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

BEN BAKER and CLARISSA GLENN,	)	
	)	No. 16 C 8940
Plaintiffs,	)	
v.	)	Hon. Franklin Valderrama, J.
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

DEFENDANT KALLATT MOHAMMED'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Eric S. Palles
Sean M. Sullivan
Yelyzaveta (Lisa) Altukhova
Mohan Groble Scolaro, P.C.
55 W. Monroe St., Suite 1600
Chicago, IL 60603
(312) 422-9999
epalles@mohangroble.com
ssullivan@mohangroble.com
lisaa@mohangroble.com
Counsel for Defendant Kallatt Mohammed

EXHIBIT A

TABLE OF CONTENTS

EXHIBIT A

TABLE OF AUTHORITIES

Cases

EXHIBIT A

Statutes

EXHIBIT A

Other Authorities

EXHIBIT A

INTRODUCTION

Kallatt Mohammed is one of thirteen defendants sued in a sweeping ten-count complaint alleging civil rights violations and related torts against the City of Chicago and members of its Police Department. Second Amended Complaint ("SAC"), Dkt. 238. Although the SAC cycles through a variety of legal theories, (due process (Count I), unlawful detention (Count II), First Amendment retaliation (Count III), failure to intervene (Count IV), civil rights conspiracy (Count V), malicious prosecution (Count VI), intentional infliction of emotional distress (Count VII), and state civil conspiracy (Count VIII)), the case emanates from two arrests and prosecutions, one of Ben Baker ("Baker") on March 23, 2005 (SAC ¶¶ 46-66) and one of Baker and Clarissa Glenn ("Glenn") on December 11, 2005. (SAC ¶¶ 70-98)[1] The resulting convictions were vacated, and this suit followed.

As the SAC and the undisputed facts developed during the course of this litigation make clear, Mohammed owes his presence in this case not to any actions he took in violation of Plaintiffs' civil rights but rather to the notoriety he gained in a widely-publicized scandal six years later when he and Ronald Watts were indicted and eventually convicted for taking government funds from a federal cooperator posing as a drug courier. Those events laid in the distant future at the time of the subject 2005 arrests and have no bearing upon an analysis of Mohammed's conduct in connection with them. A clear-eyed view of the undisputed evidence shows that it is insufficient to sustain a judgment against Mohammed.

[1] The SAC describes a previous drug prosecution resulting from the June 2004 recovery of narcotics attributed to Baker from a mailbox by Officers Jones and Young, presumably in support of Plaintiffs' retaliation claim. The arrest is not actionable because it resulted in a favorable termination when the state dismissed the case twenty years ago and consequently is time-barred. *Wallace v. Kato*, 549 U.S. 384 (2007).

LEGAL STANDARD

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See* Fed. R. Civ. P. 56(a). In determining whether summary judgment is appropriate, the Court must construe all facts in a light most favorable to the non-moving party and draw all reasonable inferences in that party's favor, *Majors v. Gen. Elec. Co*., 714 F.3d 527, 532 (7th Cir. 2013), but is not required to "draw every conceivable inference from the record - only those inferences that are reasonable." *Wade v. Collier*, No. 10 C 6876, 2013 U.S. Dist. LEXIS 127263, at *16-17, 2013 WL 4782028 (N.D. Ill. Sept. 6, 2013), *quoting Bennington v. Caterpillar Inc*., 275 F.3d 654, 658 (7th Cir. 2001).

Summary judgment should be granted to the moving party who demonstrates that "there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); s*ee also Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). It is the "put up or shut up" moment in a lawsuit — "when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *See Steen v. Myers*, 486 F.3d 1017, 1022 (7th Cir. 2007); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986) (the purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.").

Additionally, however, "[n]othing in Rule 56 demands an all-or-nothing approach to summary judgment. The rule, in fact, expressly anticipates that a party may seek summary judgment as to a limited portion of its case when it provides that '[a] party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.' Fed. R. Civ. P. 56(a)." *Hotel 71 Mezz Lender Ltd. liability Co. v. National Retirement Fund*., 778 F.3d 593, 606 (7th Cir. 2015). A partial summary judgment can

serve a useful brush-clearing function even if it does not obviate the need for a trial. *Id., citing Flynn v. Sandahl*, 58 F.3d 283, 288 (7th Cir. 1995).

