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

Tyerie Johnson,	)	
	)	
Plaintiff,	)	No. 20-cv-7222
	)	
-vs-	)	*(Judge Ellis)*
	)	
City of Chicago, et al.	)	
	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS

Plaintiff Tyerie Johnson was arrested during a police raid that is the subject of two other pending lawsuits.[1]

Defendants Anderson and Westman made the arrest (ECF No. 1, Complaint ¶ 11) without a warrant or probable cause (*id.* ¶ 18(a)-(d)), made material false statements in their police reports to justify the arrest (*id.* ¶ 20(a)-(c)), and then communicated the false charge to the prosecutors. (*id.* ¶ 20(d).) As a result, plaintiff was wrongfully detained and prosecuted. (*Id.* ¶ 21.)

Defendants Holden and Carranza were also present during the raid (ECF No. 1, Complaint ¶ 10) and, like Anderson and Westman, made material

[1] *Turner v. Chicago*, 21-cv-704 (Judge Durkin) and *Archie v. Chicago*, 19-cv-4838 (Judge Gettleman). Plaintiff in this case "does not bring any claim about the search." (ECF No. 1, Complaint ¶ 6.) Nor does plaintiff challenge the right of officers executing a search warrant of a home to detain individuals during the search. The Court need not consider defendants' argument about this issue. (ECF No. 37 at 5-6.)

false statements in their police reports to justify the arrest of plaintiff. (*Id.* ¶ 15.) Holden and Carranza knew about the misconduct of Anderson and Westman but failed to intervene to prevent the violation of plaintiff's rights. (*Id.* ¶¶ 20(b), 20(c).)

Defendants Bruno, Brown, and Willingham were supervising officers during the search. (ECF No. 1, Complaint ¶ 16.) These supervisors knew about the false police reports but also failed to intervene to prevent the violation of plaintiff's rights. (*Id.* ¶ 17.)

In addition to Section 1983 claims against the individual officers, plaintiff brings a *Monell* claim against the City of Chicago based on the well-documented "code of silence" in the Chicago Police Department. (ECF No. 1, Complaint ¶¶ 24-29.) Plaintiff also brings a supplemental state law claim of malicious prosecution against the City of Chicago. (*Id.* ¶¶ 30.)

All defendants have filed Rule 12(b)(6) motions to dismiss. ECF No. 36 (City of Chicago); ECF No. 37 (individual defendants).[2] The Court should deny these motions for the reasons set out below.

[2] The Court struck defendants' first motion to dismiss because it improperly sought to rely on police reports that plaintiff had not submitted with his complaint. (ECF No. 32.) Defendants flout the Court's order in the present motions, seeking to rely on testimony at plaintiff's criminal trial as showing probable cause to arrest (ECF No. 37 at 6) and probable cause to prosecute. (ECF No. 36 at 2-3.) The Court should again refuse to consider arguments based on materials outside of the pleadings. *See infra* at 7-8.

I. The Motion to Dismiss of the Individual Officers

The individual officers limit their motion to dismiss to a single argument: that plaintiff has failed to allege the absence of probable cause.[3] (ECF No. 37 at 2.) Defendants also raise a cursory argument about qualified immunity, but they acknowledge that this argument is duplicative of their probable cause argument. (ECF No. 37 at 7.) The Court should reject these arguments because they are based on a skewed reading of the complaint.

Plaintiff alleges the following in paragraph 18 of his complaint to provide plausibility to his claim of arrest without probable cause:

> 18. At the time of plaintiff's arrest:
>
> a. Defendants Anderson and Westman did not have a warrant authorizing the arrest of plaintiff;
>
> b. Defendants Anderson and Westman did not believe that a warrant had been issued authorizing the arrest of plaintiff;
>
> c. Defendants Anderson and Westman had not observed plaintiff commit any offense; and
>
> d. Defendants Anderson and Westman had not received information from any source that plaintiff had committed an offense or was otherwise subject to arrest.

