

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

Tyerie Johnson,)
Plaintiff,)
v.) Case No. 20-cv-07222
City of Chicago, Bradley Anderson, #15660,) Honorable Sara L. Ellis
Cornelius Brown, #2235, Yvette Carranza,) Magistrate Hon. Maria Valdez
#13435, Anthony Bruno, #1123, Steven)
Holden, #8149, Scott Westman, #18472,)
and Russell Willingham, #511,)
Defendants.)

DEFENDANT CITY OF CHICAGO'S RULE 12(b)(6) MOTION TO DISMISS

Defendant City of Chicago ("City"), by and through its attorneys, Hinshaw and Culbertson, LLP, Special Assistant Corporation Counsels for the City of Chicago, and pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby submits its Motion to Dismiss and states as follows:

1. The existence of probable cause is a complete defense to a malicious prosecution claim. *Kies v. City of Aurora*, 156 F. Supp. 2d 970, 981 (N.D. Ill., 2001); *Penn v. Chicago State Univ.*, 162 F. Supp. 2d 968, 975 (N.D. Ill., 2001); *Stobinske-Sawyer v. Village of Alsip*, 188 F. Supp. 2d 915, 919, 2002 U.S. Dist. LEXIS 3095, *6. Plaintiff must also plausibly allege that the Defendant officers acted with malice. *Aleman v. Vill. of Hanover Park*, 662 F.3d 897, 907 (7th Cir. 2011) (quoting *Carbaugh v. Peat*, 40 Ill. App. 2d 37, 189 N.E.2d 14, 19 (1963)). The police reports, relied on by Plaintiff in his complaint, unequivocally show that Plaintiff's arrest and the subsequent charges were supported by significant evidence tying him to the narcotics, satisfying the probable cause requirement and negating malice.

2. All the police reports from the February 8, 2019 search of 6832 South Dorchester Avenue and the resulting arrests are referred to in Plaintiff's complaint and central to his claims.

As such, the police reports may be considered by this court as part of the pleadings. *Neita v. Travis*, No. 14 C 1107, 2015 U.S. Dist. LEXIS 9990, at *6 (N.D. Ill. Jan. 29, 2015), *rev'd on other grounds*, 830 F.3d 494, 496 (7th Cir. 2016) (court considered arrest report because the plaintiff alleged that officers falsified the arrest report and it were therefore central to her claim); *see also Manning v. Sweitzer*, 891 F. Supp. 2d 961, 965 (N.D. Ill. 2012) (court considered a search warrant because it was central to the plaintiff's claims.).

3. To the extent Plaintiff brings a *Monell* claim, it is well settled that a plaintiff cannot prevail without first establishing an underlying constitutional violation. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Matthews v. City of East St. Louis*, 675 F.3d 703, 709 (7th Cir. 2012). The presence of probable cause is an absolute bar to a claim of false arrest. *See Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir. 2006); *Milner v. City of Chicago*, No. 01 C 5345, 2002 WL 1613720, *2-3 (N.D. Ill. 2002) (citing *Jenkins v. Keating*, 147 F.3d 577, 583- 84 (7th Cir. 1998)). Since the Defendant officers had probable cause to arrest and pursue charges, Plaintiff's underlying Fourth Amendment claim against Defendant officers fails and as such, any *Monell* claim fails.

4. Further, a plaintiff seeking to successfully allege a *de facto* policy claim "must do more than simply rely upon his own experience to invoke *Monell* liability." *Estate of Perry v. Wenzel*, 872 F.3d 439, 461 (7th Cir. 2017). Plaintiff points to no other instances, only that the Defendant officers acted pursuant to an alleged "code of silence." Plaintiff's *Monell* claim therefore fails.

5. Lastly, Plaintiff's *Monell* claim does not plausibly allege that the "code of silence" caused his constitutional injury. Other than alleging that the "code of silence" was a "cause for the actions of the officer defendants to concoct a false story and fabricate evidence," Plaintiff cites no facts that support a connection. Because Plaintiff fails to allege any similar factual

support for his claim that the “code of silence” was a proximate cause for his injuries, his *Monell* claim should be dismissed.

WHEREFORE, Defendant City of Chicago requests that this Honorable Court dismiss Plaintiff’s malicious prosecution claim, and *Monell* claim, to the extent one is brought, and grant any other relief that the Court deems appropriate.

Respectfully Submitted,

CITY OF CHICAGO

By: s/ Vincent Rizzo

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2021, I electronically filed the foregoing Defendant City of Chicago's Rule 12(b)(6) Motion to Dismiss with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Vincent M. Rizzo