

NONPRECEDENTIAL DISPOSITION

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 29, 2022
Decided April 20, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-2888

JERMAINE WILSON and DAMEON SANDERS, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:14-cv-08347

v.

John Z. Lee,
Judge.

CITY OF EVANSTON, ILLINOIS,
Defendant-Appellee.

O R D E R

When an arrested person is detained for any significant length of time, police departments face a practical problem: how to store the arrestee's temporarily seized property and how long to keep it. The City of Evanston, Illinois, allows arrestees to bring some of their property into jail, but for jail safety and security reasons, valuables and objects that might be used as weapons are seized from the arrestee and placed in storage. Arrestees are told they have 30 days to claim their seized property or to

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designate someone else to collect it. If the arrestee takes no action, the city will eventually destroy or perhaps sell the property.

Plaintiffs here are two Evanston arrestees whose property was destroyed while in custody. They sued alleging that the city took their property without just compensation and violated their substantive due process rights. The district court granted summary judgment for the city, and we affirm, following our precedents in similar challenges to Chicago's similar policy on arrestees' property. The undisputed facts show that the City of Evanston followed its policy, which gave fair warning to the arrestees of how they could ensure that someone else could retrieve their property if need be. In the absence of evidence of exceptional circumstances that might have made the policy unreasonable as applied to these particular arrestees, plaintiffs' failures to take steps to protect their property amounted to abandonment of their seized and stored property. The city did not violate these plaintiffs' constitutional rights.

I. *Factual and Procedural Background*

In 2013, the Evanston Police Department issued an order describing how Evanston stores and inventories the property of arrestees while they are in custody. City of Evanston, General Order 10.1, at 14–18 (June 26, 2013). The policy is to inventory and store valuable items, such as money and jewelry, as well as any item a detainee could use to inflict injury or to facilitate escape. Those items are recorded on a property receipt given to the detainee.

Evanston police officers arrested plaintiffs Jermaine Wilson and Dameon Sanders in July 2013. Officers took from Sanders and stored two telephones, a debit card worth \$500, and public transit passes. From Wilson the officers took and stored a backpack, a telephone, and two wedding rings. Officers then presented each with a "Prisoner Property Receipt," which warned:

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. . . . [T]o 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.

The receipt/notice tells an arrestee how he may retrieve his property. An arrestee may call to set an appointment to collect the property during business hours. An arrestee may authorize a representative on the notice, or by calling or writing the police department. Once the representative shows identification and a copy of the property receipt, he or she can collect the property. The city allows more avenues. An arrestee's attorney may request the property or have it held. The arrestee may seek a court order to return the property. An arrestee may also ask the city in writing to hold the property for a longer time under "unusual circumstances."

In April 2014, while both Wilson and Sanders were still in custody, the city destroyed their property. Wilson and Sanders filed this suit in October 2014. The district court certified two plaintiff classes, one for substantive due process claims and the other for procedural due process claims. The classes included other persons arrested by the city less than two years before suit was filed and whose property the city destroyed. The district court granted the city summary judgment on all claims. *Wilson v. City of Evanston*, 2021 WL 4439403 (N.D. Ill. Sept. 28, 2021). We review that decision de novo. *Conyers v. City of Chicago*, 10 F.4th 704, 710 (7th Cir. 2021).

The plaintiffs argued in the district court that the city unlawfully deprived them of their property and denied them due process of law. On appeal, plaintiffs have narrowed their constitutional claims to the takings claims and substantive due process claims.¹

The undisputed facts show that the city's policy provides sufficient notice of an arrestee's rights and options to retrieve his property, and the city provides sufficient warning to arrestees of the consequences of failing to act. Absent inadequate opportunities to retrieve the property not asserted in this case, where the city follows

¹ Plaintiffs waived their Fourth Amendment and procedural due process theories they asserted earlier in the case. Plaintiffs invoked the Fourth Amendment in their original complaint but did not clearly invoke it in later district court proceedings, leading the district judge to conclude the theory was not in the case. Most important, plaintiffs did not argue a Fourth Amendment theory in opposing summary judgment, effectively waiving any such theory. They cannot resuscitate a Fourth Amendment theory on appeal. Plaintiffs' counsel made clear at oral argument that they are not pursuing a procedural due process theory. In addition, the district court concluded that plaintiffs had waived their takings claims. Plaintiffs had failed to amend their complaint again to reallege that claim after it had been dismissed for failure to exhaust state remedies but the Supreme Court then eliminated that requirement in *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019). We elect to bypass the waiver issue and affirm on the merits of the takings claim.

that policy and an arrestee fails to act, the arrestee abandons the seized property. We therefore affirm the district court's judgment.

