

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

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

**DEFENDANT CITY OF CHICAGO'S RESPONSE TO PLAINTIFF'S MOTION TO  
EXCLUDE MATTERS OUTSIDE THE COMPLAINT**

Defendant City of Chicago ("City"), by and through its attorneys, Hinshaw and Culbertson, LLP, Special Assistant Corporation Counsel for the City, hereby submits its response in opposition to Plaintiff's Motion to Exclude Matters Outside the Complaint and states as follows:

**INTRODUCTION**

The police reports (hereinafter "reports") relied upon by Plaintiff in his complaint clearly demonstrate the existence of probable cause to arrest Plaintiff and pursue charges. As he did in his complaint, Plaintiff attempts to hide the undisputed facts in the reports with his Motion to Exclude. *See* Plaintiff's Complaint, Dkt. No. 1; Plaintiff's Motion to Exclude, Dkt. No. 21. Plaintiff argues only that this court may not consider the reports because they are not "concededly authentic." All other arguments are therefore waived.

In brief, Defendant City's Motion to Dismiss argues that Plaintiff's malicious prosecution claim must be dismissed as the arresting officers had probable cause to arrest and pursue charges and lacked the requisite malice. *See* Defendant City's Motion to Dismiss, Dkt. No. 20, at 5-9. There was significant, undisputed evidence that Plaintiff resided in the second floor unit and specifically, in the rear bedroom, tying Plaintiff to the narcotics found in that room. *Id.* Further, Defendant City sought dismissal of Plaintiff's purported *Monell* claim given the lack of any underlying constitutional claim and for failure to adequately plead a widespread practice that was the moving force behind any constitutional claim. *Id.* at 9-13.

Because the reports are referred to in Plaintiff's complaint and central to his claims, this court may consider them (in all undisputed respects) as part of the pleadings. Considering them now will allow this meritless case to be disposed of before Defendant City is required to incur additional costs and time. This court should therefore deny Plaintiff's Motion to Exclude Matters Outside the Complaint.

## **ARGUMENT**

It is well-settled in this circuit that "documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim." *188 LLC v. Trinity Indus. Inc.*, 300 F.3d 730, 735 (7th Cir. 2002). "Such documents may be considered by a district court in ruling on the motion to dismiss." *Id.* This court has been "liberal" in its approach to the rule. *Hecker v. Deere & Co.*, 556 F.3d 575, 582 (7th Cir. 2009); *see also Mueller v. Apple Leisure*

*Corp.*, 880 F.3d 890, 895 (7th Cir. 2018) (“This rule is a liberal one.”).

Indeed, the exception to Federal Rule of Civil Procedure (hereinafter “Rule”) 12(b) is an important one. It follows from Rule 10(c), which instructs parties that “a copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002). Were it not for the exception, a plaintiff could evade dismissal under Rule 12(b)(6) simply by failing to attach to his or her complaint a document that proved that the claim had no merit. *Id.* The exception therefore allows a defendant to submit the document to the court, and the court to consider it, without need for conversion to Rule 56. *Id.* At a practical level, “the exception doubtless reflects the pressure on judges in a busy court to dispose of meritless cases at the earlier opportunity.” *Id.*

With this purpose in mind, the Seventh Circuit has consistently upheld a district court’s application of the exception, without limiting it to a specific type of case or document. *See, e.g., Adams v. City of Indianapolis*, 742 F.3d 720, 729 (7th Cir. 2014) (upheld district court’s consideration of EEOC charges); *Hobbs v. John*, 722 F.3d 1089, 1091 n.2 (7th Cir. 2013) (upheld district court’s consideration of song lyrics); *Burke v. 401 N. Wabash Venture, LLC*, 714 F.3d 501, 505 (7th Cir. 2013) (upheld district court’s consideration of a property report); *Yassan v. J. P. Morgan Chase & Co.*, 708 F.3d 963, 975 (7th Cir. 2013) (upheld district court’s consideration of a contractual release); *Kolbe & Kolbe Health & Welfare Benefit Plan v. Med. Coll. of Wis., Inc.*, 657 F.3d 496, 501 (7th Cir. 2011) (upheld district court’s consideration of a welfare benefit plan covered by ERISA); *Evers v. Johnson*, No. 99-3761, 2000 U.S. App. LEXIS 38678, at \*5 (7th Cir. May 24, 2000)

