

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

SAMUEL GONZALEZ,)	
)	
Plaintiff,)	
)	Case No. 24-cv-11448
v.)	
)	
VILLAGE OF SUMMIT, ILLINOIS,)	Honorable Chief Judge Virginia M. Kendall
SUMMIT POLICE OFFICERS DONATO)	
#155 and PASQUEL, #310,)	
)	
Defendants.)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S 56.1 STATEMENT OF ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, Village of Summit, Illinois, Summit Police Officers Donato and Pasquel, by their attorneys, Odelson, Murphey, Frazier & McGrath, Ltd., hereby respond to Plaintiff's Rule 56 Statement of Additional Facts as follows:

GLOBAL OBJECTION TO PLAINTIFF'S ADDITIONAL STATEMENT OF FACTS

Defendants object to Plaintiff's Additional Statement of Facts and Plaintiff's response to Defendants' Rule 56.1(b)(2) Statement of Facts to the extent both rely on selectively excerpted still images or brief portions of dash-camera footage to manufacture disputes of fact that do not exist when the record is viewed as a whole. Plaintiff's Exhibits 3 and 5-7 omit audio, timing, and surrounding context, and therefore do not accurately reflect the circumstances confronting the officers or undermine the undisputed evidence establishing probable cause.

Local Rule 56.1 permits only concise, statements of material fact supported by admissible evidence, not argumentative characterizations or inferences drawn from edited evidence. Such assertions do not create a genuine dispute of material fact and should be disregarded for purposes of summary judgment.

1. At about 5:50 p.m. on June 23, 2023, (Arrest Booking Form, Exhibit 11), plaintiff was on the public way (Dkt. 26-1 at 8, Gonzalez Dep. 28:1-6) in the vicinity of 74th Avenue and 57th Place in the Village of Summit. (*Id.* at 6, Gonzalez Dep. 20:2-6).

Response: Admit.

2. Plaintiff was walking to his home on Archer Avenue in Summit (Dkt. 26-1 at 6, Gonzalez Dep. 20:2-6) when he saw four Summit police cars blocking an intersection. (*Id.* at 8, Gonzalez Dep. 28:23-29:2).

Response: Defendants admit Plaintiff was walking north towards Harlem. (Dkt. 26-1 at 8, Gonzalez Dep. 20:2-12). Defendants deny that Plaintiff merely observed police activity, as he walked into the cordoned area and approached officers. (Id. at 6, Gonzalez Dep. 28:18-29:1).

3. A portion of the interaction between Plaintiff and Defendants Pasquel and Donato was captured on a dash camera installed in Officer Correa's police vehicle, produced by Defendants in this litigation. (Plaintiff's Exhibit 1, uploaded as CorreaDashCam.mp4).

Response: Admit.

4. Plaintiff extracted 13 seconds from the dash cam video (starting three minutes and 55 seconds from the beginning of the video), split that video into still frames, filed as Plaintiff's Exhibit 3 and 5-7.

Response: Defendants object to this paragraph as immaterial and misleading; Plaintiff's description of how he edited the video does not constitute a material fact under Local Rule 56.1.

5. The video from Officer Correa's dash cam shows Defendant Donato exit his police vehicle (Plaintiff's Exhibit 3 at 1) and walk towards Defendant Pasquel, who was emerging from his vehicle to speak with plaintiff. (Plaintiff's Exhibit 3 at 193). Plaintiff was facing defendant Pasquel (Exhibit 3 at 217), with his back towards Defendant Donato. (*Id.*). This portion of the

video is also inconsistent with Donato's deposition testimony that Plaintiff was "walking away from me." (Dkt. 26-2 at 3, Donato Dep. 11:24-12:5).

Response: Defendants object to this paragraph as it constitutes improper legal argument in violation of Local Rule 56.1(d)(4) (material fact cannot contain legal argument). Additionally, Plaintiff's characterization of the video as "inconsistent" with Officer Donato's testimony is argumentative and improperly draws inferences from a brief, limited-angle video excerpt, and therefore does not constitute a proper statement of material fact under Local Rule 56.1. Objecting further, Plaintiff's reliance on isolated still-frame excerpts to draw conclusions about the encounter is incomplete and misleading, as the images lack audio, timing, and context and therefore do not constitute a proper statement of material fact under Local Rule 56.1 and lack foundation.

Subject to and without waiving the foregoing objections, Defendants admit that the dash-camera video shows Officer Donato exiting his vehicle and walking toward Officer Pasquel while Plaintiff is positioned near Officer Pasquel.

6. Plaintiff walked towards Defendant Pasquel. (Dkt. 26-1 at 8, Gonzalez Dep. 28:11-14; Dkt. 26-2 at 6, Donato Dep. 21:13-23).

Response: Admit.

