

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

Lionetta White, as special)	
administrator for Lionel White,)	
deceased)	
)	
<i>Plaintiff,</i>)	
)	No. 17-cv-2877
<i>-vs-</i>)	
)	<i>(Judge Maldonado)</i>
City of Chicago, et al.,)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT
MOHAMMED'S MOTION TO AMEND ANSWER**

During the first six years of this litigation, defendant Kallatt Mohammed invoked the Fifth Amendment, refusing to answer questions about plaintiff Lionel White's allegations that Mohammed and other officers framed White for a drug offense.¹

Mohammed first asserted the privilege in 2018, in his answer to the complaint (Exhibit 1) and in his answers to interrogatories. (Exhibit 2 ¶¶ 11-15, 24). In November of 2023, one month before the close of fact discovery, Mohammed for the first time waived the privilege and answered deposition

¹ Lionel White passed away in February of 2023, and the Court appointed his daughter, Lionetta White, to continue the suit for the benefit of her father's estate. (Case No. 17-cv-2877, ECF No. 171.)

questions about White's allegations. (Exhibit 3, Deposition of Mohammed, November 15, 2023, 69-71.)

After six years of refusing to testify in purported reliance on the Fifth Amendment privilege, Mohammed finally testified *that he does not remember the arrest of White*. Mohammed's claimed inability to recall the arrest demonstrates that his assertion of the privilege to refuse to answer questions about the arrest was made in bad faith.

"The only valid reason to invoke the Fifth Amendment is a reasonable fear that truthful answers may incriminate the witness." *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 603 (7th Cir. 2019). The Court should not permit Mohammed to assert the privilege in bad faith to gain a strategic advantage and then withdraw it at the eleventh hour.

Because of Mohammed's bad faith assertion of the privilege, the Court should deny his motion to file an amended answer to the complaint (Case No. 17-cv-2877, ECF No. 176), which would replace his assertion of the privilege with his present claim that he does not recall the arrest of White. The Court should also deny the motion because it is untimely: Mohammed did not file the motion until five months after the close of discovery and six months after his deposition.

I. Background and Procedural History

Lionel White alleges, through his estate, that he was framed for drug possession by a team of corrupt Chicago police officers led by former Sergeant Ronald Watts. Defendant Mohammed was one of the officers involved in the arrest.

More than a decade after White was convicted of the false charge and after Watts and Mohammed pleaded guilty to federal criminal charges for stealing what they believed were drug proceeds from a government informant, the Circuit Court of Cook County granted the State's motion to vacate White's wrongful conviction and granted him a certificate of innocence.

White filed this lawsuit on April 17, 2017. (Case No. 17-cv-2877, ECF No. 1.) This was the second lawsuit against Watts and members of his tactical team. There are now more than 175 cases pending against Watts and officers who worked for him. The cases are all part of the Watts Coordinated Pretrial Proceedings, 19-cv-1717, which have been coordinated for pretrial discovery. The core allegation of each case is that the officer defendants framed the plaintiffs for drug offenses, causing each plaintiff to be wrongfully convicted.

Defendant Mohammed filed his answer to White's complaint on April 21, 2018. (Exhibit 1, Case No. 17-cv-2877, ECF No. 84.) Mohammed

refused to answer 20 paragraphs, asserting a Fifth Amendment privilege.² Mohammed answered interrogatories on March 20, 2018, and again asserted his Fifth Amendment rights. (Exhibit 2.) Mohammed refused to answer five interrogatories based on the claimed privilege. (Exhibit 2 ¶¶ 11-15.) The final interrogatory requested the basis for any invocation of the privilege, but Mohammed did not answer:

24. If you refused to answer any portion of any interrogatory based on your assertion of your rights under the Fifth Amendment, state the basis for each invocation of those rights.

ANSWER: U.S. Constitution, amend. V.

(Exhibit 2 ¶ 24.) Mohammed has not sought to amend his interrogatory answers.