(upheld district court's consideration of a criminal complaint, the transcript of the plaintiff's initial appearance, and an arrest warrant); *Wilk v. McDonough*, No. 96-3399, 1997 U.S. App. LEXIS 17713, at \*8 n.2 (7th Cir. July 10, 1997) (upheld district court's consideration of performance evaluations, evaluation procedures form and affidavits of the plaintiffs.); *Venture Associates v. Zenith Data Sys.*, 987 F.2d 429, 431 (7th Cir. 1992) (admitting letters, to which the complaint referred, that established the parties' contractual relationship). Therefore, documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim.

*I. Police Reports May Be Considered Under The Exception In All Undisputed Respects.*

Accordingly, courts in this district have regularly considered police reports when they are referred to in the plaintiff's complaint and are central to the claim(s). *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). Contrary to Plaintiff's unsupported argument, allegations that the officers "falsified" the police reports do not bar the application of the exception. *Hecker v. Deere & Co.*, 556 F.3d 575, 582 (7th Cir. 2009); *Manning v. Sweitzer*, 891 F. Supp. 2d 961, 964-65 (N.D. Ill. 2012). Instead, courts in this district take the plaintiff's "point of view on all disputes" and considers the reports in all other respects. Plaintiff cites to no on-point authority stating otherwise.

For example, in *Hecker*, the defendants' motion to dismiss under Rule 12(b)(6) included approximately nine hundred (900) pages of attached materials (seven

Summary Plan Descriptions, two supplements, a Trust Agreement, and three fund prospectuses). 556 F.3d at 582. Objecting to the attachments, the plaintiffs argued that certain statements in the documents were untrue and could not be considered including the representation that the defendants pay all administrative costs associated with the plans. *Id.* Nonetheless, the Seventh Circuit held that the documents fit within the exception to Rule 12(d)'s general instruction, finding that the district court could consider the documents and take "plaintiffs' point of view on all disputes." *Id.* As such, documents that are referred to in a plaintiff's complaint and are central to the claims can be considered by the district court in all undisputed respects.

Likewise, in *Manning v. Sweitzer*, 891 F. Supp. 2d 961, 964-65 (N.D. Ill. 2012), the defendants asked the district court to consider police reports and a search warrant as part of the pleadings pursuant to Rule 10(c). The plaintiff disputed some of the facts in the police reports including that "she did not waive her right to counsel while being interviewed by police, while police reports indicate that she did." *Id.* Notwithstanding the dispute, and contrary to Plaintiff's misreading of the case, the district court still considered the police reports (and the search warrant) in all undisputed respects. For example, the court found, according to the police reports, the following:

Detective Sweitzer arrested Manning after having received a tip from an apartment manager in Chicago. The apartment manager reported that Manning came to his office to complete a rental application and was accompanied by a small boy. Suspicious of her demeanor, the apartment manager looked her up on-line and realized she was wanted for custodial interference. Manning was scheduled to return to the apartment later that day to pick up keys, so Detective Sweitzer set up surveillance and arrested her as she was walking to the building.

*Id.*

Other courts in this district also have not barred police reports just because parts of the police report were disputed. *Dempsey v. Nathan*, No. 14 CV 812, 2014 U.S. Dist. LEXIS 138724, at \*21 (N.D. Ill. Sep. 30, 2014); *Steinbrecher v. Dickey*, 138 F. Supp. 2d 1103, 1107 (N.D. Ill. 2001); *Jackson v. City of Chi.*, No. 14 C 6746, 2017 U.S. Dist. LEXIS 203937, at \*16 (N.D. Ill. Dec. 12, 2017). While the court ultimately did not consider the police reports in these case, it was only because the plaintiff did not reference them in the complaint. *Id.* The court did not even reference a “concededly authentic” requirement and certainly did not hold that a police report cannot be considered in all undisputed respects based on the exception when the plaintiff refers to the police report and it is central to the claims. *Id.*

