

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

BEN BAKER and CLARISSA GLENN,)
)
Plaintiff,)
)
v.) Case No. 16 C 8940
)
CITY OF CHICAGO, Former CHICAGO) Judge Franklin U. Valderrama
POLICE SERGEANT RONALD WATTS,)
OFFICER KALLATT MOHAMMED,) Magistrate Judge Sheila M. Finnegan
SERGEANT ALVIN JONES, OFFICER)
ROBERT GONZALEZ, OFFICER)
CABRALES, OFFICER DOUGLAS)
NICHOLS, JR., OFFICER MANUEL S.)
LEANO, OFFICER BRIAN BOLTON,)
OFFICER KENNETH YOUNG, JR.,) (This case is part of <i>In re: Watts</i>
OFFICER ELSWORTH J. SMITH, JR.,) <i>Coordinated Pretrial Proceedings</i> , Master
PHILIP J. CLINE, KAREN ROWAN,) Docket Case No. 19 C 1717)
DEBRA KIRBY, and as-yet-unidentified)
officers of the Chicago Police Department.,)
)
Defendants.)

**CERTAIN DEFENDANTS' JOINT MOTION TO ALLOW FORENSIC EXAMINATION
AND TESTING OF INVENTORY NUMBER 10503356 RECOVERED IN CONNECTION
WITH PLAINTIFF BAKER'S MARCH 23, 2005 ARREST**

Defendants City of Chicago, Philip Cline, Debra Kirby, Karen Rowan, Alvin Jones, Robert Gonzalez, Miguel Cabrales, Douglas Nichols, Jr., Manuel Leano, Brian Bolton, Kenneth Young, Jr., and Elsworth Smith, Jr., respectfully move this Court for an order allowing forensic examination and testing of inventory number 10503356 recovered in connection with plaintiff Baker's March 23, 2005 arrest. In support of their motion, these Defendants state as follows:

INTRODUCTION AND RELEVANT FACTS

On March 23, 2005, following a brief foot chase inside a building at the Ida B. Wells housing complex, plaintiff Ben Baker was arrested when defendant Officer Nichols recovered a plastic bag containing 110 clear plastic baggies containing suspect heroin from Baker's right hand,

and a plastic bag containing 68 yellow tinted baggies containing suspect crack cocaine from Baker's right front pants pocket. (Group Exhibit 1, March 23, 2005 arrest report and vice case report). At the police station, the narcotics were inventoried under Inventory Number 10503356 and ultimately forwarded by the Chicago Police Department ("CPD") to the Illinois State Police ("ISP") for chemical testing to determine whether the recovered evidence was, in fact, illegal narcotics. The ISP's chemical testing determined the recovered evidence in Inventory Number 10503356 was heroin and crack cocaine, issued a report dated April 4, 2005 (see Exhibit 2, ISP's April 4, 2005 report), and returned the narcotics to the Evidence and Recovered Property Section ("ERPS) of the CPD, where Inventory Number 10503356 remains today. In June 2006, Baker was convicted of offenses arising from his March 23, 2005 arrest and later sentenced to the penitentiary for 14 years. His conviction was vacated in 2016.

In this litigation, plaintiff Baker alleges that the defendant officers fabricated that Baker possessed the drugs contained in Inventory Number 10503356, asserting that he never possessed the drugs and had nothing to do with them. (Dkt.238, plaintiff's second amended complaint at paras. 47, 53-55). Among other things, Baker has brought claims for fabrication of evidence and malicious prosecution based on his allegation that the police lied when they said they recovered the narcotics contained in Inventory Number 10503356 from his person on March 23, 2005. (*Id.* at paras. 47, 53-55, 154, and Counts I and VI). The parties are now in the expert discovery phase of the case: plaintiffs' disclosures were made on April 1, 2024 and defendants' expert disclosures are due on May 13, 2024. Among other experts, plaintiffs disclosed a forensics expert, Dr. Alicia McCarthy, who suggests that the defendants could have conducted or asked ISP to conduct fingerprint testing on the plastic bags contained in Inventory Number 10503356 during Baker's criminal proceedings. Though he now questions defendants for not seeking to conduct forensic

testing during the criminal proceedings, plaintiff Baker (personally or through his attorneys) never requested any forensic testing, including during his post-conviction proceedings while represented by his current counsel through the Exoneration Project.

Defendants have now retained expert consultants (Speckin Forensics, LLC) to examine Inventory Number 10503356 to process the evidence in order to determine whether there are any latent print ridge impressions that can be obtained, and if so, to determine whether any such latent ridge impressions match plaintiff Baker's fingerprints. Defendants have also asked Speckin Forensics to examine Inventory Number 10503356 to determine appropriate sample areas for potential DNA material to swab, and if identified, to take appropriate swabs and send those to Sorenson Forensics. The DNA lab technicians at Sorenson Forensics would then be asked to examine the swabs for DNA, and if DNA is found, to determine whether it matches plaintiff Baker's DNA.

