

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

KHALID ALI,)	
)	
Plaintiff,)	Case No.: 19-cv-22
)	
v.)	Judge: Honorable Edmond E. Chang
)	
CITY OF CHICAGO, NORA VALDES,)	Magistrate Judge: Sidney I. Schenkier
JOHN KELYANA, and KEVIN REPPEN,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S LOCAL RULE 56.1
STATEMENT OF ADDITIONAL FACTS**

Defendants Nora Valdes, John Kelyana, Kevin Reppen and Vincent Vogt (collectively "Defendants"), by and through one of their attorneys, Mark Haines, Assistant Corporation Counsel of the City of Chicago, pursuant to Local Rule 56.1 of the United States District Court for the Northern District of Illinois, for their response to Plaintiff's Local Rule 56.1 Statement of Additional Facts, state as follows¹:

1. Defendant Chicago Police Officer Nora Valdes stopped plaintiff, who was driving a Chicago taxicab, for making an illegal U-turn on April 15, 2018 at about 1:39 p.m. when she began recording on her bodycam. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10.)

RESPONSE: Undisputed. However, paragraph 1 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

2. The interactions between plaintiff and defendants Valdes and Kelyana during the traffic stop are preserved on the officers' body cameras, filed by defendants in digital format as Exhibit J, ECF 79-10, and transcribed (as an aid to the Court) as Plaintiff's Exhibit 1.

RESPONSE: Undisputed. However, paragraph 2 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made

¹ The facts admitted in this response are only admitted for the purpose of Defendants' Motion for Summary Judgment. Defendants reserve the right to deny these facts for any other purpose, including at trial.

admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

3. Defendants Valdes and Kelyana inspected plaintiff’s valid Illinois driver’s license and determined that he lived in the City of Chicago at a specified address in the 5000 block of North Harding Avenue, that he had been born on a specified date in April of 1972, that he was five feet eight inches tall, and that he weighed 200 pounds. (Answer to Amended Complaint, admitting ¶ 11, ECF No. 32 at 3.) Plaintiff also provided Valdes with his City of Chicago Chauffeur’s license. (Ali Dep. 19:18-22, ECF No. 79-3 at 7; Plaintiff’s Exhibit 3, frame grab of AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10.)

RESPONSE: Undisputed that Defendants Valdes and Kelyana inspected plaintiff’s valid Illinois driver’s license and determined that he lived in the City of Chicago at a specified address in the 5000 block of North Harding Avenue, that he had been born on a specified date in April of 1972, that he was five feet eight inches tall, and that he weighed 200 pounds. Undisputed that Plaintiff testified in his deposition that he also provided Defendant Valdes with his City of Chicago chauffeur’s license and that Plaintiff’s Exhibit 3 appears to show Defendant Valdes holding a chauffeur’s license. However, paragraph 3 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment.

4. Defendant Valdes detained plaintiff while she asked the dispatcher to run a check on plaintiff’s driver’s license. (Video, Case: 1:19-cv-00022 Document #: 86 Filed: 06/01/20 Page 13 of 21 PageID #:881 -14- AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 4:29, Plaintiff’s Exhibit 1 at 2.)

RESPONSE: Defendants object to the use of word “detained,” as it is a legal conclusion but admit that Plaintiff remained in his vehicle while Defendant Valdes contacted dispatch to run on a check on Plaintiff’s name. See ECF No. 79-10, Ex. J. In any event, paragraph 4 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

5. The dispatcher responded to the query and reported that there was a “possible hit” (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 14:03, Plaintiff’s Exhibit 1 at 4), and that plaintiff may be the subject of a warrant for contempt of court from DuPage County. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 5:48, Plaintiff’s Exhibit 1 at 2.)

RESPONSE: Disputed. Defendant Valdes reported to dispatch that she had stopped Plaintiff and that there was a warrant for his arrest. See ECF No. 79-10, Ex. J, at 5:53. Dispatch responded that she saw a warrant for “Khalid Ali” at 1638 N. Harding for contempt of court issued by DuPage County. Id. at 8:33; Plaintiff’s Exhibit 1 at 3. Regardless, paragraph 5 of Plaintiff’s

statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence." *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore's Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

6. Valdes then telephoned DuPage County to attempt to confirm the warrant, (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 12:06, Plaintiff's Exhibit 1 at 4), but DuPage County refused to confirm the warrant over the telephone. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 16:17, 17:39, Plaintiff's Exhibit 1 at 5.)

