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

WILLIAM CARTER,	)	
	)	
Plaintiff,	)	
vs.	)	**No.: 17 cv 07241**
	)	
CITY OF CHICAGO, et al.,	)	**Judge LaShonda Hunt**
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, by and through their respective counsels, and pursuant to Fed. R. Civ. P. 56, move for summary judgment against Plaintiff, William Carter. In support thereof, Defendants state as follows:

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Authority from the Supreme Court of the United States

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On October 6, 2017, Plaintiff, William Carter ("Plaintiff") filed the above-captioned Complaint against numerous Chicago Police Officers (collectively "the Individual Defendants") including Ronald Watts ("Defendant Watts"), Darryl Edwards ("Defendant Edwards"), Alvin Jones ("Defendant Jones"), Kallatt Mohammed ("Defendant Mohammed"), John Rodriguez ("Defendant Rodriguez"), Calvin Ridgell, Jr. ("Defendant Ridgell"), Elsworth J. Smith, Jr. ("Defendant Smith"), Gerome Summers, Jr. ("Defendant Summers"), and Kenneth Young, Jr. ("Defendant Young") as well as their employer, the City of Chicago ("Defendant City"). *See* Dckt. No. 1. In summary, Plaintiff claims that he was framed by various groupings of the Individual Defendants on three separate occasions: March 3, 2004, June 18, 2004, and May 19, 2006. *See* Dckt. No. 1 at ¶¶ 17-74. All of these arrests arose from Plaintiff's involvement in various drug dealing activities. *Id.* at ¶¶ 21, 37, 49-62.

FACTUAL BACKGROUND

March 3, 2004 and June 18, 2004 Arrests

On March 3, 2004, Defendants Mohammed and Young entered the 527 E. Browning building of the Wells Complex, and claim to have observed Plaintiff in possession of two clear plastic bags – one containing smaller blue tinted bags containing a white powdery substance suspected to be heroin and one containing smaller bags containing a rock like substance suspected to be crack cocaine. SMF at ¶¶ 9-10.[1] Defendant Mohammed subsequently completed paperwork related to Plaintiff's arrest including signing a Complaint for Preliminary Examination alleging Plaintiff was in unlawful possession of a controlled substance in violation of 720 ILCS 520/420. *Id.* at ¶ 23. Defendant Mohammed was subsequently a witness before a Cook County Grand Jury that returned an indictment charging Plaintiff with possession of a controlled substance with intent to deliver. *Id.* at ¶ 24. Plaintiff appeared in bond court on March 4, 2004, and was released from custody on an I-bond. *Id.* at ¶ 44.

[1] Defendants' Local Rule 56.1 Statement of Material Facts will be referred to herein as "SMF at ¶___."

On June 18, 2004, Defendants Jones and Edwards claim to have observed Plaintiff at 540 E. 36th Street holding a clear plastic bag of suspect narcotics. SMF at ¶¶ 29, 36. According to these Officers, Plaintiff was detained and said bag was recovered from Plaintiff's hand and found to contain 22 smaller ziplock baggies of suspect heroin. *Id.* at ¶ 36. A custodial search of Plaintiff also revealed $200. *Id.* at ¶ 36. The arrest took place within the Wells complex and within 1000 feet of Doolittle Elementary School. *Id.* at ¶ 36. Defendant Jones wrote the narrative portion of Plaintiff's Arrest Report and he also prepared the Vice Case Report. *Id.* at ¶ 30. Defendant Jones subsequently testified at the preliminary hearing for Plaintiff's June 18, 2004 arrest. *Id.* at ¶ 37. Court documents reflect that Plaintiff was not in custody, but rather out on bond, for every court hearing until he pled guilty to both 2004 arrests on December 16, 2004. *Id.* at ¶ 45.

On December 16, 2004, Plaintiff pled guilty to his March 3, 2004 arrest and to his June 18, 2004 arrest before Judge Ford of the Circuit Court of Cook County. SMF at ¶ 46.[2] The court gave Plaintiff two years of probation on both arrests, to be served concurrently. *Id.* at ¶ 46. Plaintiff, who was represented by counsel, stated that no one had threatened him nor promised him anything in exchange for his guilty pleas. *Id.* at ¶ 48. In accepting Plaintiff's guilty pleas, Judge Ford specifically found that Plaintiff understood the nature of the charges against him, understood the possible sentences he faced, understood the rights he was waiving, and found that his pleas were being made freely and voluntarily. *Id.* at ¶ 48.

