

**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 OFFICERS' ANSWER TO AMENDED COMPLAINT

Defendants James Brandon, Mario Perez, James Kinsey, and Jocelyn Gregoire-Watkins (collectively, "Defendant Officers"), by and through one of their attorneys, Evan K. Scott, Assistant Corporation Counsel of the City of Chicago, for their 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: Defendant Officers admit that Plaintiff purports to bring this action pursuant to the laws of the United States Constitution, specifically, 42 U.S.C. § 1983. Defendant Officers admit that jurisdiction is proper but deny engaging in any misconduct alleged herein.

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

ANSWER: Defendant Officers lack 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: Defendant Officers admit 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: Defendant Officers admit 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: Defendant Officers admit that Defendants Brandon, Perez, and Kinsey arrested Plaintiff on February 1, 2017, but deny 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: Defendant Officers lack 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: Defendants Brandon, Perez, and Kinsey admit the allegations contained in this paragraph's subsections (a), (b), and (c) and deny the allegations contained in this paragraph's subsection (d). Defendant Gregoire-Watkins, upon information and belief, 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: Defendants Brandon, Perez, and Kinsey deny the allegations in this paragraph. Defendant Gregoire-Watkins, upon information and belief, denies the allegations in this paragraph.

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

ANSWER: Defendant Officers admit 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: Defendants Brandon, Perez, and Kinsey deny the allegations in this paragraph. Defendant Gregoire-Watkins, upon information and belief, 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: Defendant Officers deny 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: Defendants Brandon and Perez admit that they prepared police reports but deny the remaining allegations in this paragraph. Defendant Kinsey admits that Defendants Brandon and Perez prepared police reports but denies the remaining allegations in this paragraph. Defendant Gregoire-Watkins admits that one or more of the arresting officers prepared police reports and, upon information and belief, denies the remaining allegations 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: Defendant Gregoire-Watkins admits that after the arrest she drafted a separate police report in which she stated that the two witnesses to the burglary had identified plaintiff as the burglar, but denies the remaining allegations contained in this paragraph. Defendants Brandon,

Perez, and Kinsey deny that their statement that the two witnesses to the burglary had identified plaintiff as the burglar was false and lack knowledge or information sufficient to form a belief as to the truth of the remaining 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: Defendant Gregoire-Watkins admits that she interviewed these two witnesses before preparing her report but denies the remaining allegations contained in this paragraph. Defendants Brandon, Perez, and Kinsey lack knowledge or information sufficient to form a belief as to the truth of the allegations 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: Defendant Officers deny 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: Defendant Officers lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent any of the allegations in this paragraph are directed at them, Defendant Officers deny any wrongdoing or other misconduct alleged herein.

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: Defendant Officers lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent any of the allegations in this paragraph are directed at them, Defendant Officers deny any wrongdoing or other misconduct alleged herein.

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: Defendant Officers lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent any of the allegations in this paragraph are directed at them, Defendant Officers deny any wrongdoing or other misconduct alleged herein.

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: Defendant Officers lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent any of the allegations in this paragraph are directed at them, Defendant Officers deny any wrongdoing or other misconduct alleged herein.

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: Defendant Officers lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. To the extent any of the allegations in this paragraph are directed at them, Defendant Officers deny any wrongdoing or other misconduct alleged herein.

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: Defendant Officers deny any allegations of wrongdoing or other misconduct alleged herein or that Plaintiff was falsely charged with burglary and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

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

ANSWER: Defendant Officers deny 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: Defendant Officers admit that Plaintiff purports to bring a malicious prosecution claim against Defendant City of Chicago but deny any wrongdoing or other misconduct alleged herein.

24. Plaintiff hereby demands trial by jury.

ANSWER: Defendant Officers admit that Plaintiff purports to demand a trial by jury.

