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Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

QUENTIN BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20-cv-02013-CSB-EIL
	)	
CITY OF URBANA and URBANA POLICE OFFICERS LT. RICHARD SURLES, SGT. MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY, and DAVE ROESCH,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO
THE DEFENDANTS' MOTION TO DISMISS

NOW COMES the Plaintiff, QUENTIN BROWN, by and through counsel, SHILLER PREYAR JARARD & SAMUELS, pursuant to Fed. R. Civ. P. 12(b)(6), providing his response in opposition to the Defendants' partial motion to dismiss. In support thereof, Plaintiff states as follows:

BACKGROUND

On or around January 2, 2018, a shooting occurred near a fraternity party that left two women injured. Dkt. 1, Plaintiff's Complaint, ¶7. Defendants Lt. Richard Surles, Sgt. Matt Bain, Michael Cervantes, Michael Hediger, Anthony Meenely, and Dave Roesch were, at the time of this occurrence, officers with the Urbana Police Department and tasked with investigating this shooting, though in varying capacities. *See id.* at ¶5, 7. Pursuant thereto Defendant Officers fabricated an eyewitness identification against

Plaintiff. *Id.* at ¶9. This fabrication was apparent due to the, "scratching out and using white-out" on the form. *Id.*

Defendant Officers then used that fabricated evidence to procure a warrant for Plaintiff's arrest. *Id.* at ¶10. As a result, on February 2, 2018, Plaintiff was arrested without probable cause or any other lawful justification. *Id*. at ¶11. Plaintiff was thereafter charged with multiple felonies and spent close to a year in jail for a crime he did not commit. *Id.* at ¶13. Ultimately, all charges were dismissed against Plaintiff in a manner consistent with his innocence and the case against him was closed on January 22, 2019. ¶14. He then brough the instant suit seeking vindication of his constitutional rights.

ARGUMENT

The Court should deny the Defendants' motion to dismiss as Plaintiff's complaint states a plausible claim against the Defendants for their constitutional violations. A Rule 12(b)(6) motion challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6). A complaint must not only provide a defendant with fair notice of a claim's basis but must also be facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). At this stage, the Court must accept as true all well-pleaded facts in the complaint and draw all reasonable inferences from those facts in the plaintiff's favor. *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011). Here, the well-plead facts—and the reasonable inferences that can be drawn therefrom—state a plausible claim for which relief may be

granted. *See id.* Therefore, the defendants' motion to dismiss should be denied in its entirety.

I. PLAINTIFF'S COMPLAINT PLEADS THE DEFENDANTS' PERSONAL INVOLVEMENT.

The defendants do not attack the legal sufficiency of Plaintiff's claims. Rather, they argue that the complaint does not plead enough facts to infer that the defendants were personally involved in this violation. However, given the nature of the specific facts of this case, plaintiff's complaint alleges with particularity the nature of the constitutional violations the defendants caused him to incur. Accordingly, the motion to dismiss should be denied.

A. Lt. Surles and Sgt. Bains are responsible for facilitating their subordinate's misconduct.

The defendants' motion to dismiss Count III should be denied as it puts the defendants on fair notice of the claims alleged against them. For supervisory liability to attach, the defendant-supervisor must have been, "personally responsible for the deprivation of the constitutional right." *Matthews v. City of East St. Louis,* 675 F.3d 703, 708 (7th Cir. 2012). This means that the supervisor must, "know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see." *Id*. (quoting *Jones v. City of Chicago,* 856 F.2d 985, 992-93 (7th Cir. 1988)). The failure to stop the unconstitutional acts of the other defendant officers provides the causal connection or affirmative link between the action complained about and the official sued necessary for § 1983 recovery. *Wilbon v. Plovanich*, 67 F. Supp. 3d 927, 950-951

(N.D. Ill 2014). Here, Defendants Surles and Bains caused Plaintiff's injuries by facilitating and condoning their subordinate officers' unconstitutional conduct.

