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'REPLY IN SUPPORT OF THEIR 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, submit this reply in support of their motion 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.

DISCUSSION

The Supreme Court and Seventh Circuit precedent sets forth the specific federal constitutional rights to which a criminal defendant is entitled. In the context of pre-trial proceedings, a pre-trial detention is constitutional and valid if it is supported by probable cause. In the context of guilty plea proceedings, a guilty plea is constitutional and valid if the plea is voluntary and knowing. And in the context of trial proceedings, a criminal defendant has the right to a fair trial. As recent binding case law makes abundantly plain, these distinct rights (if they are violated) also have distinct remedies that arise under distinct constitutional amendments. The entirety of Plaintiff's response asks the Court to sweep aside the precedent that crystalizes these distinctions and allow her, in derogation of that precedent, to bring what are, at their heart, due process malicious prosecution claims.

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

Plaintiff does not dispute that White's statements are hearsay. Instead, she argues they are admissible under the residual hearsay rule. (Dkt. 270 at .) In reply to Plaintiff's arguments, Defendant Officers will address only the purportedly corroborating evidence and the trustworthiness of the statements. Defendant Officers

also adopt and incorporate the arguments and authority set forth in Defendant Mohammed's reply in support of his motion for summary judgment (Dkt. at) here in further reply, which establish that White's hearsay statements are inadmissible.

A. There Is No Evidence That Corroborates White's Hearsay Statements Nor Is There Sufficient Evidence To Sustain His Claims Without Those Statements.

Plaintiff contends that the testimony of Rasaan Brakes and Kimberly Collins as well as the police reports documenting the arrests in the reverse sting both corroborate White's statements and are sufficient to sustain her claims even if the Court excludes White's hearsay statements. (Dkt. 270 7-10.)

With respect to Brakes, he testified that: he was in Collins' apartment with White from about 7:00 a.m. to about 12:00 p.m.; he saw Watts, Mohammed, and Smith running in through the back door and Jones and another detective running in through the front door; he saw some officers run upstairs and some get on the elevator; he exited the building; and about 30 minutes later, he saw Mohammed and Smith escort White out of the building in handcuffs. (JSF at ¶¶77-79.) Brakes did not witness White's arrest nor did he see the altercation between Jones and White. (*Id.* at ¶¶79-80.)

According to Plaintiff, this testimony is consistent with White's statement that he was arrested in his apartment. The problem, however, is not only that Brakes' timeframe was an estimate but also that White himself told OPS that he was in fact in the lobby of the 575 extension building at 11:30 a.m. when he was warned police were coming and ran to the stairwell to escape to Collins' apartment, corroborating

Jones' testimony that he saw White in the lobby at the stairwell as he was entering the front door of the building. (JSF at ¶115.) White also told OPS that about 30 minutes after he reached Collins' apartment, Watts and Jones were at her door. (*Id.*) Likewise, White told COPA that he was in the lobby and ran when he was alerted that police were coming but in his COPA version, White claimed that about 5 minutes after he entered Collins' apartment, Watts and Jones were at her door. (*Id.* at ¶120.) In his affidavit, White claimed that he was in Collins' apartment with Brakes and that "almost immediately after [Brakes] left" Watts and Jones knocked on her door. (JSF at ¶118.) Thus, contrary to Plaintiff's assertion, White's statements were not in fact consistent. (Dkt. 270 at 6-7.)

Brakes also testified that he hung out with White every single day and that they grew up together and were like brothers. (*Id.* at ¶¶81, 83.) Brakes admitted he was a drug user and that he and White were Gangster Disciples. (*Id.* at ¶¶82, 84-85.) He also admitted that after White was released from prison, White told him he would give Brakes $2000 or $3000 from the proceeds of this lawsuit. (*Id.* at ¶81.) And Brakes in fact submitted an affidavit (which was inconsistent with his version of events at his deposition) to assist White in getting his conviction vacated. (cite) Finally, although he claimed White was "clean" at the time of his arrest, Brakes admitted that Collins, White's girlfriend, told him after White's arrest that she was going to leave White if he didn't get his stuff together or leave the street which could only mean that Collins knew White was using drugs at the time of his arrest. (*Id.* at ¶86.)

Tellingly, Plaintiff makes no attempt to explain how Brakes' testimony corroborates White's hearsay statements nor does she address the self-dealing implicit in White's promise of money or the intimate and lifelong relationship between White and Brakes. Instead, Plaintiff argues that Brakes' version of events is significantly different than the police version of events. (Dkt. 270 at 8.) But nothing about Brakes' testimony describes White's arrest and, in any event, nothing in Jones' reports is inconsistent with Brakes' testimony other than the estimated timeframes (with Jones' estimate being consistent with White's admission). Contrary to Plaintiff's claim that the reports state that Jones, Smith and Mohammed carried out White's arrest, the reports are clear that Jones and Jones alone arrested White. (See Dkt. 254 at 12-13.) Moreover, Brakes' testimony was that he saw Smith and Mohammed escorting White out of the building. (JSF at ¶79.) So even if the reports were not clear that Jones was the only arresting officer, including Smith and Mohammed as arresting officers would not be inconsistent with Brakes' testimony.[1]

As for the reverse sting arrest reports, Plaintiff claims that the "overwhelming problem" with Jones' reports/testimony regarding White is that the times estimated in the reverse sting police reports overlap with the estimated time of White's arrest in his arrest report. (Dkt. 270 at 9.)[2] But Plaintiff fails to connect the dots. She merely states that Nichols' testimony that, prior to commencing a reverse sting operation,

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[1] Likewise, Brakes' testimony that he saw Jones run into the building through the front door is consistent with Jones' testimony and reports. (¶78, Ex. 29 at 349:21-351:24, 371:24-372:8.)

[2] Smith and Bolton testified that times reported in their reports are estimates. (JSF at ¶¶134, 143.)

multiple officers would enter the targeted building at the same time to clear the building and that this testimony is consistent with Brakes' testimony that he saw officers enter the back door and Jones and another detective enter through the front door. Defendants agree and, more important, it is consistent with *Jones*' testimony that multiple officers entered from the front and back of the building and, as he entered through the front door, he saw White at the stairwell with drugs in his hands and chased, apprehended and arrested him. (JSF at ¶¶ Ex. 29 at 340:14-341:5.)

Plaintiff then points to inadmissible hearsay, one of the reverse sting police reports, that indicates that the sting operation could have started as early as 11:15 a.m. but fails to tie this "fact" to any point or argument. (Dkt. 270 at 9.)

Jones' unrebutted testimony is that White's arrest occurred before the reverse sting operation commenced. (JSF, Ex. 29 at 346:6-23.) That one officer's hearsay report indicates that the reverse sting could have started at 11:15 a.m. does not materially rebut Jones' testimony (especially given White's statements)[3] and, even if it did, there is no evidence that Jones wrote (or adopted) it and it is therefore inadmissible in any event. (JSF at ¶133.) Indeed, Jones is not even named in any of the reverse sting reports. (JSF, Group Ex. 55.) Accordingly, like Brakes' testimony, the reverse sting police reports do not corroborate White's statements nor are they sufficient evidence to sustain Plaintiff's claim even if they were admissible.

[3] As discussed above, one of White's hearsay statements (OPS) admits he was in the lobby at 11:30 a.m. that day and another (COPA) also admits he was in the lobby. (*Id.* at ¶¶115.)

The only other "corroborating evidence" Plaintiff points to is the testimony of Kimberly Collins. But she too did not witness White's arrest. (*Id.* at ¶92.) As such, all she could testify to was that on the day White was arrested, her apartment was clean when she left and in disarray when she returned. (*Id.*) If this testimony is corroboration, it is the weakest sort. It relies on rank speculation as to who or what caused the disarray in her apartment and is certainly not the type of corroboration contemplated by Rule 807 and it is certainly insufficient to sustain Plaintiff's claims.

