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

WILLIAM CARTER,	)	
	)	No. 17 C 7241
Plaintiff,	)	
v.	)	Hon. LaShonda Hunt
	)	
CITY OF CHICAGO, *et al*.,	)	
	)	
Defendants.	)	

DEFENDANT KALLATT MOHAMMED'S
REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant, Kallatt Mohammed ("Mohammed"), by and through his attorneys, Special Assistant Corporation Counsel Eric S. Palles, Sean M. Sullivan, and Lisa Altukhova of Mohan Groble Scolaro, P.C., submits the following Reply Memorandum in further support of his Motion for Summary Judgment:

INTRODUCTION

Plaintiff has sued alleging civil rights violations against the City of Chicago ("City") and members of its Police Department, as well as a state law malicious prosecution claim against the City. Dkt. No. 1. The case stems from three arrests made by members of a tactical unit led by Defendant Ronald Watts ("Watts") and subsequent prosecutions - one on March 3, 2004, the second on June 18, 2004, and the third on May 19, 2006. *Id*. at ¶¶ 17-67. The Defendant Officers other than Watts and Mohammed filed a Motion for Summary Judgment, Dkt. No. 194, supported by the Defendant Officers' Statement of Undisputed Facts ("SOF"), Dkt. No. 195. For purposes of efficiency, Mohammed incorporated and adopted the Defendant Officers' SOF in its entirety, and those portions of their Motion that are equally applicable to Mohammed. *See* Dkt. No. 197, at 2-3. For the same reason, Mohammed adopts and incorporates the Defendant Officers' Reply in

support of those arguments having overlapping applicability, §§ II through VII, and their response to Plaintiff's statement of additional facts. Mohammed submits this separate Reply solely on the issue of lack of his personal involvement in the June 18, 2004 and May 19, 2006 arrests.

ARGUMENT

As Mohammed noted in his original Memorandum, in determining whether summary judgment is appropriate, the Court must construe all facts in a light most favorable to the non-moving party and draw all reasonable inferences in that party's favor, *Majors v. Gen. Elec. Co*., 714 F.3d 527, 532 (7th Cir. 2013), but is *not* required to "draw every conceivable inference from the record - only those inferences that are reasonable." *Wade v. Collier*, No. 10 C 6876, 2013 U.S. Dist. LEXIS 127263, at *16-17, 2013 WL 4782028 (N.D. Ill. Sept. 6, 2013), *quoting Bennington v. Caterpillar Inc*., 275 F.3d 654, 658 (7th Cir. 2001). Summary judgment should be granted to the moving party who demonstrates that "there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); s*ee also Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). Here Mohammed is entitled to summary judgment because "there is an absence of evidence" of Mohammed's personal involvement in the June 18, 2004 and May 19, 2006 arrests.

A. Plaintiff Has Not Identified Any Evidence of Mohammed's Personal Involvement

It is undisputed that § 1983 creates a cause of action based upon personal liability and predicated upon fault and that liability does not attach unless the individual defendant caused or participated in a constitutional deprivation. *Wolf-Lillie v. Sonquist,* 699 F.2d 864, 869 (7th Cir. 1983); *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018); *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996). "A plaintiff bringing a civil rights action must prove that the defendant personally participated in or caused the unconstitutional actions." *See* Dkt. No. 197, at 5-6. To avoid summary

judgment, Plaintiff must establish that each and every defendant sued actually participated in committing the alleged misconduct. *Wolf-Lillie*, 699 F.2d at 869; *Eades v. Thompson*, 823 F.2d 1055, 1063 (7th Cir. 1987)("Each individual defendant can be liable only for what he or she did personally, not for any recklessness on the part of any other defendants, singly or as a group.").

