

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jermaine Wilson and Dameon)
Sanders, individually and for a)
class,)
)
 Plaintiffs,) 14-cv-8347
)
 -vs-) (*Judge Lee*)
)
City of Evanston, Illinois,)
)
 Defendant.)

**PLAINTIFFS' LOCAL RULE 56(a)(3)
STATEMENT OF UNDISPUTED FACTS**

I. The Parties, Jurisdiction, and Venue

1. Plaintiffs Jermaine Wilson and Dameon Sanders bring this case individually and, pursuant to the order of August 30, 2017, for the following classes:

Class I, Substantive Due Process: All persons whose property, following an arrest on and after October 23, 2012, was held at EPD and destroyed or otherwise disposed of, before court proceedings in connection with which such property was seized or otherwise taken possession of reached a final, appealable judgment, or were terminated without reaching such a judgment.

Class II, Procedural Due Process: All persons whose property, following an arrest on and after October 23, 2012, was held at EPD and destroyed or otherwise disposed of, while that person remained in the custody of a jail or penitentiary for over thirty days.

2. Defendant City of Evanston is an Illinois municipal corporation located in the Northern District of Illinois. (Exhibit 1, Answer to Amended Complaint, ¶ 3, ECF No. 58 at 1.)

3. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1343 to assert claims arising under 42 U.S.C. § 1983. (Exhibit 1, Answer to Amended Complaint, ¶ 1, ECF No. 58 at 1.)

II. The Municipal Policy and Its Application to the Named Plaintiffs

4. The City of Evanston requires its police officers to search arrestees and seize and inventory the arrestees' property. (Exhibit 2 at 17, City of Evanston, General Order 10.1, Section IX.F(1)(a).)

5. Evanston will return all property (other than contraband or items subject to forfeiture proceedings) to an arrestee who is released from the police station, either without a charge or after posting bond at the police station. (Exhibit 2 at 22, City of Evanston, General Order 10.1, Section XIV.B.)

6. For an arrestee who is not released from the police station, Evanston will transfer custody of the arrestee to the Sheriff of Cook County. (Exhibit 2 at 12-13, City of Evanston, General Order 10.1, Section VII.)

7. When Evanston transfers an arrestee to the custody of the Sheriff of Cook County, Evanston will also transfer to the Sheriff of Cook County the following items from an arrestee's property:

- a. United States currency
- b. United States government issued identification
- c. Plain wedding band (no engraving or stones)
- d. Keys
- e. Outer garment
- f. Prescription medication
- g. Prescription eyeglasses
- h. Legal documents (soft cover only)
- i. Shoelaces
- j. Bible or Koran (soft cover only)

(Exhibit 3, Email, March 24, 2016, Subject: Phase II of Prisoner Property—Cook County Sheriff's Office Intake.)

8. Evanston will retain in its custody all arrestee property other than the property enumerated in Paragraph 7. (Exhibit 4, Property Inventory Slip, "Notification Regarding Your Property.")

9. Plaintiff Jermaine Wilson was arrested by members of the Evanston police department on July 10, 2013. (Exhibit 1, Answer to Amended Complaint, ¶ 15, ECF No. 58 at 4.)

10. At the time of his arrest on July 10, 2013, plaintiff Wilson had in his possession a jeweled ring, with a replacement value of one thousand dollars, a phone, replacement value of two hundred dollars, and, in a

backpack, shoeshine equipment and shoeshine supplies. (Exhibit 5, Wilson Interrogatory Answers, ¶ 3.)

11. Following Wilson's arrival at the Evanston police station, and pursuant to Evanston Police Department General Order 10.1, Section F(1)(a), an Evanston police officer seized and inventoried Wilson's personal property and handed him Exhibit 5, a "property inventory slip." (Exhibit 6, Wilson Dep. 32:11-18.)

12. Wilson was subsequently transferred to the custody of the Sheriff of Cook County and remained in custody at the Cook County Jail (Exhibit 6, Wilson Dep. 53:5-14) until October 15, 2014 when he was released after receiving a sentence of 364 days, time considered served. (Exhibit 7, Evanston Police Department Court Supplementary Report, October 15, 2014.)

13. Defendant City of Evanston destroyed plaintiff Wilson's property on April 30, 2014. (Exhibit 8, Evanston Police Department Chain of Custody Report, EV384.)

