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

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

DEFENDANT CITY OF CHICAGO'S MEMORANDUM OF LAW IN SUPPORT OF ITS 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 Memorandum of Law in Support of Defendant City's Amended Motion to Dismiss. In support thereof, Defendant City states as follows:

INTRODUCTION

Plaintiff was arrested by the Chicago Police Department for illegal drugs. *See* Complaint, Dkt. No. 1, ¶ 15. Plaintiff was subsequently prosecuted as a result of the investigation by the Cook County State's Attorney's Office for knowingly manufacturing or delivering, or possessing with intent to manufacture or deliver, cannabis (720 ILCS 550.0/5-D) and heroin (720 ILCS 570.0/401-A-1-A). *See* Certified

Statement of Disposition[1], attached as Exhibit A; 12-19-2019 Trial Transcript[2], attached as Exhibit B. On December 12, 2019, after Plaintiff voluntarily waived his rights to a jury trial, Judge Jackie Portman-Brown held a bench trial on the charges. *Id.* at 4.

At the bench trial, the State did not present any evidence or otherwise argue that Plaintiff was the "target" of a warrant. *See generally* 12-19-2019 Trial Transcript, attached Exhibit B. No officer testified that Plaintiff was the "target" of a warrant. *Id*. Quite the reverse, during cross-examination by Plaintiff's counsel, Officer Anderson testified that Plaintiff was not the individual described in the search warrant and there was another male present for the search that met the description:

> **Q.** Did you testify in front of the Cook County Grand Jury that Tyerie Johnson was the target of the search warrant?
> **A.** I said Tyerie Johnson was the target of our narcotics investigation at the unit that day.
>
> **Q.** And were you asked this question and did you give this answer on page three of the Grand Jury, "Question, the defendant was the target of that search warrant and was present, correct?" And your answer was, "yes," correct, did you say that?
> **A.** I did say that and from what I understood is when we wrote the search warrant the target was for Lord and then during our investigation we used Tyerie as the target's term.

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[1] This Court may take notice of Plaintiff's certified statement of disposition. *See Adebiyi v. Felgenhauer*, No. 08 C 6837, 2010 U.S. Dist. LEXIS 39770, 2010 WL 1644255, at *2 (N.D. Ill. Apr. 20, 2010) (taking judicial notice of certified statement of conviction); *Bagley v. City of Chi.*, No. 17 C 6943, 2018 U.S. Dist. LEXIS 123754, at *2 n.3 (N.D. Ill. July 24, 2018) (same).

[2] This Court may take notice of the transcript of the proceedings of Plaintiff's criminal prosecution. *O'Hara v. O'Donnell*, No. 98 C 0979, 2001 U.S. Dist. LEXIS 3535, at *10 (N.D. Ill. Mar. 20, 2001); *City of Joliet v. Mid-City Nat, Bank of Chicago*, No. 05 C 6746, 2012 U.S. Dist. LEXIS 24941, 2012 WL 638735, *1 (N.D. Ill. Feb. 22, 2012); *Taitts v. Verpill*, No. 11 C 3004, 2012 U.S. Dist. LEXIS 44290, at *22 (N.D. Ill. Mar. 29, 2012); *Brisco v. Stinar*, No. 19-cv-7233, 2020 U.S. Dist. LEXIS 223084, at *9 (N.D. Ill. Nov. 30, 2020); *Blake v. Regan*, No. 20 CV 4065, 2021 U.S. Dist. LEXIS 33447, at *9 (N.D. Ill. Feb. 23, 2021). Defendant City does not ask this court to credit any of the testimony as true.

Q. Showing you Defendant's Exhibit No. 9 for identification, do you recognize this document?
A. Yes.
Q. What is it?
A. This is the complaint for a search warrant.
Q. Does it identify the target?
A. No.
Q. Well, it does, doesn't it, on the line above and the premises?
A. Yes.
Q. It talks about a male black 35 to 40, 6'2", 6'3", 300 pounds, long black dreadlocks, correct?
A. Yes.
Q. Did the defendant have long black deadlocks?
A. No.
Q. Was he 300 pounds?
A. No.
Q. Was he 6'2" to 6'3"?
A. No.
Q. Was there a man fitting that description in the apartment?
A. Yes.
Q. Was his name Justin Murph, M-u-r-p-h?
A. I don't recall.