As Mohammed pointed out in his original Memorandum, the entirety of the evidence supposedly connecting him to either the June 18, 2004 or May 19, 2006 arrests is the suggestion that he "was there at the time." But mere proximity to alleged misconduct, merely being listed on a police report, showing up on a scene after alleged misconduct has occurred, or otherwise not being linked in any material way to the specific malfeasance at issue are insufficient to create an issue of fact to preclude summary judgment. Dkt. No. 197, at 5, 8, citing *Walker v. White*, 2021 WL 1058096, at *14 (N.D. Ill. 2021); *De Jesus v. Odom,* 578 Fed. Appx. 598 (7th Cir. 2014). In the specific context of claims of alleged fabrication of evidence, to establish liability on the part of any individual Defendant, Plaintiff must also "prove not only that the evidence was false but that [each officer] 'manufactured' it." *Coleman v. City of Peoria, Illinois*, 925 F.3d 336, 344 (7th Cir. 2019). Plaintiff must prove that the officers "knew with certainty" that other officers' accounts of the circumstances of the respective arrests were false. *Id*. Mere evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity is insufficient." *Id.* at 345.

Plaintiff has not disputed the governing law cited above and in Mohammed's original Memorandum. Nor can he dispute the core fact that there is a complete absence of evidence supporting his claim as to Mohammed. Plaintiff effectively concedes that he has no evidence beyond Mohammed's presence on scene. *See e.g.* Dkt. No. 226, at 11 ("plaintiff identified him as being present for the arrest"). As to the June 18, 2004 arrest, Plaintiff cites only to testimony of Defendant Young that in no way implicates Mohammed:

Q. Okay. Do you see your name listed on this report?

A. Box 18, along with Ellsworth Smith, Kallat Mohammed, and Sergeant Watts.

Q. And do you know why you're listed in box 18?

A. I was at some form assisting the arresting officers with this particular arrest.

Q. The arresting officers being Jones and Smith?

A. Yes.

Q. And do you know why Mohammed is listed in Box 18?

A. I do not.

Q. Do you know why Watts is listed in Box 18?

A. I do not.

Q. Are those two listed for the same reason that you are, because they had something – some kind of involvement in the arrest?

A. Yes.

Dkt. No. 226, at 7; Dkt. No. 228, ¶ 45.

Plaintiff himself only testified that he saw Mohammed (among others) in the lobby at the time Defendant Jones arrested him. He did not describe Mohammed as participating in his arrest or engaging in any wrongful conduct. SOF at ¶¶ 33-35, 55, 63-65. None of that is evidence that Mohammed was present for, witnessed, or even knew about any alleged malfeasance by any police officers.

As to the May 19, 2006 arrest, Plaintiff cites only to a witness report prepared by Mohammed related to Plaintiff's excessive force misconduct complaint against Defendant Jones, in which Mohammed described the extent of physical contact he observed during the arrest. Dkt. No. 226, at 11; Dkt. No. 228, ¶19. The report offers no evidence of Mohammed participating in any substantive way in the arrest made by Defendants Jones and Smith, or that he was present for,

witnessed, or even knew about any alleged malfeasance by any police officers. SOF at ¶¶ 97, 106-107. Plaintiff testified that Defendant Jones detained him inside his apartment and that he did not recall what officer escorted him down the stairs with Defendant Jones. Plaintiff further testified that he observed Mohammed, Defendant Smith, Defendant Young and an officer he calls the "Chinaman" on the first floor. *Id*. at ¶¶ 105-107. Plaintiff confirmed that only Defendant Jones was in his apartment and arrested him, and that all other officers were downstairs. *Id*. Again, Plaintiff argues only that Mohammed "was there at the time." That proximity is insufficient to sustain a § 1983 claim against Mohammed.

B. Plaintiff's Failure to Intervene Theory Does Not Overcome the Absence of Evidence Concerning Mohammed

Plaintiff argues that because Mohammed was present on scene "[a] jury could therefore conclude that these officers were aware that plaintiff was being falsely arrested and falsely charged but did not intervene to prevent the violations of plaintiff's rights." Dkt. No. 226, at 7-8. That argument is without merit. What is missing, again, is any evidence that Mohammed was aware of and had an opportunity to intervene to prevent any misconduct by other Defendants. Plaintiff's reliance on *Padilla v. City of Chicago*, 932 F. Supp. 2d 907 (N.D. Ill. 2013) is misplaced. In *Padilla*, the evidence showed that all defendant officers were participants in the conduct that plaintiff claimed violated his constitutional rights. Although the plaintiff could not specifically identify which officer took each specific action, the evidence warranted a finding that each defendant either took such actions or was present and had an opportunity to intervene to prevent those actions. Here, Plaintiff's own testimony shows that the June 18, 2004 and May 19, 2006 arrests occurred without the presence or participation of all the Defendant Officers. For example, Plaintiff confirmed that only Defendant Jones was in his apartment and arrested him on May 19, 2006, and that all other officers were downstairs. Plaintiff testified that he saw Mohammed (among

others) in the lobby at the time Defendant Jones arrested him on June 18, 2004, but not that Mohammed did or observed any improper act.

