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

Alexander Gray,	)	
	)	
Plaintiff,	)	Case No. 23-cv-1931
	)	
v.	)	Judge Steven C. Seeger
	)	
City of Evanston, Evanston Police Officers Kubiak, Kane, Popp, Rosenbaum, and Pogorzelski,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendants by their undersigned counsel submit this response in opposition to Plaintiff's Partial Motion for Summary Judgment.

I. Introduction

Plaintiff moves for partial summary judgment against Defendants under the auspices that there is no genuine dispute of material fact that : (i) Defendants Kubiak and Kane used excessive force in effectuating a seizure of Plaintiff, (ii) Defendants Kane, Kubiak, Popp, Rosenbaum and Pogorzelski (collectively, "Defendant Officers") conducted an unlawful search of plaintiff, and (iii) the City of Evanston had notice that its policies were deficient and that these policies for the use of force and search and seizure authorize unlawful police conduct. For the reasons below, Plaintiff's Motion for summary Judgment should be denied.

SUMMARY OF FACTS

On March 31, 2021, at or about 2:35 pm an anonymous citizen[1] called the City of Evanston's 911 call center who reported seeing a man with a gun in his right hand at a lakefront public park located in the 500-block of Sheridan Square, Evanston. (Plaintiff Statement of Material Facts ¶5) The 911 caller described the man as white male, approximately 5 to 6 feet tall, and wearing a dark coat and jeans. (PSOMF ¶5) At about 2:38 pm, an EPD dispatcher radio broadcast the 911 caller's report to all the Defendant Officers and other Evanston police officers. (SOAF ¶1) Officer Kubiak was on patrol in a police vehicle in the area at the time of the broadcast and arrived at the reported location at 2:40 pm. (SOAF ¶2) Officer Kubiak was the first to arrive at the scene. (PSOMF ¶8) As Officer Kubiak pulled up to the location, he observed Plaintiff standing in the location described by 911 caller. (SOAF ¶3) Officer Kubiak radioed dispatch to repeat the description of the subject. The dispatcher responded "male, white 5'8 - 6', dark coat with jeans, the gun is in his right hand, it should be a black handgun. [inaudible background noise] Also, he's supposed to be north of the beach….on the trail." (SOAF ¶3)

Officer Kubiak parked and exited his police vehicle and proceeded on foot toward Plaintiff from behind a non-police vehicle that was parked between him and Plaintiff. (SOAF ¶4) From this position, Officer Kubiak observed that Plaintiff was holding a black object in his hand. (SOAF ¶13) Plaintiff was wearing a heavy dark coat and what appeared to be dark jeans. (SOAF ¶5) Officer Kubiak was unable to determine whether Plaintiff was white or black. Officer Kubiak believed Plaintiff was armed. (SOAF ¶5) Officer Kubiak transmitted to dispatch he had "eyes on him." Upon which Officer Kubiak unholstered and drew his firearm, pointed it in the direction of Plaintiff, ordered him to remove his hands from his pocket and directed him to put his hands up. (SOAF ¶5, PSOMF ¶9)

[1] The individual was later identified and interviewed by police. (SOAF ¶15)

At or about this same time, Officer Kane, who had also heard the dispatcher's broadcast of the 911 caller's report, arrived at the scene at or about the time Officer Kubiak had begun his approach toward Plaintiff. (PSOMF ¶12) Officer Kane saw that Officer Kubiak had deployed his firearm. Officer Kane joined Officer Kubiak with his firearm drawn in a low ready position and assisted in effectuating Plaintiff's compliance with Officer Kubiak's instructions. (SOAF ¶6) As Officers Kubiak and Kane walked toward Plaintiff, they directed him to lay on the ground with hands out. Plaintiff complied with their requests. (PSOMF ¶16)

At about his time, other Evanston police officers arrived at the scene, including Officers Popp, Pogorzelski and Rosenbaum. (PSOMF ¶16) When Officers Kubiak and Kane reached Plaintiff's location, Officer Kane with assistance from Officer Popp placed handcuffed Plaintiff (PSOMF ¶18) and performed a search of his outer clothing while he was still on the ground. (SOAF ¶7)