(ECF No. 1, Complaint ¶18.)

Plaintiff also alleges that, following the false arrest, defendants fabricated evidence (ECF No. 1, Complaint ¶¶ 14-15), causing plaintiff to be

[3] The individual defendants do not challenge the sufficiency of the allegations of personal involvement (ECF No. 1, Complaint ¶¶ 11, 16-17, 20), failure to intervene (*id.* ¶¶ 17, 20(b), 20(c)), fabrication of evidence (*id.* ¶ 14), or conspiracy (*id.* ¶ 14).

"unlawfully seized and deprived of his liberty" (*id.* ¶ 23) until he was "exonerated at trial on December 19, 2019." (*Id.* ¶ 21.) Neither the City nor the individual defendants challenge the sufficiency of plaintiff's allegations that, following the unlawful arrest, he was subjected to an unreasonable pretrial restraint of liberty without probable cause in violation of the Fourth Amendment, a claim pursuant to *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017). *See Gibson v. City of Chicago*, 19 C 4152, 2020 WL 4349855, at *10 (N.D. Ill. July 29, 2020).

The individual defendants assert that more is required to allege the absence of probable cause, arguing that plaintiff has failed 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." (ECF 37 at 2.) The Court should reject defendants' argument that plaintiff must anticipate and rebut defenses: "Judges should respect the norm that complaints need not anticipate or meet potential affirmative defenses." *Richards v. Mitcheff*, 696 F.3d 635, 638 (7th Cir. 2012). That is, "complaints need not anticipate or attempt to plead around potential defenses." *Craftwood II, Inc. v. Generac Power Sys., Inc.*, 920 F.3d 479, 482 (7th Cir. 2019).

Defendants mistakenly seek to compare the detailed factual allegations of the complaint in this case with those alleged in the initial complaint in *Roldan v. Town of Cicero*, 17-CV-3707, 2018 WL 1469011 (N.D. Ill. Mar. 26, 2018). The plaintiff's original complaint in *Roldan* "did not allege what facts were known to Defendants at the time of his arrest or at other relevant times." *Id.* at *5. The plaintiff in *Roldan* corrected this deficiency in an amended complaint, attached as Exhibit 1, that mirrors plaintiff's allegations in this case:

> 66. At the time of plaintiff's arrest, none of the arresting officers had a warrant authorizing the arrest of the plaintiff.
>
> 67. At the time of the arrest, none of the arresting officers believed that a warrant had been issued authorizing the arrest of the plaintiff.
>
> 68. At the time of the arrest, none of the arresting officers had observed plaintiff commit any criminal offense.
>
> 69. At the time of the arrest, none of the arresting officers had received any information from any source that plaintiff had committed any criminal offense as it relates to J.T.
>
> 70. Upon information and belief, after arresting the plaintiff, the arresting officers and other members of the Cicero Police Department, including the named detective defendants, conspired and agreed to fabricate a story in an attempt to justify the unlawful arrest, and to cause the plaintiff to be wrongfully detained and prosecuted.
>
> 71. The acts of the arresting officers and detectives in furtherance of their scheme to justify their false arrest and wrongful detention and prosecution included the following:
>
> i. One or more of the arresting officers and detectives prepared police reports containing false account of how and where plaintiff was placed under arrest;
>
> ii. One or more of the arresting officers and detectives attested through the official police reports regarding the false account of the circumstances of plaintiff's arrest;

> iii. One or more of the arresting officers and detectives communicated the false narrative to the prosecutors which resulted in plaintiff's wrongful detention and prosecution for the crime he did not commit.
>
> 72. Each of the wrongful acts of the arresting officers and detectives was performed with the knowledge that the acts would cause plaintiff to be wrongfully held and falsely prosecuted for an offense that he did not commit.
>
> 73. The actions of the defendants in falsely arresting and detaining plaintiff resulted in plaintiff being wrongfully prosecuted and convicted.

(Exhibit 1 ¶¶ 66-73.)