ARGUMENT

Based on the factual record, it now is obvious there is no genuine factual dispute that 1) Mohammed was not present at the March 23, 2005 Baker arrest and did not participate in any aspect of the subsequent criminal prosecution, and 2) although he was present at the police station subsequent to the December 11, 2005 Baker/Glenn arrest, his lack of personal involvement in the arrest and subsequent prosecution entitles him to summary judgment as a matter of law. *See* Fed. R. Civ. P. 56(c).

I. March 23, 2005 Arrest of Ben Baker

Individual liability under § 1983 requires personal involvement in the alleged constitutional deprivation. *Colbert v. City of Chi.*, 851 F.3d 649, 657 (7th Cir. 2017). The parties agree that Mohammed was not present on March 23, 2005, and played no role in the subsequent prosecution. Accordingly, the parties have agreed that Mohammad is entitled to summary judgment in his favor regarding claims arising from the March 23, 2005 arrest and prosecution. SOF ¶¶ 7-8.

II. December 11, 2005 Arrests of Ben Baker and Clarissa Glenn

a. Mohammed's lack of personal involvement in Plaintiffs' December 11, 2005 arrests and prosecutions entitle him to summary judgment of their claims.

Although Plaintiffs contest Mohammed's right to summary judgment regarding the claims arising from the December 11, 2005 arrests and prosecutions, Mohammed contends that the same guiding principles are applicable to the consideration of these claims: Mohammed's personal involvement is insufficient to sustain the claims against him.

The facts, taken in the light most favorable to Plaintiffs, are that around noon on Sunday December 11, 2005, Plaintiffs were travelling in a vehicle near 511 E. Browning where they were detained by officer Alvin Jones and Sgt. Ronald Watts. SOF ¶ 9. Watts and Jones searched the vehicle, claimed to find drugs and took Baker and Glenn into custody. *Id.* Mohammed was not present for the stop, the search, or the recovery of drugs. SOF ¶¶ 10, 11. Baker and Glenn both testified that they first encountered Mohammed after their arrest when they were arrived at the police station. *Id*. Mohammed asked what they were doing there, and Baker answered, "Your boy, your boy Watts" or "ask your boy Watts." *Id.* Mohammed went to work at a typewriter. Although Glenn and Baker inferred that Mohammed was preparing a report concerning their arrests, they could not hear any input that Mohammed was receiving from his fellow officers. Moreover, Mohammed had just been engaged in another incident involving multiple arrestees. SOF ¶¶ 17, 19. In fact, Jones authored and completed the reports related to Plaintiffs' arrests. SOF ¶ 14. Jones added Mohammed's name as a second arresting officer to those reports because Mohammed was his assigned partner that day and it is Jones who signed Mohammed's name to those reports. SOF ¶ 15. On December 29, 2005, Jones testified about the circumstances of the arrest before a Cook County grand jury. The grand jury indicted Plaintiffs on January 6, 2006. SOF ¶ 22. On September 18, 2006, Plaintiffs pleaded guilty. SOF ¶ 24.

These facts are insufficient to establish the requisite personal involvement necessary for Plaintiffs to maintain any claim against Mohammed arising from their December 11, 2005 arrests. To be liable for any claim under § 1983, a defendant must be "personally responsible" for the alleged deprivation of the plaintiff's constitutional rights. *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018). Liability does not attach unless the individual defendant caused or participated in a constitutional deprivation. *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996); *Colbert,* 851 F.3d

at 657. As demonstrate by the foregoing facts, Mohammed did not cause or participate in the alleged constitutional deprivations. Mohammed is, therefore, entitled to summary judgment.

b. Plaintiffs' due process claims against Mohammed are not supported by evidence sufficient to overcome Mohammed's claim to summary judgment.

Even assuming *arguendo* that Plaintiffs' can raise a genuine issue of material fact as to Mohammed's personal involvement in their December 11, 2005 arrests, Mohammed is still entitled to summary judgment of Plaintiffs' claims. Plaintiffs' due process claim alleges that Mohammed, together with certain other Defendant Officers, fabricated evidence and falsified police reports relating to the December 2005 arrests of Baker and Glenn and failed to disclose this fact to the prosecutors. SAC ¶ 84. To begin with, a due process analysis is inappropriate, in particular with respect to the December 11, 2005 arrest and its subsequent prosecution, which culminated without a trial. *See Patrick v. City of Chicago*, 974 F.3d 824, 834 (7th Cir. 2020) ("A claim for false arrest or pretrial detention based on fabricated evidence sounds in the Fourth Amendment right to be free from seizure without probable cause. If fabricated evidence is later used at trial to obtain a conviction, the accused may have suffered a violation of his due-process right to a fair trial." For a more detailed exposition of this point, Mohammed adopts Section I of the Certain Officers' Memorandum of Law in support of their motion for summary judgment.

