

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID HACKBART,	)	
	)	
Plaintiff,	)	No. 07 CV 157
	)	
v.	)	
	)	MEMORANDUM OF LAW IN
THE CITY OF PITTSBURGH, and	)	SUPPORT OF JOINT MOTION
FOR	)	
SGT. BRIAN ELLEDGE,	)	SUMMARY JUDGMENT
	)	
Defendants.	)	
	)	
	)	Judge David Cercone
	)	
	)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR SUMMARY  
JUDGMENT**

AND NOW, come Defendants, by and through their respective undersigned counsel, and file the within Memorandum in Support of Joint Motion for Summary Judgment.

**I. PROCEDURAL BACKGROUND**

Plaintiff commenced this action by the filing of a Complaint against Sgt. Elledge and the City of Pittsburgh on February 8, 2007. The Complaint alleged three (3) causes of action against the Defendants, summarized as follows:

- Count I: Violation of Right to Constitutionally Protected Speech
- Count II: Unreasonable Search and Seizure
- Count III: Malicious Prosecution

The Parties engaged in appropriate discovery. Accordingly the case is ripe for Summary Judgment consideration.

## **II. FACTUAL BACKGROUND**

Plaintiff, David Hackbart, was driving an SUV on Murray Ave in Squirrel Hill in the City of Pittsburgh on April 10, 2006. Plaintiff saw an open parking spot on the street and stopped his SUV on Murray Ave. in order to try to parallel park. Shortly after he stopped he realized that he did not have enough space between him and the car behind him. Plaintiff, determined to parallel park, began to nudge his car slowly backwards expecting that the car behind him would back up. The car behind him did not move and Plaintiff, angry at that driver, gave him “the finger” and then did nothing to proceed forward. Traffic on Murray Ave. was moderate to heavy that day and there was a steady stream of cars going the opposite direction so that the cars lining up behind Plaintiff’s SUV were blocked from proceeding. Police Sgt. Elledge, while driving in his police cruiser, saw the interaction between Plaintiff and the other driver and the back-up of cars created by Plaintiff’s attempt to park and refusal to abandon the space. Sgt. Elledge drove toward Plaintiff. As Sgt. Elledge reached Plaintiff, Plaintiff was still giving “the finger” to the driver behind him. Sgt. Elledge told Plaintiff not to flip the person off and to move along, and in response Plaintiff gave “the finger” to the officer. As Plaintiff had been obstructing traffic for at least 30 seconds, according to the Plaintiff, on Murray Ave. and refused the command to move on, Sgt. Elledge pulled over Plaintiff and wrote him a citation for disorderly conduct. At a hearing in front of a District Justice, Plaintiff was convicted of the offense. He filed a timely appeal. On October 17, 2006 at the scheduled time for the summary appeal, the charges against him were withdrawn.

Plaintiff alleges that he was given a ticket for giving “the finger” to Sgt. Elledge, which is constitutionally protected speech. Plaintiff also alleges that the Pittsburgh police

department has a policy of failing to appropriately train or discipline its officers regarding misapplications of the disorderly conduct statute. Plaintiff has further alleged municipal liability on behalf of the City of Pittsburgh. Sgt. Elledge has raised the defense of Qualified Immunity, testifying that his objective reasons for writing the citations were because Plaintiff was obstructing traffic and refused to move when told. As such, Sgt Elledge's actions were objectively reasonable and did not violate any clearly established right.

### **III. STANDARD OF REVIEW**

Summary judgment is appropriately granted where "the pleadings, deposition[s], answers to interrogatories, and admissions on file, together with 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). An issue is "genuine" when the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Equimark Comm. Finance Co. v. C.I.T. Financial Service Corp., 812 F.2d 141, 144 (3d Cir. 1987). Thus, where the record, when viewed as a whole, could not "lead a rational trier of fact to find for the non-moving party, summary judgment is proper." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986); Hankins v. Temple Univ., 829 F.2d 437 (3d Cir. 1987). When the moving party establishes the absence of a genuine issue of material fact, the burden is shifted to the non-moving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Foster v. Township of Hillside, 780 F. Supp. 1026, 1038 (1992) (quoting, Matsushita, 475 U.S. at 574). If evidence is "merely

colorable" or is "not significantly probative," summary judgment should properly be granted. Anderson, 477 U.S. at 249; Equimark, 812 F.2d at 144.