B. The COPA Reports Are Not Trustworthy.

COPA's investigation was hardly fulsome. Not only did it not interview either Brakes or Collins, it accepted their affidavits prepared with the assistance of Plaintiff's counsel in anticipation of litigation without question. (*Id.* at Ex. 47.) Likewise, COPA's interview of White was hardly exacting. COPA accepted his statements and his purported witnesses (Brakes and Collins) without regard to the overarching and fatal fact that they did not witness White's arrest and had no clue where he was or what he was doing or whether he was in possession of drugs when Jones arrested.

Given that there were only two witnesses to this arrest, White and Jones, COPA was obligated to vigorously cross-examine White on his allegations and to consider his criminal record and his $100/day heroin habit, his alcohol problem and his lifelong unemployment. (*Id.* at ¶126.) Incredibly, COPA found a way to use these damning facts against Jones. COPA also failed to address the Watch Commander's report documenting White's admission that he resisted arrest. (*Id.* at ¶¶48-50.)

Through rank speculation, COPA made sweeping statements regarding what Jones and the other defendants thought and felt and planned and accused them of controlling the drug trade at the Wells complex:

> Evidence reviewed by COPA investigators shows that Jones and the Team specifically targeted those, who like Baker, were involved in the drug trade precisely because he and those like him had no recourse or expectation of fair treatment if they complained of misconduct. Jones could contrive and drive false charges against such people with impunity because he was certain of the deference his law-enforcement status would provide. Such deference enabled the Team's control of the drug trafficking in the Wells Homes.

(JSF at ¶156.) None of these statements are supported by any evidence and COPA utterly failed to explain how it could divine Jones' or any Defendant's thoughts and feelings.

While engaging in such naked speculation, COPA never bothered to question the multitude of Watts plaintiffs who testified that the Gangster Disciples controlled the drug trade and that the only time drug trafficking stopped at the Wells complex was when the police were around. (JSF at ¶¶14-18.) Indeed, Brakes himself testified that the Gangster Disciples controlled the drug trade at the complex. (*Id.* at ¶17.)

COPA also failed to interrogate Brakes and Collins' allegations. Had COPA done so, it would have discovered that White promised Brakes several thousands of dollars from the proceeds of this litigation. It would have discovered that Brakes saw White, a lifelong friend, as his brother and that Brakes, an admitted drug user and Gangster Disciple, hung out with White every day. COPA also ignored the self-interest implicit in Brakes affidavit. In that affidavit, Brakes linked himself to those

purported innocents who were forced to plead guilty (undoubtedly in hopes of attaining plaintiff status himself). (See JSF, Ex. 47.)

With respect to Collins, she dated White for years and he called her his fiancé. Collins would have been a valuable source of information regarding White's character for honesty and truthfulness, his daily habits, the extent of his drug use and the nature of his relationship with Brakes and other Watts plaintiffs. Yet, inexplicably COPA did not interview Collins. Instead, COPA chose to interview six of the eleven individuals arrested as part of a reverse sting that occurred that day. (*Id.* at ¶151 and Ex. 47.) And in doing so, COPA found that those arrestees were more credible than the officers. (*Id.* at ¶147.) COPA's questioning was perfunctory and it reached its conclusion notwithstanding the fact that none of those interviewees lived at the complex, none had a legitimate reason to be there and all had extensive criminal records relating to drug arrests. (*Id.* at ¶¶150-151.)

Finally, the Interim Superintendent of Police disagreed with COPA's findings and recommendations and sent a letter to COPA's Chief Administrator expressing his disagreement and the basis for it. (*Id.* at ¶152.) COPA's Chief Administrator requested that the Police Board review the Administrator's recommendations in light of the Superintendent's letter. (*Id.* at ¶153.) The Police Board determined that:

> Based on the facts and circumstances of this matter, **the amount of evidence at issue, and the many credibility determinations that must be made, a full evidentiary hearing before the Police Board is necessary to determine whether the officers violated any of the Chicago Police Department's Rules of Conduct** and, if so, the appropriate disciplinary action.

(*Id.* at ¶154.) No other conclusion was possible. While COPA managed to amass much hearsay, speculation, rumor and innuendo, it was unable to uncover real evidence against any officers other than Watts and Mohammed. (See generally, JSF at Ex, 47.)

COPA conducted an unfair investigation in which it seemed to act as an advocate for a host of participants in the highly sophisticated and enormously profitable drug enterprise at the Wells complex. Neither COPA's reports nor White's hearsay statements can withstand genuine scrutiny. Accordingly, they are inadmissible and without them, Plaintiff's entire case must fall.[4]

II. PLAINTIFF CANNOT ESTABLISH THAT SMITH WAS PERSONALLY INVOLVED IN HIS ARREST OR PROSECUTION OR THAT SMITH OR ANY OTHER DEFENDANT OFFICER FAILED TO INTERVENE TO PREVENT ANY ALLEGED FABRICATION OF EVIDENCE OR CONSPIRED TO FABRICATE EVIDENCE.

Plaintiff concedes that there is insufficient evidence to proceed against Defendant Officers Leano, Bolton, Gonzalez, and Nichols but contends the claims remain viable against Defendant Smith. (Dkt. 270 at 25.)

Yet, in her two-paragraph argument, Plaintiff fails to point to any evidence that distinguishes Smith from Leano, Bolton, Gonzalez, and Nichols and fails to

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[44] Plaintiff argues that Defendants should not get a windfall because White's deposition was not rescheduled before his fatal overdose. (Dkt. 270 at 17.) The parties agreed that they would not seek to assign blame with respect to scheduling issues and in reliance on that Defendants agreed not to include the salient fact that White's counsel canceled at least 4 times more depositions than Defendants' counsel did. Hundreds of depositions have been taken in the Watts consolidated proceedings and all counsel acted with diligence and good faith. Furthermore, White was in jail on drug charges when his deposition was originally scheduled to proceed and remained there for months. (JSF at ¶¶111, 127.) There is no windfall here and Defendants are entitled to due process as much as any litigant. Plaintiff cannot establish that White's statements of COPA's reports are admissible. Appealing to the Court's sympathy with a disingenuous claim of windfall does not change the law that governs this issue.

explain to the Court how the dispositive case law and the undisputed facts cited in Defendants' motion do not apply to Smith. (Dkt. 270 at 25-27; Dkt. 254 at 12-14.) Instead, Plaintiff cites a string of cases (that make up the overwhelming majority of the two paragraphs) all of which are dependent on establishing a defendant officer's knowledge and participation in the misconduct at issue in those cases. (Dkt. 270 at 25-27.) Because Plaintiff cannot establish Smith's knowledge and has admitted that Smith did not participate in White's arrest, that case has no relevance here. (*Id.* at ¶¶115, 116, 118, 120, 184.)[5]

Apparently, Plaintiff (incorrectly) thinks that the mere fact that Smith *may* have reviewed White's Vice Case Report, a report authored exclusively by Jones, before Jones signed his name to is somehow sufficient to establish that he had knowledge of Watts and Jones' alleged fabrication. (Dkt. 270 at 25-26.) But that's silly. Plaintiff does not dispute, and certainly has no evidence to dispute, that: Smith did not arrest White; Smith did not testify against White at any point in his criminal proceedings; no testimony from Smith was proffered at the plea hearing; there is no evidence that Smith ever met or prepared testimony with White's prosecutors or did any single thing other than authorize his partner to sign his name on the report as is permissible and as is the custom and practice of the CPD. (JSF at ¶¶42, 61-62.) As

[5] Smith adopts and incorporates Defendant Mohammed's reply arguments and authority addressing this issue, all of which apply equally to Smith, and Smith, Leano, Bolton, Gonzalez, and Nichols adopt and incorporate Mohammed's reply arguments and authority addressing White's insufficient intervention and conspiracy claims, all of which apply equally to them. (Dkt. 280 at 6-9.)