Employing a due-process analysis however, to prevail on an evidence fabrication claim against Mohammed, Plaintiffs must show that he 1) knowingly fabricated 2) false evidence 3) that was used against him in his criminal trial and 4) was material to his conviction. *Gray v. City of Chi.*, No. 18 C 2624, 2022 U.S. Dist. LEXIS 56658, 2022 WL 910601, *12 (N.D. Ill. Mar. 29, 2022).

The record evidence against Mohammed is insufficient in each regard. First, he did not fabricate the subject police reports; Jones prepared, completed and signed them. SOF ¶ 44. Second,

assuming *arguendo* that the description of the circumstances surrounding the arrest were falsified, there is no evidence that Mohammed was aware of any falsification; he was not present when Plaintiffs were taken into custody and he could reasonably rely upon the accounts of Jones, his fellow officer, in this regard. *Jacobs v. Vill. of Ottawa Hills*, 5 F. App'x 390, 395-96 (6th Cir. 2001); *Torres v. City of Chi.*, No. 18 C 2603, 2021 U.S. Dist. LEXIS 21395, at *22-23, 2021 WL 392703, at *5-6 (N.D. Ill. Feb. 4, 2021).

To the extent that the fabrication claim depends upon the inclusion of Mohammed's name as the second arresting officer in Box 46 of the arrest reports, such evidence is insufficient to establish liability against Mohammed. *See Hill v. Rubald,* No. 13 C 4847, 2017 U.S. Dist. LEXIS 7005, 2017 WL 201357, at *9 (N.D. Ill. Jan. 18, 2017) (completion of reports not alleged to have influenced prosecutorial decision-making by an officer who was not in position at scene where it could be reasonably concluded he had knowledge of fabricated evidence and condoned or turned a blind eye to other officers' allegedly wrongful conduct warranted summary judgment). There is no evidence that Mohammed knew his name was included and, in any event, Mohammed's name on the report was neither used against Plaintiffs at trial (because there was none) or to deprive Plaintiffs of their liberty in some way because it was not material to their convictions. *See Whitlock v. Brueggeman*, 682 F.3d 567, 580 (7th Cir. 2012).

Plaintiffs' claim that Mohammed failed to disclose to prosecutors misconduct allegedly undertaken by him and other Defendant Officers similarly fails.[5] To prevail on a *Brady* claim for an officer's failure to disclose evidence, a plaintiff must show that 1) the evidence at issue was favorable to him because it is either exculpatory or impeaching; 2) the evidence was willfully suppressed by the officer; and 3) the evidence was material, meaning that there is a reasonable

probability that the result of the proceedings would have been different. *Camm v. Faith*, 937 F.3d 1096, 1108 (7th Cir. 2019); *Beaman v. Freesmeyer*, 776 F.3d 500, 506 (7th Cir. 2015).

There is no viable *Brady* claim against Mohammed. If, in fact, the officers falsely attributed the possession of drugs to Plaintiffs, this evidence would tend to be exculpatory; the inclusion of Mohammed's name in those reports, however, would merely be impeaching. However, "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *United States v. Ruiz*, 536 U.S. 622, 633 (2002). In either event, there is no evidence that Mohammed was aware either that the drugs were planted or that his name appeared in Box 46. SOF ¶¶ 14, 15 Consequently, he could not *willfully* suppress any evidence. More fundamentally, "*Brady v. Maryland*, deals with the concealment of exculpatory evidence unknown to the defendant." *United States v. Lee*, 399 F. 3d 864, 865 (7th Cir. 2005) (internal citations omitted); there is no claim here that Plaintiffs were unaware of the alleged fabrication involved in their arrests. *See Harris v. Kuba*, 486 F.3d 1010, 1015 (7th Cir. 2007) ("Harris' own alibi was not concealed from him and is therefore not properly a claim under *Brady*.") In *Walker v. White*, No. 16 CV 7024, 2021 U.S. Dist. LEXIS 52156, 2021 WL 1058096 (N.D. Ill. Mar. 19, 2021), summary judgment was granted to a police officer under notably similar circumstances:

> Daly wasn't involved in either Walker's arrest or recovery of any evidence. He was at the police station following the arrests, but never communicated with Walker or his brother, did not conduct any custodial search, and did not write a case report. He didn't testify at trial. Walker hasn't pointed to evidence from which a jury could find that Daly personally participated in detaining Walker or fabricating drug evidence against him.

