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

ANNABEL K. MELONGO Plaintiff v. ASA ROBERT PODLASEK; ASA JULIE GUNNIGLE; INVESTIGATOR KATE O'HARA (Star No. 423); INVESTIGATOR JAMES DILLON (Star No. 1068); INVESTIGATOR ANTONIO RUBINO (Star No. 5043); INVESTIGATOR RICH LESIAK (Star No. 5000); UNKNOWN COOK COUNTY SHERIFF'S OFFICERS; DR. MATTHEW S. MARKOS; ASST. ATORNEY GENERAL KYLE FRENCH; COOK COUNTY SHERIFF THOMAS DART; COOK COUNTY; INVESTIGATOR RANDY ROBERTS; SCHILLER PARK DETECTIVE WILLIAM MARTIN; VILLIAGE OF SCHILLER PARK; CAROL SPIZZIRRI, Defendants	)	Case No. 13-CV-4924 *Judge John Z. Lee* *Magistrate Sheila M. Finnegan*

DEFENDANT DETECTIVE WILLIAM MARTIN AND THE VILLAGE OF SCHILLER PARK'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

Defendants, William Martin and the Village of Schiller Park (collectively "Movants"), by and through their attorneys of record, for their motion to dismiss Plaintiff Annabel K. Melongo's ("Plaintiff") Second Amended Complaint (the "Complaint") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the "Motion"), state as follows:

1. Plaintiff has filed the instant Complaint against Movants for alleged violations of 42 U.S.C. § 1983 as well as state law causes of action.

2. For the reasons set forth in Movant's Memorandum in Support of this Motion,

each and every cause of action alleged against Movants should be dismissed with prejudice.

3. Plaintiff's claims are contrary to law and must be dismissed pursuant to Federal Rule 12(b)(6) as Plaintiff has failed to state a claim upon which relief may be granted.

4. Movants respectfully request that the Court dismiss Plaintiff's Second Amended Complaint with prejudice pursuant to Federal Rule 12(b)(6).

WHEREFORE, Defendants Detective William Martin and the Village of Schiller Park respectfully requests that this Honorable Court dismiss Plaintiff's Second Amended Complaint with prejudice and any other such further relief as this Honorable Court deems just and appropriate.

January 9, 2015

Respectfully Submitted,

DETECTIVE WILLIAM MARTIN and THE VILLAGE OF SCHILLER PARK

By: /s/ Eric D. Kaplan

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ANNABEL K. MELONGO Plaintiff v. ASA ROBERT PODLASEK; ASA JULIE GUNNIGLE; INVESTIGATOR KATE O'HARA (Star No. 423); INVESTIGATOR JAMES DILLON (Star No. 1068); INVESTIGATOR ANTONIO RUBINO (Star No. 5043); INVESTIGATOR RICH LESIAK (Star No. 5000); UNKNOWN COOK COUNTY SHERIFF'S OFFICERS; DR. MATTHEW S. MARKOS; ASST. ATORNEY GENERAL KYLE FRENCH; COOK COUNTY SHERIFF THOMAS DART; COOK COUNTY; INVESTIGATOR RANDY ROBERTS; SCHILLER PARK DETECTIVE WILLIAM MARTIN; VILLIAGE OF SCHILLER PARK; CAROL SPIZZIRRI, Defendants	)	Case No. 13-CV-4924 *Honorable Judge John Z. Lee* *Magistrate Judge Sheila M. Finnegan*

DETECTIVE WILLIAM MARTIN AND THE VILLAGE OF SCHILLER PARK'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE 12(b)(6)

Detective William Martin and the Village of Schiller Park, by and through their attorneys of record, for their memorandum in further support of their motion to dismiss Plaintiff Annabel K. Melongo's ("Plaintiff") Second Amended Complaint (the "Second Amended Complaint") pursuant to Fed. R. Civ. P. 12(b)(6) (the "Motion"), state as follows:

INTRODUCTION

Plaintiff's Second Amended Complaint chronicles an eight year legal battle related to the State of Illinois' prosecution of computer tampering and eavesdropping charges against

Plaintiff. The Second Amended Complaint adds Schiller Park Police Detective William Martin ("Detective Martin") and the Village of Schiller Park as Defendants and attempts to allege causes of action for alleged violations of 42 U.S.C. § 1983 ("§ 1983") as well as state law claims. The crux of Plaintiff's claims against Detective Martin is that he allegedly provided false testimony to the grand jury in support of the computer tampering charges. As set forth below, all claims against Detective Martin regarding allegedly false grand jury testimony fail based on the doctrine of absolute immunity. All other claims against Detective Martin are time barred. Once constitutional claims are dismissed against Martin, Plaintiff's claims against the Village of Schiller Park should also be dismissed. In the alternative, Plaintiff's *Monell* "pattern and practice" claim against the Village of Schiller Park is woefully insufficient and should be dismissed.