While on probation, a violation of probation was filed against Plaintiff and a warrant was issued for his arrest. SMF at ¶ 51. Plaintiff was arrested on that warrant on May 12, 2005. *Id.* at ¶ 51. Plaintiff pled guilty to violating the terms of his probation on July 8, 2005. *Id.* at ¶ 52. During his plea

[2] In his Complaint, Plaintiff alleges that he pleaded guilty on July 8, 2005 to charges forming the bases for both his March 3, 2004 arrest as well as his June 18, 2004 arrest. Dckt. No. 1 at ¶¶ 30-31, 43-46. Plaintiff claims he was sentenced to boot camp as a result of these guilty pleas and served his boot camp sentence on both charges concurrently. *Id.* As noted herein, this recitation of the procedural history by Plaintiff does not appear to be accurate.

to the probation violation, Judge Ford noted that Plaintiff had also pled guilty to a domestic battery case, Plaintiff failed to report on his probation, and Plaintiff picked up two new cases while on probation. *Id.* Plaintiff's attorney stipulated that Plaintiff failed to report on his probation and that Plaintiff was found guilty of a domestic battery charge as the basis for the violation of probation plea. *Id.* Plaintiff was sentenced to Cook County Department of Corrections Boot Camp on the violation of probation. *Id*

For his part, with respect to Plaintiff's March 3, 2004 arrest, Plaintiff alleges that "one or more" of the "March 3, 2004 Arresting Officers" (who he specifies to be Defendants Mohammed, Young and Edwards) prepared police reports containing false information about Plaintiff's criminal activity, falsely attested to being witnesses in police reports, communicated the false story to prosecutors, and failed to intervene to prevent other of the March 3, 2004 Arresting Officers from violating Plaintiff's rights. Dckt. No. 1 at ¶ 22. Plaintiff also claims that "Defendant Watts formally approved the official police reports, knowing that they contained the false story." *Id.*

With respect to Plaintiff's June 18, 2004 arrest, as with his March 2004 arrest, Plaintiff claims that "one or more" of the "June 18, 2004 Arresting Officers" (who he specifies to be Defendants Mohammed, Jones, Edwards, Young, Rodriguez, Summers, Ridgell, and Watts) prepared police reports containing false information about Plaintiff's criminal activity, falsely attested to being witnesses in police reports, communicated the false story to prosecutors, and failed to intervene to prevent other of the June 18, 2004 Arresting Officers from violating Plaintiff's rights. *Id.* Plaintiff also claims that "Defendant Watts formally approved the official police reports, knowing that they contained the false story." *Id.*

May 19, 2006 Arrest

On May 19, 2006, Defendants Jones and Smith entered the 527 E. Browning building and claim they observed a female (k/n/a Sandra Berry) give Plaintiff a $20 bill and Plaintiff give Ms. Berry

two small items out of a clear plastic bag containing suspect crack cocaine. SMF at ¶¶ 102-103. Defendant Jones detained Plaintiff, recovered from his hand the $20 bill, and a small plastic bag containing several items that tested positive for cocaine. *Id.* Defendant Smith completed an Arrest Report while Defendant Jones signed criminal complaints alleging that Plaintiff violated 720 ILCS 570/407 in that he knowingly and unlawfully possessed, and knowingly and unlawfully possessed with intent to manufacture or deliver a controlled substance, to wit, crack cocaine with an estimated weight of .3 grams. *Id.* at ¶¶ 95-96. Defendant Jones subsequently testified at a preliminary hearing, in which there was a finding of probable cause. *Id.* at ¶ 99.

On February 1, 2007, Defendant Jones testified at Plaintiff's jury trial that on May 19, 2006 at approximately 7:15 p.m., while inside 527 E. Browning, he observed a female [n/k/a Sandra Berry] give Plaintiff a $20 bill and Plaintiff give Ms. Berry two small items out of a clear plastic bag containing suspect crack cocaine. He then detained Plaintiff and recovered from his hand the $20 bill and a clear plastic bag containing narcotics. *Id.* at ¶ 102. On February 1, 2007, Defendant Smith also testified at Plaintiff's jury trial that while standing behind Officer Jones inside 527 E. Browning, he observed a female [n/k/a Sandra Berry] give Plaintiff U.S. currency and Plaintiff give Ms. Berry suspect narcotics out of a clear plastic bag. He then detained Ms. Berry and recovered from her hand two small zip-lock baggies containing narcotics. *Id.* at ¶ 103.