Walker, 2021 U.S. Dist. LEXIS 52156, at *41, 2021 WL 1058096, at *14. For the same reasons, Mohammed is entitled to judgment as a matter of law concerning this claim.

c. Analyzing the existence of probable cause from Mohammed's perspective entitles him to summary judgment of Plaintiffs' Fourth Amendment claim.

During the life of this litigation, the Supreme Court decided *Manuel v. City of Joliet*, 580 U.S. 357 (2017), establishing the essence of this claim as one involving pretrial detention without probable cause. "[A]ll § 1983 claims for wrongful pretrial detention—whether based on fabricated evidence or some other defect—sound in the Fourth Amendment." *Lewis v. City of Chi.,* 914 F.3d 472, 479 (7th Cir. 2019). Assuming the evidence that a search of the subject vehicle resulted in the recovery of narcotics was fabricated, the fact remains that Mohammed was not present and did not participate in the arrest. Further, there is no evidence that he was aware of the alleged fabrication. Consequently, examining the issue of probable cause from Mohammed's perspective, if he had one, requires considering what was known to him at the time of arrest, bearing in mind that information that supports probable cause can come from one officer who relays that information to others. *Esco v. City of Chi*., 107 F.4th 673, 677 (7th Cir. 2024), *citing United States v. Smith*, 989 F.3d 575, 582 (7th Cir. 2021). Mohammed could reasonably rely upon Jones's account of the arrest.

Any conduct actionable under this claim would also be vitiated by the doctrine of qualified immunity, under which an officer needs only "arguable" probable cause. *Humphrey v. Staszak*, 148 F.3d 719, 725 (7th Cir. 1998). Arguable probable cause exists when a reasonable officer "in the same circumstances and ... possessing the same knowledge as the officer in question could have reasonably believed that probable cause existed in light of well-established law." *Id.; Huff v. Reichert*, 744 F.3d 999, 1007 (7th Cir. 2014). Mohammed is entitled to qualified immunity because he could reasonably rely upon representations that Jones had probable cause to arrest Plaintiffs. *Torres v. City of Chicago*, No. 18 C 2603, 2021 U.S. Dist. LEXIS 21395, *22-23, 2021 WL

392703, *7-8 (N.D. Ill. Feb. 4, 2021); *Morris v. City of New York*, No. 14-cv-1749, 2015 U.S. Dist. LEXIS 54550, at *13, 2015 WL 1914096, at *3-4 (E.D.N.Y. Apr. 27, 2015).

d. The absence of evidence that Mohammed performed any retaliatory act or harbored any retaliatory motive dooms Plaintiffs' First Amendment Retaliation claim against him.

"To plead a prima facie case of First Amendment retaliation, Plaintiffs must allege that (1) they engaged in constitutionally protected activity, in this case, speech; (2) but for the protected speech, Defendant Officers would not have taken the alleged retaliatory action against them; and (3) Plaintiffs suffered a deprivation likely to deter future First Amendment activity. *Baker v. City of Chi.*, 483 F. Supp. 3d 543, 557(N.D. Ill. 2020), *citing Kodish v. Oakbrook Terrace Fire Prot. Dist*., 604 F.3d 490, 501 (7th Cir. 2010). "It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must cause the injury. Specifically, it must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive*." Id., citing Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

Plaintiffs' retaliation claim fails because there is no evidence that Mohammed performed any act that is retaliatory or harbored any retaliatory motive towards Baker or Glenn. Even assuming that Plaintiffs' speculation that Mohammed was involved in typing the police report could surmount summary judgment, there is no proof that retaliation was a "substantial [or] motivating factor" in Mohammed's actions. *See Abrams v. Walker*, 307 F.3d 650, 654 (7th Cir. 2002), *Trepanier v. City of Blue Island*, No. 03 C 7433, 2008 U.S. Dist. LEXIS 75026, 2008 WL 4442623 at *6 (N.D. Ill. Sep. 29, 2008). Mohammed had no retaliatory motive to suppress Plaintiffs' protected speech because he took no part in either of the two previous arrests, the June

2004 mailbox case (SAC ¶¶ 24-45) or the March 23, 2005 arrest (page 4, supra) and there is no evidence that he was the subject of any of Plaintiffs' complaints.

