

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

DERRICK SCHAEFFER,)	
)	
Plaintiff,)	19 C 7711
)	
v.)	Judge Robert M. Dow Jr.
)	
CITY OF CHICAGO, OFFICER JAMES A.)	Magistrate Judge Jeffrey T. Gilbert
BRANDON #7634, OFFICER MARIO)	
PEREZ #18936, OFFICER JAMES)	
KINSEY # 16189, and DETECTIVE)	
JOCELYN GREGOIRE-WATKINS, #20974,)	
)	
Defendants.)	

**DEFENDANT CITY OF CHICAGO’S ANSWER TO PLAINTIFF’S AMENDED
COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

Defendant City of Chicago (“the City”), by and through its attorney, Celia Meza, Acting Corporation Counsel of the City of Chicago, for its Answer to Plaintiff’s Amended Complaint, Affirmative Defenses, and Jury Demand, state as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 and 28 U.S.C. § 1367.

ANSWER: The City admits that Plaintiff purports to bring this action pursuant to the laws of the United States Constitution, specifically, 42 U.S.C. § 1983. The City admits that jurisdiction is proper but denies engaging in any misconduct alleged herein.

2. Plaintiff Derrick Schaeffer is a resident of the Northern District of Illinois.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

3. Defendant City of Chicago is an Illinois municipal corporation.

ANSWER: The City admits the allegations contained in this paragraph.

4. Defendants Officer James A. Brandon #7634, Officer Mario Perez #18936, Officer James Kinsey #16189, and Detective Jocelyn Gregoire-Watkins, #20974, were at all relevant times acting under color of their offices as Chicago police officers.

ANSWER: The City admits the allegations contained in this paragraph.

5. On February 1, 2017, defendants Brandon, Perez, and Kinsey (the "arresting officers") arrested plaintiff and caused plaintiff to be charged with burglary.

ANSWER: The City admits that Defendants Brandon, Perez, and Kinsey arrested Plaintiff on February 1, 2017, but denies the remaining allegations contained in this paragraph.

6. Aspects of the arrest were recorded on the in-car camera video system in the Chicago police vehicle driven by defendants Brandon, Perez, and Kinsey.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

7. At the time of plaintiff's arrest:

- a. None of the arresting officers had a warrant authorizing the arrest of plaintiff;
- b. None of the arresting officers believed that a warrant had been issued authorizing the arrest of plaintiff;
- c. None of the arresting officers had observed plaintiff commit any offense; and
- d. None of the arresting officers had received information from any source that plaintiff had committed an offense or was otherwise subject to arrest.

ANSWER: The City admits the allegations contained in this paragraph's subsections (a), (b), and (c) and denies the allegations contained in this paragraph's subsection (d).

8. At all relevant times, the arresting officers did not have a reasonable basis to believe that plaintiff had committed a burglary.

ANSWER: The City denies the allegations contained in this paragraph.

9. Plaintiff does not raise any claim in this lawsuit that he was falsely arrested on February 1, 2017.

ANSWER: The City admits that Plaintiff does not purport to bring any claim in this lawsuit that he was falsely arrested on February 1, 2017.

10. After arresting plaintiff, the arresting officers fabricated a false story that two witnesses to a burglary had identified plaintiff as the burglar.

ANSWER: The City denies the allegations in this paragraph.

11. Neither of these witnesses had identified plaintiff as the burglar or as otherwise involved in criminal wrongdoing.

ANSWER: The City denies the allegations in this paragraph.

12. One or more of the arresting officers prepared police reports containing the false story, and each of the other arresting officers failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: The City denies the allegations contained in this paragraph.

13. After the arrest, defendant Gregoire-Watkins created a separate police report in which she repeated the false statement that the two witnesses to the burglary had identified plaintiff as the burglar.

ANSWER: The City denies the allegations contained in this paragraph.

14. Defendant Gregoire-Watkins interviewed these two witnesses before preparing her report and knew that neither witness identified plaintiff as the burglar or as otherwise involved in criminal wrongdoing.

ANSWER: The City admits that Defendant Gregoire-Watkins interviewed these two witnesses before preparing her report but denies the remaining allegations contained in this paragraph.

15. The in-car camera video referred to in paragraph 6 above contradicted the story fabricated by the arresting officers and showed that plaintiff was framed.

ANSWER: The City denies the allegations in this paragraph.

16. The in-car camera video referenced to in paragraph 6 above was withheld from plaintiff during his criminal case as a result of the deliberate indifference of defendant City of Chicago to its constitutional duty to preserve exculpatory evidence in criminal cases: At all relevant times, defendant City of Chicago has known that its processes for managing and producing records of the Chicago Police Department in criminal prosecutions did not comply with the City's constitutional, statutory, and other legal obligations.

ANSWER: The City makes no answer to the allegations contained in this paragraph because they are the subject of a motion to dismiss.

17. Defendant has been on notice of these inadequate processes since at least 1988 when the Seventh Circuit affirmed the jury's verdict in *Jones v. City of Chicago*, 856 F.2d 985, 996 (7th Cir. 1988).

RESPONSE: The City makes no answer to the allegations contained in this paragraph because they are the subject of a motion to dismiss.

18. The City received more recent notice in January of 2016 when a federal judge sanctioned the City for failing to disclose records in *Colyer v. City of Chicago*, No. 12 C 04855, 2016 WL 25710, at *2 (N.D. Ill. Jan. 4, 2016).

RESPONSE: The City makes no answer to the allegations contained in this paragraph because they are the subject of a motion to dismiss.