For his part, with respect to Plaintiff's May 19, 2006 arrest, Plaintiff claims that he was living at the Ida B. Wells housing projects on the aforementioned date. Dckt. No. 1 at ¶ 49. He claims that on the evening of May 19, 2006, he returned to his apartment after purchasing food from a different apartment who was selling various food items. *Id.* at ¶¶ 50-52. Plaintiff alleges that, after reaching his apartment, he observed Defendant Jones leaving his (Plaintiff's) apartment. *Id.* at ¶¶ 52-53. According to Plaintiff, Defendant Jones stated to him "You're just the motherfucker I'm looking for," placed him in handcuffs and then walked him into the hallway where Defendant Mohammed joined the two.

Id. at ¶¶ 55-57. According to Plaintiff, Defendants Jones and Mohammed then walked Plaintiff downstairs and Plaintiff observed Defendants Young and Smith there. *Id.* at ¶¶ 59-60. Plaintiff alleges that another person, Sandra Berry, was also present and arrested by Defendants Jones, Mohammed, Young, and Smith. *Id.* at ¶¶ 60-62.

Plaintiff alleges that he was falsely charged with possession of a controlled substance and confined until his trial in February of 2007. *Id.* at ¶¶ 69-70. Plaintiff alleges that "[a]t trial defendant Smith and Jones testified falsely in furtherance of the conspiracy." *Id.* at ¶ 71. Plaintiff alleges that he "presented witnesses [at his trial] who testified to his innocence" but that he was convicted nonetheless and received a 9-year prison sentence. *Id.* at ¶ 72. Plaintiff was later released on parole on January 21, 2010. *Id.* at ¶ 73.

Plaintiff thereafter attributes various claims of misconduct to the "May 19, 2006 Arresting Officers" (who he specifies to be Defendants Jones, Mohammed, Young, and Smith) including claims that "one or more" of them prepared police reports containing false information about Plaintiff's criminal activity, falsely attested to being witnesses in police reports, communicated the false story to prosecutors, and failed to intervene to prevent other of the May 19, 2006 Arresting Officers from violating Plaintiff's rights. Dckt. No. 1 at ¶ 63. Plaintiff also alleges that Defendant Watts "formally approved the official police reports, knowing that they contained the false story." *Id.*

Plaintiff alleges for all three of these arrests that he "was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States while being held as a pre-trial detainee and while serving his sentence." *Id.* at ¶¶ 32, 48, 74.

It is somewhat unclear what precise claims or legal theories that Plaintiff is pursuing in this case. While Plaintiff generally claims he was "framed" for various drug offenses by various groupings of Defendant Officers, his Complaint does not set forth counts nor specific legal claims; rather, he simply generally claims that "all of the defendants caused plaintiff to be deprived of rights secured by

the Fourth and Fourteenth Amendments." Dckt. No. 1 at ¶ 112.[3] Plaintiff does not bring any Illinois state law claims against any of the Individual Defendants.[4]

ARGUMENT

I. Plaintiff Cannot Establish That Numerous Defendants Were Personally Involved In Some Or All Of His Underlying Claims.

As set forth in detail below, Plaintiff's legal claims suffer from a variety of legal defects. *See infra* Parts II-VI. However, as a threshold factual matter, it is clear that a number of Individual Defendants cannot continue to be included as Defendants in this lawsuit because there is simply no evidence that they were personally involved in any of the alleged misconduct forming the basis for some or all of Plaintiff's claims.

Plaintiff's claims, in a nutshell, are all variations on a similar alleged fact pattern: Plaintiff claims he was doing nothing illegal, was arrested and accused of drug possession, and various police officers then fabricated the circumstances of these events in police reports and during the ensuing criminal proceedings leading to Plaintiff either pleading guilty or being convicted at trial. The problem for Plaintiff in many instances, however, is that there is simply no evidence that certain Defendants were involved in any way in any of this alleged misconduct. Accordingly, numerous Defendants are entitled to summary judgment on all claims brought pertaining to certain arrests at issue in this case.

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[3] What does appear to be clear is that Plaintiff does not pursue a Fourteenth Amendment claim based upon a *Brady* suppression of evidence claim. *See* Dckt. No. 1. None of Plaintiff's underlying allegations of misconduct mention or even hint at any alleged suppression of exculpatory or impeachment evidence; rather, all of the claims appear to be premised upon fabrication of the circumstances of Plaintiff's arrests by the Defendant Officers. Moreover, Plaintiff was specifically asked in discovery to detail the alleged misconduct supposedly committed by each of the Defendant Officers and did not mention anything whatsoever about alleged suppression of evidence under *Brady*. *See* SMF at ¶¶ Accordingly, any such claim would not be permitted to be advanced at this stage anyway. *See Moran v. Calumet City*, 54 F.4th 483, 496 (7th Cir. 2022)(plaintiff barred from pursuing *Brady* theory based upon failure to disclose specific evidence he claims was suppressed in interrogatories).