Although in the SAC (¶ 69), it is alleged that after Plaintiffs complained to the Chicago Police Department about misconduct, "some of the Defendant Officers, including…Jones, Mohammed, and Watts confronted Ms. Glenn about the fact that she had complained about them to the City, calling her a 'bitch,' telling her that she would wind up in the penitentiary with her husband, and warning her in a threatening manner to 'be careful,'" Glenn corrected this statement during the course of her deposition to state that these events did not involve Mohammed, but rather just Jones and Watts. SOF ¶ 20. In so doing, Glenn withdrew her allegation against Mohammed that he had engaged in any retaliatory conduct in violation of her First Amendment rights.

There is no evidence that Mohammed performed any act that is retaliatory or harbored any retaliatory motive towards Baker or Glenn. As such, Mohammed is entitled to summary judgment of Plaintiffs' First Amendment claim.

e. Plaintiffs' failure to intervene claim against Mohammed is not supported by evidence sufficient to overcome Mohammed's claim to summary judgment.

An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know that a constitutional violation has been committed and a realistic opportunity to intervene. *Lanigan v. Vill. of E. Hazel Crest*, 110 F.3d 467, 477-78 (7th Cir. 1997); *see also Gill v. City of Milwaukee*, 850 F.3d 335, 342 (7th Cir. 2017) (plaintiff must prove that the defendant officers knew that a constitutional violation was committed and had a realistic opportunity to prevent it); *Culp v. Reed*, No. 19-cv-106, 2021 U.S. Dist. LEXIS 172009, at *14-15, 2021 WL 4133703, at *5 (N.D. Ind. Sep. 9, 2021), *citing Byrd v. Clark,* 783 F.2d 1002, 1007 (11th Cir. 1986) (duty to intervene only arises if a constitutional violation occurs in another officer's presence); *Jacobs v.*

Village of Ottawa Hills, 5 F. App'x 390, 395-96 (6th Cir. 2001) ("While officers must affirmatively intervene to prevent other officers from violating an individual's constitutional rights, [citation omitted] that obligation does not extend to questioning the basis for a fellow officer's reasons for arrest.")

Mohammed was not present when Plaintiffs were detained and Jones recovered the drugs. There can be no dispute that Mohammed lacked knowledge whether the detention was based upon probable cause and had no opportunity to prevent it. Nor is there any evidence that Mohammed learned of a constitutional violation at the station subsequent to the arrests. Mohammed's only interaction with Plaintiffs resulted in Baker's statement that he had been arrested by "your boy Watts." SOF ¶ 12. This is hardly an "outcry" that might have put Mohammed on notice of any illegality associated with the arrest. He is entitled to judgment as a matter of law.

Additionally, Plaintiffs fail to state a failure to intervene claim. The failure-to-intervene claim is an unwarranted attempt to impose vicarious liability upon Defendant Mohammed for the acts of other persons, in contravention of well-established principles of liability applicable to state and federal actors. *Ashcroft v. Iqbal*, 556 U.S. 662, 676–77 (2009); *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978); *Vance v. Rumsfeld*, 701 F. 3d 193, 203-05 (7th Cir. 2011); see also *Mwangangi v. Nielsen*, 48 F.4th 816, 2022 U.S. App. LEXIS 25875 at *42 (7th Cir. 2022) (Easterbrook, J, concurring)(citing DeShaney v. Winnebago Co. Dept. of Social Services, 489 U.S. 189 (1989): ("…our Constitution establishes negative liberties – the right to be free of official misconduct – rather than positive rights to have public employees protect private interests."). Accordingly, Count IV fails to state a claim upon which relief can be granted.

f. Mohammed is entitled to summary judgment of Plaintiffs' § 1983 conspiracy claim because there is no evidence supporting such claim.