The district court in *Roldan* considered the allegations in the amended complaint, found that they fairly alleged a Fourth Amendment claim, and denied the motion to dismiss because, *inter alia*, the defendants "fail to identify any facts known by the arresting officers at the time Plaintiff was arrested that would establish probable cause to arrest Plaintiff." *Roldan v. Town of Cicero*, 17-CV-3707, 2019 WL 1382101, at *4 (N.D. Ill. Mar. 27, 2019). This Court should follow *Roldan*.

Plaintiff's allegations meet the standard established by the Seventh Circuit in *Neita v. City of Chicago*, 830 F.3d 494 (7th Cir. 2016):

> In short, Neita alleges that he showed up at Animal Control to surrender two dogs, neither of which showed signs of abuse or neglect, and was arrested without any evidence that he had mistreated either dog. If these allegations are true, no reasonable person would have cause to believe that Neita had abused or neglected an animal. Nothing more is required to permit this straightforward false-arrest claim to proceed.

Id. at 497. The Court should therefore reject defendants' probable cause argument.

II. The Court Should Disregard Defendants' Alternative Facts

As the Court made plain in its Order striking the first motion to dismiss, the Court may not consider extrinsic evidence on a Rule 12(b)(6) motion to dismiss without converting the motion into one for summary judgment. (ECF No. 32 at 2.) Defendants nevertheless repeat their request that the Court rely on extrinsic evidence to find that there was probable cause to arrest and prosecute plaintiff. Rather than cite to the arrest reports that the Court refused to consider, defendants now rely on the transcript of plaintiff's criminal trial—a trial that resulted in a not-guilty finding. (ECF No. 36, Exhibit B; ECF No. 37, Exhibit A.)

According to defendants, the Court should rely on the transcript to find that there was probable cause to arrest and prosecute plaintiff. (ECF No. 36 at 8; ECF No. 37 at 6.) Defendants wisely do not argue that the acquittal includes any finding that is entitled to collateral estoppel effect. *See Sornberger v. City of Knoxville, Ill.*, 434 F.3d 1006, 1022-23 (7th Cir. 2006). Nor do defendants argue that the explanation provided by the state court trial judge for her finding (ECF No. 36-2 at 61:4-62:24), while instructive, is other than

inadmissible hearsay. The Court should once again strike the extrinsic materials submitted by defendants.

The Court should also reject defendants' bogus claim that they executed a "valid search warrant." (ECF No. 37 at 1, 5, 7.) Plaintiff was not named in the warrant and "does not bring any claim about the search." (ECF No. 1, Complaint ¶ 6.) Plaintiff does not, however, concede that the warrant was "valid." Whether the warrant was "valid" is a disputed factual question that is not material to whether the complaint states a claim. Evidence that the warrant was based on material false statements will be relevant to punitive damages and credibility, but is not germane to the Rule 12(b)(6) motion to dismiss.

Courts in this district have repeatedly refused to resolve factual questions about the existence of probable cause at the motion-to-dismiss stage. *Romando v. City of Naperville*, No. 20 C 2701, 2021 WL 1853304, at *3 (N.D. Ill. May 10, 2021); *Walsh v. Kaluzny Brother's Inc.*, No. 14 C 3412, 2015 WL 6673835, at *5 (N.D. Ill. Oct. 30, 2015); *Phipps v. Adams*, No. 11–147–GM, 2012 WL 686721 at *2–3 (S.D. Ill. March 2, 2012); *Engel v. Buchan*, 791 F. Supp. 2d 604, 611 (N.D. Ill. 2011); *Gay v. Robinson*, No. 08-4032, 2009 WL 196407, at *4 (C.D. Ill. Jan. 27, 2009). Defendants fail to present any reason for this Court to depart from this well-settled rule.

