

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

JORDAN MILLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 C 1601
	)	
VILLAGE OF SCHAUMBURG,	)	
Schaumburg Police Officers	)	
MATTHEW HUDAK, Star 3161, and	)	
TERRANCE O'BRIEN, Star 1794	)	

MEMORANDUM ORDER

Matthew Hudak and Terrance O'Brien, two of the defendants in this action by Jordan Miller charging them with constitutional and other violations while they were acting as police officers of the Village of Schaumburg (named as the third defendant), have filed their Answer to Miller's Second Amended Complaint ("SAC"). Because both individual defendants are facing state and criminal prosecution in matters that allege criminal activity of the type charged by Miller, their Answer understandably consists in large part of their invocation of Fifth Amendment rights. This sua sponte memorandum order is directed solely to the two affirmative defenses ("ADs") that follow the Answer itself.

As for AD 1, which asserts qualified immunity, it misses the point that ADs must accept a complaint as true but state a predicate under which the defendant is nevertheless not liable -- see not only Fed.R.Civ.P.8(c) and the many cases applying that principle, but also App'x ¶ 5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001). Because there is

no way in which a reasonable police officer could have viewed the conduct alleged by Miller to have been objectively reasonable and within constitutional limits, a resolution of those allegations must take place at trial -- hence under the Supreme Court's teaching the doctrine of qualified immunity (which is intended to spare public officials the need to defend themselves against litigation) plays no role. Hence AD 1 is stricken.

2. AD 2 similarly ascribes reasonableness to officer conduct that cannot be characterized in that fashion when Miller's allegations are credited. AD 2 is stricken as well.

A handwritten signature in black ink, appearing to read "Milton I. Shadur", written over a horizontal line.

Milton I. Shadur  
Senior United States District Judge

Dated: June 28, 2012