Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Ben Baker and Clarissa Glenn,	)	
	)	Case No. 16 C 8940
Plaintiffs	)	
v. .	)	Hon. Franklin Valderrama
	)	
City of Chicago, et al.,	)	
	)	
Defendants	)	

CERTAIN DEFENDANT OFFICERS' MOTION FOR SUMMARY JUDGMENT

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Defendants Brian Bolton, Robert Gonzalez, Alvin Jones, Manuel Leano, Douglas Nichols, Jr., and Elsworth J. Smith, Jr. (collectively "Defendant Officers" or "Defendants"), by their attorneys, move for summary judgment in their favor on all claims alleged in Plaintiffs Ben Baker and Clarissa Glenn's Second Amended Complaint ("SAC") pursuant to Fed. R. Civ. Pro. 56. In support of this motion, Defendants state:

INTRODUCTION

The Ida B. Wells housing complex was infamously known as an open-air drug market. (SOF[1], ¶¶4.) Drugs were sold in its buildings all day and all night, seven days a week. (*Id.*) The notorious Ganster Disciples controlled and operated that booming drug enterprise. (*Id.*, ¶5.) As Baker, an admitted member of the Gangster Disciples, testified, he could rake in as much as $5,000 to $20,000 per day from the drug sales he controlled. (*Id.*, ¶¶5, 6.). In fact, Baker supported himself, his wife and his children by selling drugs, heroin and crack, in the complex's extension building 527 ("Ext. 527"). (*Id.*, ¶6.) And, through the time of his arrests, he had never worked an honest job. (*Id.*) Indeed, Baker continued to sell heroin and crack even after his "exoneration." (*Id.*)

Baker's drug dealing was known to the Chicago Police Department ("CPD") and Defendant Officers as well as other CPD officers. (*Id.*, ¶¶7.) And Baker was a major player in the drug enterprise operating out of the Wells complex. (*Id.*) In fact, an extensive CPD investigation, Operation Sin City, identified him as the "manager" of

[1] "SOF refers to Defendant Officers' Rule 56.1 Statement of Facts filed concurrently with this motion and "CSOF" refers to Defendant the City of Chicago's Rule 56.1 Statement of Facts also filed on September 5, 2024.

the Gangster Disciples' drug operations at Ext. 527, the same building in which Baker, his wife and his children lived. (*Id.*, ¶7.) Nichols and other Defendant Officers knew Baker controlled the drug sales at the 527 ext. (*Id.* 7.) The Gangster Disciples named the drug lines they controlled and sold out of the extension buildings for marketing purposes. (*Id.*, ¶9.) Baker named the heroin he sold out of the 527 ext. "CPR" (as in cardio pulmonary respiration) because he thought that was "clever." (*Id.*) Baker named his cocaine line "knockout." (*Id.*) Defendant Officers knew the names of his drug lines. (*Id.*) No other dealers were allowed to use Baker's brand names while he was selling the drugs. (*Id.*)

Baker, who was in his thirties when he was arrested in March and December of 2005, used drug-addicted neighbors and children to sell the drugs he controlled and to act as law enforcement lookouts. (*Id.*, ¶5, 10.) They, and the other drug addicts he preyed on, called him "Pops." (*Id.*, ¶5.) The drug-addicted turned the money from the drug sales over to Baker or one of his sellers who gave them just enough drugs to ease their withdrawal sickness (or as Baker puts it, a "wake up call") when they didn't have enough money to feed their addiction. (*Id.*, ¶¶10, 11.)

Bebe (Gregory Young),[2] a drug addict, and Twanny (Antoine Bradley), a sixteen-year-old at the time, were two of the vulnerable Baker preyed on and they were with Baker, selling heroin and crack, in the third floor stairwell landing of Ext. 527, when he was arrested in March 2005. (*Id.*, ¶¶10, 20.)

[2] At Baker's criminal trial, Gregory Young's nickname was transcribed as "Baybay." (SOF at Ex. E.) At his deposition in this action, the name was transcribed as "Bebe" in Volume I and "Bay-Bay" in Volume II. (*Id.* at Ex. B and D.) Defendant officers will use the spelling "Bebe" in this motion.

After sweeping yet vague allegations from Baker and Glenn pointing fingers at Watts and "his crew," this action was time to "put up or shut up" and adduce any evidence establishing that *Defendant Officers* framed them. But all they could muster against Defendant Officers after two decades of accusations and an eight-year FBI investigation was mealymouthed cliches like "the apple doesn't fall far from the tree" and "guilt by association." (*Id.*, ¶¶57, 59, 60, 61,77; see also CSOF, ¶¶ .). Like the FBI, neither Baker nor Glenn has been able to adduce any evidence that Defendant Officers, *i.e.*, "Watts' crew," framed them.

Indeed, after an IAD investigation and the CPD-assisted, eight-year FBI investigation, the only officers charged were Watts and Mohammed. And the evidence adduced against them during that investigation arose from a *single* transaction, a "sting" operation in which they accepted alleged drug proceeds from a confidential informant (SAC ¶¶ (citing *United States v. Watts*, 12 CR 87-1 (N.D. Ill.) and *United States v. Mohammed*, 12 CR 87-2 (N.D. Ill.)); see also generally, CSOF.) The only "evidence" of any frameups was hearsay allegations from one or two known and self-confessed drug dealers that the FBI was unable to substantiate. (CSOF, ¶¶67-72.) And that FBI investigation included surveillance and wiretapping.

Significantly, one of the CPD officers who suspected that Watts was accepting bribes and who triggered and participated in the FBI investigation, including conducting surveillance (and did some investigating on her own), testified unequivocally that she had never, not once, seen any of Defendant Officers engage in any criminal or other illegal activity at any time. (SOF, ¶81.) She also testified that

Baker was an established drug dealer who she herself had been chasing for ten years. (*Id.*)

Equally telling, notwithstanding the extensive investigations by the FBI and the City, there is zero evidence that Defendant Officers' financial records revealed any suspicious or out of the ordinary cash deposits or withdrawals. Even Baker himself admitted that no officer other than Watts ever demanded money to sell drugs from him. (SOF, ¶75.) There is also no evidence that any of the officers had any suspicious or significant career advancement. Simply put, there is not an iota of evidence that any of Defendants here sought bribes from Baker or received any benefit, personal or professional, from Baker and Glenn's arrests or the other arrests they made during their time at the Wells complex.

This utter lack of evidence aside, Baker's own testimony defeats any claims arising from his March 2005 arrest and subsequent conviction and his and Glenn's guilty pleas and testimony defeat their claims arising from their December 2005 arrests and subsequent convictions. Defendant Officers are thus entitled to judgment in their favor on all the claims in the SAC.

STATEMENT OF FACTS

The relevant facts are set forth in Defendant Officers' SOF and Defendant the City of Chicago's CSOF.

LEGAL STANDARD

A court should grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (Fed. R.

Civ. P. 56(a)). The burden is on the moving party to identify those portions of the pleadings, depositions, and other discovery-related materials that demonstrate an absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

To defeat summary judgment, the non- moving party must set forth specific facts, through affidavits or other materials, that demonstrate disputed material facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "Merely alleging a factual dispute cannot defeat the summary judgment motion." *Samuels v. Wilder*, 871 F.2d 1346, 1349 (7th Cir. 1989). "Conclusory allegations by the party opposing the motion cannot defeat the motion[;]" rather, "[t]he party opposing the motion must come forward with evidence of a genuine factual dispute." *Hedberg v. Indiana Bell Telephone Co.*, 47 F.3d 928, 931 (7th Cir. 1995).

A scintilla of evidence in support of the non-moving party's position is insufficient to avoid summary judgment. *Anderson*, 477 U.S. at 251. And reliance on unsupported speculation does not meet a non-moving party's burden of providing sufficient defense to a summary judgment motion. *Hedberg*, 47 F.3d at 931-32 ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is the primary goal of summary judgment") (emphasis in original); *see also Brown v. Advocate South Suburban Hosp.*, 700 F.3d 1101, 1104 (7th Cir. 2012) (Viewing evidence in the light most favorable to the non- moving party "does not extend to drawing inferences that are supported by only speculation or conjecture"). At the summary judgment stage, "saying so doesn't make it so; summary

judgment may only be defeated by pointing to admissible evidence in the summary judgment record that creates a genuine issue of material fact[.]" *United States v. 5443 Suffield Terrace*, 607 F.3d 504, 510 (7th Cir. 2010).

DISCUSSION[3]

Baker and Glenn's Section 1983 claims are centered on allegations that unconstitutional misconduct by state actors resulted in their allegedly wrongful convictions and confinements. Defendant Officers are entitled to summary judgment on all claims alleged in the SAC because Baker and Glenn have failed to adduce the evidence necessary to sustain those claims.

I. THERE IS NO SUCH THING AS A FOURTEENTH AMENDMENT CLAIM FOR "UNLAWFUL PRE-TRIAL DETENTION WITHOUT PROBABLE CAUSE," OR FOR "MALICIOUS PROSECUTION".

Count II of the SAC is labeled "Due Process-Malicious Prosecution and Unlawful Pre-Trial Detention – Fourth and Fourteenth Amendments." In that count, Baker and Glenn claim they were subjected to criminal prosecutions for which there was no probable cause. (Dkt. #238, ¶197.) They further claim that the prosecutions without probable cause were malicious and violated their rights under the Fourth and Fourteenth Amendments. (*Id.*, ¶¶198-199.) Finally, they claim that Defendants deprived them of fair criminal proceedings, including the chance to defend themselves, resulting in deprivations of their liberty without due process. (*Id.*, ¶200.)

[3] Plaintiffs' SAC contains allegations relating to Baker's arrest in July 2004. (SAC, ¶¶19-30.) During briefing on Defendant Officers' motion to dismiss, Plaintiffs conceded that they were not asserting any claims in connection with that arrest. (Dkt. 78 at n. 1.) As Judge Wood explained, those claims would be time-barred in any event. *Baker v. City of Chicago*, 483 F. Supp. 3d 543, 556–57 and n. 5 (N.D. Ill. 2020).)

Under controlling Supreme Court and Seventh Circuit precedent, however, any claim for pre-trial detention without probable cause or "malicious prosecution" rests exclusively in the Fourth Amendment. Moreover, under recent precedent, the Supreme Court has clarified that a Fourth Amendment claim for unlawful pre-trial detention and a Fourth Amendment claim for malicious prosecution are one and the same claim. Thus, Baker and Glenn can only assert a single Fourth Amendment claim in connection with each arrest whether styled as a Fourth Amendment unlawful pre-trial detention claim or Fourth Amendment malicious prosecution claim.