Officer Rosenbaum provided security for Officers Kane and Popp while they placed Plaintiff in detention. (SOAF ¶9) Officer Rosenbaum carried a tethered assault rifle which he brought to the scene based on the emergency call of an armed individual. Officer Rosenbaum never pointed the rifle at Plaintiff. (SOAF ¶10) As Officers Kane and Popp were completing their search of Plaintiff, Officer Pogorzelski informed Plaintiff of the report of a man with a gun in his right hand. Plaintiff told Officer Pogorzelski that he was "just on a phone call." (SOAF ¶8)

After Officers Kane and Popp completed their search of Plaintiff's clothing, they and some of the other police officers helped Plaintiff to his feet, following which Officer Pogorzelski asked Plaintiff for his consent to search his person, to which Plaintiff replied, "of course." (SOAF ¶11) After a brief search of Plaintiff's coat, the handcuffs were removed, and Plaintiff's detention terminated. (SOAF ¶12)

The City of Evanston maintains a policy regarding use of force. This policy is set out in "Policy 300". (SOAF ¶14).

LEGAL STANDARD

Motions for summary judgment obviate the need for a trial because there is no genuine dispute to a material fact. Fed. R. Civ. P. 56(a). To assess whether a dispute exists, the court must look at proof from depositions, documents, answers to interrogatories, admissions, stipulations, and affidavits, or declarations, that become part of the record. Fed. R. Civ. P. 56(c)(1); *A.V. Consultants, Inc. V. Barnes*, 978 F.2d 996, 999 (7th Cir. 1992). "When video footage firmly settles a factual issue, there is no genuine dispute about it, and [the Court] will not indulge in stories clearly contradicted by the footage." *Horton v. Pobjecky*, 883 F.3d 941, 944 (7th Cir. 2018)

ARGUMENT

Plaintiff moves for partial summary judgment against the Defendants under the auspices there is no genuine dispute of material fact that: (i) Officers Kubiak and Kane used excessive force in pointing their firearms at Plaintiff, (ii) Officers Kane, Kubiak, Popp, Rosenbaum and Pogorzelski conducted an unlawful search of plaintiff; and (iii) the City of Evanston's written policies on the use of force and search and seizure authorize unlawful police conduct. Plaintiffs' position fails because there is a genuine issue of material fact as to these claims and because Defendants are protected by Qualified Immunity.

I. It objectively reasonable for Officers Kubiak and Kane to Fear Danger when they stopped Plaintiff.

The basic question for an excessive force claim under the Fourth Amendment is whether the officer used "greater force than was reasonably necessary." *Becker v. Elfreich*, 821 F.3d 920, 925 (7th Cir. 2016)*; Gonzalez v. City of Elgin*, 578 F.3d 526, 539 (7th Cir. 2009). This determination is made from the perspective of a "reasonable officer" in light of the totality of the

circumstances known to the officer, without regard to his or her actual intent or subjective beliefs. *Graham v. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); *Williams v. Indiana State Police Dep't*, 797 F.3d 468, 472-73 (7th Cir. 2015) As a result, "whether a particular use of force was objectively reasonable 'is a legal determination rather than a pure question of fact for the jury to decide.'" *Dockery v. Blackburn*, 911 F.3d 458, 464 (7th Cir. 2018) (*quoting Phillips v. Cmty. Ins. Corp.*, 678 F.3d 513, 520 (7th Cir. 2012)).

"[W]hile police are not entitled to point their guns at citizens when there is no hint of danger, they are allowed to do so when there is reason to fear danger." *Baird v. Renbarger*, 576 F.3d 340, 346 (7th Cir. 2009). In other words, as with any use of force, the threatened use of a firearm by an officer must be predicated on at least a perceived risk of injury or danger to the officer or others, based upon what the officer knew at that time. *See Brown v. City of Milwaukee*, 288 F. Supp. 2d 962, 976 (E.D. Wis. 2003). This determination is made from the perspective of a "reasonable officer" in light of the totality of the circumstances known to the officer, without regard to his or her actual intent or subjective beliefs. See: *Graham v. Connor*, 490 U.S. 386, 397 (1989). The totality of the circumstances that Officers Kubiak and Kane shows that it was objectively reasonable for them to fear danger when they made the decision to use the threat of force to stop and detain Plaintiff. *See Baird v. Renbarger*, 576 F.3d 340, 346 (7th Cir. 2009).

