

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

JEVARREO KELLEY-LOMAX,)	
)	
Plaintiff)	
v.)	20-CV-04595
)	
CITY OF CHICAGO, ROBERT GARDUNO,)	Judge Feinerman
ANTHONY SPICUZZA, JOEL ORTIZ,)	
GEORGE DAVROS, AND WILLIAM)	Magistrate Judge Fuentes
DOOLIN,)	
)	
Defendants.)	

**DEFENDANTS ROBERT GARDUNO, ANTHONY SPICUZZA,
JOEL ORTIZ, GEORGE DAVROS, and WILLIAM DOOLIN's
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

NOW COME the Defendants, **ROBERT GARDUNO, ANTHONY SPICUZZA, JOEL ORTIZ, GEORGE DAVROS,** and **WILLIAM DOOLIN**, by and through their attorneys, Special Assistant Corporation Counsel Elaine C. Davenport of **SANCHEZ DANIELS & HOFFMAN LLP**, and for their Answer to Plaintiff's Complaint, states 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 § 1367.

ANSWER: These Defendants admit that Plaintiff brings this action under alleged deprivations of rights pursuant to 42 U.S.C. § 1983. These Defendants deny any such deprivation of Plaintiff's rights. Defendants further admit that jurisdiction is proper.

2. Plaintiff Jevarreo Kelley-Lomax is a resident of the Northern District of Illinois.

ANSWER: These Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations set forth in the above paragraph. As such, these Defendants deny the same and demand strict proof thereof.

3. Defendants Robert Garduno, Anthony Spicuzza, Joel Ortiz, George Davros, and

William Doolin (“officer defendants”) were, at all relevant times, acting under color of their offices as Chicago police officers; each is sued in his individual capacity only.

ANSWER: These Defendants admit that at all relevant times hereto that they were acting in the course and scope of their employment under the color of law. These Defendants make no answer as to the capacity in which they are sued as the complaint speaks for itself.

4. Defendant City of Chicago is an Illinois municipal corporation. Plaintiff asserts only state law claims against the City.

ANSWER: These Defendants admit that the City of Chicago is an Illinois municipal corporation. These Defendants make no answer as to the nature of the claims asserted against the City as the complaint speaks for itself.

5. On February 18, 2019, the officer defendants arrested plaintiff at a gas station on the South Side of Chicago.

ANSWER: Defendants George Davros, Robert Garduna, and Anthony Spicuzza, admit that they arrested the Plaintiff at a gas station on 18 February 2019 for possession of a weapon.

Defendants William Doolin and Joel Ortiz admit only that they provided assistance to George Davros, Robert Garduno, and Anthony Spicuzza on scene on 18 February 2019, and deny the remaining allegations of the above paragraph.

6. At the time of plaintiff’s arrest:
- a. None of the officer defendants had a warrant authorizing the arrest of plaintiff;
 - b. None of the officer defendants believed that a warrant had been issued authorizing the arrest of plaintiff;
 - c. None of the officer defendants had observed plaintiff commit any offense; and
 - d. None of the officer defendants had received information from any source that plaintiff had committed an offense or was otherwise subject to arrest.

ANSWER: These Defendants admit that they did not have a warrant for Plaintiff’s arrest nor did they believe that Plaintiff had an outstanding warrant authorizing the arrest of

Plaintiff. Defendants deny the remaining allegations contained within paragraph 6 and its subparts.

7. As a result of the officer defendants' conduct, plaintiff was wrongfully detained and prosecuted.

ANSWER: These Defendants deny the allegations of paragraph 7.

8. After arresting plaintiff:

- a. One or more of the officer defendants prepared official police reports falsely asserting that, when arrested, plaintiff had been in unlawful possession of a firearm;
- b. One or more of the officer defendants attested to the false official police reports, and each of the other individual officer defendants failed to intervene to prevent the violation of plaintiff's rights; and
- c. One or more of the officer defendants communicated the false charge to prosecutors, and each of the other individual officer defendants failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: Defendants George Davros, Robert Garduno, and Anthony Spicuzza deny the allegations of paragraph 8, including all subparts.

Defendants William Doolin and Joel Ortiz deny the allegations of paragraph 8, including all subparts, and further answer that they were not involved in preparing any paperwork regarding the Plaintiff's arrest nor did they review any such paperwork at the time of Plaintiff's arrest. Defendants William Doolin and Joel Ortiz further deny communicating any proposed charges to the state's attorney's office nor did they participate in any such communications.