II. *The Arrestees' Property Interests*

Our decision here follows our recent decisions addressing similar constitutional challenges to Chicago's similar policies on arrestees' property. See *Kelley-Lomax v. City of Chicago*, 49 F.4th 1124 (7th Cir. 2022); *Conyers v. City of Chicago*, 10 F.4th 704 (7th Cir. 2021). In *Conyers*, the plaintiffs claimed that a policy of disposing of arrestees' inventoried property after 30 days violated the Fourth and Fifth Amendments. 10 F.4th at 706. Like the Evanston policy, the Chicago policy offered an arrestee many ways to recover seized property and clear notice that, after 30 days, the city would dispose of that property. *Id.* at 712. Chicago's policy allowed an arrestee to authorize someone else to claim the property. The notice spelled out the consequences for not collecting within 30 days. We affirmed judgment for Chicago. We said that "[n]othing compels the City to hold property forever," and we noted that "the plaintiffs failed to follow the reclamation procedures the City offered." *Id.* at 711. Chicago was "entitled to treat this property as abandoned." *Id.* at 711.

Kelley-Lomax challenged the same Chicago policy but added a substantive due process theory. We affirmed for the same reason: "[P]roperty can be abandoned. After that occurs the former owner lacks rights. Chicago draws the abandonment line at 30 days." 49 F.4th at 1125, citing *Conyers*, 10 F.4th at 712.

The plaintiff classes rely on the experiences of plaintiffs Wilson and Sanders to prove their claims. The undisputed facts show that both lead plaintiffs received notice of the Evanston policy and the different ways they could have collected their property. As in *Conyers* and *Kelley-Lomax*, the named plaintiffs here did not use any of the available avenues to collect their seized property. Wilson requested a copy of his property receipt, but he took no further action to reclaim his property. At relevant times he had access to a telephone, to social workers who could help him retrieve his property, and to the attorney representing him in his criminal case. Sanders made an effort to collect his belongings but failed to comply with the policy. He authorized his girlfriend to retrieve his property, but she did not follow through. Sanders asked another friend to collect his property, but Sanders did not properly authorize his friend to do so. After nearly nine months of minimal retrieval effort, the city finally disposed of both named plaintiffs' property.

The plaintiffs argue that Evanston must hold an arrestee's property until the termination of criminal proceedings. That could take many months or years. As we said in *Conyers*: "Nothing compels the City to hold property forever." 10 F.4th at 711. Evanston could reasonably deem these arrestees to have abandoned their property by failing to take steps to claim it. As we discuss next, the plaintiffs' abandonment defeats their takings and substantive due process theories.

III. *Takings & Substantive Due Process*

The plaintiffs argue that Evanston's policy unconstitutionally takes arrestees' property by disposing of it for a public purpose without just compensation. The city could, however, consider the property abandoned: "the state can take abandoned property without compensation—there is no owner to compensate." *Conyers* 10 F.4th at 711. There was no unconstitutional taking.

Substantive due process requires a fundamental right, and property is such a fundamental right. *Kelley-Lomax*, 49 F.4th at 1125. The city must hold an arrestee's seized property for *some* amount of time. It also has an interest in reducing the burden of storing the property. That burden amounts to, by the city's count, about 40 arrests per month, or about 480 sets of property items per year. The city need not hold the property forever. In the absence of unusual circumstances that might affect a particular arrestee or group of arrestees, we see nothing unreasonable about the city's 30-day limit, combined as it is with several paths for an arrestee to retrieve his property. After abandonment, the former owner lacks rights in the property, so no substantive due process violation results. *Kelley-Lomax*, 49 F.4th at 1125.

Conclusion

The city need not keep the property forever, but as we said in *Conyers*, we can also assume that "a statutory declaration of abandonment after only one day would be untenable." 10 F.4th at 711. Between one day and forever, our cases have not said where the Constitution draws the line. *Id.* Here, though, the plaintiffs' failures to take steps to protect their property as laid out in the city's notice add up to abandonment of the property in question. The judgment of the district court is AFFIRMED.