The authority Plaintiff presents to support his argument that Officers Kubiak and Kane lacked reasonable suspicion that Plaintiff was armed and a threat to their safety and the safety of others are materially distinguishable facts and circumstances present in this case.

In *McDonald v. Haskins* the court held that an officer engaged in excessive force by pointing a gun at a nine-year old child and threatening to pull the trigger during a search of an

apartment where the child was not suspected of committing a crime and posed no safety threat during a search. 966 F.2d 292, 294 (7th Cir. 1992).

In *Baird*, an officer obtained a search warrant for an antique car that he believed had an altered vehicle identification number. 576 F.3d at 342-43. The officer required everyone on the premises to get in the middle of the room while he pointed a submachine gun at them. *Id.* at 343. The court rejected the officer's assertion of qualified immunity, reasoning that (1) the suspected crime was "a far cry from crimes that contain the use of force as an element, crimes involving possession of illegal weapons, or drug crimes, all of which are associated with violence"; (2) police had been on the scene the previous day and had discovered nothing suggesting that their safety was endangered; and (3) no one present resisted or attempted to flee. *Id.* at 344-46.

None of these cases reflect similar circumstances to this matter. Here, the facts are that the Defendant Officers received a dispatcher report of a man with a gun at a specific location. (PSOMF ¶5) Arriving at the location within minutes, Officer Kubiak saw Plaintiff, who matched the description reported by the 911 caller in the exact location the caller described. (SOAF ¶¶ 2,3) Officer Kubiak further observed that Plaintiff was holding a black object in his hand. (SOAF ¶5) Officers Kubiak and Kane promptly terminated their threat of force upon Plaintiff being secured. (SOAF ¶ 12) Plainly stated, there actions are not comparable to the actions of the officers in the cases presented by Plaintiff.

A. It was Reasonable for Officers Kubiak and Kane to Rely on the anonymous 911 caller's report.

Plaintiff contends the 911 caller report was unreliable and did not provide Officers Kubiak and Kane a reasonable suspicion that Plaintiff was armed because the 911 caller was anonymous, and the 911 caller's description of the man holding a gun in his hand was of a white male was inconsistent with Plaintiff's race, African American.

A reasonable suspicion can be based on an anonymous report as long as the report evinces "sufficient indicia of reliability." *Navarette v. California, 572 U.S. 393, 397, (2014)* (citations omitted). In assessing the indicators of reliability of an anonymous report, courts look to whether "the tipster (1) asserts eyewitness knowledge of the reported event; (2) reports contemporaneously with the event; and (3) uses the 911 emergency system, which permits call tracing." *United States v. Watson*, 900 F.3d 892, 895 (7th Cir. 2018) (citing and distinguishing *Id.* at 400-01).

The anonymous 911 caller provided a contemporaneous eyewitness emergency report of an individual brandishing a gun in his right hand in a public park. The 911 caller described the individual as a white mail, 5 to 6 feet tall, wearing a dark coat and jeans through a recorded and traceable 911 system.[2] (SOAF ¶15) The information provided by the anonymous caller establishes a sufficient indicia of reliability to support a finding of reasonable suspicion that Plaintiff was armed and dangerous. See *Navarette*, 572 U.S. at 393 (An anonymous tip was sufficiently reliable where "the caller necessarily claimed eyewitness knowledge" of the alleged crime, which "lends significant support to the tip's reliability.") see also *United States v. Williams*, 731 F.3d 678, 684 (7th Cir. 2013) ([a]n emergency report "can support an officer's reasonable suspicion with less objective evidence to corroborate the report." (citations omitted)).

