

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

Jerome Fears,)	
)	
Plaintiff,)	
)	
)	Case No. 24-cv-5101
Vs.)	Honorable Matthew F. Kennelly
)	Mag. Hon. Sheila M. Finnegan
Officer Elias Agredano (#15210), and)	
CITY OF CHICAGO,)	
)	
Defendants.)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants Elias Agredano, #15210 and City of Chicago by and through their attorneys Johnson & Bell, Ltd., for their answer and affirmative defenses to Plaintiff's complaint, state as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1343 and 1367.

ANSWER: Admitted.

2. Plaintiff Jerome Fears is a resident of the Northern District of Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

3. Defendant Elias Agredano, #15210, was, at all relevant times, acting under the color of his office as a Chicago police officer.

ANSWER: Admitted.

4. Defendant City of Chicago is an Illinois municipal corporation. Plaintiff does not assert a federal claim against defendant City; plaintiff sues the City for a state law claim of battery and as the potential indemnitor of defendant Agredano.

ANSWER: Admitted.

5. On June 11, 2023, plaintiff was lawfully standing outside a McDonald's on the South Side of Chicago.

ANSWER: Denied.

6. Plaintiff was not violating any state or federal law or any municipal ordinance.

ANSWER: Denied.

7. Defendant Agredano drove his police vehicle close to the position where plaintiff was lawfully standing.

ANSWER: Defendants admit that Officer Agredano was driving the police vehicle and that he approached Plaintiff. Defendants deny that he drove the vehicle "close" to plaintiff because that term is vague and undefined. Defendants deny Plaintiff was "lawfully standing."

8. Defendant Agredano got out of the vehicle and ordered plaintiff to "stay right there."

ANSWER: Defendants admit that Officer Agredano got out of the vehicle and gave Plaintiff an order to that effect but lacks knowledge or information as to the specific words used.

9. Defendant Agredano did not have a lawful basis to deprive plaintiff of his freedom of movement.

ANSWER: Denied.

10. Plaintiff ran from defendant Agredano.

ANSWER: Admitted.

11. Neither Agredano nor any other police officer had told plaintiff that that he was under arrest before plaintiff ran from defendant Agredano.

ANSWER: Defendants admit Plaintiff ran from the police. Defendants admit Officer Agredano did not tell Plaintiff he was under arrest before he ran. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding what other officers did or did not do.

12. Plaintiff is a Black man; based on his life experience and the deplorable history of policing in Chicago, including his own personal experience with corrupt Chicago police officers, plaintiff had a reasonable basis to seek to avoid interacting with police officers.

ANSWER: On information and belief, Plaintiff is a “Black man.” Defendants deny the remaining allegations of this paragraph.

13. Plaintiff’s conduct was consistent with what the Illinois Appellate Court accurately described as “the well-documented, reasonable, and noncriminal impulse to avoid interactions with police.” *People v. Horton*, 2019 IL App (1st) 142019-B, ¶ 7, 142 N.E.3d 854, 858.

ANSWER: Denied.

14. Defendant Agredano ran after plaintiff and shouted in plaintiff’s direction, “Stop right there! Stop right there, you’re going to get tased! You’re going to get tased! You’re going to get tased! Stop right there, you’re going to get fucking tased.”

ANSWER: Defendants admit Officer Agredano ran after plaintiff and shouted commands for Plaintiff to stop running. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the specific words used.

15. At the time defendant Agredano spoke the above words, he had not observed plaintiff with a weapon, and he had not observed anything that could have caused a reasonable police officer to believe that the use of force was appropriate.

ANSWER: Defendants admit that Officer Agredano did not observe Plaintiff with a weapon when he gave him commands to stop running. Defendants deny the remaining allegations of this paragraph.

16. A reasonable police officer, confronted with the facts known to Agredano, would have known that firing a taser at plaintiff would cause him to collapse uncontrollably to the ground and suffer personal injuries.

ANSWER: Defendants deny that “firing a taser at plaintiff would cause him to collapse uncontrollably to the ground and suffer personal injuries.” Defendants admit that, if taser prongs make contact with a person, or with Plaintiff, they could cause him to stop running and fall to the ground and suffer injuries. Defendants deny the remaining allegations of this paragraph.

17. Defendant Agredano fired his taser at plaintiff. Plaintiff fell uncontrollably to the ground, as depicted in the following still image:



ANSWER: Defendants admit that Defendant Agredano fired his taser at Plaintiff. Defendants admit that Plaintiff fell to the ground. Defendants admit, on information and belief, that the above image shows Plaintiff. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

18. Plaintiff suffered personal injuries as a result of defendant Agredano firing his taser.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

19. Officers placed plaintiff into handcuffs and subjected him to a full custodial arrest.

ANSWER: Admitted.

20. After the arrest, defendant Agredano prepared an official police report in which he claimed that he believed plaintiff had a weapon because plaintiff reached into his front waistband while he ran.

ANSWER: Defendants deny that Officer Agredano, in a police report, “claimed that he believed plaintiff had a weapon because he reached into his front waistband while he ran.” Defendants admit Officer Agredano’s report indicates that he observed Plaintiff reaching into his waistband placing him in fear that he may be reaching for a weapon.

21. This claim is false. Plaintiff did not reach into his waistband while he ran, and he did not have a weapon of any kind on his person.

