

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

BENJAMIN K. HERRINGTON,

Plaintiff,

v.

GRUNDY COUNTY SHERIFF'S DEPUTY
AARON CORY and GRUNDY COUNTY,
ILLINOIS,

Defendants.

Case No. 1:24-cv-02940

**DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

Defendants, GRUNDY COUNTY and GRUNDY COUNTY SHERIFF'S DEPUTY AARON CORY ("Defendants"), by and through their attorneys HAWKINS PARNELL & YOUNG, LLC, for their Reply in Support of their Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), states as follows:

On July 8, 2024, Plaintiff filed his Memorandum in Opposition to [Defendants'] Motion to Dismiss (hereinafter "Plaintiff's Opposition"). [Dkt. # 11.] Plaintiff's Opposition alleges Defendants mischaracterized Plaintiff's Complaint in their Motion to Dismiss due to the use of the phrase "as he resisted" in its motion. [Dkt. # 11 at ¶ 2.] Further, Plaintiff's Opposition maintains his Complaint "raises a right to relief above a speculative level" sufficient to sustain an excessive force claim against Defendant Grundy County Sheriff's Deputy Aaron Cory, and the Court should deny Defendants' motion to dismiss. *Id.* at ¶¶ 5, 8. The assertions made in Plaintiff's Opposition are without merit. Defendants did not mischaracterize Plaintiff's Complaint as, although his Complaint does not contain the phrase "as he resisted," it does contain multiple unambiguous depictions of his active resistance before, during, and after Defendant Cory's instruction to his

canine to bite Plaintiff. *Id.* at ¶¶ 7, 10. Drawing all reasonable inferences after reading Plaintiff's Complaint, including a review of the incorporated photos, it clearly demonstrates Defendant Cory acted within his official purview and in a reasonable manner pursuant to the Fourth Amendment. Thus, Plaintiff's Complaint should be dismissed as it does not assert a facially plausible claim necessary to survive a Rule 12(b)(6) motion.

ARGUMENT

Through carefully curated, cropped, and edited photos in his Complaint, Plaintiff seeks to mislead this Court as to how the events of Plaintiff's arrest transpired on April 25, 2022. Plaintiff's Complaint incorporated three black and white photos of his arrest. *Id.* at ¶¶ 7, 10. Subsequently, Plaintiff's Opposition includes a color version of the same photo depicted in Paragraph 7 of his Complaint and re-submits the same two black and white photos shown Paragraph 10 of his Complaint. [Dkt. #11 at ¶¶ 11, 13.] Upon information and belief, all submitted photos were pulled directly from two publicly available, live news reports performed by ABC 7 Eyewitness News and CBS News Chicago "Live Chopper 2".¹ For both the black and white and color photo associated with Paragraph 7, it appears Plaintiff recorded a screenshot from the 1:09 minute mark of the ABC 7 Eyewitness News Report and cropped out all identifying markings. For the two black and white photos included in Paragraph 10, it appears Plaintiff recorded a screenshot from the 1:37 and 1:38 minute mark of the CBS News Chicago "Live Chopper 2" and cropped out all identifying markings. Plaintiff selected the screenshots he did to include in his Complaint in hopes of bolstering his claim. However, as discussed in *Gant v. Hartman*, 924 F. 3d 445 (7th Cir. 2019)

¹ Defendants request this Court take Judicial Notice pursuant to Fed. Rule 201 at the existence of these two news reports as their existence is capable of accurate and ready determination through a review of the videos located at <https://abc7chicago.com/stolen-ambulance-chase-chicago-benjamin-herrington-lawyer-police/11797962/> and [Benjamin Herrington charged with stealing CFD ambulance, after 75-mile chase along I-55 - CBS Chicago \(cbsnews.com\)](https://www.cbsnews.com/news/benjamin-herrington-charged-with-stealing-cfd-ambulance-after-75-mile-chase-along-i-55/)

both the video images in Paragraphs 7 and 10 and their associated videos “utterly discredit” the allegations made by Plaintiff.

Plaintiff’s Opposition claims this case does not involve a video. [Dkt. #11 at ¶ 16.] This is demonstrably untrue through his own photo inclusions (*See* Plaintiff’s Complaint ¶¶ 7, 10) along with their associated eyewitness news reports. The videos show, unambiguously, Plaintiff was not subdued nor restrained at the time he was bitten and that he was actively resisting arrest. As discussed in *Kailin v. Vill. of Gurnee*, 77 F. 4th 476, and contrary to Plaintiff’s claim, this case demonstrates the “rare case where video definitely demonstrates what occurred” to support a dismissal. *Id.* at 482 (7th Cir. 2023). Further, as shown in the Judicially Noticed videos, Defendant Deputy Cory had a reasonable basis to instruct his canine to bite Plaintiff at the time of the instruction, and he released said instruction as soon as reasonably prudent. Even taking the facts alleged in the light most favorable to Plaintiff, Defendant Deputy Cory did not violate Plaintiff’s clearly established statutory or constitutional rights.

CONCLUSION

For the reasons stated above, Defendants GRUNDY COUNTY and GRUNDY COUNTY SHERIFF'S DEPUTY AARON CORY, respectfully requests this Court grant their Motion to Dismiss Plaintiff's Complaint with prejudice against all Defendants and grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/: Jordan K. Cray, Esq.____

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2024, I electronically filed the foregoing document with the clerk of the court for the Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of E-Filing” to the attorneys of record in this case.

/s/: Jordan K. Cray