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

Tyerie Johnson, Plaintiff, vs. City of Chicago, Bradley Anderson, #15600, 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 Judge Sara L. Ellis

DEFENDANT OFFICERS' AMENDED 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 valid search warrant for the second-floor at a building on the 6800 block of South Dorchester Avenue in Chicago, Illinois. At the time the warrant was executed, Plaintiff was on the premises, and 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 seeking to dismiss Plaintiff's malicious prosecution claim and any alleged *Monell* claims. In its Motion, the City argues that Plaintiff failed to allege sufficient facts to show that the Defendant Officers lacked probable cause. Plaintiff fails to allege that narcotics were not found, that he did not possess or control the recovered narcotics and fails to allege that he did not reside in the apartment or room in which the recovered narcotics were found. 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.

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 for 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

PLAINTIFF FAILS TO ALLEGE SUFFICIENT FACTS TO ESTABLISH NO PROBABLE CAUSE

Plaintiff's allegation that he was not the "target" of the warrant does not establish that there was no probable cause for his detention and arrest. Plaintiff fails to allege facts demonstrating there was no probable cause for Defendant Officers to suspect him of any criminal activity thereby resulting in his detention and arrest. His Fourth Amendment claim is based on conclusory, threadbare allegations that the officers lacked probable cause and is insufficient to survive a motion to dismiss. *Roldan v. Town of Cicero*, 2018 U.S. Dist. LEXIS 49122 (N.D. Ill. Mar. 26, 2018)(dismissing Fourth Amendment claim where plaintiff failed to allege what facts were known to Defendants at the time of his arrest that would establish they lacked probable cause).

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. 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 officers 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; rather, he simply contends he was not the subject of the warrant. Plaintiff's argument fails because whether the Defendant Officers planned to arrest Plaintiff is irrelevant. In *Devenpeck v. Alford*, 543 U.S. 146 (2004), the Supreme Court held that the probable cause inquiry did not depend on whether the offense invoked by the officer at the time of arrest was closely related to facts that provided probable cause to arrest for another offense. The Court stated: "Subjective intent of the arresting officer, however it is determined (and of course subjective intent is always determined by objective means), is simply no basis for invalidating an arrest. Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest." *Id.* at 155. See also, *Whren v. United States*, 517 U.S. 806, 813-815 (1996)(holding 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); See also, *People v. Kolichman*, 218 Ill. App. 3d 132, 139 (1991)(the fact that arresting officer did not testify that his intention was to arrest the defendant did not render a search unreasonable because probable cause objectively existed).

Moreover, Plaintiff was undeniably located in the building in which a valid search warrant was executed and further admits that he was arrested "during the search." Dkt #1, ¶11. *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). The Illinois Appellate court recently affirmed the decision in *People v. Robert White*, 2021 IL App (1st) 191095, where the trial court

held that where an officer approaches a defendant and has probable cause to believe he has committed a crime, the officer has authority to arrest and search the defendant incident to the arrest even if he did not intend, on initially approaching the defendant, to arrest him for the crime for which the officer had knowledge of probable cause. *Id.* at ¶ 23. As *Devenpeck* and *White* instruct, even if Plaintiff was not the individual identified in the warrant, Defendant officers could arrest him if there was probable cause to believe that he was in possession or control of illegal drugs.

At Plaintiff's bench trial, one officer explained that probable cause to arrest Plaintiff was based on narcotics recovered in Plaintiff's bedroom, or what was deemed to be his bedroom based on articles of mail addressed to Plaintiff that were present. (12-19-2019 Trial Transcript, attached as Exhibit A).[1] Probable cause is an absolute defense to Plaintiff's claims for unlawful detention/seizure and false arrest. Plaintiff simply alleges that no reasonable officer would believe he was the target of the search (Dkt #1, ¶12). Plaintiff does not allege that he did not reside in the building, that the articles of mail were not addressed to him, that he did not possess drugs, that there was no reason to believe he was in possession of drugs or that there was no reason to believe he or anyone in the residence committed any criminal activity. Such allegations are required to state a claim because there could still be probable cause to arrest and detain Plaintiff even if he was not the target of the warrant, but there was still reason for Defendant Officers to believe that he committed a crime. Plaintiff fails to contend that there was no reason for the Defendant

[1] This court may take notice of the transcript of the proceedings of Plaintiff's criminal prosecution. *O'Hara v. O'Donnell*, 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 officers do not ask this court to credit any of the testimony as true.

Officers to believe he committed a crime while he was present in a residence during a valid search in which drugs were found and he and other suspects were arrested. 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. Therefore, Defendant Officers are entitled to qualified immunity as to Plaintiff's claims because they were executing a valid search warrant that had been approved by a judge, detained and seized Plaintiff incident to the execution of that warrant.

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' Amended Motion to Join City of Chicago's Motion to Dismiss and to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) 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 7th day of May, 2021, with proper postage prepaid.

s/ William B. Oberts
an Attorney