On January 20, 2023, the parties to the Watts Coordinated Proceedings agreed to stay discovery in all but 19 “test cases” to help the parties assess the value and merit of the remaining cases. (Case No. 19-cv-1717, ECF No. 393.) This is one of the test cases. On March 5, 2024, this Court scheduled this case for trial beginning on July 7, 2025. (Case No. 17-cv-2877, ECF No. 172.)

The discovery cutoff for the test cases was December 18, 2023. (Case No. 19-cv-1717, ECF No. 419.) Magistrate Judge Finnegan, who is

² Paragraphs 1, 2, 4, 5, 7, 26, 28, 29, 30, 36, 42, 44, 45, 46, 49, 55, 58, 64, 74, 75.

managing discovery in the coordinated proceedings, reaffirmed the discovery cutoff on January 13, 2024 when she denied defendants' request for an across-the-board six-month extension.³

Mohammed was deposed about White's allegations on November 15, 2023, one month before the close of fact discovery. (Exhibit 3, Deposition of Mohammed, November 15, 2023.) At his deposition, Mohammed asserted the Fifth Amendment privilege and refused to answer some questions that were not about White. (*Id.* 21:12-22:19, 52:1-53:2.) In response to questions about White's allegations, however, Mohammed answered and claimed for the first time that he does not remember if he has ever been involved in arresting White. (*Id.* 69:12-14.) Mohammed recognized a picture of White, but the picture did not refresh his recollection of ever arresting White. (*Id.* 70:12-18.) Mohammed reviewed the police report about the arrest and testified that reviewing the report also did not refresh his recollection. (*Id.* 71:5-14.) Mohammed could not recall any act he took regarding the arrest of White. (*Id.* 71:19-24.)

Six months after his deposition and five months after the close of fact discovery, defendant Mohammed filed his present motion for leave to file an

³ The Magistrate Judge allowed an extension of time to complete specific discovery. (Case No. 19-cv-1717, ECF No. 658.) None of these exceptions applies to Mohammed's request to withdraw his assertion of privilege and file an amended answer.

amended answer and withdraw his invocation of the Fifth Amendment privilege.⁴ (Case No. 17-cv-2877, ECF No. 176.) The motion does not contain any explanation for the delay. Nor does it explain why Mohammed asserted the privilege for the first six years of litigation. Mohammed's only explanation for seeking to withdraw the privilege is his conclusory assertion that "[s]ubsequent investigation of Plaintiff's allegations revealed information that resulted in the undersigned counsel's determination that the privilege could, and should, be withdrawn." (Case No. 17-cv-2877, ECF No. 176 ¶ 3.)

Mohammed fails to provide any details of the "subsequent investigation." Nor does Mohammed describe the evidence he claims is newly revealed "information."

Mohammed's deposition testimony and his proposed amended complaint (Case No. 17-cv-2877, ECF No. 176-1) suggest that the newly revealed information is that Mohammed is unable to recall any of his interactions with White. The Court should reject this meritless argument and deny Mohammed's motion.

⁴ Mohammed initially filed his motion before Judge Valderrama, who is presiding over the consolidated *Watts* proceedings. (Case No. 17-cv-1717, ECF No. 735.) Mohammed refiled the motion before this Court in compliance with Judge Valderrama's order of May 31, 2023. (Case No. 17-cv-1717, ECF No. 743.)

II. The Court Should Deny the Motion to Amend Because of Mohammed's Bad Faith

The record shows that defendant Mohammed asserted the Fifth Amendment privilege in bad faith. His request to withdraw the assertion of the privilege is an attempt to gain an unfair advantage.

The Seventh Circuit considered similar facts in *Harris v. City of Chicago*, 266 F.3d 750 (7th Cir. 2001), where a police officer defendant asserted the privilege to avoid discovery before withdrawing the assertion at trial. *Id.* at 753 The district court allowed the defendant to testify and excluded evidence of his prior silence. *Id.* The Seventh Circuit reversed, holding that it was an abuse of discretion for the district court to exclude evidence of the previous invocation of the Fifth Amendment. *Id.* at 755. The Seventh Circuit explained its decision by quoting *McGahee v. Massey*, 667 F.2d 1357, 1362 (11th Cir. 1982): “A defendant cannot have it both ways ... [He may not] testify in attack ... and at the same time seek refuge behind the shield of the Fifth Amendment.” *Harris*, 266 F.3d. at 754.