FACTUAL BACKGROUND

Computer Tampering Charges

On October 31, 2006, Plaintiff was charged by the State of Illinois with Computer Tampering for allegedly accessing and deleting computer files belonging to the Save-A-Life Foundation ("SALF") (Second Amended Complaint, ¶ 30). Plaintiff alleges that no factual basis existed to support a finding of probable cause that she committed computer tampering and that nonetheless Detective Martin "effectuated a search of Plaintiff's apartment, arrested Plaintiff and initiated computer tampering charges against her" (Id., ¶ 40). Plaintiff also alleges that despite the "stunning absence of evidence" Detective Martin (and other Defendants) continued to pursue computer tampering charges against her (Id.,¶ 42) Plaintiff alleges that "the State indicted Plaintiff on three counts of computer tampering on January 17, 2007, based on perjured testimony of Detective Martin" (Id., ¶ 43). Plaintiff further alleges that the computer tampering

charges against her went to trial sometime after July 28, 2014 and that she was exonerated (Id., ¶¶ 87-91).

Eavesdropping Act Charges

Plaintiff's Second Amended Complaint also details the State's prosecution of charges which were filed against her on April 13, 2010 for violating of the Illinois Eavesdropping Act (the "Eavesdropping Act") (Id., ¶ 63). Plaintiff makes no allegations whatsoever against Detective Martin or the Village of Schiller Park regarding the eavesdropping charges.[1] Plaintiff alleges that on May 5, 2010, the Court set a $300,000 bond on the eavesdropping charges which Plaintiff was unable to post (Id., ¶ 70). Plaintiff claims that she was then incarcerated for more than 20 months (Id.). On July 26, 2012, after the Illinois Eavesdropping Act was declared unconstitutional, the Court dismissed the eavesdropping charges against Plaintiff (Id., ¶¶ 85-86).

Plaintiff's Federal Lawsuit

On July 10, 2013, Plaintiff filed the instant lawsuit against multiple defendants for alleged constitutional claims under § 1983 as well as state law claims. Plaintiff's original Complaint did not include any claims against Detective Martin or the Village of Schiller Park. On June 5, 2014, with the assistance of her current counsel, Plaintiff filed an Amended Complaint which also failed to include any claims against Detective Martin or the Village of Schiller Park. These Defendants were not sued until November 11, 2014, when they were added as Defendants to Plaintiff's Second Amended Complaint.

The Second Amended Complaint fails to identify or to separate Plaintiff's constitutional claims. It also groups Defendants together and alleges actions by "Defendants." This makes it difficult to determine exactly what claims are being made against Detective

[1] Immediately after identifying six specific Defendants who Plaintiff claims singled her out for prosecution, she alleges that "Defendants" "arrested Plaintiff and instituted charges against her purely out of vindictiveness and retaliation" (Id., ¶ 65).

Martin. In Count I, Plaintiff alleges that Detective Martin "is sued in his individual and official capacity as officer of the Schiller Park Police Department" (Id., ¶ 23). Plaintiff attempts to allege claims for "federal constitutional violations" against Detective Martin and several other Defendants, claiming that they deprived her of her rights under the First, Fourth and Fourteenth Amendments (Id., ¶ 92).

In Count IV of the Second Amended Complaint, Plaintiff again brings claims against Detective Martin and many other Defendants for "state law torts." The alleged torts identified by Plaintiff are conclusory assertions of false arrest, false imprisonment, malicious prosecution, conspiracy, slander, fraud as well as negligent and intentional infliction of emotional distress (Id., ¶ 104). In addition, in Count VI, Plaintiff attempts to plead an independent cause of action against Detective Martin for punitive damages.

In Count III of the Second Amended Complaint, Plaintiff sues the Village of Schiller Park, claiming that it:

> permitted, encouraged, tolerated and knowingly acquiesced to an official pattern, practice, and/or custom of its officers, particularly Defendant Martin, falsely arresting individuals where no probable cause existed and without conducting any meaningful investigation and ignoring exculpatory evidence in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.