ANSWER: Defendants deny that Officer Agredano made the claim alleged, and deny that the police reports in question are false. Defendants deny that Plaintiff did not reach into his waistband while running. Defendants admit that no weapon was recovered from Plaintiff. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

22. When defendant Agredano chased plaintiff and fired his taser at him,

- a. Agredano did not have reason to believe that plaintiff had committed a violent offense;
- b. Agredano did not have reason to believe that plaintiff had committed any offense;
- c. Agredano did not have reason to believe that plaintiff posed an immediate threat to Agredano or to anyone else; and
- d. Agredano did not have reason to believe that plaintiff was actively resisting arrest or attempting to evade arrest by flight.

ANSWER: Defendants admit the allegations in sub-paragraph (a) above. Defendants deny the remaining allegations in this paragraph, specifically the allegations in sub-paragraphs (b) – (d).

23. After the arrest, Defendant Agredano prepared and signed criminal complaints charging plaintiff with criminal offenses.

ANSWER: Defendants admit that criminal complaints charging Plaintiff with criminal offenses were prepared. Defendants lack knowledge or information sufficient to form a

belief as to the truth of the allegations in this paragraph regarding who prepared or who signed the complaints.

24. At the time he cause plaintiff to be charged, defendant Agredano knew that there was not probable cause to prosecute plaintiff.

ANSWER: Denied.

25. Plaintiff remained in custody from the time that defendant Agredano initiated charges in the evening of July 11, 2023, until he was released on bond in the evening of July 12, 2023.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. On August 3, 2023, the prosecutor dismissed the charges against plaintiff.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

27. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth Amendment to the Constitution of the United States.

ANSWER: Denied.

28. As a supplemental state law claim against defendant City of Chicago only: As a result of the foregoing, plaintiff was subjected to the Illinois tort of battery for which defendant City of Chicago is liable because defendant Agredano's conduct was willful and wanton, his acts resulted in offensive contact with plaintiff's person, and plaintiff did not consent to the contact.

ANSWER: Denied.

29. Plaintiff hereby demands trial by jury.

ANSWER: Admitted.

Defendants deny Plaintiff is entitled to the relief sought, or to any relief whatsoever. Defendants respectfully request that this Honorable Court dismiss Plaintiff's complaint with prejudice, and further request any additional relief that this Honorable Court deems equitable and just.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (Qualified Immunity)

Defendant Agredano is a government official who performed discretionary functions. At all times material to the events alleged in Plaintiff's Complaint, a reasonable police officer objectively viewing the facts and circumstances that confronted Defendant Agredano could have believed his actions to be lawful in light of clearly established law and information that he possessed. Therefore, Defendant Agredano is entitled to qualified immunity as to the Plaintiff's claims.

SECOND AFFIRMATIVE DEFENSE (Legal Justification)

When a police officer has probable cause to believe that a person is committing a crime and during that person's detention and/or arrest physically touches a person and/or uses force necessary to effectuate the arrest, a police officer is justified in that touching even if that person did not authorize or consent to the touching or detention by a police officer. *Roy v. Coyne*, 259 Ill. App. 3d 269, 281 (Ill. App. Ct. 1994). Additionally, under the Fourth Amendment, an officer's right to make an arrest, investigatory stop, or other seizure of a person includes the right to use some degree of physical force/touching, but the detention and the use of force must be objectively reasonable in light of the totality of the circumstances. *Graham v. Connor*, 490 U.S. 386, 396 (1989); *see also Catlin v. City of Wheaton*, 574 F.3d 361, 366 (7th Cir. 2009).

**THIRD AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

Plaintiff had a duty to mitigate his damages, and any damages awarded to Plaintiff should be reduced by any amount by which the damages could have been lessened by his failure to take reasonable action to minimize those damages.

FOURTH AFFIRMATIVE DEFENSE

As to Plaintiff's state law claims, to the extent that any damages claimed by Plaintiff were caused, in whole or in part, by negligent, willful and wanton, and intentional conduct of Plaintiff, even if Defendants are liable for damages, the total amount of damages to which Plaintiff would otherwise be entitled must be reduced by application of principles of comparative fault in proportion to the amount of the negligent, willful and wanton, and intentional conduct of Plaintiff which was the proximate cause of the injuries or damages allegedly suffered.

At the time of the actions alleged in Plaintiff's Complaint, Illinois statute 735 ILCS 5/2-1116 was in effect and reduces Plaintiff's recovery according to Plaintiff's contributory negligence and bars recovery entirely when Plaintiff is more than 50% of the proximate cause of the injury or damages for which recovery is sought. Plaintiff contributed to cause the alleged injuries and damages by the conduct in which he engaged during the incident, and those injuries and damages should be reduced by the amount of fault attributed to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Under 745 ILCS 10/2-202 of the Tort Immunity Act, "A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct." Defendant Agredano was a public employee executing and enforcing the law at all relevant times and did not act "willfully and wantonly" while doing

so. Plaintiff's state law claims against Defendant Agredano are therefore barred under 745 ILCS 10/2-202.

SIXTH AFFIRMATIVE DEFENSE

As to Plaintiff's state law claims, the City of Chicago is not liable to pay punitive damages in this action as per the Tort Immunity Act. 745 ILCS 10/2-102.

SEVENTH AFFIRMATIVE DEFENSE

As to Plaintiff's state law claims, the City of Chicago is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. 745 ILCS 10/2-109.

JURY DEMAND

Defendants demand a trial by jury.

Respectfully submitted,

By: /s/ Brian P. Gainer
Attorney for Defendants, Defendant Elias
Agredano, #15210 and City of Chicago

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CERTIFICATE OF SERVICE

I, Brian P. Gainer, hereby certify that on **September 9, 2024**, I caused to be served the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Brian P. Gainer