UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LIONEL WHITE,	)	
	)	No. 17 C 02877
Plaintiff,	)	
	)	The Honorable Sara Ellis
vs.	)	
	)	
CITY OF CHICAGO, et al.	)	Magistrate Judge Laura K. McNally
	)	
Defendants.	)	

CERTAIN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Defendants Alvin Jones, Elsworth Smith, Jr., Manuel Leano, Brian Bolton, Robert Gonzalez, and Douglas Nichols ("Defendants" or "Defendant Officers"), by and through their counsel, move for summary judgment in their favor on all claims alleged in Plaintiff Lionel White Sr.'s ("White" or "Plaintiff") Complaint pursuant to Fed. R. Civ. Pro. 56. In support of this motion, Defendant Officers state:

INTRODUCTION

The Ida B. Wells housing complex was infamously known as an open-air drug market. (JSF[1], ¶¶11.) 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.* at ¶¶17-19.) The drug trafficking enterprise in the extension buildings was highly structured and well-managed, with an established hierarchy within each building and sophisticated marketing tactics used to eliminate competition. (*Id.* at ¶¶15-16, 19, 21-23.) Each extension building in the complex could rake in as much as $30,000 per day from drug sales. (*Id.*, ¶¶24-25.)

The drug dealers preyed on the vulnerable, using drug-addicted neighbors and children to sell the drugs they controlled and to act as law enforcement lookouts. (*Id.* at ¶188-189.) The drug-addicted turned the money from the drug sales over to the dealers who gave them just enough drugs to ease their withdrawal sickness (or as the

[1] "JSF refers to Defendant Officers', Defendant Mohammed's and Plaintiff's Joint Rule 56.1 Statement of Facts filed concurrently with this motion and "JCSF" refers to Defendant the City of Chicago's and Plaintiff's Joint Rule 56.1 Statement of Facts filed contemporaneously with the City's motion for summary judgment.

dealers put it, a "wake up call") when they didn't have enough money to feed their addiction. (*Id.*)

White was a drug addict with a $100/day heroin habit and an alcohol addiction at the time of his arrest. (*Id.* at ¶¶86, 126.) He was also unemployed at the time of his arrest (and for years before). (*Id.* at ¶91.) Undoubtedly, the only way White could feed his addictions was to sell drugs for the dealers at the 575 extension building in the Wells complex where he sometimes stayed with his girlfriend. In fact, he was convicted of felonies 10 times over the course of his adult life, including armed (twice), and arrested 49, primarily for drug charges and the kinds of crimes associated with drug crimes. (*Id.* at ¶127.)

Nevertheless, White has claimed that on the day Defendant Officer Jones testified he caught White with plastic baggies of narcotics in is hands, White didn't have any drugs, not in his hands and not in his girlfriend's apartment. He has also claimed that he was framed by Defendant Officers because he refused to pay Defendant Watts' bribe money. White never explained, even if the allegations about Watts were true, why Watts would waste his time shaking *him* down when the heavy hitters were pulling in as much as $30,000 per day, per extension building. And like the many other Watts plaintiffs, White also never explained what Defendant Officers could have possibly stood to benefit by "framing" innocent citizens at the Wells complex because they refused to pay Watts bribes.

Also like those many plaintiffs, White never claimed to see any Defendant Officer demand a bribe or take a bribe. As with the rest of them, his allegations were

based on what he heard and on what "everybody" purportedly knew. 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 *See 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, JCSF.) 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. 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. (JSF at ¶172.)

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. There is also no evidence that any of the officers had any suspicious or significant career advancement during the time they patrolled the Wells complex. Simply put, there is not an iota of evidence that any of Defendant Officers here sought bribes from White or received

any benefit, personal or professional, from White's arrests or the other arrests they made during their time at the Wells complex.

This utter lack of evidence aside, White died of a drug overdose before he gave any testimony regarding the allegations in his Complaint. All that can be offered here to support White's claims is inadmissible hearsay. And even then, White's own hearsay statements defeat any claims against any defendants other than Watts and Jones arising from his arrest. As for his subsequent conviction, his guilty plea defeats his claims against *all* the officer defendants in this case.

