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

Anthony Murdock,	)	
	)	
Plaintiff,	)	
	)	No. 20-cv-1440
-vs-	)	
	)	
City of Chicago,	)	*(Judge Feinerman)*
	)	
Defendant.	)	

MEMORANDUM IN RESPONSE TO ORDER OF JUNE 12, 2020 (ECF No. 18)

Plaintiff files this memorandum in response to the Court's order directing plaintiff to "articulate why the facts alleged [in his complaint] resulted in a violation of federal law."[1] (ECF No. 18.)

I. Facts Alleged in and Consistent with the Complaint

This Court recently discussed in *Cook County v. Wolf*, No. 19 C 6334, 2020 WL 2542155 (N.D. Ill. May 19, 2020) the long-standing rule in this circuit that, in opposing a motion to dismiss, a plaintiff may assert "without

[1] The Court issued its order of June 12, 2020 upon its review of defendant's motion to dismiss. (ECF No. 17.) Defendant asserted in the motion that, in the complaint, "a plaintiff *is* required to state which of his constitutional rights were violated." (ECF No. 17 at 3.) The Seventh Circuit has repeatedly rejected this theory. *See, e.g., R3 Composites Corp. v. G&S Sales Corp.*, 960 F.3d 935, 941 (7th Cir. 2020); *Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011). The Supreme Court resolved any doubt about the correctness of the Seventh Circuit's position in *Johnson v. City of Shelby*, 574 U.S. 10 (2014). Defendant also argued that plaintiff had failed to plead an injury, but the Court had no difficulty identifying the injury in its June 12th order: "Plaintiff's alleged injury was that he was held in the police station when he allegedly should have been allowed to post bond." (ECF No. 18.) In light of the Court's order, plaintiff says nothing further about defendant's frivolous arguments.

evidentiary support any facts he pleases that are consistent with the complaint." *Id.* at *1 (citing *Early v. Bankers Life & Cas. Co.*, 959 F.2d 75, 79 (7th Cir. 1992)). Plaintiff follows this rule in setting out the facts alleged in and consistent with his complaint.

A. The Arrest and Detention

At about 3:15 a.m. on Saturday, September 29, 2018, Chicago police officers Bahena and Diaz stopped plaintiff while he was driving a motor vehicle with one functioning headlight. Plaintiff's girlfriend Tishay Richardson was also in the car. Plaintiff does not challenge the legality of the traffic stop.

Plaintiff produced his valid Illinois driver's license and the officers detained plaintiff while they checked for outstanding warrants. Plaintiff does not challenge his detention while the officers conducted this "name check." *Hall v. City of Chicago*, 953 F.3d 945, 948 (7th Cir. 2020) (holding that a detention for a name check was reasonable).

The name check turned up a warrant from DuPage County that had been issued when plaintiff failed to appear in a minor traffic case. The judge who issued the warrant set bond at $3,000, meaning that plaintiff could be released upon posting 10% of that amount, or $300. Plaintiff's girlfriend had that amount of cash with her. The officers took plaintiff to the 15th district police station, where Officer Williams-Curington verified the warrant.

Plaintiff was not released on bond, even though Ms. Richardson was ready, willing, and able to post bond for plaintiff, because an express policy of

the City of Chicago, discussed below, prohibited the officers from accepting bond and releasing plaintiff. Plaintiff was therefore held at the police station until the morning when he was transferred to the custody of the Sheriff of Cook County. After plaintiff appeared before a Cook County Judge, his girlfriend posted the cash bond that had been set by the DuPage County Judge. Plaintiff was released from custody at about 10 p.m. on September 29, 2018.

B. The Express Municipal Policy

The police officers did not permit plaintiff to post bond at the police station because of a written policy of the City of Chicago that prohibits police officers from accepting cash bond from any person arrested on Saturday, Sunday, or a court holiday on a warrant for which a judge had set an amount of bond even where the arrestee was ready, willing, and able to post bond.

The written policy is set out in Chicago Police Department "Special Order S06-12-02." Plaintiff attaches as Exhibit 1 the version that was in force when he was arrested in September of 2018 and, as Exhibit 2, the current version.

Special Order S06-12-02 is entitled "Non-Traffic Arrest Warrant Procedures." (Exhibit 1 at 1.) Section IV of the Rule is titled, "Processing Persons Arrested on Warrants" (Exhibit 1 at 3) and applies to all persons detained on a warrant. Relevant to this case is Section IV.B.3 which provided (and continues to provide) as follows:

> B. The station supervisor will ensure that:
> ***
> 3. the following will be transported to Central Bond Count:[2]
> ***
> (c) all persons arrested on all warrants on Saturday, Sunday, and Court Holidays.

(Ex. 1 at 4; Ex. 2 at 5.)