[4] Plaintiff clarifies that the only Illinois state law claim he brings is against Defendant City "only" for Illinois state law Malicious Prosecution. *See* Dckt. No. 1 at ¶ 122.

"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). In order to avoid summary judgment, Plaintiff must establish that each and every defendant sued 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."). In this regard, "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. *See Nunez v. Dart*, 2011 WL 5599505, *3 (N.D. Ill. 2011). This is because summary judgment is "not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Steen v. Myers*, 486 F.3d 1017, 1022 (7th Cir. 2007).

Accordingly, case after case hold that mere proximity to alleged misconduct, merely 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 malfeasance at issue are woefully insufficient to create an issue of fact to preclude summary judgment. *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);

see also De Jesus v. Odom, 578 Fed.Appx. 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]..."); *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)*; Morfin v. City of E. Chicago*, 349 F.3d 989, 1002 (7th Cir. 2003)("[s]peculation is insufficient to withstand summary judgment.").

Indeed, the Seventh Circuit has been very clear 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 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"); *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.").

In addition, to establish liability on the part of any Individual Defendant, Plaintiff 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," Plaintiff must prove that the officers "knew with certainty" that other officers' accounts of the circumstances of the respective arrests were false. *Id.* Mere evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity in insufficient." *Id.* at 345. Plaintiff cannot satisfy these standards for numerous Defendants.

Defendant Ridgell:

Defendant Ridgell is sued only for his alleged conduct arising from Plaintiff's June 18, 2004 arrest. *See* Dckt. No. 1 at ¶¶ 17, 33, 60; *see also* SMF at ¶ 62. For this arrest, there is simply no evidence that Defendant Ridgell was involved in any way with the alleged misconduct at issue. He is, thus, entitled to summary judgment on all claims arising from the June 18, 2004 arrest and, thus, all claims asserted against him in this lawsuit.

First, Plaintiff is barred under Fed. R. Civ. P. 37 from contesting summary judgment in favor of Defendant Ridgell in this case. Plaintiff's Complaint makes no specific allegations of misconduct against Defendant Ridgell in particular; rather, Plaintiff simply lumps him in as an involved officer amongst seven (7) others as part of various conclusory allegations of malfeasance regarding him being framed for a drug possession offense on June 18, 2004. To that end, Plaintiff was specifically asked in written discovery to describe the personal involvement of a series of Defendants, including Defendant Ridgell, in the misconduct he was claiming in this case. SMF at ¶¶ 63-64. Plaintiff did not describe any conduct committed by Defendant Ridgell at all. *Id.* Rather, Plaintiff simply referenced a complaint he made to the office of professional standards around the time of the incident at issue. *Id.* at ¶ 63. This complaint does not reference Defendant Ridgell in any way. *Id.* at ¶ 64. Moreover, Plaintiff was asked in detail at his deposition about the officers he claimed were involved in various acts of misconduct on June 18, 2004 and did not reference Defendant Ridgell even a single time despite naming at least four other officers by name as participating in various acts of misconduct. *Id.* at ¶ 78.

The failure of Plaintiff to supply the evidentiary proof of Defendant Ridgell's specific involvement in his interrogatory responses (and, indeed, his deposition) bars him from relying on any additional such evidence to oppose summary judgment in favor of Defendant Ridgell 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 Court 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.*

Second, even were Plaintiff able to rely on evidence not disclosed in either his interrogatory responses or his deposition regarding Defendant Ridgell, there is simply no evidence in the record whatsoever supporting Defendant Ridgell's personal involvement in any of the malfeasance. SMF at ¶¶ 63-85. Plaintiff has not adduced any evidence that Defendant Ridgell was involved in any way with the malfeasance he alleges despite being asked specifically to disclose such evidence. *Id.* at ¶¶ 63, 64, 78, 83, 84. Defendant Ridgell has no recollection of any part of this incident. *Id.* at ¶ 79. There is no other evidence that Defendant Ridgell was present for, witnessed, or even knew about any alleged malfeasance by any other police officers. *Id.* at ¶¶ 78, 81. There is no evidence that Defendant Ridgell completed any paperwork related to this incident. *Id.* at ¶¶ 67-76. There is no evidence that Defendant Ridgell contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* There is no evidence that Defendant Ridgell communicated with any prosecutors about

this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶¶ 77, 82-85.