(Id., ¶ 100). Plaintiff also alleges that:

> Defendant Village of Schiller Park is directly liable for Plaintiff's damages due to its permanent and well-settled practice or custom of allowing police officers to arrest citizens under the Illinois Eavesdropping Statute knowing that probable cause did not justify the arrest solely to retaliate against those citizens for exercising their First Amendment rights thereby creating an atmosphere of illegal and unconstitutional behavior in deliberate indifference and reckless disregard for the welfare of the public at large, including Plaintiff.

(Id., ¶ 101). Plaintiff claims that as a result of the alleged policy, custom and practice, Plaintiff's rights were violated (Id., ¶ 103). For the following reasons, the Court should dismiss all claims

against Detective Martin and the Village of Schiller Park.

STANDARD OF REVIEW

In evaluating a 12(b)(6) motion to dismiss, a court is only obligated to accept all of plaintiff's well-pled allegations as true and draw all reasonable inferences in plaintiff's favor. *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 675 (7th Cir. 2000). The court however "need not strain to find inferences favorable to the plaintiffs which are not apparent on the face of the complaint." *ABN AMRO, Inc. v. Capital Int'l*, 595 F. Supp. 2d 805, 831 (N.D. Ill. 2008). Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice as legal conclusions must be supported by factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). To avoid dismissal, a complaint must contain enough facts to state a claim for relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

ARGUMENT

I. THE COURT SHOULD DISMISS ALL CLAIMS AGAINST DETECTIVE MARTIN

A. Plaintiff's Official Capacity Claims Against Detective Martin are Barred Pursuant to Eleventh Amendment Immunity

Plaintiff claims that she is suing Detective Martin in his official and individual capacity (Second Amended Complaint, ¶ 23). However, any official capacity claims are barred by the Eleventh Amendment. *Brown v. Budz*, 398 F.3d 904, 917-18 (7th Cir. 2005). Plaintiff may therefore only proceed against Detective Martin in his individual capacity.

B. The Court Should Dismiss Count I for Failure to State a § 1983 Claim Against Detective Martin

Although it is difficult to determine exactly what claims Plaintiff is attempting to bring based on her scattershot and conclusory Second Amended Complaint, Plaintiff's allegations of a

lack of probable cause to arrest or search and claims of providing false testimony and "ignoring exculpatory evidence" seem to indicate that she is attempting to state a due process claim. Any attempted claim is in essence a claim for Fourth Amendment false arrest / false search and/or malicious prosecution under Illinois law. Accordingly, the Court should treat Count I as such and should not permit Plaintiff to proceed with substantive or due process claims.

Section 1983 does not confer substantive due process rights in and of itself, and instead provides a mechanism by which one is able to vindicate federal rights conferred elsewhere in the Constitution. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994). In every § 1983 case, a plaintiff must identify the precise constitutional right being relied upon. *Tully v. Barada*, 599 F.3d 591, 595 (7th Cir. 2010). When a constitutional claim is covered by a specific provision of the Constitution such as the Fourth Amendment, the claim should be analyzed under applicable standards for that particular provision and not under some generalized due process standard. *Graham v. Connor*, 490 U.S. 386, 394 (1989). In addition, where there is a remedy for malicious prosecution under state law, a plaintiff cannot bring a malicious prosecution claim as a constitutional tort claim pursuant to § 1983. *McGann v. Mangialardi*, 337 F.3d 782, 786 (7th Cir. 2003). Moreover, a plaintiff cannot blend a Fourth Amendment false arrest claim with a malicious prosecution claim to create a § 1983 due process claim. *Id.*

Plaintiff alleges that she is bringing claims under the First, Fourth and Fourteenth Amendments (Second Amended Complaint, ¶ 92). She claims that Detective Martin provided false testimony to the grand jury (Id., ¶¶ 43, 55), arrested her and searched her apartment without probable cause (Id., ¶¶ 40), that he "accepted a fabricated theory" and conducted "no meaningful investigation" (Id.,¶ 39). The allegations of a lack of probable cause to arrest and to search are clearly Fourth Amendment claims. In addition, the proper remedy for Plaintiff to avenge

allegations that Detective Martin provided alleged false testimony, conducted no meaningful investigation and that he allegedly ignored exculpatory evidence is to maintain a state law claim for malicious prosecution. *Newsome v. McCabe*, 256 F.3d 747, 751 (7th Cir. 2001). Under no circumstances may Plaintiff combine these claims into a hybrid due process claim under the Fourteenth Amendment. As a result, the Court should dismiss Count I of Plaintiff's Second Amended Complaint given that the Fourth Amendment and Illinois state law provide sufficient remedies for Plaintiff's allegations.

