UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS JACKSON, Plaintiff, v. THE CITY OF CHICAGO, PATRICK BOYLE, JENNIFER BURMISTRZ, EFRAIN CARRENO, MATTHEW EVANS, JOHN FOERTSCH, EDWARD GARCIA, MICHAEL HIGGINS, GERALD LAU, and JEFFREY LAWSON, Defendants.	)	No. 1:22-cv-04337 Honorable Jorge L. Alonso

DEFENDANTS' REPLY BRIEF IN FURTHER SUPPORT OF THEIR AMENDED MOTION FOR SUMMARY JUDGMENT

Defendants, City of Chicago, Patrick Boyle, Jennifer Burmistrz, Efrain Carreno, Matthew Evans, John Foertsch, Edward Garcia, Michael Higgins, Gerald Lau, and Jeffrey Lawson, by and through one of their attorneys, Michael J. Dinard, Assistant Corporation Counsel, submit the following reply memorandum in support of their motion for summary judgment:

INTRODUCTION

With his response, plaintiff wants this Court to explicitly hold that detention before formal legal process satisfies the seizure requirement of a federal malicious prosecution claim. (Response, pg. 9). Plaintiff relies on the general assertion that a pretrial detention is a seizure both before formal legal process and after. See *Lewis v. City of Chicago*, 914 F.3d 472, 477 (7th Cir. 2019). The reason plaintiff does this is obvious. A claim of false arrest or imprisonment accrues when either the seizure ends or the plaintiff is held pursuant to legal process. *Wallace v. Kato*, 549 U.S.

384, 388–89 (2007). The cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). A malicious prosecution claim's accrual is much less onerous than that of an unlawful arrest. If a defendant is released pending a criminal trial, their false arrest claim starts to accrue during the pendency of their criminal trial. While not ideal, "it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended." *Kato*, 549 U.S. at 393–94.

However, a seizure before legal process is not the same as a seizure pursuant to legal process. In his attempt to conflate the two, plaintiff ignores decades of jurisprudence establishing unlawful arrest and malicious prosecution as two utterly distinct Fourth Amendment claims. *Kato*, 549 U.S. at 390; see also *Heck*, 512 U.S. at 484. The distinction between these claims relies on two forms of seizures, those absent legal process, and those pursuant to legal process. *Id*. It is here where plaintiff's malicious prosecution claim fails. Plaintiff cannot show that he was detained pursuant to legal process. Because this is an essential element of a federal malicious prosecution claim, summary judgment must be granted in Careno and Garcia's favor. See *Thompson v. Clark*, 596 U.S. 36, 42-44 & n.2.) (2022).

ARGUMENT

I. Summary judgement as to Patrick Boyle, Jennifer Burmistrz, Matthew Evans, John Foertsch, Michael Higgins, Gerald Lau, and Jeffrey Lawson should be granted.

As a preliminary matter, we note that plaintiff does not oppose this Court granting summary judgment for Patrick Boyle, Jennifer Burmistrz, Matthew Evans, John Foertsch, Michael Higgins, Gerald Lau, and Jeffrey Lawson. (Response, pg. 1, 14.) As such, these defendants stand on the

arguments levied in the Memorandum and respectfully ask this Court to grant summary judgment in their favor.

II. Whether plaintiff engaged in the alleged criminal conduct concerning this matter is irrelevant to defendants' motion for summary judgment.

In his response, plaintiff claims that "the key disputed issue in this case is whether [d]efendants Carreno and Garcia are truthful in their claims that they observed plaintiff and another man selling drugs. (Pl.'s Response at pg. 2.) He then asks this Court to strike "multiple paragraphs (29, 30, 36, 43, 46, 47)" on grounds that the facts contained therein are disputed." (Pl.'s Response at 2.) Plaintiff is mistaken.