Accordingly, the non-moving party "must set forth specific facts showing a genuine issue for trial and may not rest upon mere allegations, general denials, or . . . vague statements." Foster, 780 F.Supp at 1038; (quoting, Quiraga v. Hasbro, Inc., 934 F.2d 497 (3d Cir. 1991)).

Furthermore, affidavits in opposition to a motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. §56(e). A successful, non-moving party may not "replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." Foster, 780 F.Supp. at 1038 (quoting, Lusan v. National Wildlife Federation, 497 U.S. 871, 887 (1990)). In addition the Court may not presume the existence of specific facts from general averments. Id. This threshold for the sufficiency of affidavits must certainly apply to all matters of the record. Accordingly, a non-moving party must support conclusory allegations that appear in any pleadings with specific facts reflected in the record in order to defeat a motion for summary judgment.

#### **IV. ARGUMENT**

##### **A. PLAINTIFF HAS FAILED TO SHOW THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED.**

Plaintiff alleges that his citation was issued because he engaged in the constitutionally protected speech of giving "the finger" to a police officer. Defendants recognize that giving "the finger" to an officer is a form of constitutionally protected speech but reject Plaintiff's assertion that this was the reason for the disorderly conduct citation. Plaintiff was blocking the flow of traffic in his attempt to parallel park and did

not obey orders to move along. Further, Plaintiff, who was angry, was involved in an altercation with another driver that might well have escalated. There is no dispute that traffic was moderate to heavy that day and that Plaintiff had not moved on by the time Sgt. Elledge reached him. Sgt. Elledge issued the citation to Plaintiff for these reasons.

Plaintiff has alleged that the traffic stop violated his Fourth Amendment right to be free from unreasonable search or seizure. Plaintiff was not arrested when he was stopped by Sgt. Elledge, nor was he ever taken into custody. Plaintiff was stopped and detained only for enough time for Sgt. Elledge to write the citation. The general rule is that traffic stops are justified under the Fourth Amendment where the police officer has a reasonable suspicion that either the motorist or the vehicle is in violation of the law. Delaware v. Prouse, 440 U.S. 648, 663 (1979). *See also*, United States v. Johnson, 63 F.3d 242 (3d Cir. 1995):

[A] stop to check a driver's license and registration is constitutional when it is based on an "articulable and reasonable suspicion that . . . either the vehicle or an occupant" has violated the law.

Courts give considerable deference to police officers' determinations of reasonable suspicion. *See, e.g.*, United States v. Nelson, 284 F.3d 472, 482 (3d Cir. 2002). Moreover, "the cases are steadily increasing the constitutional latitude of the police to pull over vehicles" under the reasonable suspicion standard. United States v. Anthony Lee Burks, 2007 U.S. Dist. LEXIS 2147 at \*8 (W.D.Pa. January 11, 2007) (*citing* United States v. Mosley, 454 F.3d 249, 252 (3d Cir. 2006)). As such, "reasonable suspicion is a generally undemanding standard." United States v. Delfin-Colina, 464 F.3d 392, 397-98 (3d Cir. 2006).

It is clear from the face of Plaintiff's Complaint that when Sgt. Elledge made the traffic stop at issue, he was acting under an articulable and reasonable suspicion that Plaintiff was in violation of the law. Arguments about the propriety of citing the Plaintiff for giving the finger aside, plaintiff had stopped the flow of traffic for 30 seconds on Murray Ave. during moderately to busy traffic. If Sgt. Elledge made the traffic stop based only upon this reasonable suspicion of unlawful activity, the traffic stop meets the reasonable suspicion standard and was constitutional.