RESPONSE: Undisputed. However, paragraph 6 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence." *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore's Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

7. Valdes referred to the LEADS response as showing a "possible hit" in her conversation with DuPage County. (Valdes Dep. 16:8-17:6, ECF No. 79-4 at 5-6.)

RESPONSE: Undisputed. However, paragraph 7 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

8. Valdes telephoned the police department's Law Enforcement Agencies Data System ("LEADS") desk (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 19:52, Case: 1:19-cv-00022 Document #: 86 Filed: 06/01/20 Page 14 of 21 PageID #:882 - 15- Plaintiff's Exhibit 1 at 6.) Valdes explained her plight to another officer as follows: Hey. Okay. I need your help. Okay. So I stopped this fucking cabbie. He comes back with a possible warrant. Dispatch told me to call DuPage. DuPage says they can't tell me anything over the phone. [inaudible] That they can't tell me if it's a good warrant over the phone. That I will have to go through dispatch to send them a request, a LEADS request. I called LEADS. They're saying I will have to call dispatch which I did over the air and I'm like, "Hey, can you put in a request?" [inaudible] (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 24:00, Plaintiff's Exhibit 1 at 8.)

RESPONSE: Undisputed. However, paragraph 8 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made

admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

9. Valdes then spoke with her sergeant, who told Valdes to bring plaintiff to the police station. (Video, AXON_Body_2_Video_2018-04- 15_1339.mp4, ECF No. 79-10, at 26:59, Plaintiff’s Exhibit 1 at 9.)

RESPONSE: Undisputed that while talking to her sergeant over the radio, Defendant Valdes can be heard saying, “So bring him in?” Disputed that Defendant Valdes’s sergeant can be heard on the body camera video telling Defendant Valdes to bring Plaintiff to the police station. In any event, paragraph 9 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

10. Defendant Kelyana suggested to Valdes that she ask plaintiff if he knew about the warrant. (Video, AXON_Body_2_Video_2018-04- 15_1339.mp4, ECF No. 79-10, at 31:05, Plaintiff’s Exhibit 1 at 10.)

RESPONSE: Disputed. Defendant Kelyana asked Defendant Valdes if Plaintiff knew about the warrant issued by DuPage County. Plaintiff’s Exhibit 1, at 10. Regardless, paragraph 10 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

11. Plaintiff denied all knowledge of any warrant (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 33:36, Plaintiff’s Exhibit 1 at 11), and stated that he had never been to DuPage County. (Id. at 33:41, Plaintiff’s Exhibit 1 at 11.)

RESPONSE: Undisputed. However, paragraph 11 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

12. Defendant Kelyana encouraged Valdes to forget about the warrant (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79- 10, at 34:46, Plaintiff's Exhibit 1 at 11), but Valdes refused: "Dude, I'm not going to release somebody that's wanted in a fucking –" (Id. at 34:48, Exhibit 1 at 12.)

RESPONSE: Disputed that Defendant Kelyana can be heard on the body camera video encouraging Defendant Valdes to forget about the warrant. See ECF No. 79-10, Ex. J, at 34:27. Undisputed that Defendant Valdes stated, "Dude, I'm not going to release somebody that's wanted in a fucking –." However, paragraph 12 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence." *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore's Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

13. Valdes left the scene of the traffic stop at 2:24 p.m., 45 minutes and 13 seconds after she began recording at 1:39 p.m. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10.)

RESPONSE: Undisputed. However, paragraph 13 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

14. Before Valdes took plaintiff to the station, she and Kelyana learned that plaintiff had more than four hundred dollars in cash. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 41:19, Plaintiff's Exhibit 1 at 14.)

RESPONSE: Undisputed. However, paragraph 14 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence." *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore's Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

15. Kelyana continued to question plaintiff about the warrant while she drove to the station. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 42:38, Plaintiff's Exhibit 1 at 15.)

RESPONSE: Undisputed. However, paragraph 15 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff's use of Exhibit 1, a written transcript of a video, as lacking foundation. "When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made

admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

16. Plaintiff repeatedly asserted that he had never been to DuPage County, that he did not know anything about a warrant, and that he had not missed court anywhere, including DuPage County. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 43:28, Plaintiff’s Exhibit 1 at 15.).

RESPONSE: Undisputed. However, paragraph 16 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

17. Plaintiff also told Valdes that he had never been arrested in Illinois. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79- 10, at 47:30, Plaintiff’s Exhibit 1 at 17.)

RESPONSE: Undisputed. However, paragraph 17 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

18. The officers verified that plaintiff had never before been arrested when they secured plaintiff’s “rap sheet,” filed as Defendants’ Exhibit N, ECF No. 79-14 at 2, which is part of the “court packet” that defendant Vogt prepared. (Vogt Dep. 9:6-15, ECF No. 79-6 at 4.)