STATEMENT OF FACTS

The relevant facts are set forth in the JSF and the JCSF. While White generally claims he was "framed" for a drug offense by Defendant Officers, his Complaint does not set forth counts nor specific legal claims; rather, he simply claims that "all of the defendants caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments." (Dkt. No. 1 at ¶75.) With respect to White's specific claims against Defendant Officers, White's counsel has clarified to Defendant Officers' counsel that White is pursuing (i) claims for unlawful pre-trial detention and malicious prosecution under the Fourth and Fourteenth Amendments; (ii) a fabricated evidence-based due process claim under the Fourteenth Amendment; and (iii) derivative failure to intervene and conspiracy claims. White is not asserting any state law claims or other federal claims against Defendant Officers. (JSF at ¶187.)

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

White's Section 1983 claims are centered on allegations that unconstitutional misconduct by state actors resulted in his allegedly wrongful conviction and 2-year confinement. Defendant Officers are entitled to summary judgment on all claims alleged in the Complaint because White has failed to adduce the evidence necessary to sustain those claims.

I. PLAINTIFF HAS FAILED TO ADDUCE ANY ADMISSIBLE EVIDENCE THAT SUPPORTS HIS VERSION OF HIS ARREST.

White lost his life before he testified regarding the allegations in his Complaint. (JSF at ¶110-111.) As such, the only evidence Plaintiff can offer to support White's version of his arrest is his hearsay statements made to OPS, COPA and in an affidavit he signed years after his arrest. (*Id.* at ¶¶112-120.)

Such statements are clearly hearsay and not made under circumstances in which the evidentiary rules make an exception where the declarant is unavailable. Fed. R. Evid. 804; see also Fed. R. Evid. 805. The statements therefore cannot be used to oppose summary judgment unless they are admissible under the residual hearsay exception. Fed R. Evid. 807. Because the rule is unavailing for the reasons set forth

in Defendant Mohammed's motion for summary judgment (Dkt. 225 at 3-8), which Defendant Officers hereby adopt and incorporate into this motion, Defendant Officers are entitled to judgment as a matter of law.

II. PLAINTIFF CANNOT ESTABLISH THAT ANY DEFENDANT OFFICER OTHER THAN JONES WAS PERSONALLY INVOLVED IN HIS ARREST OR PROSECUTION.

Even if the Court were to accept White's hearsay statements as evidence, those statements make clear that the only Defendant Officer White ever claimed participated in his allegedly false arrest and subsequent fabrication of evidence is Officer Jones. (JSF at ¶¶112-120.) And because there is zero evidence from any other witness or document that the remaining Defendant Officers, Smith, Leano, Bolton, Gonzalez, and Nichols, were personally involved in any of the alleged misconduct forming the basis for White's claims, they are entitled to summary judgment in their favor on all of those claims.

"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); *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."). Plaintiff must demonstrate "a causal connection between (1) the sued officials and (2) the alleged misconduct." *Colbert v. City of Chicago*, 851 F.3d 649 (7th Cir. 2017).

Thus, to avoid summary judgment in favor of Officers Smith, Leano, Bolton,

Gonzalez, and Nichols, White must establish that each and every one of them actually participated in committing the alleged misconduct. *Wolf- Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983); *Eades v. Thompson*, 823 F.2d 1055, 1063 (7th Cir. 1987)("Each individual defendant can be liable only for what he or she did personally, not for any recklessness on the part of any other defendants, singly or as a group.").

Speculation and vague references to "Watts and his crew" won't cut it. *Morfin v. City of E. Chicago*, 349 F.3d 989, 1002 (7th Cir. 2003)("[s]peculation is insufficient to withstand summary judgment."); *Nunez v. Dart*, 2011 WL 5599505, *3 (N.D. Ill. 2011) ("Plaintiffs cannot proceed to trial and ask the jury to merely speculate in the absence of evidence as to whether one of the Defendant Officers was the individual that allegedly injured" him or her.). Indeed, summary judgment "is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Steen v. Myers*, 486 F.3d 1017, 1022 (7th Cir. 2007).

Accordingly, case after case holds that merely establishing proximity to alleged misconduct (for example, being listed on a police report, showing up on a scene after alleged misconduct has occurred, or otherwise not being linked in any material way to the specific misconduct at issue) is insufficient to create an issue of fact that precludes summary judgment. *Molina ex rel. Molinva v. Cooper,* 325 F.3d 963, 973 (7th Cir. 2003)(finding that evidence that defendant was in a truck was not sufficient to link defendant, one of seventeen officers who could have damaged the truck, to the damage); *Walker v. White*, 2021 WL 1058096, at *14 (N.D. Ill. 2021)(entering

summary judgment for officers responding to scene of police chase in which plaintiff alleged officers detained him and planted drugs because officers were on scene after person was detained, did not search him, did not author any police reports, did not testify at any proceedings); *Nunez,* 2011 WL 5599505 at *3 (finding that plaintiff could not hold defendant officers collectively liable simply because they were present at the home during the search); *Billups v. Kinsella,* 2010 WL 5110121, *5 (N.D. Ill. 2010)("Officer Kinsella did not slam Billups on the floor, handcuff her, or lift her off the floor and push her onto the couch. Thus, he cannot be held personally responsible for any allegedly excessive force to which Billups was subjected.")