To prove a § 1983 conspiracy, Plaintiffs must show that Mohammed and others (1) reached an agreement to deprive them of a constitutional right, (2) took an overt act in furtherance of the conspiracy, and (3) that those acts deprived them of the constitutional right. *Beaman*, 776 F.3d at 510. The "minimum ingredient of a conspiracy … is the agreement to commit some future unlawful act in pursuit of a joint objective." *Irmer v. Reinsdorf*, No. 13-cv-2834, 2014 U.S. Dist. LEXIS 83762, at *17, 2014 WL 2781833, at *5 (N.D. Ill. June 19, 2014), *quoting Redwood v. Dobson*, 476 F.3d 462, 466 (7th Cir. 2007). To avoid summary judgment, "plaintiff must come forward with facts tending to show that defendants 'directed themselves toward an unconstitutional action by virtue of a mutual understanding' and support such allegations with facts suggesting a 'meeting of the minds.'" *Sexton v. Cotton*, No. 06-cv-4225, 2008 U.S. Dist. LEXIS 89762, at *32, 2008 WL 11516444, at *9 (N.D. Ill. Nov. 5, 2008) *quoting Amundsen v. Chicago Park Dist*., 218 F.3d 712, 718 (7th Cir. 2000). "The conspirators must act with a single plan, the general nature and scope of which is known to each would-be conspirator." *Hernandez v. Joliet Police Dep't,* 197 F.3d 256, 263 (7th Cir. 1999). Circumstantial evidence can prove an agreement, but evidence must be more than merely speculation. *Williams v. Seniff,* 342 F.3d 774, 785 (7th Cir. 2003).

There is no evidence, circumstantial or otherwise, that Mohammed engaged in a conspiracy to frame Plaintiffs, a plot that, according to Plaintiffs, had its inception in 2004 and resulted in two arrests of Baker prior to Mohammed's purported tangential engagement in the December 11, 2005 arrest. Nor is there any evidence that there was a meeting of the minds between Mohammed and Watts, Jones or any other Defendant Officer to violate Plaintiffs' rights. *See Wrice v. Burge*, 187 F. Supp. 3d 939, 955 (N.D. Ill. 2015) ("Nothing in the compliant plausibly suggests that Wrice's coerced confession was part of a grand conspiracy among nine state actors, seven of whom were

unaware of the underlying coercion and three of whom did not assume office until years after Wrice's trial."). Mohammed is, therefore, entitled to summary judgment of this claim.

g. Plaintiffs' malicious prosecution claim against Mohammed is not supported by evidence sufficient to overcome Mohammed's claim to summary judgment.

Suits for malicious prosecution are not favored under Illinois law. *Esco v. City of Chi.,* 107 F.4th 673, 683 (7th Cir. 2024); *Beaman v. Freesmeyer* (*Beaman* II"), 2019 IL 122654, ¶ 24; *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 44 (1980). As specifically related to police officers, a malicious prosecution claim "is an anomaly" because "the principal player in carrying out a prosecution is not the police officer, but the prosecutor." *Washington v. Summerville*, 127 F.3d 552, 559 (7th Cir. 1997). The relevant inquiry is therefore whether the police officers played a significant role in causing the commencement or continuance of the criminal proceeding. *Beaman* II, 2019 IL 122654, ¶ 79. Specifically, to be liable for malicious prosecution, "a defendant either must have initiated a criminal proceeding or his participation in it must have been of so active and positive a character as to amount to advice and cooperation." *Denton v. Allstate Ins. Co*., 152 Ill. App. 3d 578, 583 (1st Dist. 1986).

To state a cause of action for malicious prosecution, the plaintiff must prove five elements: (1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff. *Beaman* II, 2019 IL 122654, ¶ 26. The absence of any of these elements will preclude a plaintiff from recovering on a claim for malicious prosecution. *Id., citing Swick v. Liautaud*, 169 Ill. 2d 504 (1996).

Plaintiffs' malicious prosecution claim against Mohammed falters out of the gate because he cannot prove its first element: involvement in the commencement or continuation of a criminal proceeding. The undisputed facts demonstrate that Mohammed did not play a significant role—or indeed any role—in Plaintiffs' prosecution. It follows, therefore, that Mohammed neither proximately caused, nor caused in fact, Plaintiffs' alleged injuries. The lack of evidence supporting Mohammed's involvement in the prosecution mandates judgment in his favor.

When evaluating the first element of a malicious prosecution claim, "the relevant inquiry is whether the officer proximately caused the commencement or continuance of the criminal proceeding," *Beaman v. Freesmeyer* ("*Beaman* III"), 2021 IL 125617, ¶ 79 *citing Beaman II*, 2019 IL 122654, ¶ 33. In other words, the inquiry is whether Mohammed played a significant role in causing the prosecution. *Beaman* II at ¶ 43, *quoting Frye v. O'Neill*, 166 Ill. App.3d 963, 975 (4th Dist. 1988). Acknowledging the tension between the prosecution's independence and its reliance upon credible information from law enforcement, the Illinois Supreme Court has identified "significant-role" as being directed towards "'those persons who improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct' that was instrumental in the commencement or continuation of the criminal prosecution." *Beaman* III*,* 2021 IL 125617, at ¶ 79*; Beaman* II, 2019 IL 122654 at ¶ 45.