Briefly, in *Manuel v. City of Joliet*, the Supreme Court dispositively held that, even after legal process, a pre-trial detention based on fabricated evidence may violate the Fourth Amendment, but it cannot violate the due process clause (Fourteenth Amendment). 580 U.S. 357, 367 (2017) ("If the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment."). In its analysis, the Supreme Court drew a bright line between a pre-trial deprivation of liberty secured through the use of fabricated evidence and a post-trial deprivation of liberty secured through the use of fabricated evidence at trial, and explained that a pre-trial deprivation of liberty, even after legal process has commenced, could *only* be remedied through a Fourth Amendment claim. *Id.* ("[Legal process] cannot extinguish the detainee's Fourth Amendment claim [for pre-trial detention secured through fabricated probable cause]—**or somehow . . . convert that claim into one founded on the Due Process Clause**." (emphasis added)).

Since *Manuel*, and as required by its holding, the Seventh Circuit has repeatedly held that a claim for pre-trial detention without probable cause arises *exclusively* under the Fourth Amendment. *Kuri v. City of Chicago*, 990 F.3d 573, 575 (7th Cir. 2021) ("*Manuel* held that the Fourth Amendment supplies the basis for a claim until the suspect is either convicted or acquitted . . . [and] *abrogated any due-process objection to pretrial detention* that has been approved by a judge." (emphasis added)); *Young v. City of Chicago*, 987 F. 3d 641, 645-6 (7th Cir. 2021) (declining to overturn district court, holding that it appropriately applied *Manuel*, which held that a claim of pre-trial detention without probable cause "lies in the Fourth Amendment"); *Patrick v. City of Chicago*, 974 F.3d 824, 834 (7th Cir. 2020) ("We have recently clarified the contours of constitutional claims based on allegations of evidence fabrication. **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**." (emphasis added)); *Lewis v. City of Chicago*, 914 F.3d 472, 476–78 (7th Cir. 2019) ("It's now clear that a §1983 claim for unlawful pretrial detention rests *exclusively* on the Fourth Amendment." (emphasis original.)).

Given *Manuel*'s express and unambiguous language: "[legal process] cannot extinguish the detainee's Fourth Amendment claim [for pre-trial detention secured through fabricated probable cause]—**or somehow . . . convert that claim into one founded on the Due Process Clause**" (580 U.S. at 367 (emphasis added)), the cases

cited above cannot be assailed and, in any event, they bind this Court. That the Seventh Circuit has correctly understood and applied *Manuel* to expressly limit claims based on pre-trial detentions without probable cause to the Fourth Amendment was confirmed by the Supreme Court in *Thompson v. Clark,* 596 U.S. 36 (2022).

In that case, Thompson brought a Fourth Amendment claim he labeled a malicious prosecution claim "alleging that he was 'maliciously prosecuted' without probable cause and that he was seized as a result." *Id.* at 42. Such a claim, the court explained, is "sometimes referred to as a claim for unreasonable seizure pursuant to legal process" and its "precedents recognize" such claim. *Id.* (citing *Manuel*, 580 U.S. at 363-3, *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (plurality opinion) and Justice Souter's concurrence in *Albright*, 510 U.S. at 290–291 as the precedent recognizing Thompson's claim).[4] The court thus made clear it has recognized only one Fourth Amendment claim to remedy a post-legal process pre-trial detention without probable cause whether labeled a malicious prosecution or unreasonable seizure after legal process or unlawful pre-trial detention claim.

After trial, the district court entered judgment in the defendants' favor on Thomspon's claim because he had failed to establish that his criminal proceedings were terminated in a manner indicative of innocence which the district court held was

[4] The Supreme Court also pointed out that lower courts have addressed the claim recognized in *Manuel* as a "Fourth Amendment claim[] under §1983 for malicious prosecution" (596 U.S. at 42) and have used the tort of malicious prosecution as the most analogous tort to aid their analysis of the appropriate contours of the claim (*id.* 43). (*Manuel* declined to address the elements of the Fourth Amendment claim it recognized and left that work to the lower courts directing them to "closely attend to the values and purposes of the constitutional right at issue." 580 U.S. at 370.)

required under the favorable termination element of the claim, and the Second Circuit affirmed. *Id.* at 41. Although the Supreme Court's discussion focused on the question of whether Thompson had to establish that his criminal proceedings terminated in a manner indicative of innocence or simply that his prosecution ended without a conviction, it also laid out the other elements necessary to sustain the claim. *Id.* at 42-49.

In sum, the court held that "the gravamen of the Fourth Amendment claim, as this Court has recognized it, is the wrongful initiation of charges without probable cause" (*id.* at 43) which resulted in a seizure pursuant to legal process (*id.* at n. 2) and were terminated without a conviction (*id.* at 49). Notably, unlike a common law malicious prosecution claim, the Fourth Amendment malicious prosecution claim is limited to the initiation of *charges* without probable cause. *Id.* at 43, 49; *see also Chiaverini v. City of Napoleon, Ohio*, 144 S. Ct. 1745, 1748 (2024) ("To succeed on [a Fourth Amendment malicious prosecution] claim, a plaintiff must show that a government official *charged* him without probable cause, leading to an unreasonable seizure of his person." (emphasis added)).

Put another way, consistent with decades of jurisprudence, including *Manuel* and *Albright* on which the opinion relies, *Thompson* did not recognize a Fourteenth Amendment malicious prosecution claim. *See Albright*, 510 U.S. 266, 274 ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it."); *id.* at 290 (Souter, J., concurring in the judgment) ("it is not surprising that rules of recovery for such harms have naturally coalesced

under the Fourth Amendment"); *id.* at 273 ("Where a particular Amendment [the Fourth Amendment] 'provides an explicit textual source of constitutional protection" against a particular sort of government behavior, "that Amendment, not the more generalized notion of substantive due process, 'must be the guide for analyzing these claims.'" (quoting *Graham v. Connor,* 490 U.S. 386, 395 (1989)).

Accordingly, Plaintiffs' claims for "unlawful pre-trial detention without probable cause" or "malicious prosecution" under the Fourteenth Amendment in Count II fail as a matter of controlling law, and Defendant Officers are entitled to judgment on them.

II. DEFENDANTS ARE ENTITLED TO JUDGMENT IN THEIR FAVOR ON BAKER'S CLAIMS ARISING FROM HIS MARCH ARREST.

Baker's Fourth Amendment claim relating to his March arrest fails for three independent reasons: (i) he did not suffer a pre-trial detention; (ii) probable cause existed in any event; and (iii) even if probable cause did not exist, Defendant Officers are entitled to qualified immunity.

Baker's claim also fails as to Officers Jones, Smith, Gonzalez, Leano and Bolton for a fourth independent reason: as Baker testified, they were not present when he encountered Officer Nichols that day and those officers were entitled to rely on Nichols' account of that encounter.

A. Baker's Testimony Defeats His Fourth Amendment Claim for Malicious Prosecution.[5]

1. Baker admits he did not suffer a pre-trial deprivation of liberty.

Baker admits that he was released on bond without any restrictions on the same

[5] As established above, a Fourth Amendment malicious prosecution claim and a Fourth

day he was arrested. (SOF, ¶18.) Without a pre-trial detention, there cannot be a Fourth Amendment claim for malicious prosecution. *Thompson*, 596 U.S. at n. 2; *Chiaverini*, 144 S. Ct. at 1748. Accordingly, Defendant Officers are entitled to judgment in their favor on Baker's Fourth Amendment claim arising from his March 23 arrest.

2. Even if he suffered a few hours of detention, Baker's account of his March 2005 arrest establishes that probable cause existed to support the arrest and pre-trial detention.

Whether the jury credits Baker's account or Nichols' account of his March 2005 arrest, each of their accounts establishes probable cause. Thus, accepting Baker's account for purposes of this motion, there is no genuine dispute of the facts necessary to determine probable cause as a matter of law.

a. Probable cause requires only a probability that Baker was engaging in criminal behavior.

Probable cause exists when law enforcement officers reasonably believe, in light of the facts and circumstances within their knowledge at the time of the arrest, that the suspect had committed or was committing a crime. *United States v. Parra*, 402 F.3d 752, 763–64 (7th Cir. 2005). "[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—*not readily, or even usefully, reduced to a neat set of legal rules*." *Illinois v. Gates*, 462 U.S. 213, 232 (1983) (emphasis added). As the Supreme Court describes it:

> The process [of assessing probable cause] does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as

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Amendment unlawful pre-trial detention are one and same claims. For purposes of clarity and consistent with *Thompson*, defendants will refer to the claim as a "Fourth Amendment malicious prosecution claim."

> such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

Id. (quoting *United States v. Cortez,* 449 U.S. 411, 418 (1981). And as the Seventh Circuit puts it, the "on-the-spot determination of probable cause often involves an exercise of judgment" which the courts "evaluate not on the facts as an omniscient observer would perceive them but on the facts as they would have appeared to a reasonable person *in the position of the arresting officer*—seeing what he saw, hearing what he heard." *Parra*, 402 F.3d at 764 (emphasis original) (internal quotation marks omitted).

Furthermore, because "probable cause [d]eterminations are naturally based on probabilities, a finding of probable cause 'does not require evidence sufficient to support a conviction, nor even evidence demonstrating that it is more likely than not that the suspect committed a crime.'" *United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003) (quoting *United States v. Carrillo,* 269 F.3d 761, 766 (7th Cir.2001)); *United States v. Sawyer*, 224 F.3d 675, 679 (7th Cir. 2000); *see also Gerstein v. Pugh,* 420 U.S. 103, 121 (1975) (the probable-cause determination "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands").

This understanding of probable cause and the standard required to prove it is deep-rooted and recognized as essential to law enforcement's ability to function effectively. *See e.g., Brinegar v. United States*, 338 U.S. 160, 175 (1949) ("In dealing with probable cause [], as the very name implies, we deal with probabilities. These are

not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."); *id.* at 174 ("[If higher] standards [of proof] were to be made applicable in determining probable cause for an arrest or for search and seizure . . . , few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end.")

Thus, "[s]o long as the totality of the circumstances, viewed in a common sense manner, reveals a *probability* or substantial *chance* of criminal activity on the suspect's part, probable cause exists." *Sawyer*, 224 F.3d at 679 (emphasis added). And police officers are entitled to draw reasonable inferences from the facts before them, based on their training and experience, in determining whether suspicious circumstances rise to the level of probable cause. *Funches*, 327 F.3d at 586; *Carrillo*, 269 F.3d at 766.