14. Plaintiff Dameon Sanders was arrested by members of the Evanston police department on July 25, 2013. (Exhibit 3, Answer to Amended Complaint, ¶ 22, ECF No. 58 at 5.)

15. At the time of his arrest on July 25, 2013, plaintiff Sanders had in his possession two cellphones, a CTA card, a LINK card, a hat, a belt, and a prepaid debit card with a value of about five hundred dollars. (Exhibit 9, Sanders's Interrogatory Answers, ¶ 4; Exhibit 10, Sanders Dep. 38:3-4, 40:16-17.)

16. Following Sanders's arrival at the Evanston police station, and pursuant to Evanston Police Department General Order 10.1, Section F(1)(a), an Evanston police officer seized and inventoried Sanders's personal property and handed him Exhibit 11, a "property inventory slip." (Exhibit 10, Sanders Dep. 29:11-30:5.)

17. Sanders was subsequently transferred to the custody of the Sheriff of Cook County and remained in custody at the Cook County Jail (Exhibit 10, Sanders Dep. 49:15-18), until he was sent to the penitentiary (Exhibit 10, Sanders Dep. 34:4-6) in November of 2013. (Exhibit 12, Docket Entries, Circuit Court of Cook County.)

18. Defendant City of Evanston destroyed plaintiff Sanders's belt, CTA cards, and debit card on April 8, 2014. (Exhibit 13, Evanston Police Department Chain of Custody Report, EV389.)

III. Notice about Disposition of Property

19. Before 2012, Evanston provided arrestees with a “Prisoner Property Receipt” in the form attached as Exhibit 14. (Exhibit 15, Wasowicz Dep. 15:13-21.) This form included the following statement:

I understand that any demand for this property shall be made *within 90 days* from the date hereof and that *unclaimed property will be disposed of as provided by statute*. I hereby certify that the above list is a correct record of items removed from my person at the time I was arrested.

(Exhibit 14) (emphasis added.)

20. In 2011, the City of Evanston became aware that arrestees were unable to appear in person at the Evanston Police Department to retrieve their property. (Exhibit 15, Wasowicz Dep. 13:3-12.)

21. In 2012, Evanston modified the “prisoner property receipt” to include explicit directions that an arrestee could designate an agent to retrieve their property. (Exhibit 15, Wasowicz Dep. 14:22-15:12.)

22. In addition to providing explicit instructions about designating an agent to retrieve property, Evanston modified its procedure in 2012 to shorten from 90 days to 30 days the time in which an arrestee could retrieve personal property. (Exhibit 15, Wasowicz Dep. 19:16-21.)

23. Evanston shortened the time in which an arrestee could retrieve personal property “to call attention to the fact that an individual

needed to take action sooner rather than later to reclaim their property.”

(Exhibit 15, Wasowicz Dep. 19:19-21.)

24. The “Prisoner Property Receipt” (Plaintiffs’ Exhibit 4) that Evanston has provided to arrestees throughout this litigation includes the following:

NOTIFICATION REGARDING YOUR PROPERTY

Certain property in your possession, will not be accepted by the Cook County Department of Corrections when you are transported to court for your bond hearing. These Items are marked above with a checkmark. In order to protect your property, we have inventoried them with our Property Bureau. You or your designee will have 30 days from the date of your arrest to retrieve these Items. If you do not retrieve these Items within the 30 days they will be disposed of as provided by statute. **THIS IS THE ONLY NOTICE YOU WILL RECEIVE ABOUT YOUR PROPERTY.**

(Exhibit 4.)

25. The above-quoted “notification regarding your property” is the only notice that Evanston provides to arrestees about what will happen to their property if it is not claimed within 30 days after arrest. (Exhibit 15, Wasowicz Dep. 20:21-21:2.)

26. The City of Evanston posts the following information about arrestee property on its website, www.cityofevanston.org:

Arrestee Property

Arrestees that are being transferred to the county jail system may have property that will not be accepted by the county. In these cases, the property is inventoried and held by the Property Bureau. Arrestees are provided notice in writing of the

property being held and have 30 days to claim their property. Arrestees may also designate someone to claim their property for them.