Defendants have already conclusively established, such evidence does not pass muster under binding Seventh Circuit precedent. (Dkt. 254 at 12-14.) Plaintiff's due process and Fourth Amendment claims against Smith, like those against Leano, Bolton, Gonzalez, and Nichols, must therefore also be dismissed.[6]

Nor is there any evidence to support a failure to intervene or a federal conspiracy claim. With respect to intervention, Defendant Officers could not stop any alleged fabrication because as Plaintiff admits, they weren't there when White was arrested and they had no duty to "come forward and to explain that they were not actually present at White's arrest" because the Arrest Report, the Vice Case Report and the TRR Jones prepared (not to mention White's own statements) all disclose that none of them were there. (Dkt 254 at 12-14; JSF at ¶¶115, 116, 118, 120, 184.) Again, more silliness.

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[6] Plaintiff claims that Smith's decision to sign the police reports authored by Jones "plainly played a role in White's arrest and pretrial detention." (Dkt. 270 at 26.) As already established, the facts do not support that conclusion nor does the law (not to mention the reports were prepared after Jones arrested White, see Dkt. 254 at 12-14.). Criminal proceedings are initiated by a judicial finding of probable cause not by an arrest or a police report. *Mitchell v. Doherty*, 37 F.4th 1277, 1283 (7th Cir. 2022) (A judge, relying on the criminal complaint, which was based on fabricated evidence, found probable cause for further detention, thus beginning the 'legal process.'"); *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 360, 137 S. Ct. 911, 914, 197 L. Ed. 2d 312 (2017) ("And those constitutional protections apply even after the start of 'legal process' in a criminal case—here, that is, after the judge's determination of probable cause.") Put another way, police officers do not initiate criminal prosecutions. *Evans v. Matson*, 23-2954, 2024 WL 2206638, at *3 (7th Cir. May 16, 2024); *Reed v. City of Chicago*, 77 F. 3d 1049, 1053 (7th Cir. 1996). Although an arrest could be the first step towards a prosecution, the chain of causation is broken by indictment. *Evans*, 2024 WL 2206638, at *3. In general, to hold a defendant responsible for initiating the prosecution, Plaintiff must identify "some post-arrest action which influenced the prosecutor's decision to indict." *Colbert v. City of Chicago*, 851 F.3d 649, 655 (7th Cir. 2017) (quoting *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 902 (7th Cir. 2001). This could be post-arrest "pressure or influence exerted by the police officers or knowing misstatements by the officers to the prosecutor." *Reed*, 77 F.3d at 1053. In this case, however, Plaintiff has failed to show that Smith "did anything after the arrest that made [him] responsible for the prosecution, such as misleading the prosecutors." *Evans,* 2024 WL 2206638, at *3.

The conspiracy claims also fails. (Dkt. 254 at 14-16; Dkt. 280 at 6-9.) Mohammed has addressed the deficiencies in this claim and Defendant Officers simply add that Plaintiff alleged only that Defendants Smith, Leano, Bolton, Gonzalez, and Nichols conspired to frame White by drafting and attesting to false police reports (she has no evidence of this) and by communicating the false story contained in the reports to White's prosecutors (Plaintiff failed to adduce any evidence of this too). (Dkt. 1 at ¶¶26-28.) Plaintiff did not allege that any of these officers harassed White. She is grasping here and this claim also fails.

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

With a few exceptions, Plaintiff wholly ignores the abundant and *binding* precedent Defendants cite in their motion that requires this Court to dismiss Plaintiff's purported Fourteenth Amendment claims for unlawful pre-trial detention/malicious prosecution. (See Dkt. 254 at 17-21 and Dkt. 270 at 29-32.)

Most egregious, after incorrectly asserting that Defendants relied primarily on *Manuel* (Dkt. 270 at 29), Plaintiff utterly failed to address the express language in *Manuel*, including language Defendants quoted in their motion (see Dkt. 254 at 17-19), that unassailably directs the lower courts to apply the Fourth Amendment and the Fourth Amendment alone to any claims seeking to remedy a wrongful pre-trial detention:

> [P]retrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process in a criminal case. The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process

> itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements. Then, too, a person is confined without constitutionally adequate justification. Legal process has gone forward, but it has done nothing to satisfy the Fourth Amendment's probable-cause requirement. **And for that reason, it cannot extinguish the detainee's Fourth Amendment claim—or somehow, as the Seventh Circuit has held, convert that claim into one founded on the Due Process Clause**. **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.**

Manuel, 580 U.S. at 366–67 (emphasis added); *see also id.* at n. 6 and n. 8. The Supreme Court could not have been any clearer.

Notwithstanding this unambiguous language that expressly rejects any notion that an unlawful pre-trial detention can be remedied through both the Fourth Amendment and the Due Process Clause, Plaintiff unabashedly contends that, in recognizing the Fourth Amendment claim, *Manuel* "did not preclude an action [for pre-trial deprivations of liberty] under the Fourteenth Amendment." (Dkt. 270 at 29-30.) But it did just that. And Plaintiff points to no language in *Manuel* which suggests otherwise because there is none. (*Id.*)[7] Indeed, the entire point of the opinion, and its black and white holding, was that the Seventh Circuit *erred* in holding that the plaintiff's unlawful pre-trial detention claim arose under the Fourteenth Amendment rather than the Fourth Amendment. *Manuel*, 580 U.S. at 368. And which of those two

[7] In fact, Plaintiff's entire discussion of *Manuel*, the seminal case recognizing an unlawful pre-trial detention claim, consists of *one* sentence devoid of any analysis: "Although the parties agree that the Supreme Court in *Manuel* firmly established that plaintiffs in civil rights cases may pursue claims for unlawful arrest, seizure, and other pretrial deprivations of liberty under the Fourth Amendment, the case did not preclude an action under the Fourteenth Amendment." (*Id.*)

amendments applied was *the* issue on which the Supreme Court granted certiorari. *Id.* at 363-64.[8]

Having written *Manuel* off in one sentence, Plaintiff shifts to a discussion of *McDonough v. Smith*, 139 S. Ct. 2149 (2019) in which she concedes that the case did *not* address whether an unlawful pre-trial detention claim can be brought under the Fourteenth Amendment. (Dkt. 270 at 30.) In fact, the court did not define the claim before it nor did it determine that it was correctly articulated. *McDonough*, 139 S. Ct. at 2155. It assumed without deciding that the Second Circuit's articulation of the unlawful pre-trial detention claim (as a due process claim arising under the Fourteenth Amendment) and its contours were sound because it had not granted certiorari to resolve those separate questions. *Id.* ("Though McDonough's complaint does not ground his fabricated-evidence claim in a particular constitutional provision,[9] the Second Circuit treated his claim as arising under the Due Process

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[8] As the Supreme Court put it: "The Court of Appeals for the Seventh Circuit affirmed the dismissal of Manuel's claim for unlawful detention (the only part of the District Court's decision Manuel appealed). Invoking its prior caselaw, the Court of Appeals reiterated that such claims could not be brought under the Fourth Amendment. Once a person is detained pursuant to legal process, the court stated, 'the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes [one of] due process.' And again: 'When, after the arrest[,] a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention.' So the Seventh Circuit held that Manuel's complaint, in alleging only a Fourth Amendment violation, rested on the wrong part of the Constitution: A person detained following the onset of legal process could at most [] challenge his pretrial confinement via the Due Process Clause. The Seventh Circuit recognized that its position makes it an outlier among the Courts of Appeals, with ten others taking the opposite view. [] On cue, we granted certiorari." (internal citations omitted). *Id.*

[9] Plaintiff's claim that McDonough "alleged that he was arrested, deprived of his liberty, and prosecuted based on fabricated evidence in violation of the Fourteenth Amendment" is simply incorrect. (Dkt. 270 at 30.)

