

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

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Master Docket Case No. 19-C-1717
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In re: WATTS COORDINATED
PRETRIAL PROCEEDINGS) Judge Valderrama
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) Magistrate Judge Finnegan
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) JURY DEMANDED
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This Document Relates to *Lionel White, Sr. v. City of Chicago*, No. 17 C 2877 and
Andre McNairy v. City of Chicago, 18 C 5127

**DEFENDANT MOHAMMED'S RESPONSE IN OPPOSITION TO MOTION
TO QUASH SUBPOENAS AND PAUSE NON-AGREED DEPOSITIONS**

Defendant Kallatt Mohammed, by his attorneys, Special Assistant
Corporation Counsel Eric S. Palles, Sean M. Sullivan and Lisa Altukhova of Mohan
Groble Scolaro, PC, in opposition to Plaintiffs' Motion to Quash Subpoenas and
Pause Non-Agreed Depositions, states as follows:

On December 5, 2023, Mohammed's counsel issued deposition subpoenas for
Bert Gaines co-arrestee and occurrence witness in the case of test plaintiff *Andre
McNairy*, No. 18 C 5127. On November 20, 2023, one of Plaintiffs' counsel had
transmitted to the defense "updated" but incorrect contact information regarding
Bert Gaines. (Ex. 1). Gaines was eventually located and served on December 7, 2023
for his December 14, 2023 deposition (Ex. 2) and has indicated he will attend.¹

¹ Counsel also issued a subpoena for another co-arrestee to Andre McNairy, Mario Hollingsworth, Mr. Hollingsworth was not served because he is currently incarcerated in Florida and Mohammed has

These witnesses are two of several individuals who were arrested with McNairy and have knowledge directly relevant to the events underlying the case.

Mohammed's counsel similarly issued deposition subpoenas on December 6, 2023 for Thomas Mitchell and George Green, both disclosed as occurrence witnesses in *Lionel White*, No.17 C 2877, and who were allegedly arrested on separate charges contemporaneously and adjacent to White. To provide reasonable notice, the undersigned scheduled the depositions for December 20 and December 21.

Gaines, Mitchell, Green, and Hollingsworth are witnesses identified in Rule 26 disclosures and are included on Exhibit 1 of Defendants Joint Motion to Extend. Dkt. 614. Unlike many of the other witnesses, Gaines, Mitchell, Green, and Hollingsworth are third-party witnesses, not witnesses with connections to the Plaintiffs (mostly Plaintiff family members). For those witnesses with relationships to Plaintiffs, Loevy & Loevy has undertaken to expedite and/or control their appearances.

As Mr. Gaines has been duly served under Fed. R. Civ. P.45 and indicated he would appear, Plaintiffs' standing to quash the subpoena for a deposition on December 14th is limited to circumstances where it "infringes upon the movant's legitimate interests." *Roman v. City of Chicago*, No. 20 C 1717, 2023 U.S. Dist. LEXIS 2509, *5 (January 6, 2023), *citing United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982). The problem, according to Plaintiffs' counsel, is that, with nine days' notice, the eight Loevy attorneys would have to "scramble" to prepare for a

accordingly cancelled this deposition but will try to reschedule when arrangements can be made with the prison.

deposition that could not possibly take more than three hours. This contention completely fails when the Court considers this: since filing their motion, plaintiffs have already postponed six depositions scheduled to proceed this week. Accordingly, at this time, the first scheduled deposition in any case in the consolidated proceedings is Mr. Gaines's on Thursday morning, which is within the current fact discovery deadline. That means Plaintiffs' counsel is both refusing to schedule depositions to move discovery forward and opposing Defendants' requested extension of the fact discovery deadline.

The circumstances surrounding the undersigned's issuance of the deposition subpoenas require some additional context. As this Court is aware, an important component in previous discussions concerning upcoming discovery was the pendency of the *Alvin Waddy* trial, scheduled to begin on December 4, 2023 in the Circuit Court of Cook County. However, the Court is likely unaware that on November 29, 2023, the Loevy firm filed an emergency motion in the circuit court, asking for a five-month continuance of the *Waddy* trial based upon some unspecified conflict arising for lead counsel (Mr. Loevy). (Ex. 3). Defendants did not oppose because Loevy and Loevy has represented that they are dismissing all individual defendants from that case and proceeding against the City only. On November 30, 2023, the circuit court continued the case to April 15, 2024. (Ex. 4).