In *Neita*, the plaintiff attached the arrest report to their motion to dismiss and asked the court to consider it to determine probable cause. *Neita v. Travis*, No. 14 C 1107, 2015 U.S. Dist. LEXIS 9990, at \*6 (N.D. Ill. Jan. 29, 2015). Although the plaintiff alleged that the officers “falsified the police report” regarding the plaintiff’s arrest, the court ruled that it could consider the arrest report because it was referenced in the plaintiff’s complaint and central to the plaintiff’s allegations. *Id.* The district court though dismissed the plaintiff’s false arrest claim without reliance on the police report, finding “conclusory allegations stated in the negative are nonetheless conclusory and do not satisfy [the plaintiff’s] obligation to identify actual factual content establishing the absence of probable cause.” *Id.* at \*9. The district court also dismissed the plaintiff’s illegal search claim without reliance on the police report, finding it was time-barred. *Id.*

at \*13. The court did consider the arrest report in part for the state law malicious prosecution claim, but ultimately relinquished supplemental jurisdiction over it, dismissing it without prejudice to refiling in state court. *Id.*

Thereafter, the plaintiff in *Neita* appealed the district court's decision, which is mischaracterized by Plaintiff in his Motion to Exclude. *Neita v. City of Chi.*, 830 F.3d 494, 497 (7th Cir. 2016). The Seventh Circuit did not question or even address the district court's ruling that it could consider the arrest report. *Id.* In fact, the court only reviewed the district court's decision dismissing the false arrest and illegal search claims, which were not based on the arrest reports. *Id.* The court even noted it will not address the malicious prosecution claim because it was dismissed without prejudice and the district court relinquished jurisdiction. *Id.* at 499 n.2 (7th Cir. 2016). The court ultimately reversed, finding that the plaintiff's complaint contained sufficient factual allegations to state claims for false arrest and illegal search *Id.* The court's finding that "nothing more is required," refers to Plaintiff's allegations. *Id.* Importantly, the court did not overrule or find err in the district court's decision to consider the police report.

Similarly, although Plaintiff relies heavily on the case of *Gardunio v. Town of Cicero*, the case is entirely distinguishable. 674 F. Supp. 2d 976, 985 (N.D. Ill. 2009). In *Gardunio*, the plaintiff claimed he was arrested at the President of Cicero's direction as a result of his political affiliation with a political rival. *Id.* at 983. As part of their motion to dismiss, the defendants submitted an investigative report, an Internal Affairs file initiation report, a police report, an acknowledgement that the plaintiff received his Miranda rights and a statement signed by the plaintiff, an approval of the charges

against the plaintiff signed by an Assistant States Attorney, and a court document indicating that the plaintiff was charged with false personation of a peace officer. *Id.* at 985 n.2. Although the district court did find it could not consider the police records, it was because the plaintiff claimed the entire arrest report was false (alleged no illegal activity by anyone) and that the defendants “manufactured” the crime and the corresponding police report against the plaintiff. *Id.* at 985. To the extent it ruled otherwise, it would be overruled by *Hecker*. Here, Plaintiff only alleges part of the reports are untrue (that he was the “target” of the search warrant); however, he does not dispute drugs were found or that he resided in the second floor unit.

Next, Plaintiff cites to *PTG Nev., LLC v. Wai Chan*, No. 16 C 1621, 2017 U.S. Dist. LEXIS 6276, at \*3 (N.D. Ill. Jan. 17, 2017). However, this case does not involve police reports. *Id.* Further, the only reason the documents were not considered was because they were not “referenced in the complaint and [were not] central to the plaintiff’s claim.” *Id.* That is not the case here. Plaintiff does not dispute that the reports are referenced in his complaint and central to his claims.

In short, based on the above precedent, police reports attached to a motion to dismiss may be considered by the district court when they are referred to in the plaintiff’s complaint and are central to the claims. When the plaintiff disputes parts of the police reports, the court must take the plaintiff’s “point of view on all such disputes,” but may consider the police reports in all other respects.

## *II. Plaintiff Mischaracterizes The Seventh Circuit’s Holding In Smith.*

Plaintiff incorrectly asserts that “the improper submission of Exhibits A through

E is not the first time that lawyers for the City of Chicago have sought to improperly submit police reports.” *See Motion to Exclude*, Dkt. No. 21, at 7. This is based on a misunderstanding (or misrepresentation) of the pending appeal in *Smith v. Chicago*, No. 19-2725 (7th Cir.). Plaintiff fails to note that at the district court, the defendants did not attach any exhibits to their motion to dismiss and the district court accordingly did not make any ruling as it relates to the consideration of police reports. The appeal was based solely on the district court’s dismissal of the plaintiff’s fabrication of evidence claim on timelines grounds.