Clause * * * We assume without deciding that the Second Circuit's articulations of the right at issue and its contours are sound, having not granted certiorari to resolve those separate questions." (citing *Heck v. Humphrey*, 512 U.S. 477, 480, n. 2 (1994) (accepting the lower courts' characterization of the relevant claims))).

According to Plaintiff, the court's "assum[ption] without deciding" somehow called Seventh Circuit and Supreme Court precedent on this issue into question. (Dkt. 270 at .) The Supreme Court, however, did not need to decide whether the Second Circuit's articulation of the claim was correct (*i.e.*, whether it was appropriately articulated as a Fourteenth Amendment claim) to determine when the unlawful pre-trial detention claim accrued. *See generally McDonough*. Thus, the assumption means nothing more than that the court, like in *Heck*, could resolve the accrual question regardless of the characterization of the underlying claim. And Plaintiff points to no language in *McDonough* that suggests otherwise.

Furthermore, since *Manuel*, the Seventh Circuit has repeatedly held fast to its precedent, first established in *Lewis v. City of Chicago*, that the Fourth Amendment is the exclusive vehicle for a claim that a plaintiff's pre-trial detention was not supported by probable cause, and repeatedly affirmed its deep-rooted precedent holding that there is no such thing as a Fourteenth Amendment claim for malicious prosecution. 914 F.3d 472, 476–79 (7th Cir. 2019).[10] And Plaintiff concedes as much

[10] *Id.* at 478 ("It's now clear that a §1983 claim for unlawful pretrial detention rests *exclusively* on the Fourth Amendment.") (emphasis original); *see also id.* at 479 ("[malicious prosecution] is the 'wrong characterization' . . . Instead, the constitutional right in question is the 'right not to be held in custody without probable cause,' the violation of which gives rise to a 'plain-

(Dkt. 270 at 31 ("Defendants are correct that the Seventh Circuit in *Lewis v. City of Chicago*, 914 F.3d 472, 478 (7th Cir. 2019) held that a 14th Amendment claim for pretrial deprivation of liberty was not viable".)

Still, Plaintiff insists, *Lewis* should not stand in the way of her claims here because it was decided in the context of an acquitted plaintiff and before *McDonough*. (Dkt. 270, 31-32.) The Seventh Circuit, however, has repeatedly reaffirmed the principles in *Lewis* since *McDonough* was issued, both in the context of acquitted plaintiffs[11] and in the context of plaintiffs whose convictions have been vacated.[12]

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vanilla Fourth Amendment' claim under§ 1983 because the essential constitutional wrong is the 'absence of probable cause that would justify the detention.'" (internal citations omitted)).

[11] *Kuri v. City of Chicago*, 990 F.3d 573, 575 (7th Cir. 2021) ("We have since held that [*Manuel*] abrogated any due-process objection to pretrial detention that has been approved by a judge. If the detention is not supported by probable cause, however, the Fourth Amendment provides a remedy. [citing *Lewis* and *Manuel*] We decline Kuri's invitation to revisit those precedents. This means that the verdict cannot rest on the Due Process Clause."); *Young v. City of Chicago*, 987 F.3d 641, 646 (7th Cir. 2021) ("[*Manuel*] did not say that the right [to be free from pre-trial detention without probable cause] 'could lie' in the Fourth Amendment. It said that the right lies there. We will continue to heed that instruction."); *id.* (""[T]here is no such thing as a constitutional right not to be prosecuted without probable cause.'" (quoting *Manuel v. City of Joliet (Manuel II)*, 903 F.3d 667, 670 (7th Cir. 2018) (alteration in original); *Williams v. Dart*, 967 F.3d 625, 632–33 (7th Cir. 2020), *reh'g denied* (Aug. 21, 2020) ("Wrongful pretrial custody is what plaintiffs complain of here. If plaintiffs' custody was wrongful, it was the Fourth Amendment that made it so, whether for want of probable cause, as in *Manuel*, or for want of a neutral decision-maker, as in *Gerstein*, where the Court decided some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment." (internal quotation marks omitted)).

[12] *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."); *Camm v. Faith*, 937 F.3d 1096, 1100 (7th Cir. 2019) ("Though the parties and the district judge referred to this as a claim for malicious prosecution, we've since explained that 'malicious prosecution' is the wrong label. It's a Fourth Amendment claim for wrongful arrest and detention."); *id.* at 1105 ("[T]he Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention.") (internal quotation marks omitted)); *Anderson v. City of Rockford*, 932 F.3d 494,

As for Plaintiff's suggestion that by "accepting a 14th Amendment pretrial deprivation of liberty claim in *McDonough*, the Supreme Court called the Seventh Circuit's *Lewis* decision into question," Plaintiff herself dispenses with this argument by conceding in a footnote to that very sentence that even in "recent cases" the Seventh Circuit has continued to dictate that the Fourth Amendment is *the* amendment under which a claim for pre-trial detention secured through the use of fabricated evidence arises, citing one of the many cases we cite in n. 12 of this brief. (Dkt. 270, n. 12.)

In any event, the Seventh Circuit rejected Plaintiff's very argument that *McDonough* suggests an imminent change in circuit precedent that does not recognize Fourteenth Amendment claims for pre-trial detention without probable cause or malicious prosecution. *Young v. City of Chicago*, 425 F. Supp. 3d 1026, 1033, 1034 (N.D. Ill. 2019), *aff'd,* 987 F.3d 641 (7th Cir. 2021) (rejecting plaintiff's argument "that *Lewis* should not bar his due process claim based on fabricated evidence because [] *Lewis* is inconsistent with *McDonough v. Smith*" and finding that his pre-trial detention secured through the use of allegedly fabricated evidence could only be remedied under the Fourth Amendment); *Young*, 987 F.3d at 645-46 ("Young nevertheless argues that we should overturn *Lewis* because it incorrectly narrowed

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512 (7th Cir. 2019) ("[t]here is no such thing as a constitutional right not to be prosecuted without probable cause"); *id.* ("Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pre-trial detention"); *cf. Baldwin v. Raemisch*, 788 Fed. Appx. 390, 393 (7th Cir. 2019) (December 19, 2019: "Baldwin next contends that the district court erred by construing his 'malicious prosecution' claim as one arising under state law instead of the Fourteenth Amendment. There is no such claim under the Due Process Clause, however.")

the scope of the due process clause. [] We reject this call. *Lewis* was based on *Manuel I*—a Supreme Court decision that we are bound to follow. [] The court did not say that the right "could lie" in the Fourth Amendment. It said that the right lies there. We will continue to heed that instruction.")[13]

Our circuit was well aware of *McDonough* when it decided these cases and not once did it find or even suggest that "*McDonough* should be read as recognizing that a constitutional claim for malicious prosecution exists, even if the exact contours of that claim have not yet definitively been decided." (Dkt. 270, 9-10.) Indeed, the Supreme Court did *not* recognize such a claim in *McDonough* and, in *Albright v. Oliver*, it expressly declined to do so. 510 U.S. 266, 268, 114 S. Ct. 807, 810, 127 L. Ed. 2d 114 (1994) ("Petitioner asks us to recognize a substantive right under the Due Process Clause of the Fourteenth Amendment to be free from criminal prosecution except upon probable cause. We decline to do so.")

Plaintiff also dismisses (with no analysis) the import of *Thompson v. Clark* and makes no mention of the Supreme Court's black and white statement that a §1983 claim for malicious prosecution and a §1983 claim for pre-trial detention without probable cause are one and the same:

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[13] This Court should send regrets in response to Plaintiff's invitation to follow *Culp v. Flores*, No. 17 C 252, 2020 WL 1874075, at *3 (N.D. Ill. Apr. 15, 2020), and *Mack v. Chicago*, 19 C 4001, 2020 WL 7027649, at *3 (N.D. Ill. Nov. 30, 2020), each of which declined to dismiss a Fourteenth Amendment due process claim for pre-trial detention without probable cause at the pleading stage because of *McDonough*. (Dkt. 270, 30.) Respectfully, *Young* and *Kuri*—both decided after *McDonough, Culp* and *Mack*—conclusively establish that *Culp* and *Mack* were incorrect as to this issue.