On April 17, 2024, defendants asked plaintiffs' attorneys their position on this request. Plaintiffs asked for a meet and confer but did not accept defendants' offer to discuss the matter on April 18, 2024, suggesting instead that the meet and confer take place on April 22 or 23, 2024 (see Exhibit 4, email string regarding plaintiffs' attorneys' position on the filing of this motion). Defendants intend to engage in a meet and confer with plaintiffs on April 22, 2024, but due to their expert disclosure due date of May 13, 2024, file this motion now to move the process forward. ERPS requires a court order to allow this examination and analysis so this motion would be necessary even if it is ultimately agreed to by plaintiffs.

For the same timing considerations, defendants request that this Court set a hearing on this motion for Tuesday, April 23, 2024 (or as soon thereafter as this Court is available) so that, if it is granted, defendants' expert consultants can begin their work forthwith.

DISCUSSION

Among other things, it is defendants' contention that if Baker's prints and/or DNA is on one or more of the bags contained in Inventory Number 10503356, it provides further support that the defendant officers did not fabricate reports that stated that Officer Nichols recovered the narcotics contained in Inventory Number 10503356 from Baker on March 2, 2005. Likewise, if defendant officers did not fabricate reports that stated Officer Nichols recovered the narcotics contained in Inventory Number 10503356 from Baker on March 2, 2005, then Baker was not maliciously prosecuted and was not wrongfully convicted, as he now claims. Accordingly, this forensic testing requested by defendants is unquestionably relevant to the heart of plaintiffs' fabrication, malicious prosecution, and wrongful conviction claims in his second amended complaint.

Defendants' request is timely. The forensic examination and testing at issue constitute expert discovery and it would not have been necessary or appropriate for defendants to seek to conduct this testing earlier. There is no legal basis to suggest that defendants were required to conduct this expert discovery during the fact discovery period. Any question as to the timeliness of defendants conducting this testing is answered by plaintiffs' disclosure of Dr. McCarthy. (Exhibit 3, McCarthy report at p. 4-6). While plaintiffs themselves had every opportunity to request forensic testing during the criminal proceedings or during this case, they chose not to do so. It was appropriate for defendants to wait and see what plaintiffs intended to do before seeking this testing, especially because it is plaintiffs' burden of proof on all issues in this case. It would also be misleading to allow plaintiffs to argue to the jury in this case that defendants did not request forensic testing then or now, when defendants are in fact requesting it now. In any event, since this is expert discovery, defendants request to conduct this testing now is appropriate and timely.

Wherefore, Defendants respectfully request an order of this Court that: (1) ERPS shall allow Speckin Forensics, LLC and the parties' counsel to inspect Inventory Number 10503356 at the Chicago Police Department at a convenient time to be agreed upon; (2)(a) Speckin Forensics, LLC shall be allowed to examine and process the evidence in Inventory Number 10503356 for latent ridge impressions, and if any such latent ridge impressions are located, to photograph those latent ridge impressions and conduct a review of same to determine if they are suitable for comparison; (b) the CPD shall supply Baker's prints on file to Speckin Forensics, LLC or Baker shall submit to Speckin Forensics, LLC taking his fingerprints; and (c) Speckin Forensics, LLC shall determine if any latent ridge impressions that are suitable for comparison match plaintiff Baker's prints; (3) Speckin Forensics, LLC shall also be allowed to swab the evidence contained in Inventory Number 10503356 in an attempt to detect any DNA material that may be on the materials; (4) if Speckin Forensics, LLC is able to swab any possible DNA material from the evidence in Inventory Number 10503356, those swabs shall be sent to Sorenson Forensics to conduct DNA analysis, Baker shall submit to a buccal swab to be taken from him by Speckin Forensics, LLC for his DNA, and to compare any DNA found on the swabs to plaintiff Baker's DNA; (5) during its testing, if any, Sorenson Forensics shall follow the technical specifications currently in place at Sorenson Forensics relative to all testing of evidence and shall consume no more of the item than is necessary to obtain a result; and (6) for any other relief this Court seems appropriate.

Respectfully submitted,

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/s/ Paul A. Michalik
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CERTIFICATE OF SERVICE

I hereby certify that on **April 19, 2024**, I electronically filed **Certain Defendants' Joint Motion to Allow Forensic Examination and Testing of Inventory Number 1050336 Recovered in Connection with Plaintiff Baker's March 23, 2005 Arrest** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

s/ Paul A. Michalik