

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

DANIEL TAYLOR,)	
)	
Plaintiff,)	
)	Case No. 14 C 0737
v.)	
)	Judge John Z. Lee
CITY OF CHICAGO, et al.,)	
)	Magistrate Judge Sheila M. Finnegan
Defendants.)	

**CITY OF CHICAGO’S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Defendant, the City of Chicago (“City”), by its attorneys Reiter Burns LLP, for its reply in support of its motion for summary judgment, states:

I. The Defendant Police Officers’ Motion for Summary Judgment, Upon Which the City’s Motion is Based, Asks for Summary Judgment on All Counts of the Complaint.

Plaintiff initially argues the City’s motion for summary judgment should be denied because the Defendant Police Officers allegedly did not move for summary judgment on all the claims against them. (Dkt. 737, Response at 2). Plaintiff is mistaken; the Defendant Police Officers have moved for summary judgment on all claims. (Dkt. 487). Specifically, the Defendant Police Officers are requesting summary judgment on all of plaintiff’s claims based on plaintiff’s perjury and severe discovery violations (Dkt. 487 at 8). As additional grounds for their motion, the Defendant Police Officers also are asking for summary judgment on plaintiff’s Fourteenth Amendment *Brady* and fabrication of evidence claims (count II) and Fourth Amendment pretrial detention claim (count III). To the extent the Defendant Police Officers are entitled to summary judgment on the claims asserted against them, summary judgment should be entered in favor of the City as well.

II. The Claims Against the City Are Derivative of the Claims Against the Defendant Police Officers.

Plaintiff suggests the City's liability is not "entirely derivative" of the Defendant Police Officers given the outstanding *Monell* claim, specifically contending non-defendant individuals working for the City may be responsible for plaintiff's 14th Amendment claim under *Brady* that exculpatory and material evidence was allegedly withheld from plaintiff. (Response at 3). However, the Defendant Police Officers' motion for summary judgment establishes that there was no *Brady* violation at all; they do not contend there was a *Brady* violation that was committed by an anonymous non-defendant. (Dkt. 487 at 10-20). Without an underlying *Brady* violation, plaintiff cannot pursue a *Brady*-based vicarious liability claim against the City pursuant to *respondeat superior* or indemnification, nor can he succeed on a *Brady*-based *Monell* claim.

Plaintiff declares the City is "misguided" in contending his *Brady*-based claims against the City are derivative "given the outstanding *Monell* claims." (Response, at 3). It is not the City but plaintiff who misunderstands the law. As the United States Supreme Court has explained, where a municipality is sued only because a plaintiff believes it was legally responsible for a defendant officer's actions, but the officer inflicts no constitutional harm on the plaintiff, it is "inconceivable" the city could be liable to the plaintiff. *City of Los Angeles v. Heller*, 475 U.S. 796, 797 (1986).

[N]either *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm. If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the department regulations might have *authorized* the [alleged constitutional misconduct] is quite beside the point. (Emphasis in original).

Id. Judge Pallmeyer recently reached this exact conclusion in one of the companion cases to this lawsuit. Granting summary judgment on basically the same *Brady* claim at issue in this case, Judge Pallmeyer further held:

[T]he City is correct that it cannot be held liable for conduct that did not actually violate Plaintiffs' rights. The existence of the practice or custom that Plaintiffs allege would not allow Plaintiffs to hold the City liable for Defendant-officers' alleged *Brady* violations, because the court has concluded that Plaintiffs have not presented evidence that such violations occurred in the first place.

Paul Phillips and Lewis Gardner v. City of Chicago, 2018 WL 1309881, *30 (N.D. Ill. 2018).¹

While the City has not moved for summary judgment on the *Monell* claim because of the earlier bifurcation, an award of summary judgment in favor of the Defendant Police Officers on the *Brady* claim will eliminate from the case any remaining *Brady*-based claims (including the *Brady*-based *Monell* claim).