Finally, probable cause may be established by considering all the information collectively known by multiple officers when officers are working in concert, even if that information is not specifically known to the officer who makes the arrest. *Id.* at 680; *People v. Buss*, 187 Ill. 2d 144, 204 (1999); *United States v. Williams*, 627 F.3d 247, 253 (7th Cir. 2010) (stating DEA's knowledge of facts supporting probable cause imputed to a local law enforcement officer). Probable cause can also be based on hearsay. *Franks v. Delaware*, 438 U.S. 154, 165 (1978); *People v. Gocmen*, 2018 IL 122388, ¶ 43.

b. Baker's testimony and the undisputed facts establish probable cause.

According to Baker, on March 23, 2005, he encountered sixteen-year-old Twanny and Bebe on the third-floor landing of Ext. 527. (SOF, ¶20.) Baker admits that Twanny and Bebe sold drugs for him. (*Id.*, ¶10; see also *Id.* at ¶11.) At that time, Twanny and Bebe were in possession of and selling crack cocaine and heroin respectively. *(Id.,* ¶10.) While they were in the stairwell, Nichols approached from the hallway with his gun drawn and ordered them to come out of the stairwell and place their hands against the wall. (*Id.*, ¶21.) Nichols was alone. *(Id.)* Twanny and Bebe threw the drugs to the floor. *(Id.,* ¶22.*)* All three complied with Nichols' order. *(Id.,* ¶23*)* After placing his hands on the wall in the hallway, Bebe took off and ran back into the stairwell. (*Id.*) Baker also took off and followed Bebe into the stairwell. *(Id.)* When they reached the lobby, Bebe ran out the back door of the building and Baker ran out the front door of the building. *(Id.,* ¶24.*)* Bebe escaped but Baker was stopped by Officer Leano who was entering the building and put his hands on Baker's chest. *(Id.)* Leano searched Baker, did not find any drugs on him and put Baker into a squad car. *(Id.,* ¶25.*)* No other officers were present when Leano stopped and searched Baker. (*Id.* ¶24.) Nichols exited the building holding Twanny and Bebe's drugs in his hand. (*Id.* ¶25.) Baker admits he had $819 in his pocket when he was searched after his arrest and that the cash was inventoried by police. (*Id.*) Baker has admitted that the 527 ext. is dangerous and the site of heavy narcotics trafficking. (*Id.*, ¶4.)

Additional undisputed and indisputable facts are: Watts directed Nichols and other officers to the 527 ext. [confirm whether Baker was specifically mentioned] for a

premises check. (*Id.*, ¶31.) Watts did not tell them to look for anyone in particular nor did he direct them to a particular location within the 527 ext. (*Id.*) It was not unusual for Watts to direct members of his unit to specific buildings to conduct premises checks. (*Id.*) Nichols, like Baker, and every other officer that patrolled the Wells complex and the entire CPD, knew that the complex, including the 527 ext., was a hive of drug activity. (*Id.*, ¶¶4, 7.) Nichols, like Baker, knew Watts and other officers had informants who would advise CPD on drug activity at the complex and extension buildings. (*Id.*, ¶30.) He also knew that Baker was a drug dealer and that, according to CPD and others, Baker was the Gangster Disciple who controlled the drug traffic in and out of the 527 ext. (*Id.*, ¶7.) And, again according to Baker, officers in Watts' unit even knew the brand names of the narcotics Baker sold at the 527 ext. (*Id.*, ¶9.) In short, the officers in Watts' unit, including Nichols, were intimately familiar with Baker's drug trafficking. [6] Finally, one of the two bags recovered contained 110 smaller bags of heroin and the other contained 68 smaller bags of crack. (*Id.*, ¶41.)

These facts sworn to by Baker, along with the undisputed facts establishing the knowledge Nichols already possessed, when "viewed in a common sense manner, reveal[ed] a probability or substantial chance of criminal activity on [Baker's] part." *Sawyer*, 224 F.3d at 679. In fact, Nichols had more facts than he needed to conclude there was a probability that Baker was committing a crime. Baker admits that, as Nichols entered the stairwell, Baker, Bebe and Twanny were on the landing of the

[6] Officer Nichols' account is set forth in SOF, ¶¶31-38.

third-floor stairwell in a building with daily drug activity[7] and narcotics were present. (SOF, ¶¶20-22.) These facts alone were sufficient to establish probable cause that a crime was committed. 720 ILCS 570/402 (prohibiting possession of controlled substances); *People v. Pittman*, 216 Ill. App. 3d 598, 602–03, (4th Dist. 1991) ("To sustain a conviction for unlawful possession of cannabis, the State must prove the identity of the substance in question, that defendant had knowledge that the substance was present, and that he had actual or constructive possession of the substance.") Thus, they certainly justified further investigation.

To that end, and again according to Baker, Nichols ordered Baker, Bebe and Twanny out of the stairwell and directed them to place their hands on the wall. (SOF, , ¶21.) Baker and Bebe feigned compliance but then took off and ran into the stairwell and down to the lobby. (*Id.*, ¶23.) This fact—actual flight from police—sealed the probable cause deal—even without taking into account Nichols' knowledge regarding Baker's drug dealing or his suspected role as the manager of drug trafficking at the 527 ext. *Tom v. Voida*, 963 F.2d 952, 960 (7th Cir. 1992) ("[A] suspect's actual *flight* from an officer may certainly provide information to ripen an officer's preexisting suspicions into probable cause." (emphasis original)).[8] As Baker himself testified, "if the police was coming in the building, whoever had drugs on them would run." (SOF,

[7] *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation [and may consider them].")

[8] *See also id.* ("'Of course, [] some reactions by individuals to a properly limited *Terry* encounter, e.g. violence toward a police officer, in and of themselves furnish valid grounds for arrest. *Other reactions, such as flight, may often provide the necessary information, in addition to that which the officers already possess, to constitute probable cause.*'" (emphasis original) (quoting *Kolender v. Lawson,* 461 U.S. 352, 366 at n. 4 (1983) (Brennan, J. concurring))).

¶23; *id.* ("Whoever had drugs would run if the police came."). And of course, Nichols' experience in premise sweeps informed him of this very fact. Thus, Baker's attempt to flee was another undisputed fact on which Nichols properly relied in his assessment of whether the probability existed that Baker was engaged in criminal activity. Indeed, under *Voida* and *Kolender*, once Baker fled, probable cause existed.

But there's more. When they reached the lobby, Bebe turned in the direction of the back doors and escaped while Baker turned to run out the front doors. (SOF, ¶24.) As Leano was entering the building, he held up his hand and stopped Baker. (*Id.*) Leano searched Baker and found a significant amount of cash, $819 in his pocket. (*Id.*, ¶25.) Baker admits the cash was his. (*Id.*)

To sum it up, Nichols encountered (i) a known drug dealer (ii) who CPD believed controlled the drug traffic out of the 527 ext.; (iii) a substantial amount of narcotics was present; (iv) when Nichols ordered that drug dealer to place his hands against the wall, the dealer feigned compliance and took off; (v) that dealer had nearly a thousand dollars in cash in his pocket.

These undisputed facts are more than sufficient to establish a *probability* that Baker was engaged in criminal activity as a matter of law. *See e.g.*, *Maryland v. Pringle*, 540 U.S. 366 (2003) (probable cause to arrest front seat passenger, along with driver and backseat passenger, in car where 5 plastic baggies of suspected drugs were found hidden in backseat and $763 was found in glove compartment); *id.* at 372 ("We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine.

Thus, a reasonable officer could conclude that there was probable cause to believe [the front seat passenger] committed the crime of possession of cocaine, either solely or jointly.""); *United States v. Smith*, 223 F.3d 554 (7th Cir. 2000) (Police officers had probable cause to arrest defendant based on officer's statement that defendant and three other men were standing near building known to be gang members' gathering place, that one man was recognized as gang member, and that, upon arrival of officers, defendant and other men dropped ammunition to the ground and tried to leave.)

Because the facts as testified to by Baker establish probable cause under *Pringle* and *Smith*, Defendant Officers are entitled to judgment as a matter of law on Baker's Fourth Amendment claims arising from the March arrest.

3. Even if Baker's testimony does not establish probable cause, Defendant Officers are entitled to qualified immunity.

Defendant Officers are entitled to qualified immunity under § 1983 unless Baker can show: (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. *District of Columbia v. Wesby*, 583 U.S. 48, 62–63, (2018); *Holloway v. City of Milwaukee*, 43 F.4th 760 (7th Cir. 2022). "'Clearly established' means that, at the time of the officer's conduct, the law was 'sufficiently clear' that every 'reasonable official would understand that what he is doing' is unlawful." *Wesby*, 583 U.S. at 63. To be "clearly established," a legal principle must be "dictated by controlling authority, or a robust consensus of cases of persuasive authority," such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *Id.*

Furthermore, it is essential to evaluate the public official's conduct at the correct

level of granularity. *Id*. ("The 'clearly established' standard also requires that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him. The rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.' This requires a high degree of specificity.") The "specificity of the rule is especially important in the Fourth Amendment context." *Id.* at 64. In that context, qualified immunity protects officers who "'reasonably but mistakenly conclude that probable cause is present.'" *Id.* at 65 (quoting *Anderson v. Creighton*, 483 U.S. 635, 641 (1987)).

As discussed above, under Supreme Court and Seventh Circuit precedent, the facts are more than sufficient to establish probable cause. At the very least, reasonable minds could differ on the existence of probable cause. Defendants therefore are entitled to qualified immunity.

4. Officers Jones, Gonzalez, Bolton and Leano were entitled to rely on Nichols' description of Baker's arrest.

Again according to Baker, Jones, Gonzalez, Bolton and Leano were not present during his encounter with Nichols. (SOF, ¶21.) Nor were Gonzalez and Bolton even at the scene of his arrest and Jones arrived after Baker was already in custody, in the car and pulling away from the scene. (*Id.*, ¶25.) And none of these officers testified at any point during Baker's pre-trial proceedings. (*Id.*, ¶18.)

"Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, 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) (internal citation and quotation marks omitted); *see also Grieveson v. Anderson,*

538 F.3d 763, 776 (7th Cir. 2008) ("A plaintiff bringing a civil rights action must prove that the defendant personally participated in or caused the unconstitutional actions.") (citations omitted).