Defendant Ridgell's name does not even appear anywhere on Plaintiff's arrest report. SMF at ¶ 67. The extent of evidence relating to Defendant Ridgell's supposed "involvement" in this case is the mere inclusion of his name typewritten on a Vice Case Report that was prepared by someone else. *Id.* at ¶ 74. There is no reference on the Vice Case Report to him being involved or even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* at ¶¶ 74-76. While this Report itself is hearsay on its face as to the truth of its 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), this Report does not even provide any hint as to what, if any, role Defendant Ridgell played in any part of this incident much less implicate him in any misconduct. *Id.* at ¶¶ 74-76. This Report does not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* While this, standing alone, is sufficient to entirely disregard this evidence, it also bears noting that this Vice Case Report, unlike the Arrest Report, contains information about the arrest of two other unrelated individuals in the vicinity for totally unrelated conduct, specifically, loitering and trespassing in a CHA building. *Id.* at ¶75. In other words, there is no evidence that Plaintiff had anything at all to do with Plaintiff's arrest much less that he was personally involved in any misconduct relating thereto. Simply stated, there is no basis for Defendant Ridgell to be included in this case as a Defendant.

Defendant Edwards:

Defendant Edwards is sued for his alleged conduct arising from Plaintiff's March 3, 2004 and June 18, 2004 arrests. *See* Dckt. No. 1 at ¶¶ 17-32, 33-48; *see also* SMF at ¶¶ 6, 27. However, for the March 3, 2004 arrest, there is simply no evidence that Defendant Edwards was involved in any way

with the alleged misconduct at issue. He is, thus, entitled to summary judgment on all claims arising from the March 3, 2004 arrest.

Defendant Edwards testified that he had no recollection of William Carter, and Carter's counsel did not ask Defendant Edwards any questions about the March 3, 2004 arrest. SMF at ¶ 21. There is no evidence that Defendant Edwards was present for, witnessed, or even knew about any alleged malfeasance by any police officers. *Id.* at ¶ 14, 21. There is no evidence that Defendant Edwards completed any paperwork related to this incident. *Id.* at ¶¶ 23, 26. There is no evidence that Defendant Edwards contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* at ¶ 23, 26. There is no evidence that Defendant Edwards communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶¶ 23-24.

Defendant Edwards' name does not even appear anywhere on Plaintiff's Vice Case Report. SMF at ¶¶ 9, 13. The extent of evidence relating to Defendant Edwards' supposed "involvement" in this arrest is the mere inclusion of his name typewritten as an assisting officer on Plaintiff's Arrest Report that was prepared by someone else. *Id.* at ¶¶ 9, 13. There is no reference on the Arrest Report to him being involved or even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* at ¶ 9, 13. While this Report itself is hearsay on its face as to the truth of its contents, as stated above, this Report does not even provide any hint as to what, if any, role Defendant Edwards played in any part of this arrest much less implicate him in any misconduct. *Id.* at ¶ 9, 13. This Report does not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* at ¶ 9, 13. There is no evidence that Defendant Edwards had anything to do with Plaintiff's March 3, 2004 arrest much less that he was personally involved in any misconduct relating thereto.

Defendant Rodriguez:

Defendant Rodriguez is sued for his alleged conduct arising from Plaintiff's June 18, 2004 arrest. *See* Dckt. No. 1 at ¶¶ 33-48; *see also* SMF at ¶ 27. For said arrest, there is simply no evidence that Defendant Rodriguez was involved in any way with the alleged misconduct at issue. He is, thus, entitled to summary judgment on all claims arising from the June 18, 2004 arrest.

Plaintiff testified that he did not know which of his arrests Defendant Rodriguez might have been present for. SMF at ¶ 19. *See 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). There is no evidence that Defendant Rodriguez was present for, witnessed, or even knew about any alleged malfeasance by any police officers. *Id.* at ¶¶ 32-35, 60. There is no evidence that Defendant Rodriguez completed any paperwork related to this incident. *Id.* at ¶¶ 30, 35, 56, 57, 58. There is no evidence that Defendant Rodriguez contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* There is no evidence that Defendant Rodriguez communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶¶ 32, 37, 61.