C. Detective Martin is Entitled to Absolute Immunity for Alleged False Grand Jury Testimony

Plaintiff's Second Amended Complaint alleges that Detective Martin provided false testimony to the grand jury, which resulted in the grand jury's indictment of Plaintiff for computer tampering charges. However, the Supreme Court has held that grand jury witnesses are entitled to absolute immunity from civil liability arising out of testimony in grand jury proceedings. *Rehnberg v. Paulk*, 132 S.Ct. 1497, 1505-06 (2012).

The Supreme Court's rationale is clear—that sanctions such as prosecution for perjury and the possible loss of employment provide sufficient deterrents to offering false testimony. *Id.* In addition, police officers, in their capacity as witnesses at trial or in grand jury proceedings, should not be forced to defend against distracting civil claims arising out of their testimony. *Id.* In *Rehnberg*, the Supreme Court also laid to rest the exception to absolute immunity for "complaining witnesses" in grand jury proceedings. *Id.*, at 1507. Moreover, the Supreme Court held that the rule of absolute immunity may not be circumvented by claiming that the grand jury witness conspired to present false testimony or by using evidence of the witness's testimony to support any other § 1983 claim concerning the initiation or maintenance of a prosecution. *Id.*

Pursuant to the clear mandate set forth by the Supreme Court, Plaintiff cannot maintain any §1983 claim against Detective Martin based in any way upon his alleged grand jury testimony. Likewise, all of Plaintiff's state law claims (count IV) must fail to the extent that they are grounded in Plaintiff's allegation of false testimony or conspiracy to provide false testimony.

D. All Claims Against Detective Martin Related to the Eavesdropping Prosecution are Time-Barred.

While a statute of limitations defense is not normally part of a motion to dismiss under Rule 12(b)(6), when the allegations of the complaint reveal that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim. *See Andonissamy v. Hewlett–Packard Co.*, 547 F.3d 841, 847 (7th Cir.2008); *Limestone Dev. Corp. v. Vill. of Lemont*, 520 F.3d 797, 802 (7th Cir.2008).

Causes of action arising under § 1983 are governed by the personal injury statute of limitations in the state where the alleged injury occurred. *Wallace v. Kato*, 549 U.S. 384, 387-88 (2007). It is well settled that § 1983 lawsuits in Illinois are governed by the two year statute of limitations set forth in 735 ILCS 5/13-202. *See Brooks v. City of Chicago*, 564 F.3d 830, 832 (7th Cir. 2009). The date on which a § 1983 action accrues is a question of federal law, and the Supreme Court has held that accrual occurs "when the plaintiff has a complete and present cause of action…that is, when the plaintiff can file suit and obtain relief." *Wallace*, 549 U.S. at 387-88. Thus, claims under Section 1983 accrue when a Plaintiff knows or should know that his or her constitutional rights have been violated. *Savory v. Lions*, 469 F.3d 667, 672 (7th Cir. 2006). In making this determination, a court must first identify the injury, then it must determine the date on which the plaintiff could have sued for that injury. *Dean v. Behrend*, Case No. 07 C 4383, 2007 WL 4531796, at *2 (N.D. Ill. Dec. 19, 2007).

Plaintiff alleges that she was indicted for eavesdropping charges on April 27, 2010 (Second Amended Complaint, ¶ 69). She also alleges that on May 5, 2010, she was unable to post a $300,000 bond and was jailed for more than 20 months (Id., ¶ 70). The State of Illinois dismissed the eavesdropping charges on July 26, 2012 (Id., ¶ 87).

To the extent that Plaintiff is claiming a false arrest or false imprisonment regarding the eavesdropping charge, the Supreme Court has held that the statute of limitations "begins to run at the time the claimant becomes detained pursuant to legal process." *Wallace*, 549 U.S. at 387-88. As a result, any constitutional claim (if it even exists) should have been filed no later than May 5, 2012 for alleged false imprisonment and even earlier in 2012 for alleged false arrest.