Property Disposal

Unclaimed/unidentified property will be disposed of in accordance with state and local statutes and in most instances will not be held longer than six months after recovery. In some cases property will be disposed of sooner:

Arrestee Notified Prior to Transfer to County	30 days
Identified Owner Notified by Phone or Mail	60 days
Unidentified Owner	90 days
Identified Owner / Unable to Locate or Notify	180 days

Under unusual circumstances, property owners may make a written request for an extension of the holding period.

These requests will be evaluated on a case-by-case basis.

(Plaintiffs' Exhibit 16 at 1-2; Exhibit 17 at 1-2; Exhibit 18 at 1-2.)

27. Before it disposes of arrestee property, the City of Evanston does not seek to determine if the arrestee has been held in custody for the 30-day period following his arrest. (Exhibit 15, Wasowicz Dep. 33:22-34:4.)

IV. “Provided by Statute”

28. At all times relevant, there has been in force and effect in the City of Evanston a municipal ordinance entitled “Possession and Disposition of Lost or Stolen Property,” Evanston Code of Ordinances, Chapter 7, Section 9-7-1. (Exhibit 19 at 1.)

29. Section 9-7-1(A) requires that any property “seized or taken” by Evanston police officers shall be held by Evanston’s “custodian of lost or stolen property” (Exhibit 19 at 1) and requires the custodian to store the

“seized or taken” property for “sixty (60) days from the date of the final disposition of the court proceedings in connection with which such property was seized or otherwise taken possession of.” (Exhibit 19 at 2.)

30. Defendant City of Evanston has construed the phrase “final disposition of the court proceedings” in Section 9-7-1 to mean when a criminal matter has reached a final, appealable judgment. (ECF No. 75, Mem.Op., August 30, 2017 at 11.)

31. The ordinance provides that the proceeds of any sale of property subject to the ordinance “shall be paid by the custodian of lost and stolen property to the Police Pension Fund of the City.” (Exhibit 19 at 2, Section 9-7-4.)

32. Defendant contends that Section 9-7-1 does not apply to arrestee property. (Defendant’s Supplemental Brief, ECF No. 72 at 1-2; Exhibit 15, Wasowicz Dep. 42:21-43:3: “I have never found an Evanston ordinance addressing it.”)

33. At all times relevant, there has been in force and effect a statute of the State of Illinois known as the “Law Enforcement Disposition of Property Act” and compiled as 765 ILCS 1030/1, et seq.

34. The “Law Enforcement Disposition of Property Act” applies to property in the custody of a police department that has been abandoned, 765

ILCS 1030/1, and requires the custodian to “make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof.” 765 ILCS 1030/2(a).

35. The “Law Enforcement Disposition of Property Act” establishes a six-month period for the police department to ascertain “the identity or location of the owner or other person entitled to possession of the property” before selling the property at public auction or, if the property is worth less than one hundred dollars, donating it. 765 ILCS 1030/3.

36. The “Law Enforcement Disposition of Property Act” does not provide any compensation to the person whose property has been sold. 765 ILCS 1030/4 provides as follows:

Proceeds of the sale of the property at public auction, less reimbursement to the law enforcement agency of the reasonable expenses of custody thereof, shall be deposited in the treasury of the county, city, village or incorporated town of which government the law enforcement agency is a branch.

37. Evanston entered into a contract with PropertyRoom.com, Inc. in 2009 that, *inter alia*, provides a mechanism for disposing of unclaimed arrestee property. (Exhibit 20.)

38. Evanston receives a portion of any sales of detainee property made by PropertyRoom.com, Inc. (Exhibit 20 at 3, ¶ 5.)

39. Evanston, as the “Owner,” represented in its above-referred contract with PropertyRoom.com (the “Buyer”) the following:

Owner has taken all actions under applicable law that are required for Owner to auction the Property or to transfer title to the Property to Buyers (including, without limitation, all notice requirements and the like required prior to the sale of Property at auction under local statute or municipal code).

(Exhibit 20 at 6, ¶ 10(b).)

V. The Feasibility of Retaining Arrestee Property Pending Final Disposition of the Criminal Case

40. Defendant represented by letter dated February 6, 2018 that it would voluntarily retain unclaimed arrestee property during this litigation and would not sell or destroy any such property. (Exhibit 21, Letter Ford to Flaxman, February 6, 2018.)

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