**B. ASSUMING ARGUENDO THAT PLAINTIFF'S CONSTITUTIONAL RIGHTS HAD BEEN VIOLATED; SGT. ELLEDGE IS ENTITLED TO QUALIFIED IMMUNITY**

Even if Plaintiff had established an issue of material fact, Sgt. Elledge would be entitled to qualified immunity. The Supreme Court stressed that the qualified immunity question must be resolved "at the earliest possible stage in the litigation." Saucier v. Katz, 121 S.Ct. 2151, 2156 (2001) (quoting, Hunter v. Bryant, 502 U.S. 224, 227 (1991)). Further, the Court determined that qualified immunity is an entitlement not to stand trial or face the other burdens of litigation. Saucier, 121 S.Ct. at 2156 (quoting, Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). The privilege is an immunity from suit rather than a mere defense to liability, and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial. Saucier, 121 S.Ct. at 2156. Where qualified immunity is asserted in a motion for summary judgment, "the plaintiff bears the initial burden of showing that the defendant's conduct violated some clearly established statutory or constitutional right." Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997). "The issue of an official's objective good faith is purely a legal question, and the [Supreme] Court admonished that 'reliance on the objective reasonableness of an

official's conduct as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.” Capone v. Marinelli, 868 F.2d 102, 104 (3d Cir. 1989) (quoting, Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Therefore, qualified immunity is an issue properly brought before this Court in a Motion for Summary Judgment.

“[L]aw enforcement officials who “reasonably but mistakenly” conclude that their conduct comports with the requirements of the Fourth Amendment are entitled to immunity. *Hunter*, 502 U.S. at 227. See also *Anderson*, 483 U.S. at 641; *Kornegay*, No. 96-7423, slip op. at 5; *Orsatti*, 71 F.3d at 483. In this way, “the qualified immunity standard ‘gives ample room for mistaken judgments’ by protecting ‘all but the plainly incompetent or those who knowingly violate the law.’” *Hunter*, 502 U.S. at 229 (quoting *Malley v. Briggs*, 475 U.S. 335, 343, 341, 89 L. Ed. 2d 271, 106 S.Ct. 1092 (1986)); *Orsatti*, 71 F.3d at 484.”

Sharrar, 128 F.3d at 826.

The court in *Saucier* held that claims of qualified immunity are to be evaluated using a two-step process.<sup>1</sup> Bennett v. Murphy, 274 F.3d 133, 136 (3d Cir. 2001). First, the court must determine whether the facts, taken in the light most favorable to the plaintiff, show a constitutional violation. If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity. Bennett, 274 F.3d at 136. In this case, for the reasons set forth above, Plaintiff has failed to establish a constitutional violation. Accordingly, he has not satisfied the initial inquiry of the qualified immunity analysis. Bennett, 274 F.3d at 136.

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<sup>1</sup> The Saucier Court rejected the argument that the qualified immunity analysis merely duplicates Fourth Amendment objective reasonableness standards. Saucier, 121 S.Ct. at 2158.

Assuming that there was sufficient evidence of a constitutional violation, courts evaluating a qualified immunity claim move to the second step of the analysis whether the right was clearly established at the time of the event. Saucier, 121 S.Ct. at 2155; Wilson v. Layne, 526 U.S. 603, 609 (1999); Bennett, 274 F.3d at 136. That is, in the factual scenario established by the plaintiff, would a reasonable officer have understood that his actions were prohibited? Bennett, 274 F.3d at 136. The focus in this step is solely upon the law and whether it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted. Saucier, 121 S.Ct. at 2156 (citing, Wilson, 526 U.S. at 615. If it would not have been clear to a reasonable officer *what the law required* under the facts alleged, he is entitled to qualified immunity. Bennett, 274 F.3d at 136-137. If the requirements of the law would have been clear, the officer must stand trial. Thus, qualified immunity shields an officer from liability as long as his acts did not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Wilson, 526 U.S. at 609. Further, if the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate. Saucier, 121 S.Ct. at 2156-2157 (citing, Malley v. Briggs, 475 U.S. 335, 341 (1986)).