And the Seventh Circuit has left no doubt that mere presence in the vicinity of an alleged constitutional violation is not sufficient to establish the personal involvement of an individual defendant in the absence of actual evidence establishing the participation of the defendant officer who has been sued. *See e.g., Hessel v. O'Hearn*, 977 F.2d 299, 305 (7th Cir. 1992)(holding that plaintiff could not rely on a "principle of collective punishment as the sole possible basis of liability" and that "[p]roximity to a wrongdoer does not authorize punishment"); *De Jesus v. Odom,* 578 F. App'x. 598 (7th Cir. 2014)(affirming summary judgment in favor of defendant where there was no evidence that the defendant had any role in placing the inmate plaintiff into segregation)*; Cherry v. Washington County*, 526 F. App'x 683, 688 (7th Cir. 2013)(plaintiff's failure to identify who shoved him during the arrest doomed claim for excessive force); *Harper v. Albert*, 400 F.3d 1052, 1062 (7th Cir. 2005)(affirming dismissal of two inmates' section 1983 excessive force claims against

thirteen defendant prison guards because the plaintiffs "failed to even establish that each and every one of the defendants ever touched [them]...").

In addition, to establish liability on the part of any Defendant Officer for allegedly fabricating evidence, White must also "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," White must prove that the Smith, Leano, Bolton, Gonzalez, and Nichols "knew with certainty" that Jones' account of the circumstances of White's arrest was false. *Id*. Mere evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity in insufficient." *Id.* at 345.

White has not and cannot satisfy these standards for Defendant Officers Smith, Leano, Bolton, Gonzalez, and Nichols and the Court should therefore enter judgment in their favor on all of the claims here.

A. Plaintiff Failed to Comply With Fed. R. Civ. P. 37.

As an initial matter, White is barred under Fed. R. Civ. P. 37 from contesting summary judgment in favor of Smith, Leano, Bolton, Gonzalez, and Nichols in this case. The Complaint makes no specific allegations of misconduct against them individually whatsoever. (See generally, Dkt. #1.) Instead, White simply ropes them into a few conclusory allegations (referring to them only as "one or more individual officer defendants") regarding some conspiracy to fabricate a false story to cover up Watts and Jones' alleged misconduct and to cause White's allegedly wrongful detention and prosecution. (*Id.* at ¶¶26, 28.) And as for "one or more" of those

"individual officers," White admits in his Complaint that they were *not* present when he was arrested. *(Id.* at ¶15-26.)

Given this utter lack of specific allegations against all Defendant Officers other than Jones, White was asked, prior to his fatal overdose, in written discovery to describe the personal involvement of Smith, Leano, Bolton, Gonzalez, and Nichols in the misconduct alleged in his Complaint. (JSF at ¶¶184-185.) Tellingly, White again failed to describe any conduct committed by these officers with any particularity. (*Id.* at ¶185.) In fact, all White could muster was a reference to his Complaint and "the police reports, which indicate that these Defendants were present for and attested to the fabricated facts underlying Plaintiff's false arrest." (*Id.*)

White's failure to supply the evidentiary proof of Smith, Leano, Bolton, Gonzalez, and Nichols' specific involvement in his interrogatory responses bars him from relying on any additional such evidence to oppose summary judgment in favor of them on this claim. *See Moran*, 54 F.4th at 496. In *Moran*, as here, a plaintiff was asked to specifically list the evidence he intended to use to support his claims of Fourteenth Amendment violations and failed to include various matters that he later attempted to use to defeat summary judgment. *Id.*, 54 F. 4th at 497-98. The Seventh Circuit held that the plaintiff was barred from relying on such evidence to oppose summary judgment. *Id.* The court explained:

> Parties have a duty to update interrogatory answers that are "incomplete or incorrect." Fed. R. Civ. P. 26(e)(1)(A). [The plaintiff's] failure to do so means he "is not allowed to use that information ... to supply evidence" at summary judgment "unless the failure was substantially justified or is harmless." *Id.* r. 37(c)(1). Moran argues that any Rule 26(e) violation was harmless because the allegations in

> question were part of a single Brady suppression claim, not a freestanding claim, so they did not prejudice or surprise the defendants. Rule 37(c)(1) refers to "information," not "claims," however, and it would prejudice the defendants if they had to contend with allegations at summary judgment that [the plaintiff] did not disclose during discovery. Rule 37(c)(1) thus precludes [the plaintiff] from basing his Brady suppression claim on this assertion.

