

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

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

**DEFENDANT CITY OF CHICAGO'S AMENDED 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, pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby submits its Amended Motion to Dismiss. In support thereof, Defendant City 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. Here, the only allegation Plaintiff makes in support of his malicious prosecution claim is that Defendant officers misidentified Plaintiff as the "target" of the search warrant. However, even if Plaintiff was not the individual identified in the warrant, Defendant officers could pursue criminal charges against him if there was probable cause to

believe that he was guilty of the drugs charges. As such, without more, Plaintiff fails to meet his initial burden of alleging facts sufficient to show that Defendant officers lacked probable cause to pursue criminal charges for possession of illegal drugs.

2. Plaintiff equally fails to sufficiently allege that Defendant officers "instituted or continued the proceedings maliciously" or acted with "malice," as required for a malicious prosecution claim. As such, Plaintiff's malicious prosecution claim must be dismissed.

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 also 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, Plaintiff's underlying Fourth Amendment false arrest 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, for the foregoing reasons, Defendant City respectfully requests this Honorable Court dismiss Plaintiff's malicious prosecution claim, and to the extent one is being brought, any *Monell* claim against Defendant City, with prejudice.

Respectfully Submitted,

CITY OF CHICAGO

By: s/ Vincent Rizzo

Vincent Rizzo
Hinshaw & Culbertson LLP
151 N. Franklin, Suite 2500
Chicago, IL 60606
vrizzo@hinshawlaw.com
cpowell@hinshawlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, I electronically filed the foregoing Defendant City of Chicago's Amended 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