In Hunter v. Bryant, 502 U.S. 224, 229 (1991), the United States Supreme Court stated that “qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law.” Law enforcement officers who reasonably but mistakenly conclude that probable cause is present are entitled to immunity. Cortez . McCauley, 438 F.3d 980, 990 (10<sup>th</sup> Cir 2006). Probable cause exists where an officer has knowledge or reasonably trustworthy information of facts and

circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be charged has committed or is committing a crime. Even if probable cause is ultimately found not to have existed, an officer will still be entitled to qualified immunity from a §1983 suit for damages if he can establish that there was an arguable probable cause. Arguable probable cause exists if either it was objectively reasonable for the officer to believe that probable cause existed, or officers of reasonable competence could disagree on whether the probable cause test was met. Escalera v. Lunn, 361 F.3d 737 (2d Cir. 2004).

Applying these legal standards to the present cause of action, there is a factual situation where a uniformed police sergeant is on routine patrol in a marked police vehicle. Traffic is heavy and he observes a driver in the oncoming lane attempting to park. The driver is frustrated in this attempt because another vehicle pulls up behind him blocking his ability to back into the parking space. The second driver is unable to move since traffic has backed up behind him. Obviously, Mr. Hackbart, the first driver cannot park in the spot he selected and the only alternative is to drive on, since there was no traffic in front of him, and find another parking spot or circle the block and hope the original spot would still be available.

Instead of doing what was reasonable, Mr. Hackbart stubbornly refused to drive on. He remained stopped and proceeded to berate the driver behind him by giving him the finger, shaking his fist at him, and tying up traffic. All of this was observed by Sgt. Elledge as he proceeded slowly toward the scene. When he got up next to Hackbart's vehicle he told him to stop giving the other driver the finger and to move on. Hackbart's response was to give Sgt. Elledge the finger and not move his vehicle.

Sergeant Elledge, on the basis of the totality of the circumstances, determined there was probable cause to issue Hackbart a summary citation for disorderly conduct.

He turned his police vehicle around and pulled Hackbart over and issued the citation.

Disorderly Conduct is defined in §5503 of the Crimes Code where it states:

(a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) engages in fighting or threatening, or in violent or tumultuous behavior;

(2) makes unreasonable noise;

(3) uses obscene language, or makes an obscene gesture; or

(4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) Grading.--An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense.

(c) Definition.--As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

It is clear that the issuance of a citation to Plaintiff did not violate his constitutional rights. He was observed obstructing traffic while threatening another motorist by giving him the finger and shaking his fist at him. When told to stop his action and move on, Plaintiff instead gave Sgt. Elledge the finger and did not move on. There is no doubt that probable cause exists to issue a disorderly conduct citation. Plaintiff contends that even if this were true, since Sgt. Elledge cited subsection (3) then his constitutional rights have been violated. His actions, done in anger, do not constitute an obscene gesture. Assuming this to be true, it does not negate the fact that an officer would still be entitled to qualified immunity from a §1983 suit for damages if it can be established that there

was arguable probable cause to issue the citation. Arguable probable cause exists if either it was objectively reasonable for the officer to believe that probable cause existed, or officers of reasonable competence could disagree on whether the probable cause test was met. Escalera v. Lunn, 361 F.3d 737 (2004). Clearly, it was objectively reasonable for Sgt. Elledge to believe there was probable cause given the totality of his observations and officers of reasonable competence could agree or disagree that Plaintiff's actions constituted disorderly conduct.

It makes no difference to the existence of probable cause if Sgt. Elledge incorrectly wrote the citation for disorderly conduct, rather than for obstruction of traffic. The *Devenpeck* Court held that: "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. That is to say, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Devenpeck*, 543 U.S. at 153 (citations omitted).

The Court further explained:

The rule that the offense establishing probable cause must be "closely related" to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest is inconsistent with this precedent. Such a rule makes the lawfulness of an arrest turn upon the motivation of the arresting officer-eliminating, as validating probable cause, facts that played no part in the officer's expressed subjective reason for making the arrest, and offenses that are not "closely related" to that subjective reason.

*Id.* at 153-54 (citations omitted). The type of citation that Sgt. Elledge issued does not affect the validity of the probable cause he had for the original stop. Based on the given set of facts, there was clearly probable cause to stop Plaintiff for obstructing traffic, even if Plaintiff's mere act of giving the finger would not be a citable offense.