Plaintiff alleges that the eyewitness identification of him was fabricated. In a similar circumstance, a supervisor might rightly claim an inability to either know or discern that a witness did not, in fact, make a positive identification when there was a signature purporting to attest to the opposite. However, that is not the case here. Here, it was plain and apparent due to scratch outs and white out that the eyewitness "identification" had been modified. Dkt. 1, ¶9; *see Mayes v. City of Hammond, Ind.*, 442 F. Supp. 2d 587, 634 (N.D. Ind. 2006) (holding supervisory liability may also attach where a supervisor knows of unconstitutional acts, but fails to take corrective measures). Accordingly, Defendants Surles and Bains must have either (1) facilitated in the false identification or (2) turned a blind eye to the fabrication; either response is repugnant to the constitution and subjects them to supervisory liability. *See Chavez v. Ill. State Police*, 251 F.3d 612, 652 (7th Cir. 2001)(holding a defendant, "will be deemed to have sufficient personal responsibility if he directed the conduct causing the constitutional violation, or if it occurred with his knowledge or consent").

Thus, Plaintiff's complaint puts Defendants Bains and Surles on notice of the specific claim against them: allowing their subordinates to frame a man for a crime he did not commit by fabricating an eyewitness identification. Dkt. 1, ¶8 ("Defendant Officers…knew of the fabrication of eyewitness identifications that were used to implicate Plaintiff). At this stage, that is all that is required. "To state a claim for relief, a plaintiff need only provide a short and plain statement of the claim showing she is

entitled to relief and giving the defendants fair notice of the claims." *Tanner v. Board of Trustees*, No. 3:17-CV-3039, 2018 U.S. Dist. LEXIS 35126, at *2-3 (C.D. Ill. Mar. 2, 2018) (citing Tamayo v. Blagojevich, 526 F.3d 1074, 1081 (7th Cir. 2008)). Accordingly, the Court should deny the defendants' motion to dismiss the supervisory liability claim against Lt. Surles and Sgt. Bains.

B. Plaintiff's Conspiracy Claim is Plausibly Plead.

Plaintiff properly plead a Section 1983 conspiracy claim against the defendants for falsely implicating him in a crime. A civil conspiracy claim may serve as a source of § 1983 liability when the plaintiff can show, "he was deprived of a right secured by the Constitution or laws of the United States and that the deprivation was caused by a person acting under color of state law." *Kelley v. Myler*, 149 F.3d 641, 648 (7th Cir. 1998). To establish a Section 1983 conspiracy, a defendant must be a voluntary participant in a common venture. *See Hill v. City of Chicago,* No. 06 C 6772, 2009 WL 174994, at *9 (N.D. Ill. Jan. 26, 2009). Whether explicitly or implicitly, it is enough if the defendant understands the general objectives of the scheme, accepts them, and agrees to do his part to further them. *See Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988). At the pleading stage, a plaintiff must allege, "the parties, the general purpose, and the approximate date of the conspiracy." *Loubser v. Thacker,* 440 F.3d 439, 442 (7th Cir.2006). As Plaintiff's complaint has satisfied all these elements, the defendants' motion to dismiss this claim should be denied.

Here, Plaintiff has plead all the requisite elements of the conspiracy. First, the parties to the conspiracy are the Defendant Officers. The timeframe of the conspiracy

can be reasonably inferred as between 21 January 2018—the day of the shooting—and 22 January 2019—the day the charges against Mr. Brown were dismissed. *Id.* at ¶7, 14. And finally, the general purpose of the conspiracy was to punish Plaintiff for a crime that they knew he did not commit. *Id.* 34. Furthermore, overt acts were taken in furtherance of the conspiracy, namely arresting and charging Mr. Brown. *See Walker v. Thompson,* 288 F.3d 1005, 1007-08 (7th Cir. 2002). At the pleading stage, this is more than sufficient. *See Ibarra v. City of Chicago*, 816 F.Supp.2d 541, 553 (N.D. Ill 2011)("[plaintiff] has alleged the parties involved in the alleged conspiracy, the general purpose—to deprive Ibarra of his constitutional rights—and the approximate date of the conspiracy…as a whole, these allegations plausibly state a Section 1983 conspiracy claim.") Therefore, the Court should deny the defendants' motion to dismiss his conspiracy claim.