Id.

B. White Has Failed to Adduce Any Evidence Establishing Smith, Leano, Bolton, Gonzalez, and Nichols' Personal Involvement In His Arrest Or Prosecution.

Furthermore, even if White were able to rely on evidence not disclosed in his interrogatory responses regarding Smith, Leano, Bolton, Gonzalez, and Nichols, any such evidence simply doesn't exist. There is no evidence that Smith, Leano, Bolton, Gonzalez, and Nichols were present for, witnessed, or even knew about any alleged misconduct by Watts and Jones. (JSF at ¶¶29, 31-51, 77-92.) There is no evidence that these officers completed any paperwork related to this incident or contributed to the substance of any paperwork completed by Jones. (*Id.* at ¶¶42-47.) There is no evidence that either Smith, Leano, Bolton, Gonzalez or Nichols communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. (*Id.* at ¶¶97-98.)

The extent of evidence relating to Smith, Leano, Bolton, Gonzalez, and Nichols' purported "involvement" in this case is the mere inclusion of their names typewritten on White's Vice Case Report and Arrest Report that was prepared by Jones and only Jones. (*Id.* at ¶¶52-55.)

While the reports themselves are hearsay as to the truth of their contents (and thus, not properly considered for the purposes of this motion in the first instance)(*see Logan v. Caterpillar, Inc.*, 246 F.3d 912, 925 (7th Cir.2001)(inadmissible hearsay cannot preclude summary judgment), the narrative sections of the reports make clear that Jones was the only officer who witnessed the drugs in White's hand and the only officer who arrested White. Specifically, in the vice case report, Jones begins his narrative using the plural "R/Os" (responding or reporting officers) when describing that the "R/Os" were conducting a narcotics surveillance operation. (*Id.* at ¶73.) Jones then switches to the singular "R/O" when describing his observations of White, his altercations with White and his arrest of White. (*Id.*) Likewise, Jones uses the singular "A/O" in describing his observations of White, his pursuit of White, his altercations with White and his arrest of White in the Arrest Report. (*Id.* at ¶56.) And if that wasn't enough, Jones also prepared a Tactical Response Report ("TRR") in which he again made clear that he was the only officer to witness White with narcotics, to chase White, to get into an altercation with White and to arrest White. (*Id.* at ¶47, Ex. 33 at CITY-BG-013662 (Jones identifying himself as the only involved member).) There can thus be no confusion that Jones, the first reporting officer on the Vice Case Report and the attesting and first arresting officer in the Arrest Report was the only officer to materially interact with White.

There was no basis to include Defendant Officers Smith, Leano, Bolton, Gonzalez, and Nichols as defendants in this case, especially given White's hearsay statements identifying Watts and Jones as the only officers he interacted with the

day of his arrest (JSF at ¶¶112-120) and the clarity of the police reports (*id.* at ¶47, 56, 73).

Nor is there any evidence of a federal conspiracy claim. To prove a § 1983 conspiracy, a plaintiff must show that multiple people reached an agreement to deprive the plaintiff of a constitutional right, an overt act in furtherance of the conspiracy, and that the acts actually deprived the plaintiff of the constitutional right. *Beaman v. Freesmeyer,* 776 F.3d 500, 506 (7th Cir. 2015). Circumstantial evidence can prove an agreement since conspiracies often do not depend on explicit agreements, but evidence must be more than merely speculation. *Id.* at 511. An agreement is a "necessary and important" element of this cause of action, and "[a] defendant who innocently performs an act which happens to fortuitously further the tortious purpose of another is not liable under the theory of civil conspiracy." *Turner v. Hirschbach Motor Lines*, 854 F.3d 926, 930 (7th Cir. 2017).

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.