B. Officer Kubiak corroborated the information provided by the 911 caller.

The information provided by the 911 caller was corroborated by Officer Kubiak, who within minutes of receiving the dispatcher's report, observed Plaintiff in the exact location described by the caller, wearing the same articles of clothing described by the 911 caller. (SOAF ¶¶ 3,5) see *United States v. Lenoir*, 318 F.3d 725, 729 (7th Cir. 2003) ("[P]olice observation of an individual, fitting a police dispatch description of a person involved in a disturbance, near in time

[2] The 911 caller was identified and interviewed by Detective Svendsen within minutes after Plaintiff's detention terminated.

and geographic location to the disturbance establishes a reasonable suspicion that the individual is the subject of the dispatch."); see also, *United States v. Swinney*, 463 F. Supp. 3d 851, 859 (N.D. Ill. 2020), affd, 28 F.4th 864 (7th Cir. 2022) (finding an anonymous caller's contemporaneous eyewitness report of an emergency situation involving the possession of a gun in a location where it was illegal to possess a gun, the use of the recorded and traceable 911 system, and the officers' observation of plaintiff wearing the exact articles of clothing described by the caller, in the exact location described by the caller merely minutes after the call was made, taken together, gave the officers reasonable suspicion to believe plaintiff was carrying a gun).

The fact that the 911 caller's description of the man holding a gun in his hand as being white male being inconsistent with Plaintiff's race, African American, is not dispositive of whether the reliability of the 911 caller. Rather, the question is whether the totality of the circumstances provided Officers Kubiak and Kane a reasonable suspicion that Plaintiff was the individual the 911 caller saw holding a gun.

At the time of the incident, Plaintiff was wearing a long sleeve winter jacket and jeans. (PSOMF ¶5) The only portion of Plaintiffs skin that was visible was his face. (PSOMF ¶10) Neither of these Officers were able to conclusively identify Plaintiff's race or color during the incident nor were they required to take their own life in their hands on the chance the 911 caller may have been mistaken. *United States v. Rickmon*, 952 F.3d 876, 883 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 2505 (Apr. 5, 2021).

Furthermore, police officers are permitted to rely on information from callers, even if the caller is ultimately shown to be mistaken. *see, e.g., United States v. Miranda-Sotolongo*, 827 F.3d 663, 669 (7th Cir. 2016) ("Reasonable suspicion ... does not require the officer to rule out all innocent explanations of what he sees. The need to resolve ambiguous factual situations—

ambiguous because the observed conduct could be either lawful or unlawful is a core reason the Constitution permits investigative stops."). see also *Hill v. City of Crete*, 2008 U.S. Dist. LEXIS 78265, 2008 WL 4559859, at *4 (N.D. Ill. Oct. 6, 2008) (finding reasonable suspicion to detain individual to investigate gun that turned out to be the plaintiff's walking cane where: (1) "an individual contacted 911 to report that a firearm was in a vehicle parked at the Shell gas station"; (2) "there were not inconsistencies between the dispatcher's description of the suspect vehicle and plaintiff's vehicle"; and (3) "based on the circumstances known to [the officer] at the time of the stop," he "reasonably believed that [plaintiff] had a gun in his vehicle").

For these reasons, Plaintiff's Motion for Summary Judgment on his claim of excessive force by Officer Kubiak and Kane should be denied.

II. The totality of circumstances provided Defendant Officers a reasonable suspicion to perform a stop, handcuffing, and search of Plaintiff.

Plaintiff seemingly seeks for summary judgment on a claim that the Defendant Officers lacked reasonable suspicion that Plaintiff was armed in order to justify a *Terry* stop, handcuffing, and search of Plaintiff.[3] Plaintiff is not entitled to summary judgement on these claims for the same reason his excessive force claim fail, namely because the totality of circumstances known to the Defendant Officers provided them a reasonable suspicion that Plaintiff was armed.