Defendant Rodrigeuz's name does not even appear anywhere on Plaintiff's Arrest Report. SMF at ¶ 29. The extent of evidence relating to Defendant Rodriguez's supposed "involvement" in this arrest is the mere inclusion of his name typewritten on Plaintiff's Vice Case Report that was prepared by someone else. *Id.* There is no reference on the Vice Case Report to him being involved or even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* While this Report itself is hearsay on its face as to the truth of its contents, as stated above, this Report does not even provide any hint as to what, if any, role Defendant Rodriguez played in any part of this arrest much less implicate him in any misconduct. *Id.* at ¶¶ 29, 59. This Report does not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* There is no evidence that

Defendant Rodriguez had anything to do with Plaintiff's June 18, 2004 arrest much less that he was personally involved in any misconduct relating thereto.

Defendant Summers:

Defendant Summers is sued for his alleged conduct arising from Plaintiff's June 18, 2004 arrest. *See* Dckt. No. 1 at ¶¶ 33-48; *see also* SMF at ¶ 27. For said arrest, there is simply no evidence that Defendant Summers was involved in any way with the alleged misconduct at issue. He is, thus, entitled to summary judgment on all claims arising from the June 18, 2004 arrest.

The only officers that Plaintiff can recall seeing in the lobby during his June 18, 2004 arrest were Defendants Jones, Mohammed, Edwards, and Sgt. Watts. SMF at ¶ 33. There is no evidence that Defendant Summers was present for, witnessed, or even knew about any alleged malfeasance by any police officers. *Id.* at ¶ 33, 55, 60. There is no evidence that Defendant Summers completed any paperwork related to this incident. *Id.* at ¶¶ 30, 35, 56, 57, 58. There is no evidence that Defendant Summers contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* There is no evidence that Defendant Summers communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶¶ 60-61.

Defendant Summers' name does not even appear anywhere on Plaintiff's Arrest Report. SMF at ¶ 29. The extent of evidence relating to Defendant Summers' supposed "involvement" in this arrest is the mere inclusion of his name typewritten on Plaintiff's Vice Case Report that was prepared by someone else. *Id.* at ¶ 29. There is no reference on the Vice Case Report to him being involved or even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* at ¶¶ 29, 59. While this Report itself is hearsay on its face as to the truth of its contents, as stated above, this Report does not even provide any hint as to what, if any, role Defendant Summers played in any part of this arrest much less implicate him in any misconduct.

Id . This Report does not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* There is no evidence that Defendant Summers had anything to do with Plaintiff's June 18, 2004 arrest much less that he was personally involved in any misconduct relating thereto.

Defendant Young:

Defendant Young is sued for his alleged conduct arising from all three of Plaintiff's arrests, March 3, 2004, June 18, 2004, and May 19, 2006. *See* Dckt. No. 1 at ¶¶ 17-74; *see also* SMF at ¶¶ 6, 27, 86. However, there is no evidence that Defendant Young was involved in any way with the alleged misconduct in Plaintiff's June 18, 2004 and May 19, 2006 arrests. He is, thus, entitled to summary judgment on all claims arising from Plaintiff's June 18, 2004 and May 19, 2006 arrests.

The only officers that Plaintiff can recall seeing in the lobby during his June 18, 2004 arrest were Defendants Jones, Mohammed, Edwards, and Sgt. Watts. SMF at ¶ 33. *See Cherry*, 526 F. App'x at 688 (plaintiff's failure to identify who shoved him during the arrest doomed claim for excessive force). There is no evidence that Defendant Young was present for, witnessed, or even knew about any alleged malfeasance by any police officers. *Id.* at ¶¶ 33, 42, 55, 60. There is no evidence that Defendant Young completed any paperwork related to this incident. *Id.* at ¶¶ 30, 35, 42, 56-58. There is no evidence that Defendant Young contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* There is no evidence that Defendant Young communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶¶ 37, 60, 61.

Defendant Young's name does not even appear anywhere on Plaintiff's Arrest Report. SMF at ¶¶ 29. The extent of evidence relating to Defendant Young's supposed "involvement" in this arrest is the mere inclusion of his name typewritten on Plaintiff's Vice Case Report that was prepared by someone else. *Id.* at ¶ 29. There is no reference on the Vice Case Report to him being involved or

even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* at ¶¶ 29, 59. While this Report itself is hearsay on its face as to the truth of its contents, as stated above, this Report does not even provide any hint as to what, if any, role Defendant Young played in any part of this arrest much less implicate him in any misconduct. *Id.* This Report does not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* There is no evidence that Defendant Young had anything to do with Plaintiff's June 18, 2004 arrest much less that he was personally involved in any misconduct relating thereto.