Here, there is no evidence, circumstantial or otherwise, of a conspiracy in this case. There is no evidence that Defendant Officers made any agreement to violate White's rights. Indeed, the entirety of White's conspiracy claim amounts to nothing more than a theory of "guilt by association" which seeks to insinuate some wide-ranging agreement to violate his rights based entirely on the fact that Defendant Officers Smith, Leano, Bolton, Gonzalez, and Nichols worked on the same team supervised by Defendant Watts. After all of the discovery in this case, the evidence of an alleged conspiracy amounts to nothing more than speculation and conjecture which is not enough to survive summary judgment. But "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); s*ee also Cooney v. Casady*, 735 F.3d 709, 718 (7th Cir. 2012)("vague and conclusory allegations of the

existence of a conspiracy are not enough to sustain a plaintiff's burden at summary judgment."); *U.S. v. Sullivan*, 902 F.3d 1093, 1099 (7th Cir. 1990)(hypothesizing that activities were part of a conspiracy based on "piling inference upon inference [is] a practice disapproved of by the Supreme Court."); *Wrice v. Burge,* 187 F. Supp. 3d 939, 955 (N.D. Ill. 2015)("Nothing in the compliant plausibly suggests that Wrice's coerced confession was part of a grand conspiracy among nine state actions, seven of whom were unaware of the underlying coercion and three of whom did not assume office until years after Wrice's trial.").

Finally, White can point to no evidence that would establish Smith, Leano, Bolton, Gonzalez, and Nichols had any reason to suspect much less actually know that Jones' account was purportedly fabricated. *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.") White "must prove not only that the evidence was false but that [each officer] 'manufactured' it." *Coleman*, at 344. To clear this "high bar," White must prove that Smith, Leano, Bolton, Gonzalez, and Nichols "knew with certainty" that Jones' account of his arrest was false. *Id.* Evidence that "suggests [the officers] had reason to doubt [Jones'] veracity in insufficient." *Id.* at 345. Because White has not and cannot meet this burden, Smith, Leano, Bolton, Gonzalez, and Nichols are entitled to summary judgment.

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

White has alleged that after Watts and Jones arrested him, they, Mohammed and the remaining Defendant Officers fabricated a false story in an attempt to justify his unlawful arrest, to cover-up "their" wrongdoing, and to cause him to be wrongfully detained and prosecuted. (Dkt. #1, ¶26.) Plaintiff's counsel has clarified that White is alleging both Fourth and Fourteenth Amendment claims for malicious prosecution and post-legal process pre-trial detention without probable cause. (JSF at ¶187.)

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, White can only assert a single Fourth Amendment claim in connection with his allegedly unlawful pre-trial detention 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).[2] 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 required under the favorable termination element of the claim, and the Second Circuit affirmed. *Thompson*, 596 U.S. 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

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[2] 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.)

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

IV. FOURTH AMENDMENT CLAIM IS TIME BARRED.

Plaintiff was released from any pretrial detention nearly a decade prior to filing suit in this case. (Dkt. 1 at ¶¶33, 37.) Plaintiff was arrested on April 24, 2006, his pretrial detention ended on the day he pleaded guilty, June 26, 2006, and he filed his Complaint on April 17, 2017. (*Id.*) Although §1983 claims are subject to the statute of limitations for personal injury actions in the state in which the alleged injury occurred, federal law governs the date of accrual. *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993).[3]

In the case of an acquitted plaintiff, a Fourth Amendment unlawful pretrial detention claim accrues when the charges against that plaintiff are dismissed. *Thompson*, 596 U.S. at 39, 45, 49 ("A plaintiff need only show that the criminal prosecution ended without a conviction."); *Smith v. City of Chicago*, 2022 WL 2752603, at *1 (7th Cir. 2022) ("After *Thompson*, a Fourth Amendment claim for malicious prosecution accrues when the underlying criminal prosecution is terminated without a conviction. Here, that was Smith's acquittal date, so his claim was timely." (citing *Thompson*, 596 U.S. at 39)). For all other plaintiffs, the claim accrues immediately upon release from pretrial detention unless the claim is barred by the principles of *Heck v. Humphrey* 512 U.S. 477 (1994).[4] *Marshall v. Elgin Police*

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[3] In Illinois, personal injury actions are subject to a two-year statute of limitations. 735 ILCS 5/13-202. Thus, the statute of limitations applicable to §1983 actions in Illinois is two years. *Gekas v. Vasiliades*, 814 F.3d 890, 894 (7th Cir. 2016).

[4] "*Heck* holds that a person who seeks damages on account of supposedly unconstitutional acts that lead to imprisonment must—if the theory of relief would imply the invalidity of the conviction—show that the conviction has been set aside by a court or by executive clemency.