To make a lawful investigatory stop, police officers need reasonable suspicion, supported by articulable facts, that criminal activity is afoot. *Terry*, 392 U.S. at 30. Reasonable suspicion is "some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Jackson*, 300 F.3d 740, 745 (7th Cir. 2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981) Reasonable suspicion is determined by looking at the totality of

[3] Neither Plaintiff's Amended Complaint nor Motion for Summary Judgment directly asserts a claim challenging the *Terry* stop of Plaintiff, Defendants, out of an abundance of caution, address Plaintiff's arguments.

the circumstances known to the officers at the time of the stop. see *United States v. Swift*, 220 F.3d 502, 506 (7th Cir. 2000). Plainly stated, this is the same test used to evaluate whether officers had justification to use force or threat of force in the course of a stop.

A proper *Terry* stop must be reasonable both in scope and duration, but officers may take reasonable steps to assure their own safety. *Terry*, 392 U.S. at 30. Moreover, "in evaluating the reasonableness of an investigative stop, the examines first whether the officers' action was justified at its inception and, second, whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *United States v. Smith*, 3 F.3d 1088, 1095 (7th Cir. 1993) (quoting *United States v. Glenna*, 878 F.2d 967, 971 (7th Cir. 1989)).

Plaintiffs contend the Defendant Officers lacked reasonable suspicion because once gathered around Plaintiff, it was obvious that he was not holding a firearm and that he was African American not White. But in evaluating whether the Defendant Officers had reasonable suspicion, the court looks to what they knew at the time of the stop. And at the time of the stop, Defendant Officers were unaware of Plaintiff's race – to the officers he was an unknown individual matching the description given to them by dispatch and was holding an unknown black object in his right hand, which further corroborated the information provided to them by the dispatcher. (SOAF ¶¶3,5)

Furthermore, the court must consider whether the duration and scope of the stop were reasonable under the circumstances. "For an investigative stop based on reasonable suspicion to pass constitutional muster, the investigation following it must be reasonably related in scope and duration to the circumstances that justified the stop in the first instance so that it is a minimal intrusion on the individual's Fourth Amendment interests." *United States v. Bullock*, 632 F.3d 1004, 1015 (7th Cir. 2011) (quoting *United States v. Robinson*, 30 F.3d 774, 784 (7th Cir. 1994)).

The "detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Here the entire event lasted no longer than 7 minutes. (SOAF ¶17) The seizure of Plaintiff lasted no longer than was required to ensure he was not a threat to the officers and public. Once the Defendant Officers determined that Plaintiff was not a threat, they immediately ended the stop. "When the reasonable suspicion justifying the stop evaporates, the stop must end." *United States v. Lopez*, 907 F.3d 472, 478 (7th Cir. 2018).

A. The use of handcuffs and the search of Plaintiff was reasonable and did not exceed scope of a *Terry* stop

Police officers are permitted to take reasonable steps to ensure their own safety during a *Terry* stop. *Terry v. Ohio*, 392 U.S. 1, 30 (1968), *United States v. Jackson*, 300 F.3d 740, 746 (7th Cir. 2002). These steps include performing an outer search of a suspect's clothing that is "confined in scope to an intrusion reasonably designed to discover guns, knives, clubs or other hidden instruments for the assault of the police officer." *Id*., quoting *Terry*, 392 U.S. at 29. Police officers are also permitted to use handcuffs or place suspects on the ground during a seizure. see *United States v. Tilmon*, 19 F.3d 1221, 1228 (7th Cir. 1994) ("When a suspect is considered dangerous, requiring him to lie face down on the ground is the safest way for police officers to approach him, handcuff him and finally determine whether he carries any weapons.").

Plaintiff contends he is entitled to summary judgment because the Defendant Officers use of handcuffs and search of him exceeded the permissible scope of a *Terry* stop. Summary judgment on this claims fail for the same reason as his excessive force claim, namely because the totality of circumstances known to the Defendant Officers, including that Plaintiff was wearing a heavy coat, provided them a reasonable suspicion that Plaintiff may be armed.

III. Defendant Officers are entitled to Qualified Immunity

Even if Plaintiff establishes a constitutional violation, the Defendant Officers are shielded from liability under the doctrine of qualified immunity. "The doctrine of qualified immunity protects government officials from liability for civil damages when their conduct does not clearly violate established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

"Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). "Determining whether a defendant state officer is entitled to qualified immunity involves two inquiries: '(1) whether the facts, taken in the light most favorable to the plaintiff, make out a violation of a constitutional right, and (2) whether that constitutional right was clearly established at the time of the alleged violation.' ' If either inquiry is answered in the negative, the defendant official is entitled to summary judgment." *Gibbs v. Lomas*, 755 F.3d 529, 537 (7th Cir. 2014) (citation omitted).

