

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

| | | |
|---|---|----------------------------|
| JOSE MENDOZA, an individual, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. |
| |) | |
| CITY OF CHICAGO, ILLINOIS, an Illinois |) | |
| Municipal corporation; Chicago police officer |) | |
| IWAN SMITH #5218 |) | |
| |) | |
| Defendants. |) | JURY TRIAL DEMANDED |

COMPLAINT

Plaintiff, JOSE MENDOZA, an individual, by his attorneys, Jerry Bischoff and Thomas Glasgow, complaining against Defendant, Chicago Police Officer, IWAN SMITH #5218, and the City of Chicago, Illinois, states as follows:

Introduction

1. In this civil action, JOSE MENDOZA seeks damages against Chicago Police Officer IWAN SMITH #5218, and the City of Chicago, Illinois (“Chicago”) for the deprivation of rights secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, the laws of the United States, and the laws of the State of Illinois.
2. On or about March 31, 2021 in Chicago, Cook County, Illinois, Plaintiff was shot in the face by Chicago Police Officer Iwan Smith who was acting under color of state law.
3. Defendant Smith used his Chicago Police Department service weapon upon opening the front door of his apartment, pointed his gun at Plaintiff’s head, and fired one shot striking him in the eye. Plaintiff was unarmed and posed no threat to Officer Smith at the time of the shooting.

All of these actions by the Defendant Smith, acting under color of state law, caused Plaintiff to suffer personal injuries and damages.

4. Shortly thereafter, Chicago police officers arrived at the scene and found Plaintiff lying on the floor of the vestibule of the apartment building located at 3151 W. Belle Plaine Ave, Chicago, Illinois. Plaintiff was bleeding excessively from his wound. He was transported by ambulance to Illinois Masonic Hospital by Chicago Fire Department personnel.

5. At the hospital, the Plaintiff was admitted to the ICU Unit and underwent surgery.

Jurisdiction and Venue

6. This action is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 for violations of rights guaranteed Plaintiff under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. This Court has jurisdiction of the action pursuant to 28 U.S.C. §1331. In addition, jurisdiction over Plaintiff's state law claims is conferred by principles of pendent jurisdiction pursuant to 28 U.S.C. §1367 because those claims arise from the same facts and circumstances as Plaintiff's federal claims

7. Venue is proper under 28 U.S.C. § 1391(b), because the Defendants are located in this judicial district, and the events giving rise to the claims asserted herein occurred within this judicial district.

Parties

8. Plaintiff, Jose Mendoza, is a United States citizen and a resident of Cook County, Illinois.

9. Defendant Chicago Police Officer Iwan Smith is employed as a police officer by the City of Chicago acting under color of state law. Defendant Smith is being sued in his individual capacity only.

10. The City of Chicago, Illinois (“Chicago”), is an Illinois municipal corporation located in Cook County, Illinois.

11. At all times relevant to this Complaint, Defendant Iwan Smith, badge #5218 (“Officer Smith”), was and is a police officer employed by the City of Chicago Police Department acting under color of state law.

Background

12. On March 31, 2021, Plaintiff was walking to his friend’s apartment where he planned to spend the night. He was still wearing his work clothes, which included the jacket provided by his employer - XFiniti Digital Cable TV. His name, Jose Mendoza, was visible on the uniform. He was unarmed.

13. While he was looking for his friend’s apartment building, Plaintiff entered the common area of an apartment building located at 3151 W. Belle Plaine Ave, Chicago, Illinois, mistakenly believing he had arrived at the apartment building where his friend resided. Once inside, he waited in the vestibule for approximately ten minutes. Then, he walked up five stairs to the first floor landing, turned to his right, and briefly began to turn the door handle of apartment #1W back and forth. At no time did he attempt to forcibly enter the apartment. After less than thirty seconds, plaintiff stepped away from the door and sank down to the floor with his back resting against the wall. He had nothing in his hands. He squatted there for several seconds.

14. Unbeknownst to Plaintiff, apartment #1W was the residence of Chicago Police Officer Iwan Smith. At that time, Officer Smith was in his living room watching television with his girlfriend and his child.

15. Hearing someone at his front door, Officer Smith did not call 911, nor did he call a non-emergency number to request assistance. Even though Plaintiff had stopped turning the door

handle by this point, Officer Smith walked over to the safe in his closet, retrieved his service weapon, opened the front door to his apartment and confronted Plaintiff.

16. When the door opened, Plaintiff was still in a squat position with his back to the wall. As Officer Smith opened the door, Plaintiff slowly stood up. He turned to face Officer Smith who immediately shot Plaintiff in the face.

