

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

Tyerie Johnson,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 20-cv-07222
)	
City of Chicago, Bradley Anderson, #15600,)	Judge Sara L. Ellis
Cornelius Brown, #2235, Yvette Carranza,)	
#13435, Anthony Bruno, #1123, Steven Holden,)	
#8149, Scott Westman, #18472, and)	
Russell Willingham, #511,)	
)	
Defendants.)	

**DEFENDANT OFFICERS' REPLY BRIEF IN SUPPORT OF THEIR MOTION 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., and for their Reply in support of their Motion to Dismiss, Defendant Officers state as follows:

Introduction

Plaintiff's Response is rife with contradictions. On the one hand, the Response states that "Plaintiff does not bring any claim about the search. Nor does plaintiff challenge the right of officers executing a search warrant of a home to detain individuals during the search." (ECF No. 38, p.1, fn. 1). On the other hand, Plaintiff repeatedly contends he was "wrongfully detained." (ECF No. 1, ¶19, ¶21 and ECF No. 38, p. 1). The Response does not challenge the validity of the warrant that was issued for the property. Plaintiff does not deny that he resided at the subject property nor does he deny that narcotics were found at his residence. Plaintiff does not object to

being searched and detained pursuant to the warrant. Apparently, Plaintiff's claim seems to be limited to his actual arrest, not the execution of the warrant, search of the residence and detention incident to said search.

Plaintiff was arrested for manufacture and delivery or intent to manufacture and deliver heroin and cannabis based upon narcotics found during the subject search. (ECF No. 37, p. 6, Ex. A). Plaintiff's Complaint does not deny possessing heroin and cannabis, nor does Plaintiff deny that heroin and cannabis were found in his residence. Plaintiff's Complaint fails to allege sufficient facts to state a claim under §1983 because he fails to provide any facts showing an absence of probable cause.

I. Plaintiff fails to allege Defendant Officers lacked probable cause, thereby barring his §1983 claims against Defendant Officers.

The existence of probable cause to arrest is an absolute defense to any §1983 claim against a police officer for false arrest. *Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir. 2006). It is axiomatic that one cannot determine whether probable cause exists for an arrest without examining all the events leading up to the arrest. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). "To determine whether an officer had probable cause for an arrest, "we examine the events leading up to the arrest, and then decide, 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause'" *Pringle*, 540 U.S. 366, 371 (2003), quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996). A plaintiff claiming that he was arrested without probable cause carries the burden of establishing the absence of probable cause. *McBride v. Grice*, 576 F. 3d 703, 706 (7th Cir. 2009).

A. Plaintiff's failure to allege an absence of probable cause precludes his claims against Defendant Officers.

Plaintiff contends his claim of arrest without probable cause is plausible because his Complaint alleges that “Anderson and Westman did not observe Plaintiff commit any offense and Anderson and Westman had not received any information that plaintiff had committed an offense.” (ECF No. 38, p. 3). Contrary to Plaintiff’s argument, it was not necessary for the Defendant Officers to observe him actually commit an offense or know that he had committed an offense for them to have probable cause. The U.S. Supreme Court has explained: “Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily or even usefully reduced to a neat set of legal rules. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *District of Columbia v. Theodore Wesby, et al.*, 138 S. Ct. 577 (2018)(internal citations omitted). Probable cause to justify an arrest exists if the totality of the facts and circumstances known to the officer at the time of the arrest would warrant a reasonable, prudent person in believing that the arrestee had committed, was committing or was about to commit a crime. *Thayer v. Chiczewski*, 705 F.3d 237, 246 (7th Cir. 2012).

Plaintiff does not dispute that Defendant Officers had a search warrant for the property located at 6832 S. Dorchester, nor does he dispute that he resided at that property at the time the search was conducted. Finally, Plaintiff does not dispute the fact that narcotics were found at the property during the search.

Plaintiff argues he was falsely arrested because he was not the target of the warrant, but, as explained in Defendant Officers’ Memorandum in Support of their Motion to Dismiss, whether Plaintiff was named as the original target is irrelevant. To state a claim for false arrest, Plaintiff is required to set forth the totality of the facts and circumstances of his arrest. If, based upon the totality of facts and circumstances, Defendant Officers lacked actual probable cause or no

reasonable officer would believe that probable cause existed, then he can meet his burden to state a claim for false arrest.

Plaintiff fails to meet his burden, as he does not allege the totality of the facts and circumstances of his arrest. Rather, Plaintiff suggests that because he was not the original target, no reasonable officer would have believed probable cause existed. It is not enough to say Defendant Officers did not observe him commit a crime. Rather, Plaintiff needs to provide facts to demonstrate an absence of probable cause to arrest him during the search in which narcotics were located in the premises. Plaintiff does not do so. In fact, the Complaint is silent as to what, exactly, Plaintiff was doing during the search. Plaintiff needs to allege specific facts regarding his own actions and conduct during the search which would allow a juror to infer that, observing Plaintiff's conduct during the search, no reasonable officer would have believed there was a probability that Plaintiff was engaged in criminal activity. Plaintiff fails to allege any facts to show why it was unreasonable for Defendant Officers to believe he lived in the premises where narcotics were found. Plaintiff fails to allege any facts to show why it was unreasonable for Defendant Officers to believe that Plaintiff was in possession of drugs. Therefore, Plaintiff's complaint does not sufficiently allege an absence of probable cause, and his §1983 claims against the Defendant Officers should be dismissed.