For the reasons above, Officers Kubiak and Kane's display of force and Defendant Officers involvement in the stop, search, and handcuffing of Plaintiff was objectively reasonable. Moreover, a constitutional violation was not clearly established in the law. For a right to be clearly established "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). At the time of this incident, several analogous cases had established that the Officers' threat of force and subsequent search of Plaintiff whom they reasonably believed to be armed or dangerous was lawful. *see, e.g., Williams* 524 F.3d at 828; *Tilmon* 19 F.3d 1228; *Jackson*, 300 F.3d at 746. Because the law did not clearly establish that the threat of force and search of Plaintiff was an unreasonable response the totality of the circumstances they faced at the time, the

Defendants have qualified immunity and thus the Court should deny summary judgment on Plaintiff's Fourth Amendment claims.

IV. Plaintiff is not entitled to summary judgment on his *Monell* claim

Plaintiff seeks summary judgment against the City of Evanston based on the unsupported conclusions that its written policy on the use of force, Policy 300, does not expressly forbid the threat of deadly force to compel compliance with a police order, and as a result, the omission caused its police officers to engage in a constitutional violation of Plaintiff and others. For the reasons described above, Plaintiff is unable to establish this omission caused the Defendant Officers to violate Plaintiff's Fourth Amendment rights. See *Petty v. City of Chicago*, 754 F.3d 416, 424 (7th Cir. 2014) (A municipality cannot be liable under *Monell* when there is no underlying constitutional violation by a municipal employee).

Further, Policy 300 plainly lays out the constitutional bounds of when an officer may use deadly force: "An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury. (SOAF ¶14) Under such circumstances, a verbal warning should precede the use of deadly force, where feasible." The policy defines Deadly Force as force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. Said another way, Plaintiff claims Evanston's deadly force policy is constitutionally valid on its face but omits certain details.

An express policy that is constitutionally valid on its face but omits certain details, or an implied policy of inaction, is treated like a widespread custom or practice and requires more evidence than a single incident to establish culpability and causation between the omissions in the policy and the constitutional deprivation. *City of Okla. v. Tuttle*, 471 U.S. 808, 824 (1985)). This evidentiary requirement ensures the policy itself is the problem, not a random event. *Taylor v. City*

of Chi., No. 13 CV 4597, 2020 U.S. Dist. LEXIS 2604 (N.D. Ill. Jan. 8, 2020). If the municipality has acquiesced to the outcome of the policy multiple times, a jury could infer that the gaps in the policy caused constitutional injury and the municipality acted with deliberate indifference. *Id.* Only under a narrow set of circumstances is evidence of one incident enough to justify the requisite inferences of culpability and causation: where a constitutional violation is a "highly predictable consequence" of the policy omission. *Id.* at 381 (citations omitted). Plaintiff is not entitled to summary judgment as he has no admissible evidence, nor has Plaintiff attempted to discover evidence to show the City of Evanston acquiesced to the outcome of the policy multiple times, a jury could infer that the gaps in the policy caused the constitutional injury and the municipality acted with deliberate indifference.

Plaintiff has neither presented nor attempted to adduce any evidence to support his Monell claim. Plaintiff essentially argues conclusions without evidence. "At the summary judgment stage, allegations no longer suffice. Summary judgment is the time for evidence. Proof counts for everything, and allegations count for nothing. Summary judgment is show and tell time, but in the end, Plaintiff has little to offer." *Harvey v. Dart*, No. 19-cv-2996, 2023 U.S. Dist. LEXIS 45235, at *27 (N.D. Ill. Mar. 17, 2023).

CONCLUSION

For the reasons above stated, the Court should deny Plaintiff's Summary Judgment Claim.

Date: March 6, 2024,

Respectfully Submitted,

/s/ James V. Daffada
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