To begin with, defendants included Carreno and Garcia's version of events to support the argument that Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau, and Lawson were not personally involved in the alleged constitutional violation and are entitled to qualified immunity. Because plaintiff agrees that this group of officers is entitled to summary judgment, we agree that Carreno and Garcia's version of events is no longer material to the remaining issue in this case—i.e., whether plaintiff was seized pursuant to legal process.[1] As a consequence, for purposes of defendants' motion for summary judgment, we accept as true plaintiff's version of events that he was not selling drugs out of his vehicle.

III. Plaintiff has failed to show that he was seized pursuant to legal process.

The crux of plaintiff's position rests on two assertions: (1) the time between the issuance of plaintiff's personal recognizance bond and his actual release by the Cook County Sheriff constitutes a seizure pursuant to legal process; and (2) his incarceration due to a subsequent new

[1] The central issue in this case is not, as plaintiff contends, whether Carreno and Garcia are truthful in their claim that plaintiff and his friend were selling drugs. Rather, the issue concerns whether plaintiff was seized for Fourth Amendment purposes.

possession of a stolen motor vehicle arrest satisfies the seizure pursuant to legal process requirement. Plaintiff is mistaken as to both assertions for the reasons delineated below.

a. Plaintiff cannot base his malicious prosecution claim on a seizure before legal process.

Plaintiff initially makes the argument that his detention before legal process satisfies the seizure requirement for a federal malicious prosecution claim. (Response at pg. 9-10.) However, false arrest and malicious prosecution are distinct claims. See *Heck v. Humphrey*, 512 U.S. 477, 484 (1994) ("If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more." (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 888 (5th ed. 1984)). The Supreme Court in *Heck* clearly held that unlike the *related* cause of action for false arrest or imprisonment, a malicious prosecution claim "permits damages imposed pursuant to legal process." *Heck*, 512 U.S. at 484. The Supreme Court's opinion in *Thompson v. Clark* supports this distinction, going so far as relying on *Heck* to establish the elements of a federal malicious prosecution claim. *Thompson*, 596 U.S. at 43.

Plaintiff himself recognizes these two distinct causes of action in his complaint, where he states "[p]laintiff does not raise any claim about this wrongful arrest." (ECF No. 1 at pg. 2.) In his response, plaintiff is now attempting to meld these two causes of action into one. This is improper. Because plaintiff is bringing a federal malicious prosecution claim, and not a wrongful arrest claim, the only seizures at issue are those which occurred pursuant to legal process, not before it. See *Thompson*, 596 U.S. at 42.

b. Plaintiff's pre-trial bond conditions did not constitute a seizure.

It is uncontested that the plaintiff was released on a personal recognizance bond on November 7, 2017. Plaintiff provided the bond order as part of his Response, and it indicates that

the release conditions required plaintiff to report to pre-trial services, not leave the state, and attend regular court appearances. (Plaintiff's Ex. 7). These conditions simply do not constitute a seizure for Fourth Amendment purposes.

The Supreme Court has made clear that it "adhere[s] to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained. *Bielanski v. Cnty. of Kane*, 550 F.3d 632, 642 (7th Cir. 2008) (quoting *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)). In *Bielanski*, the Seventh Circuit held that the standard conditions of bail such as a travel restriction out of state and an interview with a probation officer fall short of a seizure. *Bielanski*, 550 F.3d at 642. In fact, that court analyzed a trove of out-of-circuit case law when coming to this conclusion, and quoted *Nieves v. McSweeney*, 241 F.3d 46, 55 (1st Cir. 2001) as follows: "[I]f the concept of a seizure is regarded as elastic enough to encompass standard conditions of pretrial release, virtually every criminal defendant will be deemed to be seized pending the resolution of the charges against him." This narrowing of what the Seventh Circuit considers a seizure was confirmed in *Mitchell v. City of Elgin*, where that court, despite some out-of-circuit opinions to the contrary, declined to extend the concept of a seizure under the Fourth Amendment beyond physical detention. 912 F.3d 1012, 1016 (7th Cir. 2019).