9. As a result of the above described wrongful acts, plaintiff was deprived of his liberty while a pre-trial detainee until he was exonerated at trial on August 6, 2019.

ANSWER: These Defendants deny the allegations of paragraph 9.

10. After hearing the state's evidence at trial on August 6, 2019, the court directed a finding of not guilty in favor of plaintiff.

ANSWER: These Defendants admit the allegations of paragraph 10.

11. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

ANSWER: These Defendants deny the allegations of paragraph 11.

12. 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: Although paragraph 12 is not directed against these Defendants, Defendants deny any wrongdoing that would or could give rise to a claim for malicious prosecution.

WHEREFORE, Defendant, **ROBERT GARDUNO, ANTHONY SPICUZZA, JOEL ORTIZ, GEORGE DAVROS, and WILLIAM DOOLIN**, pray that this Court enters judgment in their favor, award them such fees and costs as allowed by law, and grant such further relief as this Court deems just, fair, and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE QUALIFIED IMMUNITY

Defendant Officers are government officials, namely police officers, who performed discretionary functions. At all times material to the events alleged in Plaintiff's Complaint, reasonable police officers objectively viewing the facts and circumstances that confronted Defendant Officers could have believed their actions to be lawful, in light of clearly established law and the information that the respective Defendant Officers possessed. Defendant Officers, therefore, are entitled to qualified immunity.

SECOND AFFIRMATIVE DEFENSE STATE TORT IMMUNITY ACT 745 ILCS 10/2-201

As to all state law claims, under the Illinois Tort Immunity Act, Defendant Officers are not liable for any of the claims alleged because the decision to arrest Plaintiff was based upon the

information and circumstances known to Defendant Officers at the time, and was a discretionary decision for which they are immune from liability. 745 ILCS 10/2-201 (West 2002).

**THIRD AFFIRMATIVE DEFENSE
STATE TORT IMMUNITY ACT 745 ILCS 10/2-202**

Defendant Officers were working as police officers at the time of the occurrence. Therefore, under the Illinois Tort Immunities Act, Defendant Officers are not liable for any of the claims alleged because public employees are not liable for their acts or omissions in the execution or enforcement of any law, unless such act or omissions constitutes willful and wanton conduct. 745 ILCS 10/2-202.

**FOURTH AFFIRMATIVE DEFENSE
STATE TORT IMMUNITY ACT 745 ILCS 10/2-204**

Defendant Officers are not liable for any of Plaintiff's alleged claims because as public employees, as such and acting within the scope of their employment, are not liable for any injury caused by the act or omissions of another person. 745 ILCS 10/2-204

**FIFTH AFFIRMATIVE DEFENSE
STATE TORT IMMUNITY ACT 745 ILCS 10/2-208**

As to Plaintiff's state law claims, Defendant Officers are not liable for any of these 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).

**SIXTH AFFIRMATIVE DEFENSE
STATE COMPARATIVE AND CONTRIBUTORY NEGLIGENCE LAW**

That any injuries or damages claims by Plaintiff against Defendants were caused, in whole or in part, by negligent, willful and wanton, and intentional conduct of the Plaintiff, even if Defendants were liable for damages, the total amount of damages to which Plaintiff would

otherwise be entitled must be reduced by application of principles of comparative fault in proportion to the amount of the negligent, willful and wanton, and intentional conduct of the Plaintiff which was the proximate cause of his injuries. In addition, at the time of the actions alleged in Plaintiff's complaint, Illinois statute 735 ILCS 5/2-1116 was in effect and reduces a 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.

**SEVENTH AFFIRMATIVE DEFENSE
MITIGATION OF DAMAGES**

To the extent that 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 his damages, commensurate with the degree of failure to mitigate attributed to the Plaintiff by a jury in this case.

JURY DEMAND

Defendants request a trial by jury.

Respectfully Submitted,

SANCHEZ DANIELS & HOFFMAN, LLP

By: /s/ Elaine C. Davenport

Elaine C. Davenport
Special Assistant Corporation Counsel
On behalf of the Defendants:
**ROBERT GARDUNO,
ANTHONY SPICUZZA, JOEL ORTIZ,
GEORGE DAVROS, and
WILLIAM DOOLIN**

Elaine C. Davenport
Federal ID No. 6272827
SANCHEZ DANIELS & HOFFMAN LLP
333 West Wacker Drive
Suite 500
Chicago, Illinois 60606
(312) 641-1555 – Telephone
(312) 641-3004 – Facsimile