7. Plaintiff did not speak as he approached Pasquel. (Dkt. No. 26-1 at 8, Gonzalez Dep. 28:15-15) [sic].

Response: Defendants deny. Plaintiff testified that he asked Officer Pasquel questions as he approached. (Dkt. No. 26-1, at 8, Gonzalez Dep. 29:2-4).

8. Defendant Pasquel emerged from his police vehicle as Plaintiff reached the car. (Plaintiff's Exhibit 3 at 130-159).

Response: Defendants object to this paragraph as Plaintiff's reliance on isolated still-frame excerpts to draw conclusions about the encounter is incomplete and misleading, as the images lack audio, timing, and context and therefore do not constitute a proper statement of material fact under Local Rule 56.1 and lack foundation.

Subject to and without waiving the foregoing objections, Defendants admit only that the still-frame images depict Officer Pasquel exiting his vehicle as Plaintiff is positioned near the vehicle.

9. Plaintiff did not interfere while Pasquel exited his vehicle. (Plaintiff's Exhibit 3 at 130-210; Dkt. No. 26-3 at 2, Pasquel Dep. 7:20-22).

Response: **Defendants object to this paragraph as Plaintiff's reliance on isolated still-frame excerpts to draw conclusions about the encounter is incomplete and misleading, as the images lack audio, timing, and context and therefore do not constitute a proper statement of material fact under Local Rule 56.1 and lack foundation.**

Subject to and without waiving the foregoing objections, Defendants admit only that Plaintiff did not prevent Pasquel from exiting his police vehicle. Defendants further state that the citation to Pasquel's testimony references Plaintiff saying those words, "I knew you motherfuckers were going to do this" and I'm going to fuck you up" as Pasquel exited his vehicle. (Dkt. 26-3, Pasquel Dep. 7:4-22).

10. Plaintiff stood about three feet away from Pasquel (Dkt. No. 26-3 at 3, Pasquel Dep. 9:8-11) and neither raised (Dkt. 26-3 at 3, Pasquel Dep. 15-16) nor moved his arms as Pasquel exited his vehicle. (Plaintiff's Exhibit 2 at 130-210; Plaintiff's Exhibit 3 at 211-222).

Response: **Defendants object to this paragraph as Plaintiff's reliance on isolated still-frame excerpts to draw conclusions about the encounter is incomplete and misleading, as the images lack audio, timing, and context and therefore do not constitute a proper statement of material fact under Local Rule 56.1 and lack foundation.**

Subject to and without waiving the foregoing objections, Defendants admit only that Plaintiff stood about three feet away from Pasquel.

11. The only threatening conduct that Pasquel could identify were verbal threats. (Dkt. No. 26-3 at 3, Pasquel Dep. 9:17-24; Dkt. No. 26-3 at 4, Pasquel Dep. 14:10-15).

Response: **Defendants deny. Officer Pasquel testified that Plaintiff's verbal threats, agitation, and combative demeanor placed him in reasonable apprehension of receiving a battery." (Dkt. 26-3; Pasquel Dep. 9:17-24; 14:10-15).**

12. Donato testified at the criminal trial that Plaintiff had been “running towards Pasquel.” (Plaintiff’s Exhibit 9, Trial Transcript 19:7-12). Donato testified differently at his deposition, stating that Plaintiff was not running, but was “in a normal walking position.” (Dkt. No. 26-2 at 3, Donato Dep. 12:12-17).

Response: Defendants object to this paragraph as it constitutes a misleading characterization in violation of Local Rule 56.1(d)(4) (material fact cannot contain legal argument). *See Uncommon, LLC v. Spigen, Inc.*, 305 F. Supp. 3d 825, 838 (N.D. Ill. 2018) (Blakey, J.), *aff’d*, 926 F.3d 409 (7th Cir. 2019) (responses to the opposing party’s statement of facts are not the place for “purely argumentative details” or “legal conclusion”).

Subject to and without waiving the foregoing objections, Defendants admit that Donato testified at his deposition in this matter that Plaintiff was not running and further explained that he made an error when typing his police report and advised the prosecutor of that error prior to testifying at the criminal trial. (Dkt. No. 26-2 at 6, 21:13-22:24).

13. Defendant Donato approached Plaintiff from the rear while Plaintiff was standing, facing Pasquel. (Exhibit 2 at 183-207).

Response: Defendants object to this paragraph and ask that it be disregarded because it is immaterial, incomplete, and argumentative as well as Plaintiff’s Exhibits 3, 5-7 lack foundation. Plaintiff’s reliance on isolated still-frame excerpts is incomplete and misleading, as the images lack audio, timing, and context and improperly invite inferences from selective excerpts, contrary to Local Rule 56.1.