In addition, all state law claims for injuries against Detective Martin are barred under the one year Illinois statute of limitations. 745 ILCS 10/8-101. Even malicious prosecution and any other conceivable claim that accrued upon a favorable dismissal of the eavesdropping charge should have been filed against Detective Martin no later July 26, 2013. Because Plaintiff did not file suit against Detective Martin until November 5, 2014, any such claim is time barred. *See e.g., LaChance v. City of Chicago*, Case No. 01 C 7732, 2003 WL 1809466, at *2 (N.D. Ill. Apr. 4, 2003)(holding that an amended complaint adding a police officer who was not party to the original complaint did not relate back and was time barred). Any and all claims against Detective Martin related to the eavesdropping prosecution are therefore time barred and should be dismissed.

E. The Court Should Dismiss Plaintiff's State Law Claims Against Detective Martin Regarding the Computer Tampering Charges

In Count IV, Plaintiff attempts to allege a variety of causes of action against Detective Martin for false arrest, false imprisonment, malicious prosecution, conspiracy, slander, fraud as well as negligent and intentional infliction of emotional distress. Although Plaintiff's blanket

assertion of conclusory claims certainly violates Fed. R. Civ. P. 8(a), if the Court considers them, they should all be dismissed.

1. False Arrest and False Imprisonment

With respect to claims related to the computer tampering allegations, although Plaintiff does not allege a specific date of her arrest, she does allege that "eight years ago, Plaintiff was arrested and charged with computer tampering" (Second Amended Complaint, ¶ 1). Plaintiff does not allege that she was ever imprisoned based on the computer tampering charge.[2] The statute of limitations for Fourth Amendment false arrest and false imprisonment claims in Illinois is one year from accrual, which takes place on the date one is arrested or detained pursuant to legal process. By Plaintiff's own admission, at the time of the filing of the Second Amended Complaint (November 5, 2014), she was arrested "eight years ago." Plaintiff's state law claims for false arrest or false imprisonment therefore have been time barred since on or about November of 2008.

2. Slander

Plaintiff's conclusory slander allegation is insufficient as Plaintiff has completely failed to allege any elements of the claim. Nowhere does Plaintiff allege that Detective Martin made or published any defamatory statements about Plaintiff. The Court should therefore summarily dismiss this claim.

3. Conspiracy

As discussed above, the Court should dismiss any and all of Plaintiff's constitutional claims. Once this is done, the absence of any underlying violation of Plaintiff's constitutional rights precludes the possibility of Plaintiff succeeding on a conspiracy to violate her rights. *See Indianapolis Minority Contractors Ass'n, Inc. v. Wiley,* 187 F.3d 743, 754 (7th Cir.1999). In

[2] All allegations regarding any imprisonment are related to the eavesdropping charge (Id., ¶¶ 69-70).

addition, nowhere does Plaintiff come close to alleging any agreement to inflict injury on Plaintiff and she has failed to allege any of the elements of a conspiracy claim. *Hernandez v. Joliet Police Dep't*, 197 F.3d 256, 263 (7th Cir.1999). Even if Plaintiff could allege the elements of a conspiracy by Detective Martin to indict Plaintiff, any such claim arose at the time of the indictment for computer tampering (January 17, 2007). *See Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009). Plaintiff did not file suit against Detective Martin until November 5, 2014, long after the expiration of the one year statute of limitations under 745 ILCS 10/8-101.

4. Negligent and Intentional Infliction of Emotional Distress

The same one year statute of limitations applies to any negligent or intentional infliction of emotional distress claim. Unfortunately for Plaintiff, her emotional distress claims also arose when she was indicted. *Brooks*, 578 F.3d at 579. Both claims are therefore time-barred.

5. Malicious Prosecution

Plaintiff's malicious prosecution claim against Detective Martin should be dismissed. Courts have consistently stated that "ordinarily a prosecutor's independent decision to indict breaks the chain of causation linking the police to the wrongful prosecution." *Rivera v. Lake Cty*, 974 F. Supp. 2d 1179, 1191 (N.D. Ill. 2013). Plaintiff has not alleged any influence by Martin on the decision to prosecute.[3] As a result, the Court should dismiss this claim.