Regarding Plaintiff's May 19, 2006 arrest, Plaintiff testified that Defendant Jones arrested him in his 5th floor apartment and escorted him down the stairs. SMF at ¶¶ 105-106. When Plaintiff arrived on the first floor, specifically to the back hallway, Officers Mohammed, Smith, the "Chinaman," and Young were already there. *Id.* at ¶ 107. Plaintiff confirmed that only Officer Jones was in his apartment and arrested him, and all other officers were downstairs working undercover, posing as drug dealers. *Id.* at ¶107. *See Walker v. White*, 2021 WL 1058096, at *14 (N.D.Ill. 2021) (entering summary judgment for officers, in part, because the officers arrived on scene after the plaintiff was already detained.)

There is no evidence that Defendant Young was present for, witnessed, or even knew about any alleged malfeasance by any police officers. SMF at ¶¶ 105-108. There is no evidence that Defendant Young completed any paperwork related to this incident. *Id.* at ¶¶ 95, 96, 109. There is no evidence that Defendant Young contributed to, or was even privy to, the substance of any paperwork completed by other officers. *Id.* There is no evidence that Defendant Young communicated with any prosecutors about this incident, testified in court, or was otherwise involved in any way with the prosecution. *Id.* at ¶ 99, 101, 104.

The extent of evidence relating to Defendant Young's supposed "involvement" in this arrest is the mere inclusion of his name typewritten on Plaintiff's Vice Case Report and being listed as an

assisting arresting officer on Plaintiff's Arrest Report. SMF at ¶ 87. There is no reference on either Report to him being involved or even present for any of the specific alleged malfeasance at issue (i.e. seeing drugs, taking Plaintiff into custody, speaking to Plaintiff, etc.). *Id.* While said Reports are hearsay on their face as to the truth of its contents, as stated above, said Reports do not even provide any hint as to what, if any, role Defendant Young played in any part of this arrest much less implicate him in any misconduct. *Id.* Said Reports do not specify whether he was present for any part of the alleged criminal activity or merely present after the incident concluded. *Id.* There is no evidence that Defendant Young had anything to do with Plaintiff's May 19, 2006 arrest, much less that he was personally involved in any misconduct relating thereto.

II. Plaintiff's Claims Arising From His March 3, 2004 and June 18, 2004 Arrests Are Barred As A Result Of Plaintiff's Guilty Pleas.

Beyond the lack of involvement of various Defendants, all of Plaintiff's claims arising from his March 3 and June 18, 2004 arrests are legally barred on their face because Plaintiff's guilty pleas to offenses underlying these arrests extinguish any claims for antecedent misconduct under well-established Supreme Court precedent.

The dispositive legal issue is simple and straightforward: can a criminal defendant who makes an intelligent and knowing decision to plead guilty in a criminal case in order to obtain a favorable sentence for charged crimes later turn around and pursue claims based on allegations that the police "forced" him into his guilty plea by engaging in misconduct relative to the underlying crime? The answer to this question is "no" under decades of Supreme Court precedent.

The law is clear: "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). While, as set forth below, a criminal defendant may retract

a guilty plea, under certain circumstances not relevant here, if he can establish that he received Constitutionally infirm advice from an attorney leading him to plead guilty, the existence of antecedent misconduct by state actors in the underlying arrest is not a basis to avoid the causal bar rule of *Tollett* and its progeny nor a basis on which to premise a claim of Constitutionally infirm advice of counsel. *Id.* Because Plaintiff admits he knowingly and intelligently pled guilty to all offenses which form the basis for this lawsuit (and for other reasons as well), all of his antecedent claims on which these claims are based fail as a matter of law. And even if Plaintiff were to claim he suffered legally infirm advice on his guilty plea, Plaintiff would still lose because any such unconstitutionally infirm advice would itself also represent an intervening cause cutting off liability for any of the Individual Defendants.

A. A Guilty Plea Extinguishes Any Antecedent Claims Of Misconduct That Allegedly Produced the Plea.

An unbroken string of case law from the Supreme Court holds that a guilty plea operates as "a break in the chain of events that preceded it in the criminal process." *Tollett*, 411 U.S. at 267; *Brady v. U.S.*, 397 U.S. 742, 748 (1970); *McMann v. Richardson*, 397 U.S. 759, 766-69 (1970); *Parker v. North Carolina*, 397 U.S. 790, 797 (1970); *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *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."). As a result, an individual who provides a voluntary and intelligent plea of guilty to criminal charges is thereafter barred from pursuing any and all antecedent misconduct claims that preceded such plea. *Id.*