III. Plaintiff Has Sufficiently Alleged a State Law Malicious Prosecution Claim

Defendant City of Chicago argues that plaintiff's complaint fails to satisfy two elements of a state law malicious prosecution claim. First, the City asks the Court to consider the evidence presented at plaintiff's criminal trial and find that the officers did not cause the criminal proceedings. (ECF No. 36 at 8-9.) This argument is without merit. Illinois law recognizes that "[p]olice officers may be subject to liability for malicious prosecution '[i]f they initiate a criminal proceeding by presentation of false statements, or by withholding exculpatory information from the prosecutor.'" *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 44, 131 N.E.3d 488, 499 (quoting 3 Dan B. Dobbs, Paul T. Hayden, & Ellen M. Bublick, THE LAW OF TORTS § 587, at 392 (2d ed. 2011).) Plaintiff asserts that "[o]ne or more of defendants Anderson and Westman communicated the false charge to prosecutors," (ECF No. 1, Complaint ¶ 20(c), thereby plausibly alleging that they one or more of them initiated the "criminal proceeding by presentation of false statements." *Beaman*, 2019 IL 122654 ¶ 44.

Defendant City also argues that plaintiff cannot plausibly allege malice because the individual officers had probable cause to arrest. (ECF No. 36 at 9-10.) Plaintiff showed above that his allegations are sufficient to plausibly

allege the absence of probable cause, from which malice can be inferred. *Williams v. City of Chicago*, 733 F.3d 749, 760 (7th Cir. 2013).

IV. Plaintiff has Sufficiently Alleged a *Monell* Claim

Defendant City of Chicago seeks dismissal of plaintiff's *Monell* claim, which is based on the well-documented code of silence in the Chicago police department. The City asserts that plaintiff has failed to "allege the same problem has arisen many times." (ECF No. 36 at 11.) This argument cannot stand against the findings of the United States Department of Justice, set out in paragraphs 25-26 of the complaint.

The Department of Justice, in its official report entitled "Investigation of the Chicago Police Department issued on January 13, 2017, made the following findings (at 75):

> "One way to cover up police misconduct is when officers affirmatively lie about it or intentionally omit material facts."
>
> "The Mayor has acknowledged that a 'code of silence' exists within CPD, and his opinion is shared by current officers and former high-level CPD officials interviewed during our investigation."
>
> "Indeed, in an interview made public in December 2016, the President of the police officer's union admitted to such a code of silence within CPD, saying 'there's a code of silence everywhere, everybody has it . . . so why would the [Chicago Police] be any different.'"

(ECF No. 1, Complaint ¶ 25.)

The United States Department of Justice concluded that "a code of silence exists, and officers and community members know it." Report at 75. (ECF No. 1, Complaint ¶ 26.)

The Seventh Circuit recognized the impact and admissibility of a similar DOJ Report in *Daniel v. Cook County*, 833 F.3d 728, 740 (7th Cir. 2016). At least one district court has held that such a report is sufficient evidence to survive summary judgment. *Kalvitz v. v. City of Cleveland*, 1:16 CV 748, 2017 WL 6805678, at *10 (N.D. Ohio Oct. 16, 2017), *aff'd on other grounds*, *Kalvitz v. City of Cleveland*, 763 Fed. Appx. 490 (6th Cir. 2019).

The City does not dispute that in October of 2020, its Police Superintendent admitted that the "code of silence" continues to exist. (ECF No. 1, Complaint ¶ 26.) Plaintiff's allegations, therefore, "permit the reasonable inference that the practice is so widespread so as to constitute a governmental custom." *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017) (finding that the plaintiff had failed to plausibly allege the existence of other examples of a challenged practice).

The City's argument about plaintiff's *Monell* claim mistakenly relies on cases decided at summary judgment. *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); *Thomas v. Cook County Sheriff's Dep't.*, 604 F.3d

293, 303 (7th Cir. 2010); *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002). At the pleading stage, however, a plaintiff asserting a *Monell* claim is "not required to identify every other or even one other individual" harmed by the alleged widespread practice. *White v. City of Chicago*, 829 F.3d 837, 844 (7th Cir. 2016).