There is no evidence that Mohammed authored or signed the allegedly fabricated reports, testified at any hearing, or communicated with the state prosecutors at any time. In fact, the evidence demonstrates that Mohammed took no such action. SOF ¶¶12-14, 21, 22, 24. Furthermore, there is no evidence showing that Mohammed had any influence upon the decision of Jones, the prosecutors, or the grand jury to charge Plaintiffs. The sole presence of Mohammed's

name on the arrest reports was not "a catalyst for the State to press charges, and therefore, were not instrumental to the commencement of the criminal proceedings." *Evans v. City of Chi.*, 2021 IL App (1st) 200412-U, ¶ 62, citing *Beaman* II, 2019 IL 122654 at ¶ 44; *see also Hill v. Rubald,* No. 13 C 4847, 2017 U.S. Dist. LEXIS 7005, 2017 WL 201357, at *9 (N.D. Ill. Jan. 18, 2017) (completion of reports not alleged to have influenced prosecutorial decision-making by an officer who was not in position at scene where it could be reasonably concluded he had knowledge of fabricated evidence and condoned or turned a blind eye to other officers' allegedly wrongful conduct warranted summary judgment).

The emphasis upon personal responsibility is reinforced by Mohammed's status as a police officer, which immunizes him from the conduct of others. 745 ILCS 2-204 (stating that a public employee "… is not liable for an injury caused by the act or omission of another person"); *see also Payne v. Churchich*, 161 F.3d 1030, 1044 (7th Cir. 1998) (holding that a sheriff could not be vicariously liable for the conduct of a deputy under section 2-204). The evidence that Mohammed was a proximate cause or cause in fact of Plaintiffs' injuries does not exist. He is entitled to judgment as a matter of law on Plaintiffs' malicious prosecution claim.

h. Plaintiffs' intentional infliction of emotional distress claim against Mohammed is not supported by evidence sufficient to overcome Mohammed's claim to summary judgment.

In Illinois, a claim of intentional infliction of emotional distress ("IIED") requires proof that 1) the defendants' conduct was extreme and outrageous; 2) the defendants knew that there was a high probability that their conduct would cause severe emotional distress; and 3) the conduct in fact caused severe distress. *Swearnigen-El v. Cook Cnty Sheriff's Dep't*, 602 F.3d 852, 864 (7th Cir. 2010). Plaintiffs' claims fail at the outset because the underlying claims of constitutional violations and malicious prosecution fail and, thus, there is no "extreme and outrageous" conduct.

See Cooney v. Casady, 746 F Supp. 2d 973, 977-78 (N.D. Ill. 2010) (plaintiff's IIED claim must fail when it is premised on alleged constitutional violations that fail).

Plaintiffs' IIED claim further fails because Mohammed neither participated in the detention or the prosecution, and even if he acquiesced specifically or generally in the use of his name in the arrest report, this is not the extreme and outrageous conduct needed to satisfy the first element of IIED. *Layne v. Builders Plumbing Supply Co*., 210 Ill. App. 3d 966, 972-73 (2d Dist. 1991) (falsely reporting criminal activity failed to state a claim for IIED); *Hancock v. Sotheby's*, 2018 U.S. Dist. LEXIS 215538, 2018 WL 6696071, *5 (N.D. Ill. Dec. 20, 2018) ("Assuming that the Sotheby's Defendants did file a police report and lawsuit based on claims they knew to be false, as the Court must, this does not rise to the level of extreme and outrageous behavior required to sustain an IIED claim."); *Rusinowski v. Vill. of Hillside*, 19 F. Supp. 3d 798, 815 (N.D. Ill. 2014) ("It is not necessarily extreme and outrageous to make a false police report."); *Petrovic v. Am. Airlines, Inc.,* No. 13 C 246, 2014 U.S. Dist. LEXIS 21753 at *2, 2014 WL 683640, at *2 (N.D. Ill. Feb. 21, 2014) ("But courts hold consistently that false accusations, even as part of a larger pattern of alleged…misconduct, are not extreme and outrageous."). Mohammed is entitled to summary judgment on the IIED claim

i. Plaintiffs' state law civil conspiracy claim against Mohammed is not supported by evidence sufficient to overcome Mohammed's claim to summary judgment.