RESPONSE: Undisputed that Plaintiff’s criminal history report was filed as Exhibit N, or attachment 14, to ECF No. 79, and that the report shows that Plaintiff had not been arrested prior to April 15, 2018. Undisputed that Defendant Vogt testified that one his responsibilities as a desk sergeant was to prepare court packets and that these packets could include a person’s rap sheet. See ECF No. 79-6, at 8:23-24; 9:1-15. Disputed that the officers verified that Plaintiff had never been arrested when they secured his rap sheet, as this alleged fact is not supported by Plaintiff’s record citations.

19. Valdes knew that the warrant “[m]akes no sense” (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 47:35, Plaintiff’s Exhibit 1 at 17), and asked plaintiff if he had been stopped by the police for anything. (Id. at 47:54)

RESPONSE: Undisputed that Defendant Valdes asked Plaintiff if he had ever been arrested in Illinois and that Plaintiff responded that he had not. See Plaintiff’s Exhibit 1, at 17. Disputed that

Defendant Valdes knew or said to Plaintiff that the warrant “makes no sense.” In actuality, after Plaintiff denied ever having been arrested in Illinois, Defendant Valdes responded “This makes no sense. Why would you have an order to contempt. Why would you have a court order, a warrant? You’re wanted in DuPage, that’s you. It’s linked to your driver’s license. Have you been stopped this year?” Plaintiff’s Exhibit 1, at 17. Regardless, paragraph 19 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

20. Plaintiff continued to deny that he had missed court in DuPage County. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79- 10, at 48:52, Plaintiff’s Exhibit 1 at 17.)

RESPONSE: Undisputed. However, paragraph 20 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment. Furthermore, Defendants object to Plaintiff’s use of Exhibit 1, a written transcript of a video, as lacking foundation. “When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence.” *Martz v. Union Labor Life Ins. Co.*, 757 F.2d 135, 138 (7th Cir. 1985) (citing 6 Moore’s Federal Practice ¶ 56.11[1-8] (2d ed. 1983)).

21. Plaintiff arrived at the police station at 2:34 p.m. on April 15, 2018. (Video, AXON_Body_2_Video_2018-04-15_1339.mp4, ECF No. 79-10, at 55:30.)

RESPONSE: Undisputed. However, paragraph 21 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment.

22. The City of Chicago requires its police to verify that a person arrested because of a computer “name check” is the person named in a warrant. *Hernandez v. Sheahan*, 455 F.3d 772, 774 (7th Cir. 2006).

RESPONSE: Defendants object as this paragraph is a legal conclusion, but Defendants admit *Hernandez* states, “Chicago requires its police to verify that the person in custody is the one named in a warrant. Arresting officers must submit reports with identifying details.” However, Defendants deny this is a complete statement of the law. Furthermore, the case law provided in paragraph 22 is inconsistent with the purpose of LR 56.1(b)(3)(C) in that it is not a fact in the record requiring denial of Defendants’ summary judgment motion.

23. The standard operating procedure of the Chicago Police Department following the arrest of person on a warrant is for “the station supervisor” to “verify that the arrestee and person wanted on the warrant are the same person.” (Chicago Police Department Special Order S06-01-04(IV)(C)(1), Exhibit 2 at 4; Mullenix Dep. 27:22-24, ECF No. 79-7 at 13.)

RESPONSE. Undisputed that Chicago Police Department Special Order S06-01- 04(IV)(C)(1) states “Whenever a name check or fingerprint check reveals that an arrestee is wanted on a warrant, the station supervisor will telephone the Central Warrant Unit and verify that the arrestee and person wanted on the warrant are the same person.” Disputed that Curtis Mullenix testified in his deposition that “the standard operating procedure of the Chicago Police Department following the arrest of person on a warrant is for “the station supervisor” to “verify that the arrestee and person wanted on the warrant are the same person.” Mullenix was asked the following question and gave the following answer:

“Q: Is there any procedure or practice that was in force with the Chicago Police Department in April of 2018 about what to do when there's – when the date of birth on the warrant is ... of 1957, and the date of birth of the suspect in custody is some date in 1972?

A: You would -- you would -- you are supposed to attempt to verify that the warrant describes the person that you have being held.” ECF No. 79-7, at 27:16-24.

24. Defendant Vogt was the desk sergeant (or “station supervisor”) at the 18th District Police Station from 1:00 p.m. to 10:00 p.m. on April 15, 2018. (Vogt Dep. 40:3-11, ECF No. 79-6 at 7; Vogt Dep. 4:10, ECF No. 79-6 at 7.)