Plaintiff erroneously contends that "the individual defendants do not challenge the sufficiency of the allegations of personal involvement, failure to intervene, fabrication of evidence or conspiracy (Pltf. Resp., p. 3, fn. 3). To the contrary, Defendant Officers argue that Plaintiff fails to meet his burden to establish personal involvement, failure to intervene, fabrication of evidence or conspiracy. Defendant Officers argue that they are entitled to qualified immunity because there are no factual allegations that clearly establish that they understood that what they were doing was

unlawful. The Defendant Officers state: “the Complaint does not allege any Defendant Officer knew of any fact that would lead them to suspect the search warrant itself was invalid.” (ECF. No. 37, p. 7). In the absence of this knowledge, Defendant Officers could not have conspired to violate, or failed to intervene to preserve Plaintiff’s due process right to a fair trial. *Sornberger v. Knoxville*, 434 F. 3d 1006, 1019 (7th Cir. 2006)(failure to intervene claim cannot exist if defendant had no knowledge of underlying substantive constitutional violation because defendant must “know” of constitutional violation and “realistic opportunity to intervene to prevent” harm). With an unlawful arrest claim in a §1983 action when a defense of qualified immunity has been raised, if reasonable officers would have believed that probable cause existed (even mistakenly), the officers are entitled to qualified immunity. *Kelley v. Myler*, 149 F. 3d 641 (7th Cir. 1998).

B. Identifying Plaintiff as the target of the warrant was not a material false statement that led to his arrest.

Plaintiff’s Response states that Anderson and Westman made the arrest without a warrant or probable cause, made material false statements in their police reports to justify the arrest and then communicated the false charge to prosecutors (ECF No. 38, p. 1). Plaintiff’s only allegation of material false statements made in the police report was the identification of Plaintiff as the target of the search. However, this is not a material false statement because even if Plaintiff was not the original target of the search, Defendant Officers did not need to identify Plaintiff as the “target” of the search to justify arresting him. Plaintiff was charged with manufacturing and delivering narcotics. (ECF No. 37, p. 6, Ex. A.) Plaintiff provides no facts to show that he did not reside at the premises where the narcotics were found and he provides no facts to show that he was not in possession of narcotics. If Plaintiff’s Complaint set forth facts denying the basis for the underlying charges and, looking at the totality of the circumstances, no reasonable officer could conclude that Plaintiff resided at the premises where narcotics were found, or that he was in

possession of them, then Plaintiff could survive dismissal of his 1983 claims. Plaintiff fails to do so here. Plaintiff does not provide any facts why it would be unreasonable for any officer to believe that there was a probability that Plaintiff was engaged in criminal activity, when he was present and/or resided at the premises where narcotics were found during the subject search.

Next, Plaintiff incorrectly states Defendant Officers do not challenge the sufficiency of Plaintiff's allegations that, following the arrest, he was subjected to unreasonable pretrial restraint of liberty without probable cause in violation of the Fourth Amendment (ECF No. 38, p. 4). Defendant Officers do challenge the sufficiency of these allegations. Specifically, Defendant Officers argue that their pretrial restraint of Plaintiff did not violate the Fourth Amendment because they were authorized to detain the occupants of the premises while executing the search warrant and subject to Plaintiff's arrest (ECF No. 37, p. 3). For all these reasons, Defendant Officers are entitled to qualified immunity, and Plaintiff's §1983 claims against Defendant Officers should be dismissed because he fails to allege facts to show why any reasonable officer could not have believed that probable cause existed to arrest Plaintiff, when Plaintiff was residing and/or present at the premises where narcotics were found.

CONCLUSION

Plaintiff's Response concedes he does not challenge the search of the premises pursuant to the warrant and detention incident to the search. Therefore, any such Fourth Amendment claims should be dismissed. Per Plaintiff's Response, his Fourth Amendment claims focus on his actual arrest, police reports drafted incident to that arrest and officers alleged failure to intervene in that arrest.

Plaintiff's Complaint should be dismissed because he does not sufficiently allege that (1) Defendant Officers lacked probable cause to pursue the actual criminal charges, or (2) that no

reasonable officer would have believed that probable cause existed based on the totality of the circumstances during the search. The officers conducted a search of the residence which Plaintiff does not challenge. Plaintiff was located inside and/or resided at the residence where the search was located and narcotics were found. Plaintiff alleges he was not the target of the search, but fails to acknowledge that he does not have to be the target of the actual search warrant if there was probable cause to believe Plaintiff committed a crime. Plaintiff was charged with drug offenses related to the narcotics located in the residence where he was present and/or resided at the time of the search. Plaintiff fails to allege any facts to show an absence of probable cause for the drug offenses in which he was arrested. Therefore, Plaintiff's Complaint should be dismissed.

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

William B. Oberts, Esq. - 6244723
Amy M. Kunzer--6293176
Tribler Orpett & Meyer, P.C.
225 W. Washington St., Suite 2550
Chicago, IL 60606
(312) 201-6400
wboberts@tribler.com
amkunzer@tribler.com

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:

Vincent Michael Rizzo, Esq.
Hinshaw and Culbertson
222 North LaSalle Street, Suite 300
Chicago, IL 60602
(312) 704-3234
vrizzo@hinshawlaw.com

Joel Flaxman, Esq.
200 S. Michigan Avenue, Suite 201
Chicago, IL 60604
(312) 427-3200
jaf@kenlaw.com

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 18th day of June, 2021, with proper postage prepaid.

s/ William B. Oberts
an Attorney

