

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

Tyerie Johnson,)
Plaintiff,)
vs.) Case No. 20-cv-07222
City of Chicago, Bradley Anderson, #15600,) Judge Sara L. Ellis
Cornelius Brown, #2235, Yvette Carranza,)
#13435, Anthony Bruno, #1123, Steven Holden,)
#8149, Scott Westman, #18472, and)
Russell Willingham, #511,)
Defendants.)

**DEFENDANT OFFICERS' MOTION TO JOIN
CITY OF CHICAGO'S MOTION TO DISMISS AND TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO RULE 12(b)(6)**

Defendants, OFFICERS BRADLEY ANDERSON, CORNELIUS BROWN, YVETTE CARRANZA, ANTHONY BRUNO, STEVEN HOLDEN, RUSSEL WILLINGHAM, SCOTT WESTMAN (“Defendant Officers”), in their individual capacities, by and through their attorneys, Tribler Orpett & Meyer, P.C., move this Honorable Court to join defendant, CITY OF CHICAGO’S, Motion to Dismiss and pursuant to Federal Rule of Civil 12(b)(6) move to dismiss Plaintiff’s complaint. In support thereof, Defendant Officers state as follows:

INTRODUCTION

On February 8, 2019, Defendants executed a search warrant for the second-floor at a building on the 6800 block of South Dorchester Avenue in Chicago, Illinois. Upon entry to the second-floor unit, Plaintiff fled the police and ran to the first-floor unit with two other adults. Narcotics were found in the second-floor unit. Plaintiff was detained, arrested and prosecuted for various criminal offenses.

Plaintiff contends he was wrongfully detained and prosecuted and unlawfully seized and deprived of his liberty. Dkt #1, ¶¶ 21-22. The City of Chicago filed a Rule 12(b)(6) motion to dismiss seeking to dismiss Plaintiff's malicious prosecution claim and any alleged *Monell* claims alleged against it. One of the City's arguments to support dismissal of Plaintiff's malicious prosecution claim is that the arresting officers had probable cause to arrest and pursue charges. Plaintiff does not allege a state law malicious prosecution claim against Defendant Officers, however, probable cause is an absolute defense to any false arrest, unlawful seizure or wrongful detention claims against Defendant Officers. Therefore, should this Court grant the City's Motion to Dismiss Plaintiff's malicious prosecution claim, Defendant Officers are also entitled to dismissal of any claims against them for false arrest, unlawful seizure or wrongful detention.

ARGUMENT

DEFENDANT OFFICERS HAD PROBABLE CAUSE TO DETAIN, SEIZE AND ARREST PLAINTIFF WHILE EXECUTING A VALID SEARCH WARRANT.

The Fourth Amendment authorizes police officers who are executing a search warrant "to 'take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search.'" *United States v. Clifton Banks*, 628 F. Supp. 2d 811, 815 (N.D. Ill. 2009) (quoting *United States v. Jennings*, 544 F.3d 815, 819 (7th Cir. 2008)). Officers, therefore, have the authority "to detain the occupants of the premises while a proper search is conducted." *Muehler v. Mena*, 544 U.S. 93, 98 (2005) (quoting *Michigan v. Summers*, 452 U.S. 692, 705 (1981)). *See also United States v. Burns*, 37 F.3d 276, 280 (7th Cir. 1994) (finding detention during the execution of the search warrant reasonable under the Fourth Amendment); *People v. Edwards*, 144 Ill. 2d 108, 126 (1991) (explaining that "a warrant to search for contraband, founded on probable cause, implicitly carries with it the authority to detain

occupants of the premises while the search is being conducted"). Police officers' authority to detain occupants incident to a search is categorical. *Muehler*, 544 U.S. at 98.