"A defendant will be deemed to have sufficient personal responsibility if he directed the conduct causing the constitutional violation, or if it occurred with his knowledge or consent." *Rasho v. Elyea*, 856 F.3d 469, 478 (7th Cir. 2017); *Cf. Culp v. Reed*, No. 19-cv-106, 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**." (emphasis added)).

Again according to Baker, Jones, Gonzalez, Bolton and Leano were not present during his encounter with Nichols. (SOF, ¶21.) Nor were Gonzalez and Bolton even at the scene of his arrest and Jones arrived after Baker was already in custody, in the car and pulling away from the scene. (*Id.*, ¶25.) And none of these officers testified at any point during Baker's pre-trial proceedings. (*Id.*, ¶18.)

What they did wrong, Baker claims, is assist Nichols in filling out his "false" arrest report. (SOF, ¶27.)[9] But as Baker admits, he has no idea which officer added

[9] Baker has concocted an absurd story of officers passing the report around the room, inserting it into their respective typewriters and then adding unknown information to the report. (SOF, ¶27.) Had they done so of course, the use of different typewriters would have been patently evident on the face of the report itself. See

which fact. (*Id.*) Perhaps one typed the date, perhaps another typed Baker's birthday or address, perhaps one typed his age, etc. In other words, Baker has nothing but rank speculation to support his claim that Jones, Gonzalez, Bolton and Leano drafted any substantive portion of the allegedly false report. *Coleman v. City of Peoria, Illinois*, 925 F.3d 336, 345 (7th Cir. 2019) ("[I]nferences that are supported by only speculation or conjecture will not defeat a summary judgment motion.")

Furthermore, even if the Court speculates that they did type any substantive portion, none of them were witnesses according to Baker's account. Only Nichols had the information regarding what occurred before Baker fled and the officers were entitled to rely on Nichols' account in assisting him in completing any reports. *Williams*, 627 F.3d at, 253. Baker can point to no evidence that would establish the officers had any reason to suspect much less actually know that Nichols' account was purportedly fabricated. *Coleman*. And they had to know "to a certainty" that Nichols' account was false. *Id.*

Even if the officers knew the reports were false and participated in falsifying them, the reports did not cause Baker's pre-trial detention. The grand jury indictment caused his pre-trial detention. And none of these officers testified in front of the grand jury or at any other point during Baker's pre-trial proceedings. Even if they had of course, they, like Nichols, would be immune from any liability for that testimony. *Rehberg v. Paulk*, 566 U.S. 356, 369 (2012) (grand jury witness has absolute immunity from any § 1983 claim based on witness' testimony and this rule may not be circumvented by using the testimony to support any other claims concerning the

initiation or maintenance of a prosecution). There is also no evidence that these officers took any other action after Baker's arrest to influence or cause the judicial determination that probable cause existed to detain him. Simply put, these officers did not cause Baker's arrest and they did not cause his pre-trial detention. *Minix v. Canarecci*, 597 F.3d 824, 833 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional deprivation." (citation and internal quotation marks omitted)); *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) ("Section 1983 creates a cause of action based on personal liability and predicated upon fault. An *individual* cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary." (emphasis added)). And Jones, Gonzalez, Bolton and Leano are entitled to judgment in their favor as a result.

5. Office Smith was not involved in any aspect of Baker's arrest.

According to Baker, Officer Smith was not present at the scene of the March arrest. (SOF, ¶¶21, 24.) Smith was not at the police station. *(Id.,* ¶27.*)* Smith did not participate in filling out any reports. *(Id.)* [10] Smith did not testify at any point during Baker's pre-trial proceedings or his trial. *(Id.,* ¶¶18,47.*)*

In short, Baker has failed to adduce any evidence that Smith was involved in securing any evidence that was used to detain or prosecute him, or in the decisions to arrest and charge him. Without personal involvement, there can be no liability in

[10] Baker testified that Officer Kenneth Young also participated in filling out the police reports. (SOF, n. 2.) This is false; Officer Young had that day off. *Id.*

Section 1983 cases. *See Munson v. Gaetz*, 673 F.3d 630, 637 (7th Cir. 2012) (personal involvement is a prerequisite to liability under 42 U.S.C. § 1983); *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996) ("liability does not attach unless the individual defendant caused or participated in a constitutional deprivation"); *Alejo v. Heller,* 328 F.3d 930, 936 (7th Cir. 2003) ("A plaintiff bringing a civil rights action must prove that the defendant personally participated in or caused the unconstitutional actions."); *Duncan v. Duckworth*, 644 F.2d 653, 655 (7th Cir. 1981) ("[A] defendant's direct personal responsibility for the claimed deprivation of a constitutional right must be established in order for liability to arise under 42 U.S.C. s 1983.") Because Smith was not present and did not participate in any of the conduct Baker complains of in connection with his March arrest, he is entitled to judgment in his favor on all of the claims arising from Baker's March arrest.

III. BAKER AND GLENN HAVE FAILED TO ADDUCE THE EVIDENCE NECESSARY TO PROVE THEIR FABRICATION CLAIMS.

This Court has held that a plaintiff who goes to trial cannot sustain a fabrication claim under the Fourteenth Amendment unless the allegedly fabricated evidence was admitted at the plaintiff's trial and caused his conviction. *In re Watts Coordinated Pretrial Proceedings*, 19-CV-1717, 2022 WL 9468206, at *12 (N.D. Ill. Oct. 14, 2022) ("*Watts*").

In addition, to establish liability on the part of any Defendant Officer, Baker and Glenn "must prove not only that the evidence was false but that [each officer] 'manufactured' it." *Coleman v. City of Peoria, Illinois*, 925 F.3d 336, 344 (7th Cir. 2019). To clear this "high bar," Baker and Glenn must prove that the officers "knew with

certainty" that Nichols' account of the March arrest and Watts' account of the December arrests were false. *Id.* Evidence that "suggests [the officers] had reason to doubt [Nichols' or Watts'] veracity in insufficient." *Id.* at 345.

A. Baker's Trial Arising From His March Arrest.

As this Court has held, a plaintiff who goes to trial cannot sustain a fabrication claim under the Fourteenth Amendment unless the allegedly fabricated evidence was admitted at the plaintiff's trial. *Watts,* 2022 WL 9468206, at *12. The Court's holding is consistent with—indeed required under—circuit precedent. *E.g., Avery v. City of Milwaukee*, 847 F.3d 433, 442 (7th Cir. 2017) ("A §1983 claim requires a constitutional violation, and *the due-process violation wasn't complete until the [fabricated evidence] was introduced at Avery's trial*, resulting in his conviction and imprisonment for a murder he did not commit. *After all, it was the admission of the [fabricated evidence] that made Avery's trial unfair*." (internal citations omitted) (emphasis added)).

Because the only allegedly fabricated evidence here, the police reports, were not admitted at Baker's trial, Defendant Officers are entitled to summary judgment on this claim.

6. Baker's fabrication claim cannot be premised on officer testimony.

The only *material* allegedly falsified evidence Baker can show was admitted at his trial is Nichols' testimony. (See generally, Trial Transcript, SOF at Ex. E.) But Nichols has absolute immunity for any testimony he gave in Baker's criminal proceedings. *See Briscoe v. Lahue*, 460 U.S. 325, 334, (1983) (witnesses have absolute immunity for liability based on their testimony, even if the testimony is false or

misleading).

That immunity includes his grand jury testimony., 566 U.S. 356, 369 (grand jury witness has absolute immunity from any § 1983 claim based on witness' testimony and this rule may not be circumvented by using the testimony to support any other claims concerning the initiation or maintenance of a prosecution).

It also includes preparation of his testimony. *Canen v. Chapman*, 847 F.3d 407, 415 (7th Cir. 2017) ("It is long-established that witnesses enjoy absolute immunity, and we have acknowledged that this protection covers the preparation of testimony as well as its actual delivery in court.") (cleaned up). This immunity also applies to Officers Jones and Gonzalez, the only other Defendant Officers to testify at Baker's trial. (SOF, ¶¶42-47.)

Beyond immunity, however, neither Jones' nor Gonzalez' testimony was material to Baker's conviction. Jones testified (and Baker admits) that he was responding to a call about a chase but arrived after Baker's arrest and after Baker was already in the car. (SOF, ¶¶26, 42.). Thus, Jones was not a witness and could not testify to what occurred before or during Baker's arrest. Jones testified that he was at the station but did not hear Baker get Mirandized and did not recall hearing him say "the blow is mine but not the rocks." (*Id.*, ¶42.) Jones testified that he did not type any reports and was listed as assisting in the arrest because he responded to the call for assistance. (*Id.*) Thus, Jones' testimony actually helped Baker because he did not hear any *Miranda* warnings nor did he recall hearing any incriminating statements from Baker. And Jones' testimony denying he prepared any reports, even if false, was not material to Baker's conviction—whether Jones prepared any reports had nothing to do

with Baker's guilt, no report was admitted into evidence and the substance of any report was not testified to by any officer. *Patrick*, 974 F.3d at 835 ("The essence of a due-process evidence-fabrication claim is that the accused was convicted and imprisoned based on knowingly falsified evidence, violating his right to a fair trial and thus depriving him of liberty without due process. A conviction premised on fabricated evidence will be set aside if the evidence was material—that is, if there is a reasonable likelihood the evidence affected the judgment of the jury.")

As for Gonzalez, he testified that he and Bolton went to the 527 ext. to do a premise check and, while they were still in the lobby, they heard a radio call about a foot chase. (SOF, ¶44.) Baker came out of the stairwell and he and Bolton detained him. (*Id.*) Gonzalez did not see any drugs in Baker's hand but caught a glimpse of the narcotics when Nichols physically detained him. (*Id.*, ¶45.) Baker stopped when he saw Gonzalez. (*Id.*, ¶46.) He did not type a police report. (*Id.*) Gonzalez testified that he thought Baker was put in Nichols and Leano's car. (*Id.*) He did not see Jones have a conversation with Baker. (*Id.*) Finally, Gonzalez testified that he saw crack recovered from Baker's pants pocket. (*Id.*, ¶45.) None of this testimony was necessary to convict Baker. Nichols was the only witness to what occurred in the stairwell and only he had those critical facts which were necessary to convict Baker.

Because the testifying Defendant Officers have immunity for their testimony and because Baker has failed to adduce any other allegedly fabricated evidence admitted at trial, Defendant Officers are entitled to judgment in their favor on Baker's fabrication claim arising from his March arrest.