**C. PLAINTIFF HAS FAILED TO ESTABLISH AN ISSUE OF MATERIAL FACT WITH RESPECT TO ALLEGED**

**LIABILITY OF THE CITY OF PITTSBURGH  
PURSUANT TO 42 U.S.C. §1983.**

To prove a claim under 42 U.S.C. § 1983 against an individual, a plaintiff must demonstrate that he suffered a violation of a right secured by the Constitution and laws of the United States, and must show that the deprivation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). To prevail under Section 1983 **against a municipality**, a plaintiff must also demonstrate that the municipality itself, through the implementation of municipal policy or custom, caused the underlying constitutional violation. Monell v. Department of Social Services, 436 U.S. 658 (1978). Thus, the proper analysis requires the separation of two issues: "(1) whether plaintiff's harm was caused by a constitutional violation, and (2) if so, whether the City is responsible for that violation." Collins v. City of Harker Heights, Texas, 503 U.S. 115, 120 (1991). The inquiry into these two issues is separate and distinct. Collins, 503 U.S. at 122. As to the first issue, a municipality can not be held liable where its employees did not commit an underlying Fourth Amendment violation. City of Los Angeles v. Heller, 475 U.S. 796 (1986). With respect to the second issue, a plaintiff must demonstrate that a municipal custom or policy reflected "deliberate indifference" on its part and was, in fact, the "moving force" behind the constitutional infraction. Board of County Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397 (1997).

To the extent that it is necessary to address the merits of Plaintiff's municipal liability claims, there is insufficient evidence to create issues of material fact. While his Complaint includes a claim against the City of Pittsburgh, there has been no evidence submitted that could lead to the City being held liable. Indeed, Plaintiff himself has testified that he is unaware of the City's customs, policies and practices. Plaintiff has

merely plead boilerplate section 1983 language, but has failed to identify any evidence or opinions that there are any shortcomings in the City's training, supervision or discipline. Because § 1983 does not permit respondeat superior liability, a municipality may be liable only where a constitutional deprivation was caused or inflicted by its "custom or policy". Bryan County, 520 U.S. at 403-405; City of Oklahoma City v. Tuttle, 471 U.S. 808, 818 (1985) (citing, Monell, 436 U.S. 658).

To demonstrate a violation by a municipal entity under §1983, a Plaintiff must, *inter alia*: 1) identify a "policy" or "custom" which is subject to challenge; 2) attribute it to the municipal Defendant; and 3) demonstrate a causal connection between the execution of that policy or custom and the deprivation of the plaintiff's federal rights. Kranson v. Valley Crest Nursing Home, 755 F.2d 46, 51 (3d Cir. 1985) (quoting, Losch v. Borough of Parkesburg, 736 F.2d 903, 910 (3d Cir. 1984)).

There are two fundamental methods of establishing municipal liability depending upon whether the plaintiff is relying upon a policy or a custom.

“A government policy or custom can be established in two ways. Policy is made when a ‘decisionmaker possessing final authority to establish municipal policy with respect to the action’ issues an official proclamation, policy or edict. A course of conduct is considered to be a “custom” when, though not authorized by law, ‘such practices of state officials [are] so permanent and well-settled’ as to virtually constitute law.”

Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990)(citations omitted); *See also* Bryan County, 520 U.S. at 404 (“[A]n act performed pursuant to a 'custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.”); Bielevicz v. Dubinon, 915 F.2d 845, 840 (3d Cir. 1990). “In

either of these cases, it is incumbent upon a plaintiff to show that a policymaker is responsible either for the policy or, through acquiescence, for the custom.” Andrews, 895 F.2d at 1480. A municipality “may be liable under § 1983 only for acts for which the municipality itself is actually responsible, ‘that is acts which the municipality has officially sanctioned or ordered.’” City of St. Louis v. Praprotnik, 485 U.S. 112, 124 (1988) (quoting, Pembauer v. City of Cincinnati, 475 U.S. 469, 480 (1986)). Municipal policymakers are limited “to those on whom state law specifically confers policymaking authority in the area at issue.” Simmons v. City of Philadelphia, 947 F.2d 1042, 1069-1070 (3d Cir. 1991) (citing, Praprotnik, 485 U.S. at 124).

