

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ERIC VON DEAN

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-162-S

THE CITY OF LOUISVILLE, et al.

DEFENDANTS

MEMORANDUM OPINION

The plaintiff, Eric Von Dean (“Dean”), has moved this court to reconsider its order granting the defendants’ motion for summary judgment (DN 74) in this matter. As discussed below, the plaintiff’s motion will be denied.

BACKGROUND

A more detailed description of the events which form the basis of Dean’s suit against these defendants can be found in this court’s memorandum opinion of October 20, 2000 (DN 73). To summarize, the plaintiff was arrested and charged with drug trafficking charges following an undercover investigation into drug activity in the Louisville area. The plaintiff alleges that at the time, the defendants sought to question him in connection with an ongoing homicide investigation. The plaintiff claims that in order to gain leverage against the plaintiff, the defendants arrested him on drug charges. The plaintiff alleges that in exchange for cooperation in the homicide investigation, the defendants agreed to dismiss the drug charges.

On the other hand, the defendants claim that various police officers identified an individual videotaped selling drugs as the plaintiff prior to his arrest. The defendants contend that when they became aware that the plaintiff was not the individual videotaped selling drugs, all charges against the plaintiff were dismissed. The plaintiff filed this action seeking redress for alleged civil rights

violations under 42 U.S.C. §1983 (“§1983”). The plaintiff also made several state law claims against various defendants.

On October 20, 2000 we granted the defendants’ motions for summary judgment and dismissed that part of the plaintiff’s claims which sought recovery under §1983. In light of that disposition, we declined to exercise jurisdiction over the plaintiff’s claims which were based on state law. The plaintiff now asks that we reconsider that order. For the reasons discussed below, we will decline to reconsider our order entered on October 20, 2000.

STANDARD OF REVIEW

Motions for reconsideration are “extraordinary in nature and, because they run contrary to notions of finality and repose, should be discouraged.” *In Re August, 1993 Regular Grand Jury*, 854 F.Supp. 1403, 1406 (S.D. Ind. 1994). As such, motions for reconsideration are granted “very sparingly.” *Bakari v. Beyer*, 870 F.Supp. 85, 88 (D.N.J. 1994). Generally, there are three major situations which justify a court reconsidering one of its orders: “(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or to prevent manifest injustice.” *Birmingham v. Sony Corp. of America, Inc.*, 820 F.Supp. 834, 856 (D.N.J. 1992), *aff’d*, 37 F.3d 1485 (3rd Cir. 1993).

Motions for reconsideration are not substitutes for appeal nor are they vehicles whereby a party may present arguments inexplicably omitted in prior proceedings. *Karr v. Castle*, 768 F.Supp. 1087, 1093 (D. Del. 1991), *aff’d sub nom.* 22 F.3d 303 (3rd Cir. 1994), *cert. denied sub nom.*, 513 U.S. 1084, 115 S.Ct. 739, 130 L.Ed.2d 641 (1995). “A party seeking reconsideration must show more than a disagreement with the Court’s decision, and ‘recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party’s burden.’” *Database America, Inc., v. Bellsouth Advertising & Pub. Corp.*, 825 F.Supp. 1216, 1220 (D.N.J. 1993), citing *G-69 v. Degnan*, 748 F.Supp. 274, 275 (D.N.J. 1990).

DISCUSSION

Dean argues that in considering the defendants' motions for summary judgment, this court misconstrued the factual record before it. However, a supplementary review of the factual record, specifically the deposition testimony of several of the individual defendants, only bolsters our original conclusion. There is ample evidence in the record that the plaintiff was identified as the individual captured on videotape by undercover police prior to his arrest in April of 1998. *See, e.g.,* Farmer Depo. at 20-21; Nunn Depo. at 45. Against this evidence, the plaintiff asks us to weigh: (1) the absence of a notation of the date Dean was identified as the individual in the videotaped drug transaction; (2) the inability of the prosecutors involved in the plaintiff's prosecution to recall whether the videotaped individual was identified as the plaintiff prior to his arrest; (3) the failure of those same prosecutors to list the police officers who allegedly identified the videotaped individual as the plaintiff as witnesses in the drug case; and (4) his contention that if the videotaped individual had been identified as the plaintiff, there would have been some record of it in the police investigation file. *See* Pl.'s Mot. to Reconsider at 8.

As we originally held, the evidence relied upon by the plaintiff is insufficient to withstand the defendants' motions for summary judgment. The plaintiff has failed to present any affirmative evidence in support of his allegations. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The plaintiff's primary contention with respect to his §1983 claim is that he was either never identified as the individual captured on video selling drugs or if such an identification was made, it was made after his arrest. In either case, the plaintiff alleges that absent such an identification, the police lacked the requisite probable cause to arrest. However, even given the full opportunity to conduct discovery, the plaintiff can not point to any affirmative evidence to support his contention. Rather, by pointing out alleged omissions and the inability of some defendants to recall certain events and their dates referred to above, the plaintiff appears to argue that he may avoid summary judgment if the defendants are unable to prove that they made the identifications in question prior to his arrest. We do not believe this to be the law. While the

plaintiff need not demonstrate that his arrest was unreasonable at this, the summary judgment stage of litigation, he must present at least some “concrete evidence from which a reasonable juror could return a verdict in his favor . . .” *Anderson, supra*, at 256. This, the plaintiff has failed to do.

CONCLUSION

Having failed to demonstrate an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or to prevent manifest injustice, the plaintiff’s motion to reconsider will be denied. *See Bermingham, supra*.

This _____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

Motion having been made by the plaintiff, Eric Von Dean, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the plaintiff's motion is **DENIED**.

This _____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record