7. Baker cannot base his fabrication claim on the drugs recovered from the scene.

Any argument that the drugs Nichols recovered from the scene of Baker's March arrest constitutes fabricated evidence fails. Unlike his testimony regarding his December arrests, Baker admits that the drugs were in fact recovered from the scene—that is, they were present and *not* planted. (*Id.* at ¶20.) Baker just denies they were his drugs which, if believed, means nothing more than that Nichols gave false testimony. Again, Nichols, and any other officer who Baker claims lied on the stand, has absolute immunity for that testimony.

Defendants are therefore entitled to judgment on Baker's fabrication based due process claim arising from the March arrest.

B. Plaintiffs' Guilty Pleas In Connection With the Charges Arising from their December Arrests Foreclose Any Due Process Claims Based on Those Convictions.

1. Because Plaintiffs did not go trial, they cannot sustain due process fabrication claims.

Plaintiffs admit that they pleaded guilty in connection with their arrests. (SAC, ¶95.) Thus, they concede there were no trials in their case, much less the introduction of any evidence (fabricated or otherwise) against them at any trial. For that reason, they have failed to prove an essential element of their due process claims based on allegedly fabricated evidence arising from the December arrests. *Moran v. Calumet City*, 54 F.4th 483, 498 (7th Cir. 2022) (To prevail on a claim alleging officers fabricated evidence, a plaintiff must prove that "'there is a reasonable likelihood the evidence ***affected the judgment of the jury***.'" (quoting *Patrick*, 974 F.3d at 835) (emphasis added)); *Brown v. Elmwood Park Police Dep't*, Civil Action No. 19-9565 (SDW), 2019

WL 2142768, at *2 (D.N.J. May 16, 2019) ("As Plaintiff pled guilty, and the alleged fabricated evidence against him was not used at trial, Plaintiff has failed to plead a viable stand-alone fabricated evidence claim….")

In *Watts*, this Court acknowledged that *Patrick* could be read to require the admission of the allegedly fabricated evidence to state a Fourteenth Amendment fabrication claim. 2022 WL 9468206, at *8. Nevertheless, the Court determined it would allow the fabrication claims arising from the December arrests to proceed based on its broad reading of *Patrick* and other cases on this issue in our circuit. *Id.* at 8-9.

Specifically, the Court pointed to language in *Whitlock v. Brueggemann*, 682 F.3d 567, 580 (7th Cir. 2012) often quoted in our circuit before *Manuel* and *Lewis* were decided. *Watts*, at 7. However, although *Whitlock* states: "We have consistently held that a police officer who manufactures false evidence against a criminal defendant violates due process if that evidence is later used to deprive the defendant of her liberty *in some way*," *id.* at 582 (emphasis added), this language cannot be read in isolation; it must be read in the context of the additional language: "[defendant] is correct that the alleged constitutional violation here was not complete *until trial*," *id.* (emphasis added). As the Seventh Circuit has admonished with respect to the use of broad language in its opinions: "Lesson Number One in the study of law is that general language in an opinion must not be ripped from its context to make a rule far broader than the factual circumstances which called forth the language." *Federal Deposit Ins. Corp. v. O'Neil*, 809 F.2d 350, 354 (7th Cir. 1987); *see also Todd v. Collecto, Inc.*, 731 F.3d 734, 738 (7th Cir.2013) ("[B]road language in [an] opinion must be understood in

[its] context.").

It is no coincidence that Seventh Circuit cases discussing fabrication claims make it a point to emphasize that the due process tort is not complete until admitted at trial. Indeed, the Seventh Circuit has restated and upheld this principle for over a decade: from *Whitlock*, 682 F.3d at 582 ("[Defendant] is correct that *the alleged constitutional violation here was not complete until trial*." (emphasis added)), to *Fields v. Wharrie,* 740 F.3d 1107, 1114 (7th Cir. 2014) ("*Fields II*") ("[T]he cases we've just cited involved not merely the fabrication, but the introduction of the fabricated evidence at the criminal defendant's trial. For if the evidence hadn't been used against the defendant, he would not have been harmed by it, and without a harm there is, as we noted earlier, no tort."), to *Avery* 847 F.3d at 442 ("A §1983 claim requires a constitutional violation, and *the due-process violation wasn't complete until the [fabricated evidence] was introduced at Avery's trial*, resulting in his conviction and imprisonment for a murder he did not commit. *After all, it was the admission of the [fabricated evidence] that made Avery's trial unfair*."), to *Patrick*, 974 F.3d 824, 834-5 (a plaintiff must prove that the allegedly fabricated evidence *was used at trial* and was material to the plaintiff's conviction to sustain a Fourteenth Amendment fabrication claim); *id.* at 835 ("The essence of a due-process evidence-fabrication claim is that the accused was convicted and imprisoned based on knowingly falsified evidence, *violating his right to a fair trial* and thus depriving him of liberty without due process. A conviction premised on fabricated evidence will be set aside if the evidence was material—that is, if there is a reasonable likelihood the evidence affected the judgment

of *the jury*." (emphases added)) to *Moran*, 54 F.4th at 499 (If fabricated evidence is not admitted at trial, it cannot be material and therefore fabrication claim premised on evidence not admitted at trial fails).

And district courts in our circuit routinely follow this black-letter law. *E.g., Fulton v. Bartik*, 20 C 3118, 2024 WL 1242637, at *22 (N.D. Ill. Mar. 22, 2024) (admission at trial is an *element* of a due process fabrication claim); *id.* at n. 27 (distinguishing case law issued before *Patrick*); *Brown v. City of Chicago*, 633 F. Supp. 3d 1122, 1156 (N.D. Ill. 2022) ("An evidence-fabrication claim has four elements: (1) the defendant knowingly fabricated evidence against the plaintiff, (2) the evidence was used at his criminal trial, (3) the evidence was material, and (4) the plaintiff was damaged as a result." (citing *Patrick*, 974 F.3d 835)); *Zambrano v. City of Joliet*, 21-CV-4496, 2024 WL 532175, at *8 (N.D. Ill. Feb. 9, 2024) (admission at trial is an *element* of a due process fabrication claim). [11]

And *Manuel* couldn't have spoken more plainly in instructing our circuit that it was absolutely incorrect in blurring the rights afforded under different amendments in the Constitution: "[legal process] cannot extinguish the detainee's Fourth

[11] The list goes on: *Boyd v. City of Chicago*, 225 F. Supp. 3d 708, 725 (N.D. Ill. 2016) ("Here, nothing about the lineup procedure was introduced at plaintiff's criminal trial. Therefore, even assuming the defendant officers did fabricate their reports regarding the lineup, an evidence fabrication claim cannot be sustained because the allegedly fabricated evidence was not used at plaintiff's trial."); *Ulmer v. Avila*, 15 CV 3659, 2016 WL 3671449, at *8 (N.D. Ill. July 11, 2016) ("*Whitlock,* though, is distinguishable from the present case. The court in *Whitlock* found that the fabrication of evidence caused harm because it was introduced against the defendants at trial and 'was instrumental in their convictions.'" (quoting *Whitlock,* 682 F.3d at 582)); *Starks v. City of Waukegan*, 123 F. Supp. 3d 1036, 1048 (N.D. Ill. 2015) ("nowhere did *Fields* question the requirement that the fabricated evidence must be introduced at trial; to the contrary, it reaffirmed that requirement").

Amendment claim [for pre-trial detention secured through fabricated probable cause]—**or somehow . . . convert that claim into one founded on the Due Process Clause**" (580 U.S. at 367 (emphasis added). If fabricated evidence is used to secure a pre-trial detention, the Fourth Amendment is the amendment that provides a remedy for *that* specific deprivation of liberty. *Id.*; *Patrick*, 974 F.3d at 834. If fabricated evidence is used to secure a conviction at trial, the Fourteenth Amendment provides the remedy for that specific deprivation of liberty because the fabricated evidence *made the trial unfair*. Patrick, 974 F.3d at 834.

Thus, it no longer valid to vaguely refer to a plaintiff having been deprived of his/her liberty "in some way." And with respect to guilty pleas, the due process the Constitution affords, that a defendant make a knowing and voluntary plea, is grounded in the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (That is the amendment that guarantees our right to counsel and having that counsel functions as the safeguard against an unknowing and involuntary plea. *McMann v. Richardson*, supra, 397 U.S. at 770, 771. As *McMann* and the other the Supreme Court authority discussed below explains, defendants do not have "trial rights" in the context of a guilty plea and it is an absolute nonstarter for a defendant to blame his guilty plea on tainted evidence or any other alleged constitutional violation that occurred before the plea. *cf. Franklin v. Burr*, 535 Fed. Appx. 532, 533 (7th Cir. 2013) ("[Defendant's] convictions rest on [his] guilty plea, not on the admissibility of any particular evidence.")

Criminal defendants have the right to competent counsel who can advise them of the benefits and disadvantages of pleading guilty such that they can make a knowing

and voluntary decision. That the Supreme Court *may* have left the door slightly ajar with respect to whether *Brady* applies in a plea context is consistent with the constitutional rights attendant to a plea: a defendant cannot make a knowing and voluntary plea if he is unaware of material evidence. In that context, his plea is necessarily unknowing (he did not *know* about the evidence *nor did his counsel*) and involuntary (he *and his counsel* were tricked into pleading because they did not have a full picture of the evidence such that he could accurately assess his chances at trial). Thus, it is not actually *Brady* that would be at issue; it is an analysis of whether a defendant could have received competent counsel from his attorney and thereby make a knowing and voluntary plea without knowledge of all the material evidence the State had in its possession.

Baker and Glenn, unlike the plaintiff in *Avery* (or those in *Patrick*, *Whitlock* and *Fields II*), did *not* go to trial. They therefore cannot (and never will be able to) prove that the purported fabricated evidence was *admitted against them at trial*, an element critical to sustaining a fabrication of evidence claim under the due process clause, dooming that claim. Defendants are therefore entitled to judgment in their favor on the Fourteenth Amendment fabricated evidence-based due process claims in Count I arising from the December arrests.

2. Plaintiffs failed to adduce any evidence that Defendant Officers were involved in any alleged fabrication of evidence in connection with their December arrests.

Baker and Glenn's fabrication claims arising from the December arrests should also be dismissed because they have failed to adduce any evidence that Defendant Officers fabricated any evidence that was used against them or that they knew Watts

allegedly planted narcotics in their car.