RESPONSE: Undisputed. However, paragraph 24 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment.

25. Part of Vogt’s responsibility on April 15, 2018 was to review incoming faxes. (Reppen Dep. 18:13-15, ECF No. 79-11 at 4.)

RESPONSE: Undisputed that Defendant Reppen so testified in his deposition. However, paragraph 25 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment.

26. Vogt received the fax of the warrant on April 15, 2018. (Vogt Dep. 18:18:1-4, ECF No. 79-6 at 6.)

RESPONSE: Undisputed that Defendant Vogt so testified in his deposition. However, paragraph 26 of Plaintiff’s statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants’ Motion for Summary Judgment.

27. The fax of the warrant arrived at the 18th District police station at 3:04 p.m. on April 15, 2018. (Fax Header, ECF No. 79-2 at 2.)

RESPONSE: Undisputed. However, paragraph 27 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

28. The contents of the warrant that were included in the fax did not match the LEADS printout. (Vogt Dep. 19:10-13, ECF No. 79-6 at 6.)

RESPONSE: Disputed that this was Defendant Vogt's deposition testimony. The actual question and answer that Defendant Vogt was asked and responded to in his deposition are as follows:

Q. And have you ever looked at, compared the information about name, date of birth that's on an actual warrant to the information contained in a LEADS printout?

A. I had never done that before.

Q. Have you ever done it since?

A. Yes.

Q. why did you do -- have you done it after April 15th of 2018?

A. Because of the situation that occurred with this warrant.

Q. And could you -- what do you mean by "the situation that occurred with this warrant"?

A. That the contents of the warrant did not match the LEADS printout." See ECF No. 79-6, Ex. F, at 18:23-24, 19:1-13.

Additionally, the name, hair color, eye color on the LEADS printout matched the contents of the warrant. See ECF Nos 79-2 and 79-8. Further, the height on the LEADS printout differed from the height contained on the warrant by 1 inch. See *Id.*

29. Another part of Vogt's job on April 15, 2018 was to determine whether an arrestee was being erroneously held on a warrant. (Reppen Dep. 18:16-19, ECF No. 79-11 at 4.)

RESPONSE: Defendants object to this paragraph as it is argumentative and contains a legal conclusion, but it is undisputed that Defendant Reppen so testified in his deposition. Disputed in that Defendant Vogt did not testify in his deposition that this was one of his responsibilities and in fact testified that "[a]s a desk sergeant, I deal with bonding of prisoners and processing of warrants." See ECF No. No. 79-6, Ex. F, at 7:18-19. Additionally, paragraph 29 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

30. The warrant shows that it had been issued on June 13, 2017 in a civil lawsuit captioned *Nesbitt v. Klean Motors, Inc.* and described the person sought (named "Khalid Ali") as 58 years of age, with a date of birth in 1957, five feet seven inches tall, and weighing 250 pounds. (ECF 79-2 at 2.)

RESPONSE: Undisputed. However, paragraph 30 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

31. Defendants had accepted the correctness of plaintiff's 1972 date of birth, his employment as a Chicago taxicab driver, and his home address in the 5000 block of North Harding Avenue in Chicago in the traffic ticket (ECF 79-5 at 2) and the arrest report (ECF No. 79-9 at 2), which defendant Vogt approved at 7:01 p.m. on April 15, 2018. (ECF No. 79-9 at 6.)

RESPONSE: Undisputed that Defendant Vogt approved the arrest report at 7:01 p.m. on April 15, 2018. Undisputed that the traffic ticket (ECF No. 79-5) and the arrest report (ECF No. 79-9) reflect that Plaintiff was born in 1972, that his address was in the 5000 block of North Harding, and that he was employed as a Chicago taxicab driver. Disputed that Defendants "had accepted the correctness" of this information, as this alleged fact is vague and ambiguous and is not supported by any citation to the record. Furthermore, paragraph 31 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

32. The 15-year discrepancy between plaintiff's date of birth and the date of birth of the person sought in the warrant was so great that more information would be needed to determine if the plaintiff was the person sought in the warrant. (Mullenix Dep. 30:2-14, ECF No. 79-7 at 14.)

RESPONSE: Disputed in that paragraph 32 of Plaintiff's statement of additional facts misrepresents Mullenix's testimony. The actual question posed to Mullenix and his response are as follows:

"Q. okay. Now, and let's assume that after the person had arrived at the police department the -- the -- this police station received the fax which has Exhibit 6 in it showing a date of birth 8/13/57. And that this -- and that Mr. Ali 6 7 whose date of birth is April 22nd of '72 was -- was held on this warrant would showing a date -- seeking a man date of birth of 8/13/57, would that have been in accordance with the policies and procedures with the Chicago Police Department?