Department & Detective Houghton, 2023 WL 4102997, at *2 (7th Cir. 2023)("A claim of arrest without probable cause is one challenging an unlawful pretrial detention, and that claim accrues when the detention ceases."); *Towne v. Donnelly*, 44 F.4th 666, 675 (7th Cir. 2022)(holding that pretrial detention claim remained time barred despite intervening application of *Thompson v. Clark*); *Manuel v. City of Joliet, Ill.*, 903 F.3d 667, 669–70 (7th Cir. 2018) (Fourth Amendment claim of unlawful pretrial detention accrues when detention ends); *Prince v. Garcia*, 2024 WL 4368130, at *5 (N.D. Ill. 2024)("Plaintiff's Fourth Amendment claim for unlawful pretrial detention is untimely. Plaintiff's claim accrued when his pretrial detention ended, more than two years before his complaint was filed in 2022.")

As discussed more fully below, in White's case, his conviction was caused by his guilty plea not by the use of any allegedly fabricated evidence against him at trial (indeed, White waived his right to a trial and thus no trial ever occurred). *Franklin v. Burr*, 535 F. App'x 532, 533 (7th Cir. 2013) ("[Defendant's] convictions rest on [his] guilty plea, not on the admissibility of any particular evidence.") The plaintiff in *Burr* was arrested for murder and aggravated battery. *Id.* During his interrogation, the plaintiff requested counsel but police and a state prosecutor continued to interrogate him and secured an inculpatory statement from him. *Id.* The plaintiff moved to

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As long as the conviction stands, no damages action that would be incompatible with the conviction's validity is permissible. The Court added that the claim does not accrue until the conviction has been vacated, which means that the statute of limitations does not begin to run until then." *Franklin v. Burr*, 535 F. App'x 532, 533 (7th Cir. 2013) (citing *Heck*, 512 U.S. at 489–90).

suppress the statement and after the state court denied his motion, the plaintiff pleaded guilty. *Id.* Several years later and while still incarcerated, the plaintiff filed a §1983 action alleging that police and the prosecutor violated his privilege against self-incrimination. *Id.* The district court dismissed the action holding it was barred under *Heck*. *Id.*

The Seventh Circuit, however, rejected any notion that *Heck* applies to bar claims that *would have* impugned the validity of a conviction *if* a trial had occurred and the constitutionally infirm evidence had been admitted at the trial. *Id.* at 533-534. Because the plaintiff's conviction was caused by his guilty plea and not by the constitutionally infirm evidence, the Seventh Circuit held that, rather than *Heck*-barred, the claim was untimely because it accrued when the statement was made. *Id.* As the court put it: "There is no necessary inconsistency between the propositions that (a) a conviction based on a guilty plea is valid, and (b) the police violated the accused's rights at the time of arrest or interrogation." *Id.*

Accordingly, any claim for unlawful pretrial detention in violation of the Fourth Amendment is time-barred and Defendant Officers are entitled to summary judgment on this claim.

V. UNDER CONTROLLING LAW, PLAINTIFF'S DUE PROCESS FABRICATION CLAIM FAILS.

To prove fabrication, White must show that Defendant Officers: (1) manufactured evidence that they knew with certainty was false; (2) that the false evidence was used against him at trial; and (3) the evidence was material to his

conviction. *Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020); *Coleman v. City of Peoria, Illinois*, 925 F.3d 336, 344 (7th Cir. 2019).

A. Plaintiff Cannot Establish the Requisite Elements of a Due Process Fabrication Claim.

White admits that he pleaded guilty in connection with his arrest. (Dkt. 1, ¶33.) Thus, he concedes there was no trial in his criminal case, much less the introduction of any evidence (fabricated or otherwise) against him at any trial. See *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….") For that reason alone, he cannot establish a due process claim based on allegedly fabricated evidence.

In *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017), the Seventh Circuit held that a due process claim based on fabricated evidence is viable *only* when the allegedly fabricated evidence was admitted against a plaintiff at trial and caused the plaintiff's conviction:

> 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**.

847 F.3d at 442 (internal citations omitted) (emphasis added). In so holding, the court emphasized that the allegedly fabricated evidence, defendants' police reports, *were admitted at trial* (*id.*) and *caused* Avery's conviction:

> [w]hen the detectives falsified their reports of a nonexistent confession, it was entirely foreseeable that this fabricated "evidence" would be used to convict Avery **at trial** for Griffin's murder. That was, of course, the whole point of concocting the confession.