The Fourth Amendment is not violated when occupants are handcuffed during the execution of a search warrant for two reasons. *Id.* First, the detention is much less intrusive than the search. *Id.* Second, three law enforcement interests justify such a detention: "[1] preventing flight in the event that incriminating evidence is found; [2] minimizing the risk of harm to the officers; and [3] facilitating the orderly completion of the search, as detainees' self-interest may induce them to open locked doors or locked containers to avoid the use of force." *Id.* Furthermore, police officers' authority to use reasonable force to effectuate a detention is inherent in their authority to detain incident to a search. *Id.*

Plaintiff asserting a false arrest claim must plead and prove: (1) a restraint or arrest; (2) caused or procured by defendants; (3) without their having reasonable grounds to believe an offense is being committed by the plaintiff. See *Woods v. Clay*, 2005 WL 43239 *11 (N.D. Ill 2005). Probable cause to arrest is an absolute defense to liability under 42 U.S.C. § 1983 for false arrest and imprisonment. See *Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir. 2006). Probable cause is only a "substantial chance of criminal activity, not a certainty that a crime was committed." *Beauchamp v. City of Noblesville*, 320 F.3d 733, 743 (7th Cir. 2003). Police officer have probable cause to arrest an individual when "the facts and circumstances within their knowledge and of which they have reasonably trustworthy information are sufficient to warrant a prudent person in believing that the suspect had committed" an offense. *Mustafa*, 442 F.3d at 547, citing *Kelley v. Myler*, 149 F.3d 641, 646 (7th Cir. 1998). Probable cause exists when the facts within the arresting officer's knowledge at the time of arrest "would

warrant a prudent person in believing that the suspect had committed or was committing an offense." *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 1999).

Here, Plaintiff does not challenge the validity of the search warrant, he simply contends he was not the subject of the warrant. Plaintiff was undeniably located at the building in which the search warrant was executed and further admits that he was arrested "during the search." Dkt #1, ¶11. Plaintiff fails to allege where he was located at the time officers entered the building or whether he fled the second floor to the first floor upon entry by the police. Regardless, there was probable cause to detain and seize Plaintiff as an occupant of either the second floor or the first floor based upon Plaintiff and others fleeing the second floor to the first floor and narcotics being located on the second floor. *See Muehler*, 544 U.S. at 102 (emphasis added) (finding that defendant officers acted reasonably when they handcuffed the plaintiff in a garage for *two to three hours* during the execution of the search warrant); *Billups v. Kinsella*, No. 08 CV 3365, 2010 U.S. Dist. LEXIS 130345, at *16-17 (N.D. Ill. Dec. 9, 2010) (emphasis added) (finding the detention and handcuffing of plaintiff for *three hours*, the duration of the search, was reasonable). Probable cause is an absolute defense to Plaintiff's claims for unlawful detention/seizure and false arrest. Therefore, for the reasons stated herein and in the City's Motion, Plaintiff's Complaint should be dismissed.

Alternatively, for these same reasons, Defendant Officers are entitled to qualified immunity for Plaintiff's unlawful detention/seizure and false arrest claims. *Muehler*, 544 U.S. at 98 (explaining the Fourth Amendment allows officers to detain occupants when executing a search warrant). Here, Plaintiff's detention/seizure was lawful as he was detained and/or seized during the execution of a valid search warrant. Notably, the Complaint does not allege any Defendant Officer knew of any fact that would lead them to suspect that the search warrant

itself was invalid or that Plaintiff was not present in the building at the time the search warrant was executed. Therefore, Defendant Officers are entitled to qualified immunity as to Plaintiff's claims because they were executing a search warrant that had been approved by a judge, detained and seized Plaintiff incident to the execution of that warrant and arrested Plaintiff based upon the evidence discovered as detailed in the reports attached to the City's motion.

WHEREFORE, Defendant Officers, BRADLEY ANDERSON, CORNELIUS BROWN, YVETTE CARRANZA, ANTHONY BRUNO, STEVEN HOLDEN, RUSSEL WILLINGHAM, SCOTT WESTMAN, respectfully request this Honorable Court grant their motion to join the City of Chicago's Motion to Dismiss and dismiss Plaintiff's Complaint for the reasons stated in the City's Motion and those stated herein.

Respectfully submitted,

s/ William B. Oberts

Attorneys for Officers Bradley Anderson,
Cornelius Brown, Yvette Carranza,
Steven Holden, Russell Willingham,
Scott Westman in their individual capacities

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Officers Motion to Join City of Chicago's Motion to Dismiss was served upon:

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Service was accomplished pursuant to ECF as to Filing Users and complies with LR 5.5 as to any party who is not a Filing User or represented by a Filing User by mailing a copy to the above-named attorney or party of record at the address listed above, from 225 W. Washington Street, Suite 2550, Chicago, IL 60606, prior to 5:00 p.m. on the 22nd day of February, 2021, with proper postage prepaid.

s/ William B. Oberts
an Attorney