearly established' at the time it was taken." Anderson v. Creighton, 483 U.S. 635, 639 (1987), *quoting* Harlow, 457 U.S. at 818-819; *see also* Benitez v. Wolf, 985 F.2d 662, 666 (2d Cir 1993); Golino v. City of New Haven, 950 F.2d 864, 870 (2d Cir 1991),*cert. denied sub nom* Lillis v. Golino, 505 U.S. 1221(1992).

As a general rule, police officers are entitled to qualified immunity if (1) their conduct does not violate clearly established constitutional rights, or (2) it was objectively reasonable for them to believe their acts did not violate those

rights. Anderson, 483 U.S. at 640; Oliviera v. Mayer, 23 F.3d 642, 648 (2d Cir. 1994).

Because the defense of qualified immunity is designed to relieve government officials of the burdens of litigation as will as the threat of damages, summary judgment or a motion to dismiss is encouraged as a device for disposing of claims barred by qualified immunity. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)("Unless the plaintiff's allegations state a claim of violation of a clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery"). Dismissal is ordinarily appropriate when the defendant's premise is that "even if the contours of the plaintiff's federal rights and the official's permissible actions were clearly delineated at the time of the acts complained of . . . it was objectively reasonable for [the official] to believe that his acts did not violate these rights. Robison v. Via, 821 F.2d 913, 921 (2d Cir. 1987).

These principles raise insurmountable barriers to Plaintiff's claim that the six police officers violated her constitutional rights. The officers were at her home with a valid search warrant and Plaintiff did not suffer any physical injury. *See* Aponte Matos v. Toledo Davila, 135 F.3d 182, 191 (1st Cir. 1998). A warrant to search for contraband founded on probable cause, which these officers had, implicitly carries with

it the limited authority to detain the occupant of the premises while a proper search is conducted. Michigan v. Summers, 452 U.S. 692, 705 (1981). "The issuance of a warrant by a neutral magistrate, which depends on a finding of probable cause, creates a presumption that it was objectively reasonable for the officers to believe that there was probable cause, and a plaintiff who argues that a warrant was issued on less than probable cause faces a heavy burden." Golino, 950 2d at 870. *Accord*, United States v. Vantresca, 380 U.S. 102, 109 (1965). *See also* Rivera v. United States, 928 F.2d 592, 602 (2d Cir. 1991 (search warrant). In order to mount such a showing the plaintiff must make a "substantial preliminary showing" that the affiant knowingly and intentionally, or with reckless regard for the truth, made a false statement in his affidavit and that the allegedly false statement was "necessary to the finding of probable cause." Franks v. Delaware, 438 U.S. 154, 155-56 (1978). In the present case, Plaintiff completely fails to meet this heavy burden. In her Amended Complaint she makes only unsubstantiated allegations that the search was "without probable cause, without justification whatsoever, and was otherwise illegal." She sets forward no facts to support these allegations. Thus, she fails under the controlling precedent noted above to make the substantial preliminary showing that the warrant was obtained through the use of any false statement.

Claims of force even more extreme than Plaintiff's claims have been found objectively reasonable by various Courts of Appeals. Shoving an arrestee against a wall with no resulting physical injury was insufficient to give rise to a claim of excessive force. Foster v. Metropolitan Airport Com'n., 914 F.2d 1076, 1082 (8th Cir. 1990). In Aponte Matos, 135 3d. at 191-92, an officer, while executing a search warrant, pointed a gun at and threatened the plaintiff, yet it was found that the officer reasonably could have believed that it was necessary to use such force in order to carry out his duty. Even extreme methods have been found to be constitutionally permissible. In Sharrar v. Felsing, 128 F.3d 810, 821 (3d Cir. 1997), the officers required the arrestees to lie face down in the dirt, with guns to their head and vulgar threats. The Court held that merely because the actions caused discomfort and humiliation, they were still objectively reasonable. *Id.* *See also* Hinojosa v. City of Terrel, Texas, 834 F.2d 1223, 1229 (5th Cir. 1988)(temporary emotional distress does not rise to a level that can be redressed under Section 1983). A review of each of these cases reveals that the lack of physical injury bore heavily in each courts' decision. In the present case, Plaintiff suffered no physical injury. Hence, this is another reason why her claim must fail.

Thus, the Court holds that it was objectively reasonable to place the Plaintiff near a wall and hold a gun to her head as a

lawful search was ongoing. Police officers are often forced to make split second judgments -- in circumstances that are tense, uncertain and rapidly evolving -- about the amount of force that is necessary in a particular situation. Graham v. O'Connor, 490 U.S. 386, 396-97 (1989). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather with 20/20 hindsight'". *Id.*, *citing* to Terry v. Ohio, 392 U.S. 1, 20-22 (1968).

B. The Town of Bethel and the Bethel Police Departmen

Plaintiff also seeks damages from the Town of Bethel and the Bethel Police Department for failure to train and supervise its officers in the execution of a search warrant and because it is the "custom and policy to execute search warrants in such an unlawful manner as was the case in the unlawful execution of the warrant against plaintiff." A municipality or an official agency thereof may only be held liable for damages under the law for the unconstitutional acts of its employees while implementing a policy or decision of the municipality. Monell v. Dep't of Social Services, 436 U.S. 658 (1978).

Inasmuch as this Court has found that the search warrant was constitutionally and lawfully executed, Plaintiff fails to set forth any cause of action against the Town or its Police Department.

CONCLUSION

For each of the foregoing reasons the Motion to Dismiss [Doc. No. 24] is hereby GRANTED WITH PREJUDICE. Inasmuch as the federal claims have been disposed of, the Court delines to entertain jurisdiction over the state law claims. The Clerk is directed to close this case.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of September, 2000.