Plaintiff acknowledges that, as defendant points out, Judge Kendall rejected a code of silence claim in *Smith v. City of Chicago*, No. 18 C 4918, 2019 WL 95164, at *1 (N.D. Ill. Jan. 3, 2019), *appeal pending* No. 19-2795 (7th Cir.) The plaintiff in *Smith* filed an amended complaint and, as the appellant points out in *Smith*, "[t]he district court never passed on the substance of the conspiracy and *Monell* claims plaintiff included in his amended complaint." (*Smith v. City of Chicago*, No. 19-2795, Brief of Appellant at 27 (7th Cir.))

Contrary to the district court order in *Smith*, the weight of authority is that the allegations plaintiff presents in this case sufficiently plead a *Monell* claim against the City by alleging that the City has a widespread practice or custom of covering up police misconduct and that this practice was the cause of plaintiff's injuries. *Hallom v. City of Chicago*, No. 18-cv-4856, 2019 WL 1762912, at *4 (N.D. Ill. Apr. 22, 2019); *Spearman v. Elizondo*, 230 F. Supp. 3d 888, 896 (N.D. Ill. 2016); *Obrycka v. City of Chicago*, 07 C 2372, 2012 WL 601810, at *9 (N.D. Ill. Feb. 23, 2012). Thus, as the Seventh Circuit held in

Sledd v. Lindsay, 102 F.3d 282, 287 (7th Cir. 1996), a "code of silence" could be the cause of the injuries to the plaintiff "because the officers responsible for using excessive force and otherwise abusing [the plaintiff] had good reason to believe that their misconduct would not be revealed by their fellow officers and that they would effectively be immune even if a complaint was filed." *Id.* at 287.

Plaintiff notes that in *Jordan v. City of Chicago*, 20-cv-4012, Judge Gottschall recently concluded that the plaintiff's original complaint failed to "plead enough facts to raise the inference that the code of silence was the moving force behind the constitutional violations he suffered above the speculative level." *Jordan v. City of Chicago*, 20-CV-4012, 2021 WL 1962385, at *5 (N.D. Ill. May 17, 2021). The plaintiff in *Jordan* accepted the district court's invitation to file an amended complaint and added allegations that are applicable to this case about how the "code of silence" harms arrestees. (*Jordan*, 20-cv-4012, ECF No. 46, Amended Complaint.)

The allegations in the amended complaint in *Jordan* are consistent with the complaint in this case and may therefore be considered in response to the motions to dismiss. *Bausch v. Stryker Corp.*, 630 F.3d 546, 559 (7th Cir. 2010). Under this rule, plaintiff presents the following allegations for the Court's consideration on the motions to dismiss:

- By maintaining its code of silence, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.
- The code of silence gave defendants Anderson, Brown, Carranza, Bruno, Holden, Westman, and Willingham comfort and a sense that they could violate plaintiff's rights and not be disciplined.
- The code of silence emboldened Anderson, Brown, Carranza, Bruno, Holden, Westman, and Willingham to frame plaintiff.
- The code of silence provided defendants Anderson, Brown, Carranza, Bruno, Holden, Westman, and Willingham with good reason to believe that they would effectively be immune from any sanction for their wrongdoing.
- The code of silence encourages Chicago police officers to frame innocent persons because the officers know they will not be meaningfully disciplined, and it encouraged defendants Anderson, Brown, Carranza, Bruno, Holden, Westman, and Willingham to frame plaintiff.

Accordingly, plaintiff has fairly alleged that defendant officers "had good reason to believe that their misconduct would not be revealed by their fellow officers and that they would effectively be immune even if a complaint was filed." *Sledd v. Lindsay*, 102 F.3d 282, 287 (7th Cir. 1996). The Court should therefore reject the challenge to plaintiff's *Monell* claim.

V. Conclusion

The Court should therefore deny defendants' motions to dismiss.

Respectfully submitted,

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