> In this case, Thompson **sued several police officers under § 1983, alleging that he was "maliciously prosecuted" without probable cause and that he was seized as a result.** He brought a Fourth Amendment claim under § 1983 for malicious prosecution, **sometimes referred to as a claim for unreasonable seizure pursuant to legal process.** This Court's precedents recognize such a claim. See *Manuel* v. *Joliet*, 580 U.S. 357, 363–364, 367–368, 137 S.Ct. 911, 197 L.Ed.2d 312 (2017); *Albright v. Oliver*, 510 U.S. 266, 271, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) (plurality opinion); see also *id.,* at 290–291, 114 S.Ct. 807 (Souter, J., concurring in judgment). And following this Court's precedents, the District Courts and Courts of Appeals have decided numerous cases involving **Fourth Amendment claims under § 1983 for malicious prosecution**.

596 U.S. 36, 42 (2022) (emphasis added).

Instead, Plaintiff argues that because Thompson alleged a Fourth Amendment claim and because the only issue before the court was the scope of the favorable termination requirement, *Thompson* has nothing to say about whether a §1983 malicious prosecution claim can be brought under the Fourteenth Amendment. (Dkt. 270, 32.) But that is the point: the Supreme Court has never recognized a Fourteenth Amendment claim for malicious prosecution or even the right to not be prosecuted without probable cause. Nor has the Seventh Circuit. Plaintiff claims that *McDonough* "apparent[ly] approved of such a claim" is just magical thinking and does save her Fourteenth Amendment malicious prosecution/pre-trial detention claim. (Dkt. 270 at 32.)

In any event, the Supreme Court has instructed the courts on how to apply its precedent when the reasoning in one case seems to call another into question: a court is to apply the case which is most directly on point and applicable to the case before it. *Rodriguez de Quijas v. Shearson/American Express, Inc.,*490 U.S. 477, 484 (1989)

("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); *see also United States v. Leija-Sanchez*, 602 F.3d 797, 799 (7th Cir. 2010) ("Whether or not *Aramco* and other post–1922 decisions are in tension with *Bowman,* we must apply *Bowman* until the Justices themselves overrule it.") And the Seventh Circuit has resoundingly held that the case most directly on point is *Manuel*. *Young*, 987 F.3d at 646 ("[*Manuel I*] did not say that the right [to be free from pre-trial detention without probable cause] 'could lie' in the Fourth Amendment. It said that the right lies there. We will continue to heed that instruction.")

IV. FOURTH AMENDMENT CLAIM IS TIME BARRED.

In *Heck*, the Supreme Court held that to recover damages for an allegedly unconstitutional conviction or imprisonment:

> [A] §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

512 U.S. 477, 486–87 (1994). Therefore:

> [A] §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.

Id. at 489-90.

In *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the Supreme Court held that *Heck* applied only to convicted or sentenced plaintiffs, not to situations where an action would impugn an ***anticipated*** conviction and therefore not to Fourth Amendment

claims because such claims do not necessarily imply the invalidity of a future conviction. *Id.* ("[T]he *Heck* rule for deferred accrual is called into play only when there exists a conviction or sentence that has ***not*** been ... invalidated.") (internal quotations omitted) (emphasis in original).

And while *McDonough* did not recognize a Fourteenth Amendment claim for unlawful pre-trial detention/malicious prosecution, what it did do was extend *Heck*'s delayed accrual principles to plaintiffs who were acquitted either at their first trial or at retrial. Cite. Without that extension, a plaintiff may very well be acquitted years after he was subject to an unlawful pre-trial detention and thus his unlawful pre-trial detention/malicious prosecution claim would have accrued and expired (because *Heck* said the claim remains unaccrued only if a conviction is "extant" and *Wallace* reaffirmed that holding and further held that Fourth Amendment claims are not *Heck*-barred because they do not necessarily imply the invalidity of a conviction, *supra*). The same issue would be faced by plaintiffs whose convictions were overturned but subject to a retrial or retrials that occurred years after their post-trial convictions were vacated. Recognizing the hardship and impracticality of bringing suit while still in the thick of pre-trial proceedings, *McDonough* held that an acquitted plaintiff's unlawful pre-trial detention claim (whether acquitted in the first instance or at a retrial) does not accrue until he is acquitted. 139 S.Ct. at 2157-58, 2161, 2164; see also *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)). But for all other plaintiffs, the claim accrues immediately upon release from pretrial detention unless the claim is barred by the principles of *Heck*. *Marshall v. Elgin Police 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."); *Manuel v. City of Joliet, Ill. ("Manuel II")*, 903 F.3d 667, 669–70 (7th Cir. 2018) (Fourth Amendment claim of unlawful pretrial detention accrues when detention ends).And the Seventh in an unpublished read McDonough precisely this way. *See Sanders v. St. Joseph Cnty., Indiana*, 806 Fed. Appx. 481, 484, n. 2 (7th Cir. 2020).

Plaintiff doesn't deal meaningful with *Burr* (Dkt. 254 at 23-24) and without saying so, assumes that the words "ends without a conviction" includes a conviction that is later vacated (Dkt. 270 at 32-34.). The correct interpretation of those words, however, is that the proceedings end in an acquittal, whether at a first trial or a later retrial because *Heck* principles govern vacated convictions and if that phrase included them, *McDonough* would be superfluous. Again, 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). *Burr*, 535 F. App'x at 533 ("[Defendant's] convictions rest on [his] guilty plea, not on the admissibility of any particular evidence.")

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. And because the plaintiff's conviction was caused by his guilty plea and not by the constitutionally infirm evidence, rather than *Heck*-barred, the claim was untimely because it accrued when the statement was made. *Id.* at 533-534.

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.

As Defendants established (Dkt. 254 at 24-28), to prove fabrication, Plaintiff 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.

A fabricated evidence-based due process claim is viable only if the allegedly fabricated evidence was used at trial and material to the plaintiff's conviction at trial. (Dkt. 254 at 24-28) Because White pleaded guilty, the allegedly fabricated evidence could never have been used at trial and therefore cannot support a due process claim.

Plaintiff relies heavily on the opinions of other judges issued in these coordinated proceedings, which were decided without the benefit of the recent case law discussed in Defendants' motion. Plaintiff disregards that recent precedent and focuses on language parsed from *Whitlock v. Brueggemann*, 682 F.3d 567, 580 (7th Cir. 2012) often quoted in our circuit before *Manuel* and *Lewis* were decided. (Dkt. 270 at .) While *Whitlock* states that "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); *see also Manuel*, 137 S. Ct. 911, 919 ("[Legal process] cannot extinguish the detainee's Fourth Amendment claim [for pre-trial detention secured through fabricated probable cause]—or somehow, as the Seventh Circuit has held, convert that claim into one founded on the Due Process Clause.")[14]; *Lewis*, 914 F.3d 472, 478 ("It's now

[14] *Id.* at 920, n. 8 ("Nothing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment: Whatever its precise form, if the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking, then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated. By contrast (and contrary to the dissent's suggestion, see *post,* at 927, n. 3), ***once a trial has occurred****, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment. Gerstein* and *Albright,* as already suggested, both reflected and recognized that constitutional division of labor. In their words, the Framers "drafted the Fourth Amendment" to address "the matter of *pretrial* deprivations of liberty," and the Amendment thus provides "standards and procedures" for "the detention of suspects *pending trial*.") (first emphasis added) (internal citations omitted).

clear that a §1983 claim for unlawful pretrial detention rests *exclusively* on the Fourth Amendment."); *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."). Read in the proper context, *Whitlock* and *Fields II* make clear that to establish a due process claim based on the use of fabricated evidence, a plaintiff must allege that the evidence was used at trial and material to his conviction. (See Dkt. 254 at 26.) The Seventh Circuit's subsequent rulings in *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017) and *Patrick*, *supra* n. 12, as well as *Young* and *Kuri supra* n. 11, confirm that principle of law.