In summary, the conditions of plaintiff's bond do not constitute a seizure for Fourth Amendment purposes because those conditions did not involve government agents using physical force against, nor did not conditions involve him submitting to a show of authority.

c. Plaintiff was released pursuant to legal process.

Plaintiff contends that the period between the issuance of his bond order and his actual physical release constitutes a seizure pursuant to legal process. However, this argument borders on nonsensical once viewed in light of the relevant case law. The first task is to clarify what exactly

constitutes a seizure pursuant to legal process. Given the above analysis, plaintiff's bond conditions cannot be a seizure pursuant to legal process. Given the newness of the *Thompson* decision, it is instructive to look to other jurisdictions that have already entertained Fourth Amendment malicious prosecution claims in the past. The Sixth Circuit requires that a plaintiff show that as a consequence of a legal proceeding, the plaintiff suffered a deprivation of liberty, apart from the initial seizure. *Sykes v. Anderson*, 625 F.3d 294, 309 (6th Cir. 2010) (quoting *Johnson v. Knorr*, 477 F.3d 75, 81 (3rd Cir. 2007); *Heck v. Humphrey*, 512 U.S. 477, 484 (1994) ("[U]nlike the related cause of action for false arrest or imprisonment, [an action for malicious prosecution] permits damages for confinement imposed pursuant to legal process.")).

The court in *Nieves* generally defined the offending legal process as either an arrest warrant or subsequent charging document. 241 F.3d at 54. Importantly, the *Nieves* court held that a plaintiff must show some post-arraignment deprivation of liberty, *caused* by the application of legal process. *Id*. In this case, plaintiff was not seized pursuant to legal process, he was released pursuant to it. Plaintiff was released from custody by order of a court with only standard conditions of pretrial release. (Plaintiff's Ex. 7; Plaintiff's SOAF, ¶ 26). Plaintiff quips that defense counsel is "unfamiliar with the procedures of the Cook County Sheriff to hold detainees after a judge has ordered their release on bond. See *Harper v. Sheriff of Cook County*, 581 F.3d 511, 513 (7th Cir. 2009)." (Response, pg. 12.) However, his argument itself proves the defendants' point. In this case, Judge Marubio ordered that plaintiff be released. (Plaintiff's Ex. 7.) At that point, the legal process in this matter is not seizing plaintiff, but rather mandating his release. (Id.) The onus then falls on the Cook County Sheriffs to abide by this order. Plaintiff at that point is not being detained pursuant to legal process, but rather the bureaucratic inertia of the Cook County Sheriff's Office. The *Harper* case plaintiff cites supports this assertion. 581 F.3d at 514. That case was concerned

with the constitutionality of detention by the Sheriff after bond has been posted. *Id*. It deals entirely with a potential constitutional deprivation by the Cook County Sheriff, and has nothing to do with the Chicago Police Department at all. In fact, there is an independent test to determine the constitutionality of the period of detention between a defendant posting bond and being released. See *Shultz v. Dart*, No. 13 C 3641, 2013 WL 5873325, at *3 (N.D. Ill. Oct. 31, 2013) (quoting *Harper*, 51 F.3d at 515 ("[T]he constitutionality of this detention [between the arrestee's posting of bond and his release] depends on whether the length of the delay between the time the Sheriff was notified that bond had been posted and the time that the detainee was released was reasonable in any given case.")

If plaintiff wanted to challenge the constitutionality of the detention between his release pursuant to legal process and his actual release, he should have sued the Sheriff of Cook County. It stands that Carreno and Garcia had nothing to do with the delay in plaintiff's release from custody after his bond hearing. The legal process in this case did not seize plaintiff, it freed him. It stands that the period of time between the issuance of plaintiff's recognizance bond and his actual physical release cannot be considered a seizure pursuant to legal process. Summary judgment must be granted in Carreno and Garcia's favor for that reason.

d. Plaintiff's subsequent incarceration was for an alleged possession of stolen motor vehicle and not due to the legal process of this incident.