In this matter, it is inferred by the Plaintiff that the City of Pittsburgh is liable for failing to adequately train Sgt. Elledge. Thus, on Plaintiff’s claim against the city - that the City *indirectly* caused its officer to deprive Plaintiff of his constitutional rights - the applicable standards are clear. “A plaintiff . . . must demonstrate that the municipal action was taken with ‘deliberate indifference’ as to its known or obvious consequences.” Bryan County, 520 U.S. at 407, *citing* City of Canton, 489 U.S. at 390 n.10. This presents a formidable and difficult standard for good reason. Deliberate indifference<sup>2</sup> “is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” Bryan County, 520 U.S. at 410. Under this standard, “[a] plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision.” Bryan County, 520 U.S. at 411. To meet the deliberately

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<sup>2</sup> This standard applies equally to municipality liability claims whether based upon training, supervision, discipline or the like. *See* Montgomery v. De Simone, 159 F.3d 120, 127 (3d Cir. 1998); Groman v. Township of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995).

indifferent standard for subjecting a city to § 1983 liability, a plaintiff “must present scienter-like evidence on the part of a particular policymaker.” Simmons v. City of Philadelphia, 947 F.2d 1042, 1060 (3d Cir. 1991). Plaintiff has utterly failed to offer any such evidence in the present case.

In limited circumstances, a municipality’s failure to adequately train its police officers may serve as a basis for Section 1983 liability. City of Canton, 489 U.S. at 387. Sufficient evidence under this theory, however, requires proof of a deficient training program that applied over a period of time to multiple employees. Bryan County, 520 U.S. at 407.

“If a program does not prevent constitutional violations, municipal decisionmakers may eventually be put on notice that a new program is called for. Their continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action – the “deliberate indifference” – necessary to trigger municipal liability.”

Bryan County, 520 U.S. at 407, *citing* City of Canton, 489 U.S. at 390 n.10; Montgomery v. De Simone, 158 F.3d 120, 127 (3d Cir. 1998)(affirming summary judgment where plaintiff failed to demonstrate inadequacies in training program). While summarizing this jurisprudence, this Court has stated that “[a] plaintiff pressing a § 1983 claim must identify a failure to provide specific training that has a causal nexus with their injuries and must demonstrate that the absence of that specific training that has a causal nexus with their injuries and must demonstrate that the absence of that specific training can reasonably be said to reflect a deliberate indifference to whether the alleged constitutional deprivation occurred.” Reitz v. County of Bucks, 125 F.3d 139, 145 (3d Cir. 1997)

(citing, Colburn v. Upper Darby Township, 946 F.2d 1017, 1030 (3d Cir. 1991)). In Bonenberger v. Plymouth Township, 132 F.3d 20, 25 (3d Cir. 1997), the Court stated:

“[A] municipality’s failure to train police officers only gives rise to a constitutional violation when that failure amounts to deliberate indifference to the rights of persons with whom the police come into contact. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). We have held that a failure to train, discipline or control can only form the basis for Section 1983 municipal liability if the plaintiff can show both contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents and circumstances under which the supervisor’s actions or inaction could be found to have communicated a message of approval to the offending subordinate.”

*See also*, De Simone, 159 F.3d at 126-127; Woodson v. City of Philadelphia, 54 F.Supp.2d 445, 448-449 (E.D. Pa. 1999) (granting summary judgment where there was no evidence of similar conduct in past or of activity that occurred because of insufficient training) Again, Plaintiff has proffered nothing to support such a claim against the Defendants in this matter. Given these stringent standards, it is clear that the Plaintiff has not established sufficient facts to further pursue a claim for municipal liability

Simply put, there are no material issues in dispute as to the City of Pittsburgh’s customs, policies or practices allegedly causing Plaintiff’s constitutional violations. The City of Pittsburgh should be granted Summary Judgment.

Wherefore the Defendants jointly request Summary Judgment in their favor.

Respectfully submitted,

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