Plaintiff contends that:

> The relevant question is not whether the evidence was used at trial, but whether it was used to deprive a plaintiff of his liberty in some way. Put differently, "[h]ow the fabricated evidence came into play is not as critical to establish the constitutional violation as the fact that the fabricated evidence was a direct cause of a Defendants' conviction."

(Dkt. 270 at 36 (quoting *White v. City of Chicago*, 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018).) The court in *White*, however, relied on *Bianchi v.*

McQueen, 818 F.3d 309, 319 (7th Cir. 2016), a case decided before *Manuel* and *Lewis* and that is now abrogated by that precedent.[15, 16]

Plaintiff also additionally contends that at trial is just one way that the use of fabricated evidence can be the basis for a due process claim and argues that a guilty plea does not foreclose a due process claim. But again, this requires the Court to ignore *Manuel* and *Manuel II* and the distinctions between a Fourth and Fourteenth

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[15] The court in *White*, like Plaintiff here, also relied on *Hurt v. Wise* to erroneously conclude that the plaintiff's pre-trial deprivation gave rise to a Fourteenth Amendment claim. *White*, 2018 WL 1702950, at *2. Shortly after *Manuel v. City of Joliet, Illinois*, 903 F.3d 667 (7th Cir. 2018) ("*Manuel II*") was decided, *Hurt* was overruled. *Lewis*, 914 F.3d 472, 479 ("*Hurt* is hard to square with *Manuel I*. The Supreme Court held that the initiation of formal legal process following an arrest does not convert a Fourth Amendment unreasonable-seizure claim "into one founded on the Due Process Clause." The injury of wrongful pretrial detention may be remedied under §1983 as a violation of the Fourth Amendment, not the Due Process Clause. To the extent *Hurt* holds otherwise, it is overruled."); *see also id.* ("[I]n *Manuel II*—decided nine months after *Hurt*—we explained that all §1983 claims for wrongful pretrial detention—whether based on fabricated evidence or some other defect—sound in the Fourth Amendment . . . In other words, the Fourth Amendment, not the Due Process Clause, is the source of the right in a §1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process. We overrule precedent only in limited circumstances; a clear intracircuit conflict is one of them. *Manuel II* and *Hurt* cannot be reconciled.").

[16] Plaintiff's extensive reliance on Judge Wood's opinion in *Baker v. City of Chicago,* 16-CV-08940, 2020 WL 5110377 (N.D. Ill. Aug. 31, 2020) also provides little guidance to this Court. As noted, the *Baker* decision did not have the benefit of subsequent Seventh Circuit case law like *Patrick, Young, or Kuri*. Moreover, Judge Wood's opinion in that case conflicts with her opinion in *Green v. Florez*, in which she dismissed a fabricated evidence-based due process claim because the plaintiff had failed to allege that the fabricated evidence was admitted at his trial, 15-CV-07928, 2018 WL 6018605, at *3 (N.D. Ill. Nov. 16, 2018) ("Construed as a Due Process claim based on his post-trial deprivation of liberty, Green has not adequately pleaded a claim in Count I. As explained above, although fabrication of evidence may not always give rise to a due process claim actionable under §1983, such a claim may exist where the defendant has been convicted based on fabricated evidence. *See Petty v. City of Chi.*, 754 F.3d 416, 422–44 (7th Cir. 2014). Thus, to plead a Due Process claim adequately, Green must allege facts sufficient to plausibly suggest that Defendants fabricated evidence ***and*** that the evidence fabrication precluded him from receiving the trial process due to him. He has not done so here. As currently pleaded, the Complaint contains no allegations indicating that any allegedly fabricated evidence was actually used *at trial* or otherwise played any role in his conviction *at trial*, resulting in his post-trial detention. (first emphasis original)).

Amendment claim and thus this contention goes nowhere. Context matters. At a trial, *a jury* (or judge) is acting as fact-finder and weighing the evidence presented to determine innocence or guilt. In the context of a guilty plea, the only "facts" a court must find is that the plea is voluntary, knowing and intelligent. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("[A defendant who has plead guilty] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.") Thus, the conviction is not "premised" on the allegedly fabricated evidence, it is premised on *the plea*. (Dkt. 254 at 29-33.)

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. Plaintiff therefore cannot (and never will be able to) allege that the purported fabricated evidence was *admitted against White at trial*, an allegation critical to stating a fabrication of evidence claim under the due process clause, dooming that claim.

B. White's Convictions Were Caused by His Guilty Plea.

The Supreme Court has considered the scope of a criminal defendant's rights in connection with a guilty plea and has determined that, if the plea was voluntary

and knowing, the plea breaks the causal chain between any pre-plea constitutional violations and the defendant's conviction. *Tollett*, 411 U.S. at 267. As the Supreme Court also explained in *McMann*:

> A conviction after trial in which a coerced confession is introduced rests in part on the coerced confession, a constitutionally unacceptable basis for conviction. It is that conviction and the confession on which it rests that the defendant later attacks in collateral proceedings. The defendant who pleads guilty is in a different posture. He is convicted on his counseled admission in open court that he committed the crime charged against him. *The prior confession is not the basis for the judgment[and] has never been offered in evidence at a trial . . .*

McMann v. Richardson, 397 U.S. 759, 773 (1970). As such, unless that plea was unknowing and involuntary, a criminal defendant cannot claim that his conviction was wrongful—that is, secured through a violation of due process—based on a violation that occurred prior to his plea. (Dkt. #173, 12-13).

Plaintiff's only allegation with respect to White's guilty plea is that he was afraid of receiving a life sentence if he didn't take a plea. (Dkt. 1, ¶¶31, 35.) Nothing about this allegation impugns the knowing or voluntary nature of White's plea. Plaintiff does not claim evidence was suppressed, and White's fear of a harsher sentence if convicted at trial does not render his plea involuntary. And White himself admits that he weighed his risks and made a choice to plead guilty. (Dkt. 1, ¶¶31, 35.)

Plaintiff makes the general statement that district courts "following *McCann* have rejected the argument that a vacated guilty plea forecloses a due process claim" and cites *Garcia v. Hudak*, 156 F. Supp. 3d 907 (N.D. Ill. 2016) and *Ollins v. O'Brien*, No. 03 C 5795, 2005 WL 730987 (N.D. Ill. Mar. 28, 2005) for support. (*Id.*). Plaintiff's

failure to discuss the details of those cases is understandable as they do not assist her position. *Garcia* and *Ollins* involved *Brady* claims that were allowed to proceed because the court in each case, citing *McCann* and some of the same Supreme Court precedent cited by Defendants here, found that the plaintiffs' guilty pleas could not have been voluntary and knowing if material exculpatory evidence was not disclosed to them. *Garcia*, 156 F. Supp. 3d at 916 ("Applying the reasoning articulated in *McCann*, the Court concludes that the State has a constitutional duty to disclose material exculpatory evidence to a criminal defendant before the defendant pleads guilty. This conclusion is bolstered by the fact that a criminal defendant's guilty plea is not voluntary if the prosecution withholds factual exculpatory evidence." (citing *Brady*, 397 U.S. 742, 757)); *Ollins*, 2005 WL 730987, at *11 ("'When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees.' However, 'the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary'...'" (quoting *Ruiz,* 536 U.S. 622, 628-9 and *Brady*, 397 U.S. 742, 748)).[17] These cases are inapplicable here as Plaintiff does not assert a *Brady*-based due process claim.