Plaintiff next argues it would be inappropriate to dismiss the "unidentified employees" of the City at this time because of the *Monell* claim. (Response at 4). Plaintiff again is incorrect. As Judge Pallmeyer logically concluded in *Phillips/Gardner*, the absence of a *Brady* violation defeats a *Brady* claim against the City or any other individual, named or unnamed. *Id.* As an aside, this result demonstrates the wisdom of the Court in bifurcating and staying plaintiff's *Monell* claims at the outset of the case, and the prudence of Magistrate Judge Finnegan's denial of plaintiff's motion to commence policy and practice discovery. (Dkt. 404). As Magistrate Judge Finnegan stated during her oral ruling on November 29, 2017:

So we turn to the efficiency argument. And as you can tell from what I've just said, I think it does make sense to wait since I think even plaintiff concedes there is a chance that this discovery will not be necessary at all and that would depend – there's a possibility first that Judge Lee might grant summary judgment on the

¹ It is worth noting that Judge Pallmeyer, like this Court, had bifurcated plaintiff's *Monell* claim in *Phillips/Gardner*. Accordingly, the bifurcation of *Monell* in *Phillips/Gardner* saved the City and the court substantial resources litigating and conducting voluminous discovery on a *Monell* claim that ultimately turned out to be unnecessary.

Brady claim as Judge Guzman did in the *Deon Patrick*² case. (Exhibit A, 11/29/17 Tr. at 17).

If this Court adopts the same analysis employed by Judge Pallmeyer in *Phillips/Gardner* and Judge Guzman in *Patrick*, and grants the Defendant Police Officers' motion for summary judgment on the *Brady* claim, then the City (and any unidentified employees of the City) likewise would be entitled to summary judgment on any *Brady*-based claim.

The City's motion for summary judgment (Dkt. #488, at ¶5) also pointed out the untimeliness of any further attempt to add a named defendant to this action. Plaintiff's apparent attempt to rely on the discovery rule is badly misplaced. (Response at 4-5). Even if plaintiff's *Brady* claim were to survive the Defendant Police Officers' motion for summary judgment, plaintiff should not be permitted to add any new party defendants to this case or to continue to proceed against "unidentified employees." As the City explained in its motion for summary judgment (Dkt. #488, at ¶4), dismissal of the so-called "unidentified" defendants is warranted where the plaintiff fails during the discovery period to identify the unknown or unnamed parties referenced in his complaint. *Williams v. Rodriguez*, 509 F.3d 391, 402 (7th Cir. 2007). Plaintiff has failed to identify any unknown or unnamed City employee who committed a *Brady* violation, despite the lengthy discovery period in this case. This failure was recognized by Magistrate Judge Finnegan, who observed: "It doesn't appear that plaintiff has identified any unknown police officers who allegedly withheld exculpatory material" (Exhibit A at 6). Contrary to plaintiff's unfounded argument, the bifurcation of *Monell* had nothing to do with his failure to adduce any evidence that some unidentified City employee is liable for committing a constitutional violation. Regardless of how it rules on the Defendant Police Officers' motion for

² The *Deon Patrick* case is the other companion case to this case in addition to *Phillips/Gardner*. As Magistrate Judge Finnegan stated, Judge Guzman also granted summary judgement to the Defendant Police Officers on the *Brady* claim there. *Patrick v. City of Chicago*, 103 F.Supp.3d 907, 915 (N.D. Ill. 2015).

summary judgment, this Court should dismiss with prejudice the “unidentified employees” of the City referenced in the caption of plaintiff’s first amended complaint.

CONCLUSION

Accordingly, for the reasons set forth above and in the City’s motion for summary judgment, this Court should grant the City the relief requested herein.

Respectfully submitted,

THE CITY OF CHICAGO

By: s/ Daniel M. Noland

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2019, I electronically filed the foregoing **Defendant City of Chicago's Reply in Support of Motion for Summary Judgment** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to:

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