

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

Randy Johnson, Jonathan Shields,)	
and Germain Sims,)	
)	
<i>Plaintiffs,</i>)	No. 25-cv-1094
)	
<i>-vs-</i>)	<i>(Judge Shah)</i>
)	
Baker Alfarajat #18414, Charles)	
Flaster #15498, John Sandoval)	
#1079, Ronson Solaqa #7973, and)	
City of Chicago,)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S RESPONSE IN
SUPPORT OF MOTION TO QUASH**

Plaintiffs file this response in support of the motion to quash a deposition subpoena and a document subpoena filed by non-party Cook County State's Attorney's Office. (ECF No. 47.) The Court should grant the motion because the statistical evidence sought by defendants is not probative of any material fact at issue in this case.

This case arises from the arrests of plaintiffs by the individual officer defendants on July 1, 2024. The plaintiffs were charged with criminal trespassing, and all charges were dismissed at the first court appearance on July 25, 2024. Plaintiffs bring claims for false arrest and malicious prosecution. One of the elements of plaintiffs' malicious prosecution claims is

that the dismissal of plaintiffs' criminal charges constituted a favorable termination.

Defendants seek to oppose plaintiffs' evidence of favorable termination by fishing for evidence that the defendants "believe will demonstrate that CCSAO strikes or dismisses the vast majority of its misdemeanor trespass cases." (ECF No. 50 at 3.) Defendants do not cite any precedent for this request, and advance their conclusory argument that this hypothetical evidence would be relevant without any reference to the facts of this case.

Plaintiffs expect the evidence to show that the charges for criminal trespass were dismissed because the complaining witness did not appear in court. The evidence will also show that the reason the complaining witness failed to appear is that none of the arresting officers told the complainant about the court date. This evidence demonstrates a favorable termination:

[W]here a malicious prosecution plaintiff presents evidence that the prosecutor abandoned a charge because the complaining witness failed to appear for trial, a reasonable jury could conclude that probable cause was lacking and therefore that the dismissal was indicative of innocence.

Garcia v. Chicago, 09 C 5598, 2012 WL 601844, at *10 (N.D. Ill. Feb. 23, 2012).

The statistical evidence defendants hope to obtain is not related to why plaintiffs' criminal cases were dismissed. Any showing that "the vast majority" of trespass charges are dismissed (ECF No. 50 at 3) would not be probative of whether some portion of those dismissals were for reasons other

than innocence. Nor would such a showing rebut plaintiffs' evidence about why their individual cases were dismissed.

There is simply no reason to assume that the hypothetical evidence defendants seek would show that many dismissals are for reasons other than innocence. Misdemeanor cases in Cook County are initiated by the arresting officers without any involvement by a prosecutor. It may be that the vast majority of misdemeanor trespass cases are dismissed because the vast majority of police officers initiating such cases do not understand the elements of the offense or the prosecutor's burden of proof. In this case, the defendant officers initiated charges through complaints that alleged violations of 720 ILCS 5/21-3(a)(3), but the officers claimed in their arrest reports and have asserted in their deposition testimony that plaintiffs violated a different provision, 720 ILCS 5/21-3(a)(2).

For all these reasons, the Court should grant the motion to quash.

Respectfully submitted,

/s/ Joel A. Flaxman
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