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[17] Although *Garcia* held that allegations that police officers failed to disclose they planted evidence on the plaintiff stated a *Brady* claim (156 F. Supp. at 917), the Seventh Circuit has expressly held that police officers do not have a *Brady* duty to disclose their misconduct. *Saunders-El v. Rohde*, 778 F.3d 556, 562 (7th Cir. 2015). The plaintiff in *Saunders-El* attempted to base a *Brady* claim on allegations that the defendant police officers planted blood evidence at the crime scene in an attempt to frame him for a crime he did not commit and failed to disclose their misconduct to the prosecutor. *Id.* at 561. The plaintiff claimed "that the police officers' failure to admit their misdeeds to the prosecution amounts to a withholding of exculpatory evidence in violation of *Brady* . . . ." *Id.* The court rejected the claim explaining: "In the end, Saunders– El seeks to charge the officers with a *Brady* violation for keeping quiet about their wrongdoing, not for failing to disclose any existing piece of

The only case cited by Plaintiff that allowed a "fabrication claim" to proceed notwithstanding a guilty plea is *Saunders v. City of Chicago*, 2014 WL 3535723 (N.D. Ill. July 11, 2014). *Saunders*, however, is not helpful to the Court's analysis because (1) it was decided before *Avery*, *Manuel* and *Patrick*, and (2) like *Bianchi*, *Saunders-El*, *Alexander,* and *Petty*, it focused only on *Whitlock*'s "seminal" language without considering the additional requirement from *Whitlock* (and other then existing precedent such as *Fields II*) that to state a constitutional claim, the fabricated evidence must have been used at trial. *Whitlock*, 682 F.3d at 582 ("[Defendant] is correct that the alleged constitutional violation here was not complete until trial."); *see also Fields II,* 740 F.3d 1107, 1114 ("[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."). Moreover, the *Saunders* court engaged in no analysis whatsoever, instead merely finding that because it had previously ruled that the plaintiff's *Brady* claim could proceed notwithstanding his plea, so could his fabrication claim. The court did not discuss any of the Supreme Court authority that holds otherwise.

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evidence to the prosecution. But our case law makes clear that *Brady* does not require the creation of exculpatory evidence, nor does it compel police officers to accurately disclose the circumstances of their investigations to the prosecution." *Id.* at 562 (emphasis in original).

Other than the cases discussed above, Plaintiff relies on *Haring v. Prosise*, 462 U.S. 306 (1983) which Plaintiff contends "directly addresses this very issue" and held that a guilty plea "does not bar a subsequent section 1983 lawsuit." (Dkt. 270 at 2, 39-40.) According to Plaintiff, *Haring* both establishes that *Tollett* and its progeny are wholly inapplicable to § 1983 claims and provides precedent sufficient to defeat any assertion of qualified immunity. *Id.* Plaintiff is wrong in every respect and Plaintiff absurdly overstates the scope of *Haring* and its purported applicability to the issues in this case.

According to Plaintiff, *Haring* broadly held "that a guilty plea does not bar a subsequent § 1983 lawsuit." (Dkt. 270, 41.) In making such a broad conclusion, Plaintiff selectively cites portions of *Haring* and provides truncated quotations implying that *Haring* somehow held that a guilty plea to criminal charges in a state criminal court has no impact whatsoever on a plaintiff's ability to later bring claims based on such proceedings under Section 1983. Doubling down on this erroneous recitation of *Haring*'s holding, Plaintiff then suggests that "[a]t least eight different judges in this District" have allegedly followed *Haring* and found that a guilty plea is not a bar to a subsequent civil rights cases. (*Id.* at 41-43.)

Despite Plaintiff's best attempts, *Haring* bears no factual or legal applicability to the present issues and, in fact, merely restates well-established law that free-standing constitutional violations wholly unrelated to the crux of a criminal conviction may survive notwithstanding such conviction. And Defendant Officers conceded that issue in their motion. (Dkt. 254 at 33.)

Haring involved an individual (Prosise) who pled guilty in state court in Virginia to a charge of manufacturing a controlled substance. 462 U.S. at 308. After pleading guilty, Prosise turned civil plaintiff and sued his arresting officers relating to the search of his residence that turned up the contraband that formed the basis for his conviction. *Id.* at 309. None of the claims Prosise raised sought to challenge or otherwise contradict his guilty plea; rather, the claims he raised were solely and exclusively related to the conduct resulting in the discovery of evidence of his guilt (specifically, the propriety of the search of his residence) rather than fabrication of evidence relating to his guilt itself. *Id.*

The district court dismissed this complaint on the grounds Prosise had waived his claims on the illegal search and seizure claims by failing to bring a motion to suppress in his criminal proceedings. *Id.* at 309-10 ("The court reasoned that Prosise's failure to assert his Fourth Amendment claim in state court constituted a waiver of that right precluding its assertion in any subsequent proceeding.") The Fourth Circuit reversed holding that any preclusive effect of subsequent claims based on underlying criminal proceedings was to be determined by the law of the state in which the conviction was entered and that "under Virginia law 'criminal judgments, whether by guilty plea or adjudicated guilt, *have no preclusive effect in subsequent civil litigation*.'" *Id.* (emphasis added). Moreover, the Fourth Circuit noted that the preclusive effect of a guilty plea "should not 'have preclusive effect as to potential but not actually litigated issues respecting the exclusion of evidence on fourth amendment grounds.'" *Id.* The court explained that "a defendant who pleads guilty

has not necessarily had an adequate incentive to litigate 'with respect to potential but unlitigated issues related to the exclusion of evidence on fourth amendment grounds.'" *Id.*

Thus, the narrow issue addressed in *Haring* was whether unlitigated claims of governmental misconduct *unrelated* to actual guilt should bar future § 1983 claims based on such unrelated misconduct once a criminal defendant pleads guilty to an underlying criminal offense. Unsurprisingly, the Supreme Court held that it did not.

As far as § 1983 was concerned, the court similarly focused on whether the unlitigated alleged violations which did not bear upon any issue of guilt could be found to bar a subsequent civil suit. *Id.* at 316. Again unsurprisingly, the court held that it did not because "a determination that the search of Prosise's apartment was illegal would have been entirely irrelevant in the context of the guilty plea proceeding" since "[n]either state nor federal law requires that a guilty plea in state court be supported by legally admissible evidence where the accused's valid waiver of his right to stand trial is accompanied by a confession of guilt." *Id.*

Beyond this, the civil defendants further argued that the court should create "a special rule of preclusion which nevertheless would bar litigation of his § 1983 claim" even if unlitigated and not inconsistent with his plea of guilt simply because the criminal defendant/plaintiff had an opportunity to litigate such issue in the underlying proceeding. *Id.* at 317-321. The court refused to recognize such a special rule. *Id.* In so doing, the court analyzed *Tollett* and its progeny and held that it "simply recognized that when a defendant is convicted pursuant to his guilty plea

rather than a trial, the validity of that conviction cannot be affected by an alleged Fourth Amendment violation because the conviction does not rest in any way on evidence that may have been improperly seized" and that "a plea of guilty does not rest on any notion of waiver, but rests on the simple fact that the claim is irrelevant to the constitutional validity of the conviction." *Id.* To this end, the court merely held that an unlitigated constitutional claim that was wholly unrelated to the question of guilt is not barred in a subsequent § 1983 claim. *Id.* at 322 ("While Prosise's Fourth Amendment claim is irrelevant to the constitutionality of his criminal conviction, and for that reason may not be the basis of a writ of habeas corpus, that claim is the crux of his § 1983 action which directly challenges the legality of police conduct."). Thus, any rule barring such unlitigated claims unrelated to a guilty plea, according to the court, would be contrary to the purpose of § 1983. *Id.*