AFFIRMATIVE DEFENSES

1.. The Defendant Officers are government officials, namely police officers, who performed discretionary functions. At all times material to the events alleged in Plaintiff's Complaint, a reasonable police officer objectively viewing the facts and circumstances that confronted said Defendant Officers could have believed his actions to be lawful, in light of clearly established law and the information that said individual Defendant Officers possessed. Defendant Officers, therefore, are entitled to qualified immunity as a matter of law on Plaintiff's §1983 claims.

2. Defendant Officers are absolutely immune from civil liability for their testimony given in judicial proceedings in Plaintiff's underlying criminal case. *Briscoe v. LaHue*, 460 U.S.

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.

325, 330-31, 103 S. Ct. 1108, 1113 (1983); *Jurgensen v. Haslinger*, 295 Ill. App. 3d 139, 141-42, 692 N.E.2d 347, 349-50 (3d Dist. 1998).

3. Plaintiff is not entitled to attorney's fees for any 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 Board*, 267 Ill. App.3d 160, 171, 642 N.E.2d 475, 485 (4th Dist. 1994).

4. 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 has a duty to mitigate, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in the case.

5. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by the negligent, willful, wanton and/or other wrongful conduct 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 was in effect and reduces Plaintiff's recovery according to his contributory negligence and bars his recovery entirely when Plaintiff is more than fifty percent (50%) of the proximate cause of the injury or damage for which recovery is sought.

6. Defendant Officers cannot be held liable for Plaintiff's 42 U.S.C. § 1983 claims unless each individually caused or participated in an alleged constitutional deprivation because individual liability for damages under 42 U.S.C. § 1983 is predicated upon personal responsibility. *See Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983).

7. As to all state law claims, under the Illinois Tort Immunity Act, as the Defendant Officers were acting under color of law, the Defendant Officers are not liable for any of the claims alleged because their actions were based upon the information and circumstances known to the Defendant Officers at the time, and were discretionary decisions for which they are immune from liability. 745 ILCS 10/2-201 (2014).

8. To the extent Defendant Officers were acting within the scope of his or her employment, they are 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 (2010).

9. As to Plaintiff's state law claims, Defendant Officers are not liable for any injury caused by the acts or omissions of another person. 745 ILCS 10/2-204 (2010).

10. As to Plaintiff's state law claims, under the Illinois Tort Immunity Act, the Defendant Officers are not liable for any of the claims alleged because a public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause. 745 ILCS 10/2-208 (2014).

11. As to Plaintiff's state law claims, under the Tort Immunity Act, Defendant Officers are not liable for any claim for punitive damages because a public official is not liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party. 745 ILCS 10/2-102 (2012); *Reese v. May*, 955 F. Supp. 869, 873(N.D. Ill. 1996); *Golden v. Village of Glenwood*, No. 14 C 7247, 2015 WL 1058227, *3-5 (Mar. 6, 2015).

JURY DEMAND

Defendant Officers hereby demand a jury trial for all issues so triable.

DATED: January 19, 2021

Respectfully submitted,

/s/ Evan K. Scott

Evan K. Scott

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Gregory Beck, Assistant Corporation Counsel Supervisor

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Plaintiff,)	
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City of Chicago, Officer James A.)	
Brandon #7634, Officer Mario)	
Perez #18936, Officer James)	
Kinsey #16189, and Detective)	
Jocelyn Gregoire-Watkins, #20974,)	
)	
Defendants.)	

NOTICE OF FILING AND CERTIFICATE OF SERVICE

Kenneth N. Flaxman
Joel A. Flaxman
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(312) 427-3200

PLEASE TAKE NOTICE that on this 19th day of January 2021, I have caused to be e-filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division **DEFENDANT’S ANSWER TO PLAINTIFF’S AMENDED COMPLAINT**, a copy of which is herewith served upon you.

I hereby certify that I have served this notice and the attached document by causing it to be delivered by electronic means to the person named above at the address shown this 19th day of January 2020.

/s/ Evan K. Scott
Evan K. Scott
Assistant Corporation Counsel