19. Despite these and other forms of notice, defendant City of Chicago has refused to remedy the above-described inadequate processes, as defendant confirmed through the June 10, 2020 report of its Inspector General, *Review of the Chicago Police Department's Management and Production of Records*.

RESPONSE: The City makes no answer to the allegations contained in this paragraph because they are the subject of a motion to dismiss.

20. On December 3, 2020, during the pendency of this lawsuit, plaintiff learned for the first time of the existence of the in-car camera video referred to in paragraph 6 above; plaintiff also learned on December 3, 2020 that employees of the City of Chicago had destroyed the video pursuant to the above-described widespread practice.

RESPONSE: The City makes no answer to the allegations contained in this paragraph because they are the subject of a motion to dismiss.

21. As a result of the above-described wrongful conduct of all defendants, plaintiff was falsely charged with burglary and held at the Cook County Jail from February 12, 2018 until May 6, 2019 when the prosecutor learned of the above-described wrongful acts of the defendant officers and dropped all charges.

ANSWER: The City makes no answer to the allegations contained in this paragraph because it is the subject of a motion to dismiss.

22. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments.¹

ANSWER: The City denies the allegations in this paragraph.

23. As a supplemental state law claim against defendant City of Chicago only: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

ANSWER: The City admits that Plaintiff purports to bring a malicious prosecution claim against the City but denies any wrongdoing or other misconduct alleged herein.

24. Plaintiff hereby demands trial by jury.

ANSWER: The City admits that Plaintiff purports to demand a trial by jury.

AFFIRMATIVE DEFENSES

1. The City is not liable to plaintiff for any federal claim for which its employees or agents are not liable to plaintiff. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

2. To the extent plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by plaintiff must be reduced by application of the principle that plaintiff had a duty to mitigate his claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to plaintiff by the jury in this case.

3. Plaintiff is not entitled to attorney's fees for his state law claims. *See Pennsylvania Truck Lines, Inc. v. Solar Equity Corp.*, 882 F.2d 221, 227 (7th Cir. 1989); *Kerns v. Engelke*, 76 Ill.2d 154, 166; 390 N.E.2d 859, 865 (1979); *Miller v. Pollution Control Bd.*, 267 Ill. App. 3d 160, 171; 642 N.E.2d 475, 485 (4th Dist. 1994).

4. The City is immune from the imposition of punitive damages under both state and federal law. Moreover, under Illinois law, the City cannot be required to indemnify any employee for punitive damages, nor may it pay a judgment for punitive damages. 745 ILCS 10/2-102 (2014).

5. As to any state law claim made by Plaintiff, the City is not liable because the decision as to what action to take with regard to Plaintiff was a discretionary decision for which the City and its employees are immune from liability. 745 ILCS 10/2-201.

6. To the extent any employee or agent of the City was acting within the scope of his

¹ The Court dismissed plaintiff's free-standing Fourteenth Amendment claim without prejudice on June 19, 2020. Plaintiff does not re-assert this dismissed claim. *Smith v. Nat'l Health Care Services of Peoria*, 934 F.2d 95, 98 (7th Cir. 1991). Plaintiff refers to the Fourteenth Amendment because it is how the Fourth Amendment applies to state action.

or her employment, that employee or agent is not liable for his or her acts or omissions in the execution or enforcement of the law, unless such act or omission constitutes willful and wanton conduct. 745 ILCS 10/2-202.

7. The City is not liable to plaintiff for any state law claim for which its employees or agents are not liable to plaintiff. 745 ILCS 10/2-109.

8. To the extent any injuries or damages claimed by plaintiff as proximately caused, in whole or in part, by the negligent, willful and wanton and/or other wrongful conduct on the part of the plaintiff, any verdict or judgment obtained by Plaintiff must be reduced by application of the principles of comparative fault, by an amount commensurate with the degree of fault attributed to Plaintiff by the jury in this cause. At the time of the actions alleged in plaintiff's complaint, 735 ILCS 5/2-1116 (West 2018) was in effect and reduces plaintiff's recovery according to his contributory negligence and bars his recovery entirely when the plaintiff is more than fifty percent (50%) of the proximate cause of the injury or damage for which recovery is sought.

9. As to Plaintiff's state law claims, the City is not liable for failing to provide adequate police protection or service. 745 ILCS 10/4-102.

10. Defendant City is not liable for any injury caused by the act or omission of another person. 745 ILCS 10/2-204 (2010).

11. To the extent plaintiff asserts a federal malicious prosecution claim, such a claim may not be cognizable. *Saunders-El v. Rohde*, 778 F.3d 556, 560 (7th Cir. 2015); *Newsome v. McCabe*, 256 F.3d 747, 750 (7th Cir. 2001).

JURY DEMAND

The City hereby demands a jury trial for all issues so triable.

DATED: January 19, 2021

Respectfully submitted,

DATED: January 19, 2021

Respectfully submitted,
CELIA MEZA
ACTING CORPORATION COUNSEL

BY: /s/ Raoul Vertick Mowatt
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CERTIFICATE OF SERVICE

I, Raoul Vertick Mowatt, an attorney, hereby certify that I have served a copy of **DEFENDANT CITY OF CHICAGO'S ANSWER TO PLAINTIFF'S COMPLAINT, AFFIRMATIVE DEFENSES, AND JURY DEMAND** upon all counsel of record using the District Court's Electronic Filing System on this day of January 19, 2021.

/s/ Raoul Vertick Mowatt

Raoul Vertick Mowatt
Assistant Corporation Counsel