Plaintiffs' conspiracy claim fails as an initial matter because its viability depends on the viability of the malicious prosecution claim, which is absent in this case. Under Illinois law, civil conspiracy is not an independent tort, and there must be an independent cause of action underlying a plaintiff's conspiracy claim. *Siegel v. Shell Oil Co*., 656 F. Supp. 2d 825, 836 (N.D. Ill. 2009), aff'd, 612 F.3d 932 (7th Cir. 2010); *Indeck North American Power Fund, L.P. v. Norweb*, P.L.C., 316 Ill. App. 3d 416, 432 (1st Dist. 2000). The limited "function of a conspiracy claim is to extend

tort liability from the active wrongdoer to wrongdoers who may have only planned, assisted, or encouraged the active wrongdoer." *Redelmann v. Claire Sprayway, Inc*., 375 Ill. App. 3d 912, 923 (1st Dist. 2007), *citing Adcock v. Brakegate, Ltd.,* 164 Ill. 2d 54, 62 (1994).

The elements of a civil conspiracy are: "(1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). The essence of a conspiracy is a meeting of the minds of the co-conspirators. *Amundsen, supra* at 718. Notably, characterizing a combination of acts as a conspiracy does not make it so. *Buckner v. Atl. Plant Maint*., 182 Ill. 2d 12, 23-24 (1998) (analyzing sufficiency of complaint).

Here, the Defendant Officers have uniformly denied an agreement to falsely prosecute Plaintiffs; consequently, any evidence of the agreement element of conspiracy is necessarily circumstantial. Circumstantial evidence must be both clear and convincing to sustain a conspiracy claim. *McClure v. Owens Corning Fiberglas Corp*., 188 Ill. 2d 102, 134 (1999). Accordingly, the fact that a team of tactical officers operated in tandem does not fulfill this requirement. "Consciously parallel behavior" is not, by itself, clear and convincing evidence of a conspiracy because the parallel behavior is susceptible to a non-conspiratorial explanation that is at least as reasonable as a conspiratorial explanation. *Gillenwater v. Honeywell Int'l, Inc*., 2013 IL App (4th) 120929, ¶ 82.

Plaintiffs have not produced any evidence that Mohammed entered into any agreement with the arresting officers regarding any charges against Plaintiffs. The "what, when, why, and how" of Defendants' supposed agreement to deprive Plaintiffs of their rights is conspicuously lacking. *Amundsen, supra* at 718. Conspiracy exists only if the others intentionally assisted or

encouraged the tortious conduct of the active wrongdoer. *See McClure, supra* at 133-34. There is no evidence to warrant a finding that Mohammed engaged in a civil conspiracy against Plaintiffs. He is, thus, entitled to judgment as a matter of law.

j. Plaintiffs' guilty pleas in connection with the charges arising from their December arrests foreclose any due process claims based on those convictions.

The Defendant Officers have contemporaneously argued in support of their motions for summary judgment that Plaintiffs' guilty pleas preclude their ability to sustain their claims arising from the December arrests. Mohammed adopts their discussion in Section II, B. of their Memorandum of Law.

CONCLUSION

For all the foregoing reasons, Kallatt Mohammed is entitled to summary judgment as a matter of law on all claims emanating from both the March 2005 and December 2005 incidents.

Respectfully submitted,

/s/ Eric S. Palles #2136473
Special Assistant Corporation Counsel

Eric S. Palles
Sean M. Sullivan
Yelyzaveta (Lisa) Altukhova
Mohan Groble Scolaro, P.C.
55 W. Monroe St., Suite 1600
Chicago, IL 60603
(312) 422-9999
epalles@mohangroble.com
ssullivan@mohangroble.com
lisaa@mohangroble.com
Counsel for Defendant Kallatt Mohammed

EXHIBIT A

CERTIFICATE OF SERVICE

I, Eric S. Palles, an attorney, certify that I caused a true copy of the foregoing **DEFENDANT KALLATT MOHAMMED'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served upon all counsel of record by electronic mail and the Court's ECF system on September 5, 2024.

/s/ Eric S. Palles
Eric S. Palles

EXHIBIT A