

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

Dennis Jackson,)	
)	
<i>Plaintiff,</i>)	No. 22-cv-4337
)	
<i>-vs-</i>)	<i>(Judge Alonso)</i>
)	
City of Chicago, et al.)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S MOTION TO SUPPLEMENT RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

On June 20, 2024, the Supreme Court decided *Chiaverini v. City of Napoleon*, No. 23-50. Plaintiff attaches the Supreme Court's slip opinion as Exhibit 1.

Because *Chiaverini* is controlling on the only argument that defendants raised in opposition to plaintiff's Fourth Amendment malicious prosecution claim, plaintiff respectfully seeks leave to file this motion as a supplement to his response to defendants' motion for summary judgment, ECF No. 77.

1. Defendants assert in their motion for summary judgment that a Fourth Amendment malicious prosecution claim requires proof that the plaintiff was seized after legal process issued. (ECF No. 72 at 5-6, ECF No. 80 at 4.) This argument does not survive *Chiaverini*.

2. In *Chiaverini*, the Supreme Court squarely held that the constitutional violation in a Fourth Amendment malicious prosecution claim is

“an arrest and detention of a person based on a criminal charge lacking probable cause.” (*Chiaverini*, slip op. 4, Exhibit 1 at 6.)

3. This element was satisfied in *Chiaverini* because the plaintiff was subjected to an “arrest and three-day detention.” (*Chiaverini*, slip op. 7, Exhibit 1 at 9.)

4. Plaintiff in this case was arrested on November 6, 2017 and remained in custody until November 7, 2017. (ECF No. 77 at 8-11.) This seizure, like that in *Chiaverini*, satisfies the seizure requirement for a Fourth Amendment malicious prosecution claim.¹

5. Even if the Court adopts the defense argument that the required seizure begins with the initiation of legal process, *Chiaverini* shows that legal process begins when police file a criminal complaint. (*Chiaverini*, slip op. 2, Exhibit 1 at 4.)

6. In this case, defendant Garcia completed and signed the criminal complaint charging plaintiff with Manufacture or Delivery of a Controlled Substance. (Plaintiff’s Rule 56.1(b)(3) Statement, ECF No. 76, ¶ 20.)

7. Garcia signed the criminal complaint on November 6, 2017 (Plaintiff’s Exhibit 5, ECF No. 74-5), and plaintiff was not released until about

¹ Plaintiff showed in his response to defendants’ motion for summary judgment that he was also seized in April of 2017 when he his bond was revoked. (ECF No. 77 at 11.) Defendants’ argument about this seizure, which was presented for the first time in their reply brief, is meritless. (ECF No. 80 at 7-10.)

9:00 p.m. on November 7, 2017. (Plaintiff's Rule 56.1(b)(3) Statement, ECF No. 76, ¶ 27.)

8. Plaintiff expects defendants to respond that legal process requires action by the prosecutor after the officer signs a criminal complaint. This argument is also inconsistent with *Chiaverini*, where the Supreme Court found a seizure even though the prosecutor did not act on the criminal complaints and did not present the case to a grand jury in the required time. (*Chiaverini*, slip op. 3, Exhibit 1 at 5.)

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
Attorneys for Plaintiff