Simply put, no part of *Haring* holds or even remotely suggests that *all* §1983 claims survive in the face of *Tollett*. To the contrary, *Haring*'s holding was strictly confined to unlitigated claims which had no relation to the guilt or innocence of an individual. In short, *Haring* is merely a rehashing of well-established law holding that certain constitutional claims may survive a conviction (whether by guilty plea or otherwise) so long as the claims do not imply the invalidity of the basis for the conviction. *See Heck*, 512 U.S. at 487

Thus, consistent with *Haring*, the law is clear that claims for illegal searches remain viable even in the face of evidence of actual guilt but that a plaintiff may not proceed on damages claims which contradict such evidence of guilt. *McWilliams v.*

City of Chi., 2022 WL 135428, *2 (7th Cir. 2022)(illegal contraband discovered after illegal search provides probable cause defeating both federal and state claims because exclusionary rule does not apply in civil cases); *Martin v. Marinez*, 934 F.3d 594, 598 (7th Cir. 2019)(same). But, again, the law even subsequent to *Haring* has made clear - fully consistent with *Tollett* and its progeny - that arguments about predicate constitutional misconduct which produced a conviction cannot be used to attack guilt itself. *Id.*[18] On this point, several courts (including one as recently as 2014-many years after both *Haring* and the incidents in this case) have held that *Haring* **does not** apply all § 1983 claims under *Tollett* and its progeny but rather only applies to those unlitigated antecedent claims unrelated to guilt.[19]

Because a guilty plea breaks the chain of events which 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

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[18] *See also Torres v. City of Chi.*, 2021 WL 392703, at *10-11 (N.D. Ill. 2021)(granting summary judgment on all claims except for brief detention prior to discovery of contraband during search; "[E]ven if constitutional violations preceded the officers' probable cause determination because, as the Seventh Circuit recently clarified, 'the exclusionary rule does not apply in a civil suit under § 1983 against police officers.' In other words, even if the evidence providing probable cause was the fruit of a warrantless entry and search without Plaintiff's consent, probable cause still insulates Defendants from liability.").

[19] *See Procknow v. Curry*, 26 F.Supp.3d 875, 883 (D. Minn., 2014)(declining to apply *Haring* to case where alleged antecedent misconduct was not litigated at underlying case); *Daubenmire v. City of Columbus*, 507 F.3d 383, 390 (6th Cir.2007) (distinguishing *Haring* in § 1983 action where plaintiffs had litigated the legality of their arrests in prior criminal case); *Coney v. Smith*, 738 F.2d 1199, 1199–200 (Dist. Fl. 1984)(noting in Section 1983 claim that *Haring* did not apply to claim actually litigated in underlying criminal case; "[I]t appears that Coney litigated the issue of illegality of arrest and search prior to his plea of guilty. Although the state court proceedings on the suppression issue were not made a part of the record before the district court, we may take judicial notice of the same. *Haring*, therefore, does not apply.")

attacked only by establishing that the plea was not voluntary or knowing, *id.,* which Plaintiff nowhere alleges. The reasoning in *Tollett*, *McMann*, *Brady,* and *Harlow* is consistent 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 for that tainted evidence to be deemed the cause of the injury, *i.e.*, a conviction and subsequent incarceration. Because the only injury White suffered as a result of the allegedly fabricated evidence was any pre-plea detention, the only available §1983 claims based on the use of that evidence are Fourth Amendment claims for post-legal process, pre-trial detention without probable cause.

C. Defendant Officers Are Entitled To Qualified Immunity

Finally, at minimum, this case presents one of the more compelling contexts in which to apply qualified immunity. The Seventh Circuit was explicit in *Bianchi* that the unsettled nature of the viability of a damages claim required that qualified immunity be applied. *Id.*, 818 F. 3d at 323 (granting qualified immunity because it was unsettled whether a Fourth Amendment malicious prosecution claim was legally cognizable at time of incident). Citing only a Seventh Circuit case which predated *Bianchi* (and was decided more than a decade after the incidents in this case) and a district court case disagreeing with *Bianchi*, Plaintiff argues that this Court, in essence, should ignore *Bianchi*'s holding that the unsettled nature of whether a claim was recognized under Section 1983 bars retrospective liability against government officials. (Dkt. 270 at 43-44 (*citing Armstrong v. Daily*, 786 F.3d 529, 556 (7th Cir. 2015) and *Serrano v. Guevara*, 315 F. Supp. 3d 1026, 1038 (N.D. Ill. 2018)).) These

citations are unavailing for obvious reasons. Specifically, citing outdated authority and district court precedent to ignore Seventh Circuit precedent is plainly not a valid argument.

But, even taking Plaintiff's citation of *Serrano* at face value, this analysis does not even hold up. According to Plaintiff, *Bianchi*'s analysis is "based on the first prong of the qualified immunity analysis—whether a constitutional violation was alleged—and not the second—whether the right was clearly established at the time of violation." (Dkt. 270 at *quoting Serrano,* 315 F. Supp. 3d at 1038. Plaintiff does not explain why it matters whether *Bianchi* was based on the first or second prong of qualified immunity. *Id.* This is entirely irrelevant. Plaintiff bears the burden on this motion of establishing the non-existence of *both* prongs of the qualified immunity analysis. *Jones v. Wilhelm*, 425 F.3d 455, 460–61 (7th Cir. 2005); *J.N.J.C. by Tye v. Cooper*, 2017 WL 5634242, at *4 (E.D. Wis. 2017)("A plaintiff must establish both prongs of the qualified immunity doctrine.").

Moreover, the analysis of *Bianchi* more recently has been adopted by numerous courts in determining whether previously unrecognized damage claims can form the basis for prospective liability defeating a claim of qualified immunity and have found that they do not. *See e.g. Moore v. City of Dallas, Texas,* 2024 WL 913368, at *3 (5th Cir. 2024)(same)(pre-*Thompson* was barred by Qualified Immunity because viability of claim was not well-established prior to *Thompson*); *Guerra v. Castillo*, 82 F.4th 278, 289 (5th Cir. 2023) (same); *Frias v. Hernandez*, 2024 WL 1252945, at *8 (N.D. Tex. 2024)("The court concludes that plaintiffs have not adequately pleaded a

malicious prosecution claim under § 1983 because, between 2003 and 2021, Fifth Circuit precedent explicitly denied the possibility of a constitutional malicious prosecution claim."); *Rose v. Collins*, 2022 WL 1251007, at *1 (E.D. Ark., 2022)("The Supreme Court recently clarified that Rose's pretrial detention claim is one under the Fourth Amendment for malicious prosecution. Collins, Hodges, and Ellis are entitled to qualified immunity on that claim, however, because Rose's constitutional right against malicious prosecution was not clearly established when he was arrested in 2013.").

And, as set forth above, as far as Plaintiff's claim that *Haring* supposedly made it beyond dispute that all Section 1983 claims are outside of the ambit of *Tollett* and its progeny, this does not hold up to any degree of scrutiny. Neither *Haring* nor any of the district court cases cited by Plaintiff hold any such thing. Indeed, as set forth above, even the cases cited by Plaintiff suggest that this analysis applies to Section 1983 claims. *See supra*. To this end, the courts have held repeatedly held that the qualified immunity analysis cannot be applied using anything other than an exactingly high level of specificity which places the issue beyond any reasonable dispute to all government officials. *See Royal v. Norris*, 776 Fed. Appx. 354, 357–58 (7th Cir. 2019); *see also Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015); *Kisela v. Hughes*, 138 S.Ct. 1148, 1152 (2018). Accordingly, even were there some analytical daylight in Plaintiff's arguments, this itself would not be enough to satisfy Plaintiff's burden on this motion. Thus, at minimum, qualified immunity is appropriate here.

CONCLUSION

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

Dated: May 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2025, I electronically filed the foregoing REPLY IN SUPPORT OF 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*