The Second Circuit, in a case cited by Mohammed (Case No. 17-cv-2877, ECF No. 176 ¶ 9), explained why the tactic Mohammed attempts is improper:

Since an assertion of the Fifth Amendment is an effective way to hinder discovery and provides a convenient method for obstructing a proceeding, trial courts must be especially alert to the danger that the litigant might have invoked the privilege

primarily to abuse, manipulate or gain an unfair strategic advantage over opposing parties.

United States v. Certain Real Prop. & Premises Known as 4003-4005 5th Ave., 55 F.3d 78, 84 (2d Cir. 1995).

Mohammed mistakenly seeks to rely (Case No. 17-cv-2877, ECF No. 176 ¶ 8) on the Seventh Circuit's decision in *Evans v. City of Chicago*, 513 F.3d 735 (7th Cir. 2008). There, the district court allowed defendant police officers to withdraw their assertions of the privilege and excluded evidence of the prior assertions at trial. *Id.* at 740. The Seventh Circuit affirmed after finding "a good-faith invocation of the Fifth Amendment" because a special prosecutor had been investigating the officers' conduct until shortly before trial. *Id.* at 743.

Mohammed is unable to point to anything showing that he acted in good faith in asserting the privilege. He fails to explain how testifying about an inability to recall could incriminate him. Nor has Mohammed identified any factual development that supports his current attempt to withdraw the privilege. His only explanation is the claim that "[s]ubsequent investigation of Plaintiff's allegations revealed information that resulted in the undersigned counsel's determination that the privilege could, and should, be withdrawn." (Case No. 17-cv-2877, ECF No. 176 ¶ 3.) Mohammed does not

explain what the newly revealed information is, when he learned that information, or why he did not learn about it earlier.

The Court should reject this conclusory assertion because the testimony that Mohammed refused to provide is a claimed inability to recall any of his interactions with White. (Exhibit 3, Deposition of Mohammed, November 15, 2023, 69:12-14, 70:12-18, 71:5-14, 71:19-24.) There is no merit in Mohammed's illogical claim that "investigation" was required before he realized that he did not recall the events in question.

Nor can Mohammed show that he acted diligently in moving to amend his answer. Mohammed claims that he discovered new facts before his deposition in November of 2023, but he waited another six months before filing his motion to amend. *See Liebhart v. SPX Corp.*, 917 F.3d 952, 965 (7th Cir. 2019) (upholding denial of leave to amend where party waited four months from discovery of new facts to move to amend); *Park v. City of Chicago*, 297 F.3d 606, 613 (7th Cir. 2002) (upholding denial of leave to amend where party waited six months.)

Harris and *Evans* teach that a showing of good faith is required before a party may withdraw an assertion of the Fifth Amendment privilege. *See also Davis-Lynch, Inc. v. Moreno*, 667 F.3d 539, 548 (5th Cir. 2012) (withdrawal of privilege allowable when "circumstances indicate that (1) the

litigant was not using the privilege in a tactical, abusive manner, and (2) the opposing party would not experience undue prejudice as a result.”)

“The only valid reason to invoke the Fifth Amendment is a reasonable fear that truthful answers may incriminate the witness.” *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 603 (7th Cir. 2019). The Fifth Amendment provides “a privilege against self-incrimination, not inconvenience or embarrassment.” *Id.* Mohammed’s claimed inability to recall the arrest of White was not a valid reason to invoke the Fifth Amendment; his present attempt to withdraw demonstrates that he asserted the privilege in an attempt to game the system. The Court should therefore deny the motion.

III. Conclusion

Accordingly, the Court should deny defendant’s motion.

Respectfully submitted,

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