The *Waddy* trial continuance freed up 8-10 lawyers on the defense side who had blocked off substantially all of December for the trial and left at least three Loevy and Loevy lawyers with at least two weeks of open time in their December calendar.

The undersigned saw this as an opportunity to undertake what this Court has repeatedly exhorted the parties to do: wrap up necessary discovery.

Plaintiffs take the position that when December 18th passes, all discovery in this matter is closed except for Rule 30(b)(6) depositions, Dkt 606 at 4; and except for depositions of FBI agents, *id.*; and except for Watts's deposition regarding certain test cases, *id.*; and except for depositions of Watts and Mohammed (his sixth day of testimony) regarding FBI recordings, *id.*; and except for the remaining test-case plaintiffs, Dkt.615 at 2; and except for Rule 404(b) witnesses, *id.*; and except for 32 depositions that plaintiffs' counsel agrees to, *id.*, Ex. 1; and except for Officers Jones, Smith and Ridgell (the latter of whose November 30, 2023 deposition was unilaterally postponed by plaintiffs); and except for 4-5 CPD officers who Plaintiffs want to call as Rule 404(b) witnesses against Sgt. Watts. In other words, Plaintiffs' counsel believes that discovery is open for any discovery they agree with and closed for any discovery they don't. Indeed, counsel objects to the Gaines deposition, noticed to take place prior to December 18th, arguing that defendants should concentrate on depositions Plaintiffs have "agreed to allow." Dkt. 624 at 4. This presumptuous attempt to micromanage the defense's discovery is unwarranted.

Plaintiffs accuse Mohammed of "evading" both "the Court's power to set discovery deadlines" and "the possibility that the Court will deny [the motion to extend]." Dkt. 624 at 2, 5. In addition to the numerous discovery cut-off carve-outs that the Loevy firm is asking for, the pretense that they consider the December 18th date inviolable is further belied by the fact that they continue as of this writing to

schedule numerous depositions with defense counsel, including those of several Plaintiffs and other witnesses they have previously agreed or committed to produce, past December 18th. ***This is as it should be***; all parties should be cooperating to complete discovery in a manner that is satisfactory to both sides.

First, the deposition of Gaines is within the current discovery cut-off and Plaintiff has no basis to stop it.

Second, as to Green and Mitchell, whose depositions are scheduled only 2-3 days after the cut-off, Mohammed actions are consistent with this Court's intentions, *i.e.*, that discovery proceed expeditiously until it finally closed. We base this on the following factors: 1) this Court took the motion to extend under advisement until January 10, 2023, and in no way suggested that discovery be suspended in the interim; 2) this Court's expression on November 8, 2023, "I don't think it will be a nine-month extension. I can't imagine it would be. I think it would be something narrower" Dkt. 609 at 17; 3) the acknowledgement by all parties that discovery is not completed; 4) the lack of a trial date for Lionel White or Andre McNairy cases; and 5) the inference, based on observation of this Court's case management practices over the last several years, that if the Court was aware that the *Waddy* trial was postponed, it would condone, if not welcome, the parties' attempts to use the time fruitfully. Against this backdrop, counsel reasonably concluded that fact discovery is open until this Court says it is closed.

As to the claim that Mohammed is trying to evade the possibility that the Court will deny the motion to extend, we'd frame it differently; as to these

witnesses, Mohammed is seeking to moot it. When this Court eventually determines the scope of future discovery, it need not consider the fates of Gaines, Mitchell, or Green because that discovery will have been completed. Considering the inevitability that this Court will yet be called upon to resolve numerous discovery issues before the end of this referral, it is hoped that rather than take offense, this Court will perceive Mohammed's sincere attempt to take these off the table. In any event, Plaintiffs' petty objections to conducting these depositions are without merit.

For the foregoing reasons, Plaintiffs motion to quash Mohammed's deposition subpoenas to Bert Gaines, Thomas Mitchell and George Green should be denied.

Respectfully submitted,

/s/ Eric S. Palles #2136473
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2023, I caused the foregoing DEFENDANT MOHAMMED'S RESPONSE IN OPPOSITION TO MOTION TO QUASH SUBPOENAS AND PAUSE NON-AGREED DEPOSITIONS to be served on all counsel of record using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Eric S. Palles _____