Q. When you testified in front of the Grand Jury about this case that Tyerie Johnson was the target it wasn't true, was it?
A. From what I understood this was my first search warrant that I presented it so the term that we use was -- was target.
Q. You know what a target is, don't you?
A. The target, yes, he be -- Tyerie Johnson became our target throughout --
Q. Even though he was not named on the search warrant?
A. Correct.
Q. Why did he become the target when he was not the target on the search warrant?
A. He became the target because all the suspect narcotics was recovered in his bedroom that we deemed his bedroom with articles of mail in the bedroom.

Id. at 41:1-5; 41:18-42:1; 42:11-43:10; 45:8-46:8.

Thereafter, Plaintiff brought this lawsuit alleging a malicious prosecution claim against the City. However, the only allegation Plaintiff makes in support of the claim is

that Defendant officers misidentified Plaintiff as the "target" of the search warrant. 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. 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.

In addition, to the extent Plaintiff asserts a *Monell* claim against Defendant City, it should be dismissed for failure to state a Fourth Amendment false arrest claim against Defendant officers (the underlying constitutional claim). Similar to Plaintiff's malicious prosecution claim, Plaintiff's fails to allege the absence of probable cause to arrest. Plaintiff's complaint also does not contain sufficient allegations to support the existence of any widespread policy or practice, or that the alleged policy or practice was the "moving force" behind the alleged constitutional violation suffered by Plaintiff.

For these reasons and those stated below, Plaintiff's malicious prosecution and *Monell* claims should be dismissed.

LEGAL STANDARD

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must contain sufficient factual matter that, when accepted as true, will state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 555 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A plaintiff's statement of claims requires more than labels, conclusions, or a recitation of the elements of a cause of action. *Twombly*, 550 U.S. at 555. The Court may disregard a complaint's "inconceivable" allegations. *Atkins v. City of Chicago*, 631 F.3d 823, 830 (7th Cir. 2011).

ARGUMENT

I. Plaintiff Fails to State a Malicious Prosecution Claim.

To prove malicious prosecution under Illinois law, a plaintiff must establish that "(1) he was subjected to judicial proceedings; (2) for which there was no probable cause; (3) the defendants instituted or continued the proceedings maliciously; (4) the proceedings were terminated in the plaintiff's favor; and (5) there was an injury." *Bahena v. City of Chi.*, No. 17 C 8532, 2020 U.S. Dist. LEXIS 154859, at *15 (N.D. Ill. Aug. 26, 2020). Illinois courts disfavor malicious prosecution claims "because of the general principle that the courts should be open for litigants to settle their rights without fearing prosecution for doing so." *Hancock v. Sotheby's*, No. 17 C 7446, 2018 U.S. Dist. LEXIS 215538, at *9 (N.D. Ill. Dec. 20, 2018). As discussed below, Plaintiff fails to state a claim for malicious prosecution under the second, third and fourth prong.

a. Plaintiff Fails to Sufficiently Plead the Absence of Probable Cause.

The existence of probable cause is an absolute bar to a claim of malicious prosecution. *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). Given the above pleadings

standards pursuant to *Iqbal* and *Twombly*, a plaintiff must therefore plead sufficient facts in his or her complaint to establish the absence of probable cause. *Roldan v. Town of Cicero*, No. 17-cv-3707, 2018 U.S. Dist. LEXIS 49122, at *12-13 (N.D. Ill. Mar. 26, 2018). For the below reasons, Plaintiff's sole allegation that he was not the "target" of the search warrant is insufficient to survive dismissal as it does not sufficiently establish the absence of probable cause to pursue criminal charges.

The case of *Roldan v. Town of Cicero* is instructive. No. 17-cv-3707, 2018 U.S. Dist. LEXIS 49122 (N.D. Ill. Mar. 26, 2018). In *Roldan*, the plaintiff was arrested and later charged with three counts of criminal sexual assault. *Id.* at *2. The plaintiff thereafter brought, *inter alia*, a Fourth Amendment claim against the defendants. *Id.* at *4. The defendants filed a motion to dismiss. *Id.* The court dismissed the claim, finding the plaintiff failed to meet his "initial burden of alleging facts sufficient to show that [the] [d]efendants lacked probable cause." *Id.* at *12-14. Specifically, the court found the plaintiff cannot establish a Fourth Amendment claim by merely asserting he was arrested and detained without probable cause. The court further explained "[a]lthough the complaint includes allegations regarding the facts adduced by the prosecution at trial, Plaintiff does not allege what facts were known to Defendants at the time of his arrest or at other relevant times." *Id.* As such, Plaintiff bears the burden of sufficiently establishing that Defendant officers lacked probable cause.