Subject to and without waiving the foregoing objections, Defendants admit Officer Donato approached Plaintiff while Plaintiff was positioned near Officer Pasquel. Defendants deny that the cited still-frame excerpts accurately depict Plaintiff’s movement, orientation, or conduct in a manner that negates the officers’ contemporaneous observations or establishes any material fact relevant to probable cause.

14. Plaintiff showed Pasquel his empty left hand (Exhibit 2 at 207), while Defendant Donato grabbed Plaintiff by his arms (Exhibit 3 at 219) and pushed Plaintiff onto the rear of Pasquel’s vehicle. (Exhibit 3 at 219-274).

Response: Defendants object to this paragraph and ask that it be disregarded because it is immaterial, incomplete, and argumentative as well as Plaintiff's Exhibits 3, 5-7 lack foundation. Plaintiff's characterization of the still-frame excerpts is argumentative and lacks foundation, as the images do not capture audio, timing, or the full interaction and therefore do not constitute a proper statement of material fact under Local Rule 56.1.

Subject to and without waiving the foregoing objections, Defendants admit that the still-frame excerpts depict Officer Donato making physical contact with Plaintiff and positioning Plaintiff against Officer Pasquel's vehicle. Defendants deny that the still images establish the sequence of events, Plaintiff's compliance, or the absence of threatening or obstructive conduct, or undermine probable cause.

15. Neither Defendant Pasquel nor Defendant Donato told Plaintiff why he was being restrained and handcuffed. (Dkt. No. 26-1 at 9, Gonzalez Dep. 30:6-10).

Response: Defendants object to this paragraph as the assertion that neither Defendant told "Plaintiff why he was being restrained and handcuffed" is not supported by the cited material in Dkt. No. 26-1 at 9, Gonzalez Dep. 30:6-10, in violation of Local Rule 56.1(d)(2) (each fact must be supported by citation to specific evidentiary material). *See Tel-Lock, Inc. v. Thomson Consumer Electronics*, 2005 WL 741930, at *3 ("[p]arties are required to make "specific references" to the appropriate part of the record that supports their position.")

Subject to and without waiving the foregoing objections, Defendants admit only that Plaintiff's cited testimony states, "I asked them numerous why are they bothering me, why is it that they need to bother me. They refused to give me any iteration as to what I had done." (Dkt. No. 26-1 at 9, Gonzalez Dep. 30:6-10)

16. Defendants did not know, when they arrested Plaintiff, whether or not he had been violating the Summit no-soliciting ordinance. (Dkt. No. 26-2 at 3, Donato Dep. 9:8-9).

Response: Admit.

17. Pasquel transported Plaintiff to the police station after the arrest. (Defendants' Exhibit D, Pasquel's in-car camera).

Response: Admit.

18. While being transported to the police station, Plaintiff proclaimed his innocence, called Pasquel a variety of names, threatened to cause Pasquel to lose his badge, freely used obscenities, and told Pasquel that he would be sued. The following is a rough transcription of the words spoken by Plaintiff on Defendants' Exhibit D:

Yeah. Like say what the fuck I want out of my mouth. Ain't shit you can do about it. 'cause I'm fucking constitutionally protected and you're fucking violating every one of my rights. Therefore, you're gonna lose your badge buddy. Promise you that. You're gonna learn just like the other ones. Yeah. Include \$250,000 payday...

They have back up. Come to a check out some shit for me. I did this on purpose. Stupid motherfucker. Yeah. I didn't run from you. Everything's on camera. Everything's on camera. I walked right up to you. Yeah, you can say whatever you want.

[message from dispatcher omitted]

You taxpayer's money for right? Huh? What you taxpayer's money for? You know, I'm on parole for nothing, right? I'm about to be done so. You're stupid as shit. If you thought I was gonna do anything to forfeit that, you're a dumb motherfucker. I hope you know that. You know that, right?

Get me 2.2 until I get out these cuffs and I get into a lawyer's office.

Response: Defendants deny that Plaintiff "proclaimed his innocence." Defendants admit Plaintiff made the quoted statements, including using obscenities, threatening Officer Pasquel's job, stating he would sue, asserting that he "did this on purpose," referencing a "\$250,000 payday," and acknowledging that he "walked right up to" Officer Pasquel. Defendants deny that these statements support Plaintiff's claims or undermine probable cause; to the contrary, the statements corroborate Defendants' account of Plaintiff's intentional, aggressive, and confrontational conduct.

19. Plaintiff was in police custody until 6:35 p.m. on June 25, 2023 when he signed a personal recognizance bond. (Bond Slip, Plaintiff's Exhibit 8).

Response: Defendants deny Plaintiff remained in custody until June 25, 2023.

Respectfully Submitted,

**THE VILLAGE OF SUMMIT,
OFFICER DONATO (#155) and
OFFICER PASQUEL (#310)**

By: */s/ Kelly A. Krauchun*
One of their attorneys

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