Allowing failure to intervene liability based on mere presence would abrogate the established law that § 1983 liability is premised on personal fault. As noted above, mere evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity is insufficient." *Coleman*, 925 F.3d at 345. To allow a claim based only on presence would invite "the jury to merely speculate in the absence of evidence as to whether one of the Defendant Officers was the individual that allegedly injured" him or her. *See Nunez v. Dart*, 2011 WL 5599505, *3 (N.D. Ill. 2011). Plaintiff's failure to intervene theory is insufficient to deny Mohammed summary judgment.

C. Mohammed's Prior Invocation of the Fifth Amendment is Not Sufficient to Deny Summary Judgment

Finally, Plaintiff argues the Court should deny summary judgment because "a jury could draw an adverse inference [from Mohammed's prior invocation of the Fifth Amendment] and conclude that Mohammed was involved in the arrest and involved in framing plaintiff." Dkt. No. 226, at 8. This argument is also without merit. First, Mohammed amended his Answer on October 21, 2024, Dkt. No. 181, and has now denied the subject allegations. Second, Mohammed provided a supplemental deposition on February 4, 2025, and denied those allegations, although he was unable to recall specifics regarding the subject arrests. Third, the prior invocation of the Fifth Amendment, standing alone, is not a substitute for evidence supporting Plaintiff's claims. *Padilla*, on which Plaintiff relies, does not stand for the proposition that the exercise of the Fifth Amendment is sufficient to avoid summary judgment in the absence of evidence supporting the underlying claim. In that case the court simply held that the continued assertion of the Fifth Amendment was a factor to consider along with the other substantial evidence supporting the

plaintiff's claim. 932 F. Supp. 2d at 919. A defendant's invocation of the Fifth Amendment cannot substantiate civil liability on its own, it must be viewed in light of the other evidence proffered. *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 390-91 (7th Cir. 1995).

Evidence regarding an invocation of the right to remain silent generally has little or no probative value, while evidence of invocation carries a significant risk of unfair prejudice. *See United States v. Zaccaria*, 240 F.3d 75, 79 (1st Cir. 2001), citing *United States v. Hale*, 422 U.S. 171 (1975). Those two facts weigh heavily against allowing cross-examination concerning a prior invocation. As the court wrote in *Zaccaria*:

> *Hale* teaches that the trial court must start this task from a binary premise: (1) that silence *per se* generally has little or no probative value for impeachment purposes, …; and (2) that evidence of the invocation of the right to remain silent is inherently prejudicial[.] Thus, a proffer of such evidence should be rejected unless special circumstances exist in a given case that materially shift the balance in favor of admissibility.

240 F.3d at 79.

There are no special circumstances in this case (in which there is no substantive evidence of Mohammed's personal involvement) that would warrant allowing examination about Mohammed's earlier (now withdrawn) assertion of the Fifth Amendment, let alone allowing the case to proceed solely on the basis of that prior invocation. Mohammed's prior assertion of the Fifth Amendment does not absolve Plaintiff of the obligation to come forward with evidence supporting his claim. His failure to do so warrants summary judgment for Mohammed.

CONCLUSION

For the foregoing reasons, Kallatt Mohammed is entitled to summary judgment on all claims asserted in Plaintiff's Complaint.

Respectfully submitted,

/s/ Sean M. Sullivan
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CERTIFICATE OF SERVICE

I, Sean M. Sullivan, an attorney, certify that I caused a true copy of the foregoing **DEFENDANT KALLATT MOHAMMED'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served upon all counsel of record by the Court's ECF system on February 10, 2025.

/s/ Sean M. Sullivan
Sean M. Sullivan