On appeal, the defendants-appellees did attach arrest reports to their appellate response brief and the plaintiff-appellant did move to strike the reports. *See Motion to Exclude*, Exhibit 1. However, the plaintiff-appellants’ main argument was that it was an “improper attempt to submit new evidence on appeal,” given the district court did not consider the reports. *Id.* The Seventh Circuit granted the motion to strike, but did not provide any reasoning or explanation for the ruling. *See Motion to Exclude*, Exhibit 2. The Seventh Circuit certainly did not rule that police reports cannot be considered on a motion to dismiss by the district court when they are referenced in the complaint and central to the claims—that issue was not before the court.

*III. This Court May Consider Exhibits A Through E In All Undisputed Respects As They Are Referred To In Plaintiff’s Complaint And Are Central To Plaintiff’s Claims.*

Pursuant to the above precedent, this court may consider the reports (Exhibits A through E) in all undisputed respect as they are undisputedly referred to in Plaintiff’s complaint and are central to Plaintiff’s claims. This will allow this court to avoid

unnecessary litigation and delay given the reports make it clear that probable cause existed. Plaintiff's only objection is that the reports are not "concededly authentic." All other arguments are waived. *PNC Bank, Nat'l Ass'n v. Tyre Works-Hoffman, LLC*, No. 1:12-cv-07499, 2013 U.S. Dist. LEXIS 28044, at \*10 n.2 (N.D. Ill. Feb. 25, 2013) (holding that arguments raised for the first time in a reply brief are waived.).

As the decisions in the cases of *Hecker, Manning and Neita* instruct, just because Plaintiff alleges the officers misidentified him as the target of the search warrant, that does not bar the application of the exception to 12(b). Instead, this court may consider the police reports in all undisputed respects and in all disputed respects, take Plaintiff's "point of view." That is exactly what Defendant City asks of this court. Defendant City assumes for purposes of the motion to dismiss that the officers misidentified Plaintiff as the target of the search warrant, and ask the court to consider the reports only in the following undisputed respects:

A. Mail addressed to Plaintiff was discovered in a rear bedroom of the second floor unit. *See* Defendant City's Motion to Dismiss, Exhibit A, at 2 (Plaintiff's Arrest Report); Defendant City's Motion to Dismiss, Exhibit A, at 2 (Plaintiff's Case Incident Report).

B. CPD officers observed Plaintiff flee the second floor unit down the stairway to the first floor unit. *Id.*

C. A subject detained in the second floor unit confirmed to the officers that Plaintiff ran down the stairs to the first floor unit. *See* Defendant City's Motion to Dismiss, Exhibit C, at 2 (Murphy's Case Incident Report).

D. Upon entry into the first floor unit, the officers located Plaintiff and Plaintiff's one year old child. *See* Defendant City's Motion to Dismiss, Exhibit D, at 3 (Murphy's Arrest Report); Defendant City's Motion to Dismiss, Exhibit C, at 2 (Murphy's Case Incident Report); Defendant City's Motion to Dismiss, Exhibit E, at 2 (Tanzania's Arrest Report).

E. The tenant of the first floor, Krystal Archie, told the officers that none of the subjects lived on the first floor and did not have permission to be in unit. *Id.*

F. Ms. Archie identified Plaintiff as her second-floor neighbor. *Id.*

Indeed, Plaintiff does not dispute any of this information. He does not allege that mail was not found, that he did not reside in the second floor residence, or in the rear bedroom, or even that drugs were not found. Plaintiff only alleges that the police reports are “false” to the extent they allege he was the target of the search warrant.

As such, assuming Plaintiff was misidentified as the target of the search warrant, the reports may be considered by this court in all other respects in deciding Defendant City’s motions to dismiss.

## **CONCLUSION**

WHEREFORE, for the foregoing reasons, Defendant City respectfully requests this Honorable Court deny Plaintiff’s Motion to Exclude Matters Outside the Complaint.

Respectfully Submitted,

CITY OF CHICAGO

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2021, I electronically filed the foregoing Defendant City of Chicago's Response to Plaintiff's Motion to Exclude Matters Outside the Complaint 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*