Relatedly, Illinois and federal law is well-established that officers may arrest an individual without a warrant when there is probable cause to believe that a criminal offense has been or is being committed. *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004).

Further, an officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004). "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Id.* "Whether an officer has probable cause to arrest is an objective consideration, and the subjective intent of the officer in initiating the encounter, including whether the officer planned to arrest the individual, is irrelevant. *People v. White*, 2021 IL App (1st) 191095, ¶ 23 (citing *Whren v. United States*, 517 U.S. 806, 813-15 (1996)).

Here, similar to the plaintiff in *Roldan*, Plaintiff fails to meet his initial burden of alleging facts sufficient to show that Defendant officers lacked probable cause to pursue criminal charges. Plaintiff insufficiently relies solely on allegations that he was not the "target" of the warrant and that Defendant officers "did not have a warrant authorizing the arrest of plaintiff." *See* Complaint, Dkt. No. 1, ¶¶ 13-20. Such facts though do not allow this court to "infer more than the mere possibility of misconduct." *McCauley v. City of Chicag*o, 671 F.3d 611, 616 (7th Cir. 2011)). Under *Devenpeck* and *White*, Defendant officers did not need a warrant to arrest Plaintiff and thereafter pursue criminal charges if probable cause existed. Also, the officers' subjective intent in initiating the encounter or arrest—including whether he was target of the search warrant—is irrelevant. Even assuming Plaintiff was misidentified as the "target" of the search warrant, Defendant

officers could arrest Plaintiff and pursue criminal charges if there was probable cause to believe Plaintiff was in possession or control of illegal drugs.

Importantly, Plaintiff does not allege that illegal drugs were not found during the execution of the search warrant. Plaintiff also does not allege that he did not reside in the residence or the room where the illegal drugs were found. Plaintiff equally does not allege that that he did not possess or control the seized drugs. In fact, Plaintiff does not allege any facts that were known to Defendant officers at the time of his arrest or at other relevant times. The word "probable cause" does not even appear in Plaintiff's complaint. This court cannot therefore determine whether Plaintiff raises a claim of entitlement to relief.

Accordingly, Plaintiff fails to plead sufficient facts in his complaint to establish the absence of probable cause and does not plausibly establish a malicious prosecution claim. As such, Plaintiff's malicious prosecution claim should be dismissed.

b. Plaintiff's Malicious Prosecution Claim Fails as the Defendant Officers Did Not Commence or Continue a Criminal Proceeding Against Plaintiff.

Plaintiff also fails to sufficiently allege that Defendant officers "instituted or continued the proceedings maliciously," as required for a malicious prosecution claim. *Bahena v. City of Chi.*, No. 17 C 8532, 2020 U.S. Dist. LEXIS 154859, at *16 (N.D. Ill. Aug. 26, 2020); *Beaman v. Freesmeyer*, 2019 IL 122654, 433 Ill. Dec. 130, 131 N.E.3d 488, 496 (Ill. 2019). Typically, "the State's Attorney, not the police, prosecutes a criminal action." *Serrano v. Guevara*, No. 17 CV 2869, 2020 U.S. Dist. LEXIS 98130, at *62 (N.D. Ill. June 4, 2020). Police officers can only be liable if they played a "significant role" in causing the

prosecution. *Id.* The key issue is whether the defendants' actions were "the but-for and proximate cause of" the plaintiff's prosecution and, in the case of alleged "manipulated or falsified" evidence, courts in this district require it constitute "key evidence." *Id.; Bahena*, 2020 U.S. Dist. LEXIS at *16.

Here, Plaintiff's entire case relies on allegations that Defendant officers falsely stated in official police reports that Plaintiff was the target of the search. However, such alleged statements cannot amount to "key evidence" and cannot therefore have been the "but-for" or "proximate cause" of Plaintiff's prosecution. The prosecution was based on evidence that Plaintiff was in possession or control of the illegal drugs, irrespective of whether he was "target" of the warrant. *See* Certified Statement of Disposition, attached as Exhibit A; 12-19-2019 Trial Transcript. At the bench trial, the State did not even present evidence or otherwise argue that Plaintiff was the "target" of a warrant. *Id.*

Therefore, even taking Plaintiff's allegations as true, Defendant officers did not manipulate or fabricate any "key evidence" and could not have proximately caused Plaintiff's prosecution. As such, Plaintiff's malicious prosecution claim should be dismissed.

c. Plaintiff's Malicious Prosecution Claim Fails as Defendant Officers Did Not Act with Malice.