II. PLAINTIFF'S STATE LAW CLAIMS ARE TIMELY.

The Court should deny the defendants' motion to dismiss Plaintiff's claims as untimely. A plaintiff is not required to negate an affirmative defense in his complaint. *Clark v. City of Braidwood*, 318 F.3d 764, 767 (7th Cir. 2003); *Leavell v. Kieffer,* 189 F.3d 492, 494 (7th Cir. 1999); *Tregenza v. Great Am. Communications Co.,* 12 F.3d 717, 718 (7th Cir. 1993); *Ollins v. O'Brien*, No. 03 C 5795, 2006 WL 1519286, *3 (N.D. Ill. May 26, 2006)("Because the Court can conceive of a set of facts upon which equitable tolling could apply to plaintiffs' false arrest claims, *Wallace* does not dictate the dismissal of such claims at this time."). Thus, "[u]nless the complaint alleges facts that create an ironclad defense, a limitations argument must await factual development." *Foss v. Bear*

Stearns & Co., Inc., 394 F.3d 540, 542 (7th Cir. 2005). Furthermore, a plaintiff only, "pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits." *Kolupta v. Roselle Park Dist.*, 438 F.3d 713, 715 (7th Cir. 2006).

Here, the defendants' motion to dismiss plaintiff's state claims are premised entirely on the affirmative defense of the statute of limitations. *See Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 899, 901 (7th Cir. 2004) ("Complaints need not contain *any* information about defenses and may not be dismissed for that omission.") (emphasis in original). Thus, dismissal is unwarranted because possible defenses to their claim could apply to the facts of this case. *Anguilo v. U.S.*, 867 F.Supp.2d 990, 1000 (N.D. Ill. 2012) ("Equitable estoppel and equitable tolling are doctrines that stop a statute of limitations from running."); *see also Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-51 (7th Cir. 1990). Accordingly, this Court should deny the defendants' motion.

A. Defendant's Exhibit Support that Plaintiff's Claim is Timely.

Here, Plaintiff's complaint does not plead him out of court; a point the defendants concede by attaching exhibits to their motion to dismiss in an attempt to bolster their argument. However, this is wholly inappropriate and should not be considered by the Court. *Hill v. Trustees of Ind. Univ.*, 537 F.2d 248, 251 (7th Cir. 1976); *see also Carter v. Stanton*, 405 U.S. 669, 671 (1972)(holding that consideration of matters outside the four corners of the complaint without converting the motion to a Rule 56 motion for summary judgment may be result in reversible error). Even if the court does consider the attachments, though, no where do they say what the defendants purport

they do. The last page of the certified disposition literally states: "1/22/2019 Case dismissed." *C.f.* Dkt. 1, ¶14. Accordingly, Plaintiff's malicious prosecution claim is timely.

The defendants make an additional argument that Plaintiff made some sort of deal with the state's attorney to have this case dismissed in exchange for pleading guilty in another matter. However, that is not stated anywhere. It is not in the email (which the Court should not even consider because it is extraneous evidence), it is not in the dismissal order, and it is not reflected in any transcript. There is nothing that states *because* plaintiff plead in one case another is being dismissed. "The absence of a bargained quid pro quo for the voluntary dismissal means that the Underlying Litigation was not terminated by a compromise or settlement that forecloses a malicious prosecution claim." *Birch|Rea Partners, Inc. v. Regent Bank*, No. 1:18-CV-30-HAB, 2019 U.S. Dist. LEXIS 79288, at *10 (N.D. Ind. May 10, 2019). Therefore, the defendants' wholly premature *Joiner* argument is misplaced. *See Joiner v. Benton Community Bank (1980)*, 82 Ill. 2d 40, 411 N.E.2d 229. The court should deny the defendants' motion to dismiss.

Therefore, the court should deny the defendants' motion to dismiss.

B. Plaintiff's Intentional Infliction of Emotional Distress Claim is not Premised on his Arrest.

Defendants erroneously assumed that Plaintiff's Intentional Infliction of Emotional Distress ("IIED") Claim is based upon his arrest. However, this simply wrong. Plaintiff's claim is premised on the fabrication of evidence. When plaintiff learned that the defendants had gone out of their way to frame him for a crime he did not commit, that is when he suffered severe emotional distress. Accordingly, his claim

is timely and he has not plead himself out of court by alleging an airtight defense to his own claim. *See Baldwin v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 WL 5278614, at *1 (holding plaintiff's allegations must show that there is an "airtight" defense to dismiss on the pleadings). Therefore, the Court should deny the defendants' motion to dismiss his IIED claim.

Dated: 12 March 2020

Respectfully Submitted,

QUENTIN BROWN

By: /s/ Jeanette Samuels
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