

pill loose in Plaintiff's pants pocket. Def. 56.1 ¶ 33. P.O. Cruz contemporaneously vouchered the pills. Def. Exs. N, O. Lab testing required destructive testing of one pill, leaving 2.5 pills intact. Def. Ex. O; Def. 56.1 ¶¶ 34–35. These remaining pills were photographed, inventoried, and vouchered into evidence storage. Def. Ex. P.

After the arrest, P.O. Cruz spoke to the Bronx assistant district attorney about Plaintiff's OOP violations; and provided him the relevant paperwork and information. Def. 56.1 ¶ 45. The Bronx District Attorney ("DA") declined to prosecute Plaintiff for the OOP violations, *Id.* ¶ 46, but charged him with criminal possession of a controlled substance ("CPCS") in the seventh degree, in violation of N.Y.P.L. 220.03. *Id.* ¶ 48. On November 14, 2014, the criminal charges were dismissed. *Id.* ¶ 51. On March 12, 2015 Plaintiff filed the complaint in this action. *Id.* ¶ 53.

DISCUSSION

I. Legal Standard

"A motion for reconsideration is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Benjamin v. Goord*, No. 02 Civ. 1703 (NRB), 2010 U.S. Dist. LEXIS 139110, at *1–2 (S.D.N.Y. Aug. 18, 2010) (internal quotations and citations omitted). It is appropriate only when a court overlooks controlling decisions or facts put forward in the underlying motion, which might have led to a different result. *Eisemann v. Greene*, 204 F.3d 393, 395 n.2 (2d Cir. 2000).

II. Analysis

A denial of fair trial claim based on an officer's omission of, or failure to disclose information to a prosecutor requires that the information be material, i.e. "likely to influence a jury's decision." *See Garnett v. Undercover Officer C0039*, 838 F.3d 265, 280 (2d Cir. 2016). Plaintiff's fair trial claim was based on his contention that P.O. Cruz withheld information from

the prosecutor, namely, that Plaintiff had a valid Tramadol prescription. *See* ECF 47 at 14. The Court held that this claim failed because possession of a valid prescription is irrelevant under Public Health Law § 3345. *Id.* In seeking reconsideration, Plaintiff's arguments are largely repetitive, focusing on Plaintiff's prescription, and arguing that "whether [P]laintiff violated PHL Section 3345 is irrelevant... because [Plaintiff] was not charged with that offense." ECF 50 at 2. Plaintiff misses the point again: CPCS charges are necessarily based on underlying Public Health Law violations. N.Y. Penal Law § 220.00(2) (McKinney 2013).

Penal Law 220.03 makes it illegal to "knowingly and unlawfully" possess a controlled substance, and requires an underlying Public Health Law offense. *See Bravo v. State*, 129 A.D.3d 488, 489 (N.Y. App. Div. 2015); ECF 47 at 11. "Unlawfully" means in violation of article thirty-three of the Public Health Law. Penal Law § 220.00(2). Public Health Law § 3345 precludes possession of a controlled substance outside its original container, except for "current use." N.Y. Public Health Law § 3345 (McKinney 2017).

Here, Plaintiff possessed Tramadol outside of its original container. ECF 47 at 5; Def. 56.1 ¶ 33. Plaintiff, therefore, violated Public Health Law § 3345, and the DA correctly charged him with CPCS because his actions were "unlawful[]" under Penal Law § 220.03, regardless of any prescription. Penal Law §§ 220.00(2), 220.03; Public Health Law § 3345. Having a prescription is immaterial, and would not be "likely to influence a jury's decision." *Garnett*, 838 F.3d at 280. P.O. Cruz's alleged withholding of such information could not have denied Plaintiff a fair trial.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for reconsideration is DENIED. The Clerk of Court is ordered to enter judgment, terminate all pending motions, and close this case.

Dated: New York, New York

July 27, 2017

SO ORDERED



PAUL A. CROTTY
United States District Judge