Plaintiff has additionally failed to allege that the Defendant officers acted with malice. Malice in the context of malicious prosecution means that the officers had "any motive other than that of bringing a guilty party to justice." *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)). As detailed above, Plaintiff has not even established the absence of probable cause and certainly has not alleged the requisite malice. As Plaintiff has failed to allege malice on behalf of the officers, his malicious prosecution claim fails.

II. *To the Extent Plaintiff brings a Monell Claim, It Should be Dismissed as It is Not Adequately Plead.*

a. Plaintiff Has Not Adequately Pled an Underlying Constitutional Violation.

It is well settled that a plaintiff cannot prevail on a *Monell* claim 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). Here, Plaintiff brings an underlying Fourth Amendment false arrest claim against Defendant officers. However, similar to the arguments raised above on Plaintiff's malicious prosecution claim, Plaintiff's Fourth Amendment false arrest claim must also be dismissed as 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)). For the same reasons discussed in Section II, Plaintiff fails to sufficiently allege that Defendant officers lacked probable cause to arrest.

Therefore, Plaintiff's allegations do not plausible establish a false arrest claim. Absent an underlying Fourth Amendment claim, Plaintiff's *Monell* claim must be dismissed.

b. Plaintiff's *Monell* Claim Should be Dismissed As Plaintiff Fails to Adequately Allege a Widespread Pattern and/or Practice.

Plaintiff must sufficiently allege a pattern and practice that represents a *de facto* policy for municipal liability under § 1983. 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 must allege the same problem has arisen many times and the municipality acquiesced in the outcome to possibly allow the inference that a policy exists. *Valentino v. Village of South Chicago Heights*, 575 F.3d 664, 675 (7th Cir. 2009); *Palmer v. Marion County*, 327 F.3d 588, 596-597 (7th Cir. 2003) (two incidents of misconduct in a one-year period fails to establish a "widespread practice"); *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017) ("the specific actions of the detectives in Gill's case alone, without more, cannot sustain a *Monell* claim based on the theory of *de facto* policy."); *Thomas v. Cook Cnty. Sheriff's Dept.*, 604 F.3d 293, 303 (7th Cir. 2010); *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002) (three incidences insufficient to amount to a persistent and widespread practice.) These other instance of misconduct also must be similar enough to the complained-of constitutional violations to make it plausible that that particular custom or practice had the force of law. *See Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005); *Hicks v. City of Chi.*, 2017 U.S. Dist. LEXIS 160617, 2017 WL 4339828, at *9 (N.D. Ill. Sept. 29, 2017) (facts that "have no direct or inference-generating connection" to the alleged constitutional violation cannot support a widespread practice claim). *Baskins v. Gilmore*, No. 17 C 07566, 2018 U.S. Dist. LEXIS 168579, at *10 (N.D. Ill. Sep. 30, 2018).

Similar to this case, in *Smith*, the plaintiff alleged that a "code of silence" is a widespread practice of custom of the City. *Smith v. City of Chi.,* No. 18 C 4918, 2019 U.S. Dist. LEXIS 601, at *21 (N.D. Ill. Jan. 3, 2019), *reh'g granted,*, 2019 U.S. Dist. LEXIS 151957, at *5 (N.D. Ill. Sep. 6, 2019). Counsel in this case, Kenneth N. Fkaxman P.C., represented the plaintiff. *Id.* The plaintiff's complaint in *Smith* contains the same exact allegations for his *Monell* claim as in this case. *Id.*; *see also* Smith Complaint, attached as Exhibit C.[3] The court dismissed the plaintiff's *Monell* claim, finding that "his allegations about the existence of the 'code of silence' are generally stated and his only specific allegation about the "code of silence" at play in this case is that [the defendant officers] acted pursuant to it." *Id.* The court concluded that "these allegations do not lead to an inference of pervasive or widespread misconduct, either in fabricating evidence or ignoring misconduct." *Id.*

Here, in the same exact manner as in *Smith*, Plaintiff alleges a "code of silence" exists. *See* Complaint, Doc. No. 1, ¶¶ 24-28. Just as in *Smith*, other than generally referring to an alleged "code of silence," Plaintiff points to no other instances, only that the defendant officers acted pursuant to an alleged "code of silence." These naked assertions do not "lead to an inference of pervasive or widespread misconduct," and have already been rejected by courts in this district.