6. Fraud

Plaintiff has completely failed to allege the elements of a fraud claim and does not even attempt to satisfy the heightened pleading standard to plead fraud under Fed. R. Civ. P. 9(b). *See Ackerman v. Northwestern Mut. Life Ins. Co.*, 172 F.3d 467, 469 (7th Cir. 1999).

[3] Plaintiff cannot base a malicious prosecution claim on her allegation that Detective Martin provided false testimony as Detective Martin is absolutely immune from liability related to this testimony. See supra, Section C.

7. Claim for Punitive Damages (Count VI)

Plaintiff attempts to maintain an independent cause of action for punitive damages in Count VI of her Second Amended Complaint. Punitive damages, however, are a type of relief, not an independent cause of action. *Kleinwort Benson N. Am., Inc. v. Quantum Fin. Servs., Inc.*, 181 Ill. 2d 214, 224 (1998).

II. THE COURT SHOULD DISMISS COUNT III AGAINST THE VILLAGE OF SCHILLER PARK

In count III, Plaintiff attempts to allege a claim against the Village of Schiller Park pursuant to *Monell v. Dep't. of Social Servs.*, 436 U.S. 658 (1978). *Monell* recognized that the premise behind a §1983 action against a municipality is the allegation that official policy is responsible for the deprivation of constitutional rights. *Thomas v. Cook Cty. Sheriff's Dept.*, 604 F.3d 293, 306 (7th Cir. 2010). Under *Monell*, a municipality may violate an individual's civil rights based on its policy when: (1) an express policy, when enforced, causes a constitutional violation; (2) a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the full force of law; or (3) an allegation that the constitutional injury was caused by a person with final policymaking authority. *Baxter v. Vigo Cty. Sch. Corp*., 26 F.3d 728, 735 (7th Cir. 1994).

A § 1983 plaintiff cannot simply identify conduct attributable to the municipality. *Bd. of County Commis. of Bryan County v. Brown*, 520 U.S. 397, 404 (1997). Rather, "the plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." *Id.* To state a *Monell* claim under *Iqbal*, a plaintiff must plead factual content that allows the court to reasonably infer that the City maintained a custom, policy or practice that deprived plaintiff of his or her constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Coleman v. City of Chicago*, 2014 WL 3706584 at *3, 13 C 6792 (N.D. Ill. July

25, 2014).

It is well established that a municipality cannot be liable under *Monell* when there is no underlying constitutional injury by the municipal employee. *Sallenger v. City of Springfield*, 630 F.3d 499, 504 (7th Cir. 2010). As argued above, all of Plaintiff's claims against Detective Martin fail as a matter of law. Once the constitutional claims against Detective Martin are dismissed, the Court must dismiss any municipal claims against the Village of Schiller Park.

Plaintiff has not alleged an express policy or action by anyone with final policymaking authority. Plaintiff's attempt to plead a *Monell* pattern and practice claim is clearly insufficient. Plaintiff has not plead facts that support a reasonable inference that the Village of Schiller Park engaged in a widespread practice so permanent and well-settled that it constituted a custom and practice. *Coleman*, 2014 WL 3706584 at *3, *citing Waters v. City of Chicago*, 580 F.3d 575, 581 (7th Cir. 2009). Rather, Plaintiff simply asserts that the Village of Schiller Park had a pattern of vindictively arresting people on eavesdropping charges without probable cause, without meaningful investigation and, in the process, ignoring exculpatory evidence (Second Amended Complaint, ¶¶ 101-02). Conclusory boilerplate allegations of the existence of a custom and practice do not sufficiently state a cause of action against a municipality. *See, e.g., McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995). Plaintiff has alleged one incident that happened to her, not a widespread practice so permanent and well settled that it caused the alleged constitutional injuries. This is insufficient to establish municipal liability. *See Williams v. Heavener*, 217 F.3d 529, 532 (7th Cir. 2000). The Court should therefore dismiss Plaintiff's *Monell* claim due to her failure to allege facts supporting the existence of a municipal policy.

WHEREFORE, Defendants Detective William Martin and the Village of Schiller Park respectfully requests that this Honorable Court dismiss Plaintiff's Second Amended Complaint against Detective William Martin (Counts I, IV and VI) and the Village of Schiller Park (Count III) with prejudice and any other such further relief as this Honorable Court deems just and appropriate.

January 9, 2015

Respectfully Submitted,

DETECTIVE WILLIAM MARTIN and THE VILLAGE OF SCHILLER PARK

By: /s/ Eric D. Kaplan

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