A. I would say generally that if -- if the discrepancy is that far off more information would need to be gathered in order to proceed."

33. The warrant stated that the person sought resided in Skokie, Illinois and was then employed at S.A. Auto, also in Skokie. (ECF No. 79-2 at 2.)

RESPONSE: Undisputed. However, paragraph 33 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

34. The warrant did not contain any information about the driver's license number of the person sought. (ECF No. 79-2 at 2.)

RESPONSE: Undisputed. However, paragraph 34 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

35. Defendant Vogt based his decision to find probable cause (Answer to Amended Complaint, ¶ 21, ECF No. 32 at 4), solely on the information contained in the LEADS printout (Vogt Declaration, ¶ 4, ECF No. 79-17 at 2), which identified the person sought as five feet eight inches tall, weighing 167 pounds, with plaintiff's date of birth and plaintiff's driver's license; Vogt did not consider the discrepancies between the LEADS printout and the actual warrant (Vogt Dep. 18:13-17, ECF No. 79-6 at 6) when he approved holding Mr. Ali on the warrant at 7:01 p.m. on April 15, 2018. (Vogt Dep. 16:11-14, ECF No. 79-6 at 5.)

RESPONSE: Undisputed that Defendant Vogt based his decision to approve final charges against Plaintiff based upon the LEADS report, which identified Plaintiff as the individual named in the warrant, and that the LEADS report identified the person sought as five feet eight inches tall, weighing 167 pounds, with plaintiff's date of birth and plaintiff's driver's license number. Responding further, Defendant Vogt testified that he just looked at the name on the warrant because he believed that the LEADS report accurately represented the content of the warrant (see ECF No. 79-6, at 18:13-17) and that he issued the final approval to hold Plaintiff on the warrant (see *Id.* at 16:11-14).

36. Defendant Reppen was the "watch operations lieutenant" or "watch commander" at the 18th District on April 15, 2018. (Reppen Dep. 5:2- 7, ECF No. 79-11 at 3; Reppen Dep. 12:11-13, ECF No. 79-11 at 4.)

RESPONSE: Undisputed. However, paragraph 36 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

37. As the watch commander on April 15, 2018, defendant Reppen had the power to conclude that a person being held on a warrant was not the person sought in that warrant and to order the release of that person. (Reppen Dep. 19:20-20:13, ECF No. 79-11 at 6.)

RESPONSE: Undisputed. However, paragraph 37 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

38. Reppen approved the continued detention of plaintiff at 4:14 p.m. on April 15, 2018. (Reppen Dep. 8:18, ECF No. 79-3; Arrest Report at 3, ECF No. 79-9 at 4; Answer to Amended Complaint, ¶ 21, ECF No. 32 at 4.)

RESPONSE: Disputed. Defendant Reppen approved the initial probable cause to arrest pending Plaintiff's outcome of his processing. (see ECF No. 79-11 at 5:8:20). However, paragraph 37 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

39. At the police station, two white shirted officers repeatedly asked plaintiff about his age, trying to reconcile plaintiff's date of birth in 1972 with the much older person sought in the warrant. (Ali Dep. 42:6-7, ECF No. 79-3 at 10.)

RESPONSE: Disputed. Plaintiff testified in his deposition that at the police station, an officer in a white shirt asked Plaintiff his age several times, to which Plaintiff responded that he was born in 1972 and that he was 46 years old. See ECF No. 79-3, at 42:4-9. Moreover, paragraph 39 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

40. Sergeants and lieutenants in the Chicago police department, wear white shirts if not working in an undercover position. (Kelyana Dep. 13:24-14:9, ECF No. 79-12 at 5.)

RESPONSE: Undisputed that Defendant Kelyana so testified in his deposition. However, paragraph 40 of Plaintiff's statement of additional facts is inconsistent with LR 56.1(b)(3)(C) in that it does set forth an additional fact requiring denial of Defendants' Motion for Summary Judgment.

Respectfully submitted,

s/ Mark Haines
Mark Haines
Assistant Corporation Counsel

Scott Cohen, Assistant Corporation Counsel Supervisor
Jessica Ziswa, Assistant Corporation Counsel
Mark Haines, Assistant Corporation Counsel
30 North LaSalle Street, Suite 900
Chicago, Illinois 60602
(312) 744-3982 (p)
Attorney No. 6287914