The written policy requires that any person arrested on a warrant on a Saturday, Sunday, or court holiday may not post bond at the police station, even when—as in this case—the judge who issued the warrant determined the amount of bond and the arrestee has available to him (or her) cash to post bond. Rather than being released, the arrestee will be held at a police station and transferred the next morning to the Sheriff of Cook County, who will present the arrestee to a judge of the Circuit Court of Cook County.

A much different fate awaits persons arrested on weekdays that are not court holidays who are able to post the bond that had been set on a warrant. The Chicago Police Department allows these persons to post bond at the police station and be released immediately. Unlike plaintiff and others similarly situated, this group is not subjected to the extended detention that results from defendant's express policy.

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[2] "Central Bond Court" is held at the George N. Leighton Criminal Court Building, 2600 South California Avenue, Chicago, Illinois. Circuit Court of Cook County, *First Municipal District Bond Courts*, http://www.cookcountycourt.org/ABOUTTHECOURT/Municipal-Department/FirstMunicipalDistrict-Chicago/BondCourt.aspx.

Plaintiff in this case, acting individually and for others similarly situated, challenges this municipal policy.

II. The Violation of Federal Law

Before the decision of the Supreme Court in *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017), three circuits agreed that there was a "constitutionally protected liberty interest" in being released on bond and that the "substantive due process protection of this liberty interest attaches once arrestees are deemed eligible for release on bail." *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017) (citing *Dodds v. Richardson*, 614 F.3d 1185 (10th Cir. 2010) and *Campbell v. Johnson*, 586 F.3d 835, 940 (11th Cir. 2009)).

The decision of the Supreme Court in *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), as interpreted by the Seventh Circuit, suggests that the Court should view the detention of a person arrested on a warrant who is ready, willing, and able to post the cash bond that had been set on the warrant as an unreasonable detention contrary to the Fourth Amendment. As the Seventh Circuit held in *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019), "*Manuel I* makes clear that the Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention." *Id.* at 475. *Accord*, *Johnson v. McCarber*, 942 F.3d 405, 410-11 (8th Cir. 2019) (any deprivation of liberty before trial "is governed by the Fourth Amendment and its prohibition of unreasonable seizures").

The Sixth Circuit applied this reasoning in *Miller v. Maddox*, 886 F.3d 386 (6th Cir. 2017) to a factually similar case involving detention after the arrestee had been accepted into a pretrial release program. The Court of Appeals there concluded that the plaintiff had "suffered a deprivation of liberty by being detained past the time necessary to enroll her in the pretrial services program." *Id.* at 394.

An analogous fact situation was presented to the district court in *Alcorn v. City of Chicago*, No. 17 C 5859, 2018 WL 3614010 (N.D. Ill. July 27, 2018). That case does not challenge the municipal policy, but seeks to impose liability on individual police officers for unreasonable post-arrest detention on a warrant:

> Plaintiff's case is distinguishable from *Manuel* in that the Officers had probable cause to make the initial arrest of Lumar based on the facially valid out-of-county warrant. However, that warrant did not provide probable cause to *continue* detaining Lumar after the Officers learned that the warrant was for a bondable offense and Lumar could secure his release by paying $50. While an officer may end her investigation once she has established probable cause and the Fourth Amendment imposes no duty to investigate whether a defense is valid, an officer "may not ignore conclusively established evidence of an affirmative defense." [*McBride v. Grice*, 576 F.3d 703, 707 (7th Cir. 2009).] Here, the Officers did not end their investigation and instead inquired further with Lee County, learning that the arrest warrant had been issued for a bondable offense. Despite conclusive evidence to the contrary, according to the facts alleged [in the] Complaint which the Court accepts as true, the Officers falsified the arrest report to show that Lumar's bond information was not available and continued to detain him for a nonbondable offense. Therefore, Plaintiff has sufficiently alleged the Officers detained Lumar without probable cause in violation of the Fourth Amendment.

Id. at *7. Plaintiff here does not advance any argument that the arresting officers falsified his arrest report, but the underlying legal rule does not require such falsification. Refusing to release an arrestee who is ready, willing, and able to pay a bond is a violation of the Fourth Amendment and the Due Process Clause.[3]

III. Conclusion

The Court should therefore deny the motion to dismiss, find that plaintiff has complied with the order of June 12, 2020, and order defendant to answer the complaint.

Respectfully submitted,

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[3] A similar issue is before Judge Chang in *Ali v. City of Chicago*, 19-cv-22. The plaintiff in that case challenges, *inter alia*, the provision of S06-12-02 that prohibits persons arrested on warrants issued outside of Cook County, regardless of the day of arrest, from posting bond at the police station. A summary judgment motion by the individual defendants is pending in *Ali*; the City has not sought summary judgment on the *Ali* plaintiff's challenge to this provision of the Special Order.