Id. at 443 (emphasis added); *see also 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))

In short, a due process claim based on fabricated evidence can arise only if the fabricated evidence is admitted at trial and causes the plaintiff's conviction. The Seventh Circuit has restated and upheld this principle for nearly a decade: from *Whitlock v. Brueggemann*, 682 F.3d 567, 582 (7th Cir. 2012) ("[Defendant] is correct that the alleged constitutional violation here was not complete until trial."), 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* (as discussed above), 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 *Moran*.

And trial courts in this district routinely follow this black-letter law. *See, e.g., Fulton v. Bartik*, 20 C 3118, 2024 WL 1242637, at *22 (N.D. Ill. Mar. 22, 2024)("But when a plaintiff brings a fabricated evidence claim under the Fifth and Fourteenth Amendments, *Patrick* requires that the evidence have been used at trial."); *Zambrano*

v. City of Joliet, 21-CV-4496, 2024 WL 532175, at *9 (N.D. Ill. Feb. 9, 2024) ("Zambrano wasn't 'convicted and imprisoned based on knowingly falsified evidence,' because the police report did not come into evidence." (quoting *Patrick*, 974 F.3d at 835)); *Brown v. City of Chicago*, 633 F. Supp. 3d 1122, 1159–60 (N.D. Ill. 2022)(" Mr. Brown's evidence-fabrication claim regarding these reports fails because these reports were not used against him at trial. Neither report was introduced at either of Mr. Brown's trials, and neither report was used to refresh a witness's recollection during either trial.") [5]

In *Patrick*, the Seventh Circuit reiterated that to sustain a due process claim based on fabricated evidence, a plaintiff must indeed prove that the allegedly fabricated evidence was used at the plaintiff's criminal trial and was material to the plaintiff's conviction:

> 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

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[5]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").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)).

> 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.

Id. at 834 (internal citations omitted) (emphasis added); *see also 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.").

This law makes crystal clear that, in the absence of a trial, the only constitutional remedy available to Plaintiff based on Defendant Officers' alleged fabrication of evidence (if proven) would be claims for post-legal process, pre-trial detention without probable cause under the Fourth Amendment and the Fourth Amendment alone. White, unlike the plaintiff in *Avery* (or those in *Patrick*, *Whitlock* and *Fields II*), did not go to trial. He therefore cannot establish that the purportedly fabricated evidence was *admitted against him at trial*, a critical element in sustaining a fabrication of evidence claim under the due process clause.

Because White never went to trial, Defendant Officers are entitled to judgment in their favor on his Fourteenth Amendment fabricated evidence-based due process claim.

B. Plaintiff's Convictions Were Caused by His Guilty Pleas Per Supreme Court Law.

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, White chose to plead guilty to charges stemming from his arrest, rather than take his chances at a trial, thereby ensuring a shorter sentence. Indeed, because of his criminal history, White was facing mandatory life in prison if he were convicted at trial. (JSF at ¶¶100, 104.) And he admits in his Complaint that he pleaded guilty to guarantee he would not spend the rest of his life in prison. (Dkt. 1 at ¶¶31-33.) In choosing to plead guilty, White also chose to waive the due process rights a trial would have afforded him. Having waived his right to a trial, the very

purpose of which is to "effectuate due process,"[6] White cannot now "blame" his guilty plea, which caused his conviction and subsequent incarceration, on due process violations that simply did not occur: the allegedly fabricated evidence was never admitted against him 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]").[7]

In the simplest terms, White may only attack the voluntary and intelligent character of his guilty plea "by showing that the advice he received from counsel was not within the standards set forth in *McMann*." *Tollett*, 411 U.S. at 266–67. His hearsay claim that he only pleaded guilty because he was afraid of receiving a sentence of life in prison is not only inadmissible, it gets him nowhere near establishing that the counsel he received from multiple lawyers, including a Grade 3 public defender, was constitutionally subpar. (JSF at ¶ ¶101-104, 106.)

Indeed, *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. 580 U.S. at 367. Thus, it is no longer valid to

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[6] *Saunders-El v. Rohde*, 778 F.3d 556, 561 (7th Cir. 2015).