Both Baker and Glenn testified that the only officers present were Watts and Jones. (SOF, ¶¶49.). Watts directed Baker and Glenn to go stand with the uniformed police officer and he and Jones began searching their car. (*Id. at* ¶50.*)* Watts and Jones were searching different areas of the car and were on opposite sides of the car while they were searching (*Id.*) According to Glenn, she saw Watts pull a plastic bag out of his sleeve. (*Id.*, ¶51.) He then held it up and said he found it. (*Id.*) Watts was in between the open driver-side door and the inside of the car when he stated he found drugs. (*Id.*) According to Glenn, Jones was at the hatch at the back of the car when this happened. (*Id.*) According to Baker, Jones was standing with him and Glenn when Watts was searching the driver's side door and stated he found drugs. (*Id.*) After Watts said he found the drugs, Glenn accused him of pulling the drugs out of his sleeve. (*Id.*, ¶51.) Neither Baker nor Glenn testified that Jones saw Watts allegedly plant drugs. (*Id.* at Ex. B, D, F and L.) Nor did they testify that they saw Jones plant any drugs on December 11, 2005. (*Id.*)

According to Baker, after the arrest, other than Watts, only Officers Mohammed, Jones, Gonzalez and Bolton were at the station. (*Id.*, ¶53.) Although Baker thought Nichols was there as well, he could not be certain. (*Id.*) As it turns out, Nichols and Bolton had the day off and were not in fact at the station. (*Id.*)

According to Baker, at least 8 other arrestees were in the room. (*Id.*, ¶55.) Mohammed was typing the report but "he was taking dictation." (*Id.*, ¶54.) Baker did not hear what the officers were saying to one another. (*Id.*) He did not see any other

officer typing his report. (*Id.*)

According to Glenn, there were 7 to 10 arrestees at the station. (*Id.*, ¶52.) Glenn saw Mohammed at the station. (*Id.*) She also saw Watts who was walking around with paper in his hand going to different officers" desks, handing them the paper and instructing them on what to type on the paper. (*Id.*, ¶55.) Mohammed was using a typewriter not a computer. (*Id.*, ¶52.) Glenn was detained overnight and released on bond the next day. (*Id.*, ¶62.) Baker was detained from December 11, 2005 until January 20, 2006, when he was released on bond. (*Id.*)

Glenn admitted that Gonzalez, Leano and Smith were not on the scene of her arrest; she admitted that neither they nor Nichols and Bolton ever planted drugs on her or stole money from her or falsely arrested her; she admitted that she had no knowledge of Nichols, Bolton, Gonzalez, Leano or Smith engaging in any misconduct towards other individuals and that she could not recall Baker telling her that they had ever planted drugs on him, falsely arrested him or otherwise engaged in misconduct toward him; and she that admitted Bolton, Gonzalez and Leano were included in this action because they were on "Watts' crew.". (*Id.*, ¶¶57-60.)

Glenn also admitted that Jones had never planted drugs on her or stolen money from her or falsely arrested her; that she had no knowledge of Jones engaging in any misconduct towards other individuals; and that she could not recall Baker telling her that Jones had planted drugs on him at any time prior to their December arrests. (*Id.*, ¶61.)

Baker admitted that no Defendant Officer ever demanded money from him. (*Id.*,

¶73.) Baker admitted that he has never seen anyone pay a law enforcement officer a bribe. (*Id.*) Although Baker claims he had seen Watts and Jones "plant" drugs on two people prior to his arrests, he was unable to testify to any such event in an intelligible manner. (*Id.*)

None of this evidence is sufficient to establish that Defendant Officers manufactured any false reports and knew to a certainty that Watts' account of his discovery of drugs in Baker and Glenn's car, as reported, was allegedly false.

3. Baker and Glenn's Convictions Were Caused by Their Guilty Pleas and not by any allegedly fabricated evidence.

The Seventh Circuit's requirement that the allegedly fabricated evidence be introduced at trial is consistent with—indeed, mandated by—long-standing Supreme Court precedent holding that a guilty plea breaks the causal chain between any unconstitutional acts that precede the plea and the conviction and imprisonment subsequent to the plea. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("We thus reaffirm the principle recognized in the *Brady* trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process.") (referring to *Brady v. United States*, 397 U.S. 742, 750 (1970), *McMann v. Richardson*, 397 U.S. 759, 770 (1970), and *Parker v. North Carolina*, 397 U.S. 790 (1970)); *see also*, *Hurlow v. United States*, 726 F.3d 958, 966 (7th Cir. 2013) ("[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.") (quoting *Tollett,* 411 U.S. at 267).

Because a guilty plea breaks the chain of events that preceded the plea, any constitutional violations that occurred prior to the plea cannot form the basis of

attacking the plea. *Tollett,* 411 U.S. at 267. Instead, the plea can be constitutionally attacked only by establishing that the plea was not voluntary or knowing. *Id*.

The reasoning in *Tollett*, *McMann*, *Brady,* and *Harlow* goes hand in hand with the requirement in *Patrick*, *Avery*, *Whitlock* and *Fields II* that the allegedly fabricated evidence must both be admitted at trial *and* material to a conviction in order for that tainted evidence to be deemed the cause of the injury, *i.e.*, the conviction and subsequent incarceration.

McMann is particularly instructive on this point. There, three defendants seeking to vacate their guilty pleas claimed their pleas were induced by constitutionally tainted evidence (physically coerced confessions) and therefore their pleas were involuntary and should be vacated. *McMann,* 397 U.S. at 761-64. Specifically, the defendants claimed the tainted evidence was crucial to the State's cases and, but for the existence of that evidence, they would not have pleaded guilty. *Id*. at 768. The Supreme Court rejected any notion that the pleas were involuntary, remarking:

> A more credible explanation for a plea of guilty by a defendant who would go to trial except for his prior confession is his prediction that the law will permit his admissions to be used against him by the trier of fact. At least the probability of the State's being permitted to use the confession as evidence is sufficient to convince him that the State's case is too strong to contest and that a plea of guilty is the most advantageous course. **Nothing in this train of events suggests that the defendant's plea, as distinguished from his confession, is an involuntary act**.

Id. at 769 (emphasis added).

Similarly here, Baker and Glenn chose to plead guilty to charges stemming from the December arrests, rather than take their chances at a trial, thereby ensuring a

shorter sentence for Baker and no prison time for Glenn. In choosing to plead guilty, they also chose to and did waive the due process rights a trial would have afforded them. (SOF, ¶64.) Having waived their right to a trial, the very purpose of which is to "effectuate due process,"[12] Baker and Glenn cannot now "blame" their guilty pleas, which caused their convictions and Baker's subsequent incarceration, on due process violations that simply did not occur: the allegedly fabricated evidence was never admitted against them at trial. *McMann*, 397 U.S. at 769 (defendant could have chosen to go to trial and contest the State's tainted evidence, including through appellate and collateral proceedings; "[i]f he nevertheless pleads guilty the plea can hardly be blamed on the [tainted evidence]").

Furthermore, Plaintiffs admit their pleas were negotiated. (*Id.*, ¶65.) Their primary motivation was to ensure Glenn, who was facing 4 to 15 years on a non=probational charge, did not receive any prison time. (*Id.*) And they got what they bargained for: Glenn received 1 year probation. (*Id.*, 65.) Baker was facing 6 to 30 years for the charges arising from the December arrests. (*Id.*, ¶60.) Because of the plea, he received only 4 years on those charges. (*Id.*) Baker was also facing 5 years on a weapons charge that he has *not* challenged. (*Id.*) Because of the plea, Baker was sentenced to 2 years, the minimum sentence for that conviction (that conviction still stands). (*Id.*)

Baker and Glenn were also properly admonished. (*Id.*, ¶64.) They were informed that in pleading guilty they were waiving their right to contest the State's evidence, call their own witnesses and mount a defense. (*Id.*) They raised the issue of purported

[12] *Saunders-El*, 778 F.3d at 561.

police corruption at the plea hearing (as Baker did during the pre-trial proceedings arising from the March arrest). (*Id.*, ¶67.) The prosecutors knew about their allegations and the allegations of other drug dealers at the Wells complex. (*Id.*, ¶68.) The prosecutors knew about the ongoing investigation into Watts. (*Id.*) Those prosecutors nevertheless chose to continue Baker and Glenn's prosecution.

In short, Baker and Glenn had excellent counsel representing them and knew exactly what they were doing when they pled guilty. That is all the constitution requires. *Tollet*, 411 U.S. at 267.

Because the only injury Baker and Glenn suffered as a result of the allegedly fabricated evidence was any pre-plea detention, Defendant Officers are entitled to judgment in their favor on any fabricated evidence based Fourteenth Amendment claims in Count I arising from the December arrests.

IV. UNDER CONTROLLING LAW, DEFENDANTS ARE ENTITLED TO JUDGMENT IN THEIR FAVOR ON BAKER AND GLENN'S *BRADY* CLAIMS ARISING FROM THEIR MARCH AND DECEMBER ARRESTS

The crux of Plaintiffs' alleged *Brady* based due process claims is that Defendants had a duty to disclose to prosecutors what they have now admitted they already knew, namely, that Defendant Officers: (i) planted drugs on them at the time of the March and December arrests; and (ii) falsified police reports in connection with the arrests. (SAC, ¶¶53, 54, 62, 77, 79, 84.) Plaintiffs also allege Defendants had a duty to disclose another fact they have now admitted they already knew, namely, the officers' alleged pattern of misconduct, and, they claim, had that purported pattern been disclosed, "they could have used it to impeach the officers' accounts of their arrests, which would

have changed the outcome of the criminal proceedings instituted against them." (*Id*. at ¶¶118; 139.)

To sustain a claim under *Brady v. Maryland*, 373 U.S. 83 (1963), a plaintiff must show: (1) evidence was suppressed by the government, either willfully or inadvertently; (2) the evidence at issue is favorable to the accused, either because it was exculpatory or impeaching; and (3) there is a reasonable probability that prejudice ensued. *Parish v. City of Chicago,* 594 F.3d 551, 554 (7th Cir. 2009). Evidence is only "suppressed for *Brady* purposes if the plaintiff did not know of the evidence or, in the exercise of reasonable diligence, could not have discovered the evidence on his/her own." *Harris v. Kuba*, 486 F.3d 1010, 1015 (7th Cir. 2007).