Finally, plaintiff attempts to stave off summary judgment by arguing that he was seized for eight days in April 2018 because he was arrested in violation of the terms and conditions of his bond. (Pl.'s Response at 11.) In essence, plaintiff seeks to hold Officers Carreno and Garcia liable

for a seizure that occurred as a result of a superseding criminal act committed by plaintiff. (*Id.*) This assertion is baseless.

The record reveals that while plaintiff was out on bond, he was arrested for the separate charges of felony possession of a stolen motor vehicle, felony theft, and criminal trespass to state supported land. (Plaintiff's Ex. 8.) Plaintiff was in custody for those charges from April 15, 2018 to April 20, 2018. (Id.) Importantly in that case, the plaintiff had a $4,000 D bond keeping him in the custody of Cook County. Plaintiff's counsel rightly notes that Defendants' Exhibit 14 show that Judge Marubio set no bail on the criminal matter which is the subject of this case. (Defendant's Ex. 14 at pg. 8.) What plaintiff failed to mention in his Response is that on April 15, 2018, there was an independent finding of probable cause to detain plaintiff. (Id.) As explained below, this distinction is of the utmost importance.

One must not forget that a Fourth Amendment malicious prosecution claim is couched in tort law. *Thompson*, 596 U.S. at 44. The alleged constitutional violation of such a claim must relate back to the specific actions of an individual, in this case Officer Garcia and Officer Carreno. *Id*. at 43. Specifically, the accused individuals must "cause the initiation of [the] criminal proceeding. *Id*. Defendants could not have caused this independent seizure because they did not institute the criminal proceeding that ultimately held the plaintiff. It is clear that there was an independent finding of probable cause on April 15, 2018. (Defendants' Ex. 14 at pg. 8.) It was this independent finding that led to plaintiff's bond being revoked in criminal case relevant to this matter. That finding of probable cause included whatever facts were at issue in the new felony charges. That

finding of probable cause was wholly independent of the initial finding of probable cause at issue in this case.

Carreno and Garcia had nothing to do with the subsequent bond proceedings that ultimately led to plaintiff being placed into custody. The independent facts surrounding the possession of stolen motor vehicle, theft, and criminal trespass charges, as well as any other information given to Judge Marubio on April 15, 2018, led to the defendant's seizure. It can be reasonably inferred that the criminal case relevant to this litigation was continued to April 23, 2018, a Monday, to wait and see what happened to the new stolen vehicle case. (Defendant's Ex. 14 at pg. 8.) In the interim, the new case was dismissed on April 20, 2018, a Friday, with a finding of no probable cause. (Plaintiff's Ex. 8.) Plaintiff was held over the weekend, and on Monday, April 23, 2018, plaintiff's recognizance bond was reinstated. (Id.)

These facts confirm that plaintiff was being held based on the independent probable cause determination. It was not through Carreno or Garcia's efforts that plaintiff was seized and then ultimately released. An entirely different set of Chicago Police officers brought the stolen vehicle case, based on an entirely independent finding of probable cause. Defendants did not cause plaintiff's seizure, as is required. The plaintiff caused it by getting arrested on a separate charge. Regardless of the validity of the probable cause determination in this case, plaintiff was detained for a separate set of facts. The fact that plaintiff spent the weekend of April 20, 2018 in the Cook County Department of Corrections, and was released on his recognizance bond on Monday, April 23, 2018, was independent of the prosecution of the case at issue. This remand was not caused by

Carreno or Garcia's actions. It is for this reason that summary judgment is appropriate for Garcia and Carreno.

CONCLUSION

It is agreed by both parties that summary judgment should be granted for Patrick Boyle, Jennifer Burmistrz, Matthew Evans, John Foertsch, Michael Higgins, Gerald Lau, and Jeffrey Lawson. Additionally, summary judgment must be granted for Carreno and Garcia because plaintiff cannot meet all the elements of a Fourth Amendment malicious prosecution claim as laid out in *Thompson*. For the above reasons, defendants ask this Court to render summary judgment in their favor.

DATED: May 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 20, 2024, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *Michael J. Dinard*
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