[7] *U.S. v. Litos,* 847 F.3d 906, 910 (7th Cir. 2017); *Hurlow v. U.S.*, 726 F.3d 958, 966 (7th Cir. 2013); *Gomez v. Berge*, 434 F.3d 940, 943 (7th Cir.2006); *U.S. v. Adkins*, 743 F.3d 176, 193 (7th Cir. 2014); *U.S. v. Lockett*, 859 F.3d 425, 427 (7th Cir. 2017); *see also United States v. Spaeth*, 69 F.4th 1190, 1212 (10th Cir. 2023)("*Tollett* rested on the guilty plea's breaking the causal effect of any unconstitutional conduct on a defendant's conviction. No reason exists, therefore, to hold that a sunken pre-plea constitutional violation somehow resurfaces on the other side of a guilty plea.").

vaguely refer to a plaintiff having been deprived of his/her liberty "in some way" as some courts in our district have. See *In re Watts Coordinated Pretrial Proceedings*, 19-CV-1717, 2022 WL 9468206, at *1 (N.D. Ill. Oct. 14, 2022); *Baker v. City of Chicago*, 483 F. Supp. 3d 543 (N.D. Ill. 2020); *Carter v. City of Chicago*, 17 C 7241, 2018 WL 1726421, at *2 (N.D. Ill. Apr. 10, 2018); *White v. City of Chicago*, 17-CV-02877, 2018 WL 1702950, at *1 (N.D. Ill. Mar. 31, 2018); *Powell v. City of Chicago*, 17-CV-5156, 2018 WL 1211576, at *2 (N.D. Ill. Mar. 8, 2018)

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. That means 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. As *McMann* and the other the Supreme Court authority discussed above 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.")

Because the only injury White suffered as a result of the allegedly fabricated evidence was any pre-plea detention, the only §1983 claim he can attempt to prove at trial based on the use of that evidence is a Fourth Amendment (and not Fourteenth Amendment) claim for post-legal process, pre-trial detention without probable cause, a/k/a Fourth Amendment malicious prosecution claim. As one court has aptly explained:

> Taking a step back, evidence-fabrication claims can sprout from the Fourth Amendment *or* the Fourteenth Amendment. *See Patrick*, 974 F.3d at 834–35. It depends on when and how the government uses the phony evidence.
>
> "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." *Id.* at 834; *see also Young v. City of Chicago*, 987 F.3d 641, 645 (7th Cir. 2021) ("[T]he Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention.") (citation omitted). On the other hand, when "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." *See Patrick*, 974 F.3d at 834 (emphasis added).
>
> Different amendments apply to different stages of an interaction with law enforcement. If the police take you off the street based on phony evidence, that's a potential Fourth Amendment problem. If the state takes you to trial based on phony evidence, that's a potential Fourteenth Amendment problem.

Zambrano v. City of Joliet, 21-CV-4496, 2024 WL 532175, at *9 (N.D. Ill. Feb. 9, 2024)

C. Defendant Officers Are Entitled To Qualified Immunity

At minimum, Defendants are clearly entitled to qualified immunity. In 2006, it was not well-established that antecedent claims survived a guilty plea and could be a basis for a subsequent action for damages in a civil case. The burden of

defeating qualified immunity rests with a plaintiff. *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 1999). Qualified immunity applies not just to unsettled application of laws to facts but also to whether the law itself is settled on the viability of a legal claim on a particular topic. *Bianchi v. McQueen*, 818 F.3d 309, 323 (7th Cir. 2016)(granting qualified immunity because it was unsettled whether a Fourth Amendment malicious prosecution claim was legally cognizable at time of incident). In fact, the Supreme Court has explicitly held that ambiguities about the viability of legal claims is itself a reason to apply qualified immunity to police officers. *Bianchi*, 818 F.3d at 323; *Ziglar v. Abbasi*, 582 U.S. 120, 154 (2017)("[T]he fact that the courts are divided as to whether or not a § 1985(3) conspiracy can arise from official discussions between or among agents of the same entity demonstrates that the law on the point is not well established. When the courts are divided on an issue so central to the cause of action alleged, a reasonable official lacks the notice required before imposing liability."); *Wilson v. Layne*, 526 U.S. 603, 618 (1999)(noting it would be "unfair" to subject officers to damages liability when even "judges ... disagree"); *Reichle v. Howards*, 566 U.S. 658, 669–670 (2012) (same). Here, it simply was not well-established that antecedent claims of governmental misconduct could survive a guilty plea under *Tollett* and the *Brady* trilogy. Thus, even were this Court to hold that such claims do survive a knowing and voluntary guilty plea, Defendant Officers would nevertheless be entitled to qualified immunity on any such antecedent civil claims.

CONCLUSION

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

Dated: March 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2025, I electronically filed the foregoing CERTAIN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT 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*