[3] This court may take notice of the complaint filed in *Smith* as it is a source "whose accuracy cannot be reasonably questioned," in the sense that the document filed can be reliably assumed to be irrefutable proof that a complaint was actually filed. *ABN Amro, Inc. v. Capital Int'l Ltd.*, 2007 U.S. Dist. LEXIS 19601, *38, 2007 WL 845046 (N.D. Ill. March 16, 2007). Defendant City does not ask this court to take notice of the facts alleged in the complaint.

For these reasons, Plaintiff fails to state a proper *Monell* claim and should be dismissed.

c. Plaintiff's *Monell* Claim Should be Dismissed as Plaintiff Fails to Allege that the City's Policies or Practices were the Moving Force Behind the Alleged Constitutional Violation.

Further, Plaintiff's *Monell* claim does not plausibly allege that the "code of silence" caused his constitutional injury. Simply alleging a "code of silence" is insufficient: Plaintiff must adequately allege (and, ultimately, prove later in the case) how the City, and not just the individual Chicago police officers, was responsible for causing his constitutional deprivation. There must be a direct causal link between the municipal policy and the constitutional injury. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989); *Bd. of Cnty. Commis of Bryan Cnty., Oakland v. Brown*, 520 U.S. 397, 407 (1997)). In order to show causation, a plaintiff must demonstrate that the municipality's deliberate conduct was the "moving force" behind the alleged injury. *Brown*, 520 U.S. at 404; *Johnson v. Cook County*, 526 Fed. Appx. 692, 695, 2013 WL 2005236, at *3 (7th Cir. 2013) ("deliberate action" by the municipality must be the moving force behind the constitutional violation).

First, courts look at "whether the complaint alleges a direct causal link between a policy or custom of the [municipality] and the alleged constitutional violations." *Sims*, 506 F.3d at 515; *Mikolon v. City of Chi.*, No. 14 CV 1852, 2014 U.S. Dist. LEXIS 171318, at *4 (N.D. Ill. Dec. 11, 2014). In the instance of an alleged widespread practice, it requires evidence of a true municipal policy, not a random event. *Calhoun v. Ramsey*, 408 F.3d 375, 378 (7th Cir. 2005); *see also Sroga v. Preckwinkle*, No. 14 C 6594, 2016 WL 1043427, at

*8 (N.D. Ill. Mar. 16, 2016) (Chang, J.). The plaintiff must show "policymakers were deliberate[ly] indifferen[t] as to [the custom's] known or obvious consequences"; that the municipality was "aware of a substantial risk'…and…'failed to take appropriate steps to protect [plaintiff].'" *Young*, 2011 WL 1575512, at *2; *see also Brown*, 520 U.S. at 404 (1997) (identifying a policymaker's conduct attributable to that municipality is insufficient to establish a liability for a "policy").

Cited above, this district in *Smith v. City of Chi*. dismissed the plaintiff's *Monell* claim, which contained the same exact allegations as in this case. In addition to finding there was no alleged widespread policy or practice, the court also ruled that the plaintiff did not plausible allege causation. 2019 U.S. Dist. at *21. The court found that "[w]ith regard to causation, his "code of silence" allegations are brief and circular: the "code of silence" caused Officers Mitchell and Otero to do what they did because they acted pursuant to the "code of silence." *Id.*

Similar to *Smith*, Plaintiff's complaint suffers from an insufficient connection between the alleged "code of silence" and the alleged constitutional violation. 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. There is no evidence that Defendant officers felt protected by an alleged "code of silence" based on previous experience. In addition, there are no allegations that Defendants officers were encouraged to commit unconstitutional acts because they knew that fellow officers would not testify against them or that any specific individuals agreed to follow an alleged "code of silence."

Plaintiff's references to an alleged "code of silence" are therefore entirely too attenuated and conclusory for this court to determine if the "code of silence" plausibly could have been the moving force behind Plaintiff's alleged constitutional violation. *Cook v. City of Chicago*, No. 06 C 5930, 2014 WL 4493813, at *8 (N.D. Ill. Sept. 9, 2014). 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.

CONCLUSION

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

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, I electronically filed the foregoing Defendant City of Chicago's Memorandum in Support of its 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