Baker and Glenn's *Brady* based due process claims in Count I should be dismissed because (i) police officers have no duty to disclose their own alleged misconduct whether the misconduct occurred in Plaintiffs' or other unrelated cases; (ii) Baker and Glenn knew about the circumstances of the allegedly fabricated evidence in their cases; (iii) Baker and Glenn had knowledge of the allegations that form the allegedly withheld "pattern" of misconduct before Baker's trial arising from his March arrest and before they pled guilty in connection with their December arrests and, in the exercise of reasonable diligence, they and their attorneys had ready access to witnesses from their community as well as any and all civilian complaints; (iv) their prosecutors also knew about the allegations that form the allegedly withheld "pattern" of misconduct before Baker's trial and before they negotiated a plea deal with Baker and Glenn, and their prosecutors had access to any and all civilian complaints and it

was *their* duty to disclose the complaints to Baker and Glenn; and (v) there is no duty to disclose impeachment evidence prior to a guilty plea.

A. The Drugs Found at The Scene of The Arrests.

Circuit precedent plainly holds that *Brady* does not require Defendant Officers to disclose their alleged fabrication of evidence, whether the fabrication occurred in Plaintiffs' cases or in other unrelated cases. *Saunders-El v. Rohde*, 778 F.3d 556, 562 (2015). Put simply, *Brady* does not impose a duty on police officers to tell the truth (or what is alleged to be the truth) about their investigations, including that they allegedly fabricated evidence. *Id.*; *Gauger v. Hendle,* 349 F.3d 354, 360 ("Gauger wants to make every false statement by a prosecution witness the basis for a civil rights suit, on the theory that by failing to correct the statement the prosecution deprived the defendant of *Brady* material, that is, the correction itself."); *see also Harris*, 486 F.3d at 1017 ("Harris essentially seeks an extension of *Brady* to provide relief if a police officer makes a false statement to a prosecutor by arguing that an officer is "suppressing" evidence of the truth by making the false statement. This court has already foreclosed this extension.")

Consistent with this precedent, this Court has held that police officers have no duty to disclose their own misconduct. *Watts*, 2022 WL 9468206, at *12 ("The Court agrees with the Defendants that under binding Seventh Circuit case law, *Brady* does not require the creation of exculpatory evidence, nor does it require police officers to accurately disclose the circumstances of their investigations to the prosecution.") (citing *Saunders-El*, 778 F.3d at 562)). Thus, Baker and Glenn's *Brady* claims cannot be premised on Defendant Officers failure to disclose that they allegedly fabricated

evidence as a matter of law. *Id.*; *Saunders-El*, 778 F,3d at 562.

B. Plaintiffs Knew About the Circumstances Surrounding The Alleged Fabrication Of Evidence.

In *Watts*, the plaintiff, who claimed that police officers planted drugs on him, brought a *Brady* claim alleging that the defendants had failed to disclose they planted the drugs. *Id.* at *10. Although the Court reiterated that the defendants had no duty to disclose their alleged fabrication, it declined to dismiss the *Brady* claim because "it is not clear that evidence about the drugs' origin was known to or reasonably available to [the plaintiff]." *Id.* [13]

Here, however, Baker has admitted with respect to his March arrest: (i) the drugs were present at the scene of his arrest and therefore not planted on him and (ii) he knew the drugs belonged to Twanny and Bebe. (SOF, ¶20.) Thus, Baker's *Brady* claim cannot be premised on a failure to disclose the origin of the drugs that were recovered at the scene of Baker's arrest.

With respect to the December arrests, Baker has also admitted that Willie Robinson (a/k/a Fred), who was arrested on the same day and at approximately the

[13] The Court's holding was premised on its reading of *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017), in which the Seventh Circuit held that Avery could bring a *Brady* based due process claim for the officers' failure to disclose *the circumstances* that led to the informants' allegedly fabricated statements, including any promises of benefits in exchange for testimony because that evidence would have supported the plaintiff's claim that the informants' statements were fabricated. The court recognized, however, that Avery could not base a *Brady* claim on the officers' failure to inform him that the informants' statements that he confessed were false because by their very nature, Avery already knew the statements were false. *Id.* (recognizing the distinction in what could constitute a *Brady* claim, stating "Avery knew that the informants' statements were false, but he did *not* know about the pressure tactics and inducements the detectives used to obtain them." (emphasis original)). To illustrate this distinction (admitting the fact of a fabrication as opposed to disclosing evidence of the fabrication) *Avery* distinguishes *Gauger*, *Sornberger* and *Harris*, cases which, like *Saunders-El*, are wholly apposite here. *Id.* at 443–44.

same time as the December arrests, told him at the police station as they were waiting to be processed that the drugs Watts was claiming were Baker and Glenn's were actually his drugs that Watts had just confiscated from him when he was arrested. (*Id.* at ¶56.) He also told Baker that after he had been detained at the 574 ext., Watts received a call from an informant who told Watts that Baker had arrived at 527 ext. with a supply of narcotics. (*Id.*)

Thus, unlike the plaintiff in *Watts*, Baker and Glenn cannot claim they did not know the original source of the drugs. In fact, they not only knew the source, they actually knew Bebe, Twanny and Fred personally. Armed with that information, Baker could have called Bebe and Twanny to testify at his trial. And Baker and Glenn could have called Fred to testify at a trial in connection with the December arrests but they instead chose to plead guilty.

C. Pattern of misconduct

Any alleged pattern of fabricating evidence in *other* unrelated cases is beyond the reach of *Brady*. Again, police officers have no *Brady* duty to disclose their misconduct. Moreover, that alleged evidence had nothing to do with Plaintiffs' guilt or innocence. In fact, Plaintiffs admit that the sole purpose of this alleged pattern evidence would have been to impeach the officers' credibility and create an inference that the officers had a propensity to fabricate evidence and acted in conformity with that propensity in their cases. (SAC, ¶¶118, 139.) Such evidence is not admissible. Similar conduct offered to demonstrate a pattern is inadmissible. *United States v. Gomez*, 763 F.3d 845, 853 (7th Cir. 2014) (propensity evidence inadmissible); *United States v. Beasley*, 809 F.2d 1273, 1278 (7th Cir. 1987); Fed. R. Evid. 404(b). And inadmissible evidence

is not material and therefore is not subject to *Brady*. *Beaman v. Freesmeyer*, 776 F.3d 500, 509 (7th Cir. 2015) (inadmissible evidence is not "material" under *Brady*); *United States v. Salem,* 578 F.3d 682, 686 (7th Cir.2009) (evidence which would not have been admissible in criminal trial is not material for *Brady* purposes)..

Furthermore, Plaintiffs knew about the allegations that form the purported "pattern of misconduct." (SOF, ¶¶67-68.) Indeed, Baker and his counsel raised this issue with Baker's trial judge and prosecutors. (CSOF, ¶¶34-35.) Baker's counsel was also aware of an IAD investigation into Watts and he subpoenaed and obtained the investigation documents from the IAD. (*Id.*, ¶¶29-32; 41.) The CCSAO chose to continue with its prosecution of Baker. (*Id.*, ¶36.) And Baker testified he had been living at the Wells complex and trafficking drugs since 1998. (SOF, ¶7.) He admits he was friends with other drug dealers who had made similar claims against Watts. He admits that both Bebe and Twanny sold drugs for him and Bebe, like Baker, also lived in the 527 ext. Indisputably, Baker had easy access to any number of witnesses he could have subpoenaed and called to testify at his trial and corroborate his claims at his trial in connection with his March arrest. Thus, not only was the purported pattern known to Plaintiffs, evidence of the "pattern" was easily discoverable in the exercise of even the most minimal diligence. *U.S. v. O'Hara,* 301 F.3d 563, 569 (7th Cir. 2002) (evidence is only suppressed if plaintiff could not have discovered the evidence through the exercise of reasonable diligence).

Likewise, this same information was available to Baker and Glenn to use in their defense had they decided to go to trial for the charges arising from their December

arrests. By their own admission, Plaintiffs knew what they needed to know and had an abundance of witnesses at their fingertips from their own community they could have called to present evidence of the purported pattern *if* they had chosen to go trial. The evidence of the "pattern" was therefore not suppressed under *Brady* as a matter of law. *Harris*, 486 F.3d at 1015 (evidence is only "suppressed for *Brady* purposes if the plaintiff did not know of the evidence or, in the exercise of reasonable diligence, could not have discovered the evidence on his/her own.")

Plaintiffs further allege that "dozens" of formal complaints were filed against Watts and other members of his tactical team beginning well before they were arrested. (SAC, ¶130.) Assuming the truth of the allegations, these complaints were all available to Plaintiffs. At any time during their criminal proceedings, Plaintiffs could have requested any citizen complaints filed against their arresting officers from their prosecutors. Baker and Glenn knew that CPD has a process pursuant to which citizens could file complaints against police officer. (SOF, ¶71.) In fact, Baker and Glenn themselves did just that. *(Id.*; see also (CSOF, ¶¶43-44.*)* And Glenn did so multiple times starting in 2001. (*Id.*) That means they knew citizen complaints existed and they were obligated in the exercise of due diligence to request any citizen complaints filed against Defendant Officers. Thus, not only was the purported pattern known to Plaintiffs, evidence of the "pattern" was easily discoverable in the exercise of even the most minimal diligence.

And while Plaintiffs claim that Defendant Officers should have revealed the scope of their purported misconduct to the prosecutors, prosecutors, the ultimate

holders of the duties *Brady* imposes, are certainly aware of citizen complaints and it was up to them to determine whether any existed against the officers involved in Baker and Glenn's arrests. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"); *Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006) (police officers discharge their *Brady* obligation by disclosing exculpatory information to prosecutors that is *not otherwise already known to them*). Assuming, for purposes of argument only, that the content of these citizen complaints constituted *Brady* material, there is no evidence indicating that Plaintiffs' prosecutors did not have ready access to these materials, much less any claim that they had no obligation to review them or disclose them.[14] *Beaman v. Freesmeyer*, 776 F.3d 500, 512 (7th Cir. 2015) (the duty to disclose *Brady* material to the defense in a criminal case belongs to the prosecutor). Indeed, CSOF filed by defendant City of Chicago lays out in extraordinary detail all of the investigations and the prosecutors with knowledge of those investigations. For this additional reason, Defendant Officers are entitled to summary judgment on Plaintiffs' *Brady* based due process claims in Count I must be dismissed.

D. Defendants Had No Duty to Disclose Impeachment Evidence Prior To The Guilty Pleas.

According to Plaintiffs, had the alleged fabrication of evidence and pattern of misconduct been disclosed, they could have used that information in their defense. But

[14] Moreover, Plaintiffs' admitted knowledge of these allegations and their guilty pleas meant that the prosecutors' duty to disclose this impeachment evidence was never triggered in connection with their December arrests in the first place.

as Baker and Glenn admit (SAC, ¶¶ 118, 139), the only possible use Plaintiffs could have made of the alleged pattern would have been to impeach any testifying Defendant Officer at their trials—*trials they chose to forgo*. Without any trials, there was no testimony to impeach. This is precisely the reason the Supreme Court has held that "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). *Ruiz* is dispositive. For this reason, Defendants are entitled to judgment in their favor on any *Brady* based due process claims arising from the December arrests.

