

1 WO

2

3

4

5

6

7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

8

9

10

11

12 Kurt Adam Oldenburg,)

13) Plaintiff,) CV 10-0656-PHX-RCB

14) vs.) O R D E R

15) City of Phoenix, et al.)

16) Defendants.)

17

18 Currently pending before the court is defendants' motion
19 for reconsideration (Doc. 109). Defendants are seeking
20 reconsideration of two aspects of this court's order
21 pertaining to various motions *in limine* (Doc. 106). Finding
22 that the parties' stipulations rendered each motion moot, this
23 court, *inter alia*, denied defendants' motions *in limine*
24 ("MIL") nos. 1 and 2. See Ord. (Doc. 106) at 2:4-21.

25 In seeking reconsideration, defendants contend that "the
26 Court committed clear error and its decision was manifestly
27 unjust[.]" Mot. (Doc. 109) at 4:7. Believing that the agreed
28

1 upon stipulation is insufficient,¹ defendants are moving this
2 court to reconsider and grant MIL no. 1 "so that it is clear
3 to Plaintiff that he cannot testify or present other evidence
4 that Defendants used inappropriate, unreasonable, excessive
5 or unlawful force against him at the apartment complex." Id.
6 at 5:6-8. Similarly, also believing that the stipulation as
7 to defendants' motion *in limine* no. 2 is insufficient,²
8 defendants are moving this court to reconsider and grant MIL
9 no. 2 "so that it is clear to Plaintiff that he cannot
10 testify or present other evidence that he was injured as a
11 result of an unknown officer standing on or holding his
12 ankles at the Desert Horizon Precinct or that such alleged
13 force was excessive." Id. at 6:3-6.

14 The court understands defendants' concern, echoed by
15

16 ¹ The parties stipulated to the following:

17 On May 20, 2008, Plaintiff Kurt Oldenburg
18 was lawfully arrested by Defendant Todd Oliver at
19 an apartment complex that was under construction.
20 In response to Plaintiffs' resistance to Officer
21 Oliver's efforts to place Plaintiff under arrest,
22 Officer Oliver used a leg sweep and employed the
23 carotid control technique. Officer Oliver also
24 secured handcuffs on Plaintiff's wrists. Officer
25 Oliver and Officer Wells also used a Ripp restraint
26 to secure Plaintiff's ankles. All of these actions by
27 Officer Todd Oliver and Officer Cameron Wells were
28 lawful. Plaintiff cannot recover damages for any
injuries he received as a result of any of the actions
taken by Officer Oliver and/or Officer Wells at the
apartment complex.

25 Defs.' Proposed Jury Instructions (Doc. 89) at 46 ("Defendants' Non-Model
26 Jury Instruction No. 1 Lawful Use of Force by Defendants at the Apartment
Complex" (emphasis omitted)).


27 ² The parties stipulated that another officer, not either of the
28 defendants, was holding plaintiff's ankles trying to restrain his legs
while plaintiff was at the Desert Horizon Precinct. Audio Tr. (Nov. 19,
2012) at 11:16:34 a.m. - 11:16:59 a.m.

1 plaintiff's own counsel during the November 19, 2012, final
2 pretrial conference, with confining not just plaintiff, but
3 all witnesses, to testimony and evidence which is consistent
4 with the prior ruling of partial summary judgment in this
5 case. In the court's view, however, that can be accomplished
6 through the stipulations set forth herein, coupled with the
7 court's directions during the final pretrial conference. For
8 example, the court directed the parties to raise the issue
9 early on as to the stipulation regarding MIL no. 1. Audio
10 Tr. (Nov. 19, 2012) at 11:00:35 a.m. - 11:00:42 a.m. In a
11 similar vein, as to MIL no. 2, the court reminded the parties
12 to raise that issue before plaintiff or any other witness
13 inadvertently testifies contrary to or inconsistent with that
14 stipulation. Id. at 11:16:59 a.m. - 11:17:16 a.m. Thus,
15 the court discerns no practical difference between denying
16 MIL nos. 1 and 2 as moot, as the court did, or granting them,
17 as defendants are now seeking. Consequently, defendants have
18 not met their burden of persuading the court that its prior
19 rulings on MIL nos. 1 and 2 resulted in "manifest error[.]"
20 See LRCiv 7.2(g)(1).

21 Accordingly, the court **DENIES** "Defendants' Motion for
22 Reconsideration of the Court's Denial of their Motions *in*
23 *limine* No. 1 and 2 as Moot" (Doc. 109) at 1:12-14 (emphasis
24 omitted).

25 DATED this 10th day of January, 2013.

26
27
28



Robert C. Broomfield
Senior United States District Judge

1 Copies to counsel of record

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28