17. At no time did Plaintiff attempt to verbally or physically assault Officer Smith. He was at all times unarmed. Plaintiff never forcibly attempted to enter Officer Smith's apartment. He possessed no burglary tools. He did not make physical contact with Officer Smith nor did he make any threatening gestures in an attempt to harm him. Officer Smith never identified himself as a police officer nor did he make any attempts to de-escalate the situation. Instead, within two seconds of opening the door to his apartment, Officer Smith fired one shot from his gun into Plaintiff's face. Then, he instructed his girlfriend to call 911.

18. Upon being shot in the face, Plaintiff fell to the floor and began to bleed out. Officer Smith never patted Plaintiff down to determine if he possessed a weapon. At no time did Officer Smith attempt to render Plaintiff first aid. Instead, as Plaintiff writhed about in a growing pool of his own blood, Officer Smith kicked him away from his door.

19. When Chicago Police Officers arrived at the scene, Officer Smith merely stepped over the Plaintiff to open the door for the officers. Plaintiff was by now semi-conscious on the floor of the vestibule bleeding profusely from his gunshot wound. Other than Officer Smith's gun, no other weapons were found. Police called for an ambulance.

20. Thereafter, Plaintiff was transported by ambulance to Illinois Masonic Hospital where he was admitted to the Intensive Care Unit.

21. Despite the fact that Plaintiff never entered Officer Smith's apartment, nor attempted to enter with the intent to commit a felony therein, he was charged by the Chicago Police Department with felony home invasion.

FIRST CAUSE OF ACTION
(Unconstitutional Excessive Use of Force by
Defendant Smith, Pursuant to 42 U.S.C. §1983)

22. The allegations contained in the foregoing paragraphs are repeated, realleged, and incorporated herein by reference as if fully set forth herein,

23. At all times relevant to this Complaint, Defendant Smith was acting under color of state law as a police officer employed by the City of Chicago.

24. Under the Fourth and Fourteenth Amendments to the United States Constitution, Defendant Smith was prohibited from using excessive force in his efforts to investigate, seize and process Plaintiff throughout his arrest.

25. Defendant Smith intentionally used force against Plaintiff in his efforts to investigate, seize and process Plaintiff.

26. As described in the preceding paragraphs, the degree of force used against Plaintiff by the Defendant Smith exceeded the degree of force that a reasonable police officer would have used under the circumstances.

27. As a direct and proximate result of Defendant Smith's unlawful and unconstitutional actions Plaintiff suffered injuries and damages of a personal, permanent and pecuniary nature.

28. Defendant Smith's actions, as alleged herein, were objectively unreasonable and were undertaken with intentional, malicious, willful, wanton, and/or in reckless disregard for Plaintiff's constitutionally protected rights, thereby entitling Plaintiff to an award of punitive damages.

29. Plaintiff is further entitled to recovery of his attorney's fees pursuant to 42 U.S.C. §1988.

SECOND CAUSE OF ACTION
State Law Claim for Indemnification
Against the City of Chicago

30. Plaintiff realleges all paragraphs of this Complaint as if fully stated herein.

31. In Illinois, public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities. 735 ILCS 10/9-102.

32. Defendant Iwan Smith is or was an employee of the City of Chicago, and acted within the scope of his employment in committing the misconduct described herein. In fact, in his tactical response report Defendant Smith asserted that he was performing a “police function.”

THIRD CAUSE OF ACTION
(State Law Claim for Battery)

33. The allegations contained in the foregoing paragraphs are repeated, realleged, and incorporated herein by reference as if fully set forth.

34. Plaintiff was shot in the face without sufficient justification or provocation. Plaintiff was unarmed, made no verbal threats, nor physical contact with Officer Smith.

35. The actions of the Defendant Smith constituted an offensive physical contact, undertaken willfully and wantonly, proximately causing Plaintiff to suffer injuries and damages.

36. The conduct described in this Count was objectively unreasonable and undertaken with malice and willfulness.

37. As a result of the above described offensive physical contact by the Defendant, Plaintiff suffered injuries and damages of a personal, permanent, and pecuniary nature.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jose Mendoza respectfully requests that the Court:

38. Enter judgment in favor of Plaintiff and against the Defendant for actual and punitive damages in amounts to be proven each at trial, plus post-judgment interest until fully paid;
39. Enter judgment in favor of Plaintiff and against Defendant City of Chicago for actual damages in an amount to be proven at trial, plus post-judgment interest until fully paid;
40. Award Plaintiff a reasonable attorney's fee pursuant to 42 U.S.C. §1988;
41. Tax the costs of this action against Defendants;
42. Grant Plaintiff a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable;
43. Award Plaintiff such other and further relief that this Court may deem just and proper.

Dated February 15, 2022

Respectfully submitted,

JOSE MENDOZA,

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