V. PLAINTIFFS HAVE NO EVIDENCE TO SUPPORT THEIR FIRST AMENDMENT CLAIM.

In Count III, Plaintiffs assert First Amendment retaliation claims. Specifically, Plaintiffs claim that Defendant Officers framed and arrested them in retaliation for Plaintiffs' attempts to expose Defendant Officers' misconduct. "An act taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000). 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. *See 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." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

Baker and Glenn have failed to adduce any evidence that Defendant Officers acted with a retaliatory motive, if they acted at all. First of all, there is zero evidence that Nichols, Leano, Bolton, Gonzalez or Smith were ever the subject of any complaints by Plaintiffs. Second, Glenn testified that her one complaint against Jones never went anywhere. Third, Plaintiffs failed to establish that any Defendant Officer was involved in the December arrest other than Jones. Nichols and Bolton were not even at work that day. (SOF, ¶53.) And with respect to Jones, Plaintiffs failed to adduce any evidence that Jones knew of much less participated in any fabrication of evidence in connection with the December arrests. Accordingly, Defendants are entitled to judgment on this claim too.

VI. PLAINTIFFS HAVE FAILED TO ADDUCE ANY EVIDENCE OF A CONSPIRACY TO FRAME THEM.

To sustain a claim at summary judgment that defendants conspired to deny a plaintiff's constitutional rights, a 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." *Amundsen v. Chicago Park Dist.*, 218 F.3d 712, 718 (7th Cir. 2000); see also *Redwood v. Dobson*, 476 F.3d 462, 466 (7th Cir. 2007) ("The minimum ingredient of a conspiracy [ ] is an agreement to commit some future unlawful act in pursuit of a joint objective"). When considering whether a plaintiff can establish the

existence of a conspiratorial agreement, "[t]he 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 Dept.*, 197 F.3d 256, 263 (7th Cir. 1999) (citing *Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir. 1979)). "The agreement may be inferred from circumstantial evidence, but only if there is sufficient evidence that would permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's objectives." *Id.* A conspiracy claim cannot survive summary judgment based on vague conclusory allegations that include no overt acts reasonably related to promoting the conspiracy. *Amundsen*, 218 F.3d at 718.

Plaintiffs have utterly failed to adduce any evidence of a conspiracy to frame them. To the contrary, as detailed in Defendants' SOF, neither Baker nor Glenn were able to muster any evidence of that these officers framed them or anyone else. (SOF, ¶¶57-61, 72-74.) As detailed above, Baker admits that only Nichols was present at the March encounter; at no time between his release from custody in November 2004 and his March arrest did any Defendant Officer arrest him or plant drugs on him or demand money from him even though he saw them and interacted with them almost daily; he never saw any Defendant Officers engage in any criminal or illegal activity. (*Id.*, ¶¶72-74.) His only "evidence" is guilt by association, the apple doesn't fall far from the tree, and if Watts' is dirty, they're all dirty. (*Id.*, ¶¶60, 7.) But this is nothing more than rank speculation. *Flowers v. Kia Motors Fin.*, 105 F.4th 939, 946 (7th Cir. 2024) (speculation cannot create a genuine issue of fact that defeats summary judgment and

speculation is insufficient to defeat a summary judgment motion.

Baker and Glenn further admit that only Watts and Jones were present at the December arrests and that Jones was not with Watts when Watts claimed to have discovered narcotics in their car. (SOF, ¶49.) Glenn admits that no Defendant Officer ever planted drugs on her, stole from her or falsely arrested her. (*Id.*, ¶¶57-61.) She also admits that the officers were named simply because they worked under Watts at some time or another. (*Id.*, ¶¶60 .) But going to work and doing your job is not evidence of a conspiracy.

Baker and Glenn have been unable to adduce any evidence of any benefits to Defendants from their arrests. The IAD and FBI investigations detailed in the CSOF failed to result in any charges against Defendants notwithstanding surveillance and wiretapping. The FBI investigation into Defendants' financial records also failed to discover any irregularities or windfalls. Baker and Glenn could not even muster any evidence that Watts could confer some professional benefits on Defendants. Watts had no control over raises, promotions or time off. (*Id.*, ¶¶37.)

At bottom, Baker was a drug dealer until at least 2018. If Watts was demanding bribes from Baker for protection as he claims, that demand may have been illegal but it is not unconstitutional. This is precisely the reason Baker latched on to a federal prosecutor's statement regarding a confidential informant informing him that Watts had framed him. (CSOF, ¶¶ 67-72.) Not surprisingly, that information turned out to be patently false. (*Id.*, ¶¶69-72.) In short, neither the FBI nor IAD was able to find any evidence to corroborate Baker's claim that Defendant Officers were spending their

time framing him and other drug traffickers, not through surveillance and not through wiretapping and not after a decade of investigating. Baker and Glenn have no evidence and it's time to end to this charade.

VII. PLAINTIFFS HAVE FAILED TO ADDUCE ANY EVIDENCE SHOWING THAT DEFENDANT OFFICERS HAD A DUTY TO INTERVENE IN EITHER THE MARCH ARREST OR THE DECEMBER ARRESTS.

Because Baker and Glenn have failed to adduce any evidence that Gonzalez, Leano, Bolton, Smith or Jones were present when Nichols encountered Baker on March 23, 2005 much less knew Nichols' account was allegedly false, and because they failed to establish that any Defendant Officer other than Jones was present at the December arrests or that Jones (or any other defendant) knew Watts' accounts of their arrests were purportedly false, they cannot establish that the officers failed to intervene. *Culp v. Reed*, No. 19-cv-106, 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**." (emphasis added)).

Furthermore, as Justice Easterbrook has pointed out, failure to intervene claims have no basis in the Constitution and should not be used to hold officers liable under § 1983. *Mwangangi v. Nielsen*, 48 F.4th 816, 834 (7th Cir. 2022) (Easterbrook

concurring). Indeed, Section 1983 supports only direct, not vicarious, liability and a failure to intervene sounds like vicarious liability. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009); *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978)). The Constitution establishes negative liberties – the right to be free from official misconduct – not positive rights to have public employees protect private interests. *Id.*

This claim, therefore, fails too.

VIII. STATE LAW CLAIMS ALSO FAIL

A. Probable Cause Is an Absolute Bar To A State Law Malicious Prosecution Claim. See Discussion Above.

Must have commenced or continued The Illinois Supreme Court "has long recognized that 'suits for malicious prosecution are not favored in law.'" *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 24, 433 Ill. Dec. 130, 136 (2019). Hence "the circumstances in which malicious prosecution actions may be brought have been rather narrowly circumscribed." *Joiner v. Benton Cmty. Bank*, 82 Ill. 2d 40, 45, 44 Ill. Dec. 260, 262, 411 N.E.2d 229, 231 (1980). To prevail on such a claim, a plaintiff must prove: "(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." *Id.* "The absence of any single element is fatal to a claim." *Holland v. City of Chicago*, 643 F. 3d 248, 254 (7th Cir. 2011). The burden is on the plaintiff to prove each of these elements and the absence of any of these elements bars plaintiff's claim. *Swick v. Liautaud*, 169 Ill. 2d 504, 512

(1996). Defendants are entitled to judgment as a matter of law because Baker and Glenn have failed to satisfy any of the elements.

As set forth in detail above, probable cause existed to arrest and charge Baker for the March 2005 arrest. As also detailed above, Baker and Glenn failed to adduce any evidence that any Defendant Officer was involved in the December 2005 arrests other than Jones. And with respect to Jones, they have failed to prove he fabricated any evidence or knew that Watts allegedly fabricated any evidence.

In other words, Plaintiffs have failed to establish that Jones or any Defendant Officer played a significant role in causing their prosecution arising from the December arrests. *Beaman v. Freesmeyer* ("*Beaman II*"), 2019 IL 122654, ¶79 (The relevant inquiry for th commenced and continued element is whether the police officers played a significant role in causing the commencement or continuance of the criminal proceeding); *Denton v. Allstate Ins. Co*., 152 Ill. App. 3d 578, 583, 504 N.E.2d 756. 759 (1st Dist, 1986) (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."); *see also* 745 ILCS 2-204 (stating that a public employee "… is not liable for an injury caused by the act or omission of another person"). Thus, Baker and Glenn's malicious prosecution claims fail for this reason alone.

B. IIED Claims: Plaintiffs' Failed to Establish Extreme and Outrageous Conduct.

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 was 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).

Again, for the same reasons detailed above, Plaintiffs have not adduced any evidence that Defendant Officers engaged in "extreme and outrageous" conduct. The officers either relied on the accounts of their fellow officers or, in Nichols' case with respect to the March arrest, had probable cause to arrest Baker.

C. Plaintiffs Failed To Prove A Civil Conspiracy

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, 735 N.E.2d 649, 661 (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, 874 N.E.2d 230, 240 (1st Dist. 2007), *citing Adcock v. Brakegate, Ltd.,* 164 Ill. 2d 54, 62, 645 N.E.2d 888 (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, 807 N.E.2d 461, 470 (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, 694 N.E.2d 565, 570 (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, 720 N.E.2d 242, 258 (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, 996 N.E.2d 1179, 1194.

IX. DERIVATIVE CLAIMS ALSO FAIL

Failure to intervene is a derivative claim. Absent an underlying constitutional violation, there can be no independent claim for failure to intervene. *Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005). Because Plaintiffs' underlying Fourteenth Amendment and federal malicious prosecution claims fail, their derivative failure to

intervene claims also fail. For the same reason, Plaintiffs' conspiracy claims based on these claims also fail. *See Reynolds v. Jamison,* 488 F.3d 756, 764 (7th Cir. 2007) (Section 1983 conspiracy claim depends upon the viability of the underlying constitutional claim). First Amendment claim also fails. Thus, Defendant Officers are entitled to summary judgment on Plaintiff's derivative federal and state claims.

CONCLUSION

For the foregoing reasons, Defendant Officers are entitled to judgment in their favor on all claims alleged in Plaintiffs' SAC.

Dated: September 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2024, I electronically filed the foregoing **Defendant Officers' Motion for Leave to File Oversized Motion for Summary Judgment (*Unopposed*)** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

/s/ *Amy A. Hijjawi*