While the specific reasons for this rule are substantively immaterial for the purposes of this case, they bear mentioning nonetheless as context. Fundamentally, pleading guilty "has long been

recognized" as "a grave and solemn act to be accepted only with care and discernment." *Brady v. U.S.*, 397 U.S. 742, 748 (1970). In this regard, the finality and integrity of guilty pleas is of paramount importance to the orderly administration of justice since they are so widely used in our criminal justice system. *See United States v. Timmreck*, 441 U.S. 780, 99 S.Ct. 2085, 60 L.Ed.2d 634 (1979); *see also Hill v. Lockhart*, 474 U.S. 52, 58 (1985). As explained in *Timmreck*:

> Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice. The impact is greatest when new grounds for setting aside guilty pleas are approved because the vast majority of criminal convictions result from such pleas. *Id.*

To this end, the Supreme Court held in the so-called *Brady* trilogy (*Brady*, *McMann*, and *Parker*) and later in *Tollett*, that the encouragement and finality of holding criminal defendants to their knowing and intelligent decision to plead guilty requires that denying collateral attacks on the antecedent misconduct claims which might have preceded or lead to such guilty plea was necessary. *Tollett*, 411 U.S. at 262-68. This remains so even if there are competing motives for a criminal defendant deciding whether to plead guilty or seek vindication based on, among other things, predicate antecedent government misconduct.

A criminal defendant's decision to admit to his factual guilt is a difficult judgment "for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time." *Brady*, 397 U.S. at 756-57; *see also*, *Id.* at 750 (reflecting that "[f]or some people, their breach of a state's law is alone sufficient reason for surrendering themselves and accepting punishment. For others, apprehension and charge, both threatening acts by the Government, jar them into admitting their guilt. In still other cases, the post-indictment accumulation of evidence may convince the defendant and his counsel that a trial is not worth the agony and expense to the defendant and his family"); *see also*, *McMann*, 397 U.S. at 766-69 (examining the differing states of mind of criminal defendants pondering plea offers). However, the

integrity of the criminal justice system requires that criminal defendants who obtain a benefit by pleading guilty are held to the benefit of their bargain. *See, e.g., Hugi v. U.S.,* 164 F.3d 378, 382 (7th Cir. 1999) (holding that "[a] guilty plea is not a road-show tryout before the 'real' contest occurs" and that a criminal defendant must be held to their guilty pleas rather than being allowed to contradict during later proceedings; "He wants to have the benefits of the plea bargain without taking any risks. That sort of game is not one the criminal justice system tolerates.").

B. While A Plea Must Be Knowing And Voluntary To Extinguish Antecedent Claims, A Party Cannot Rely On Antecedent Claims Of Misconduct To Establish That It Was Not Knowing And Voluntary.

Under *Tollett* and the *Brady* trilogy, a party can escape the consequences of a guilty plea if they can establish their plea was not knowing and voluntary. *Tollett*, 411 U.S. at 267; *U.S. v. Litos,* 847 F.3d 906, 910 (7th Cir. 2017)(collecting cases). However, importantly, the voluntariness/intelligence exception to the general rule is *not* an inquiry that focuses on the existence or strength of antecedent governmental misconduct which might predate the guilty plea and be the driving force behind it; rather, the pertinent inquiry explicitly *only* focuses on the Constitutional sufficiency of the quality of the advice given the criminal defendant. *See Tollett*, 411 U.S. 258; *McMann*, 397 U.S. at 766-69.

Tollett explained this in painstaking detail. In *Tollett* (which involved a habeas proceeding), the Court held that, while a petitioner must, of course, always prove an antecedent Constitutional violation in order to collaterally attack any conviction, the antecedent Constitutional violation *itself* is not a basis to establish the right to free oneself from the consequences of his guilty plea. To wit:

> The focus…is the nature of the advice and the voluntariness of the plea, *not the existence as such of an antecedent constitutional infirmity*. A state prisoner must, of course, prove that some constitutional infirmity occurred in the proceedings. But the inquiry does not end at that point, as the Court of Appeals apparently thought. If a prisoner pleads guilty on the advice of counsel, he must demonstrate that the advice was not 'within the range of competence demanded of attorneys in criminal cases,'…[W]hile claims of prior constitutional deprivation may play a part in evaluating the advice rendered by counsel, they are not themselves independent grounds for federal collateral relief….

> 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. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he 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*.

Tollett, 411 U.S. at 266–67.

Guilty pleas remain "valid in spite of the State's responsibility for some of the factors motivating the pleas" because "[t]he rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision." *Brady*, 397 U.S. at 757. Rather:

> When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he 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*.

Tollett, 411 U.S. at 267 (referring to *Brady*, 397 U.S. at 750, *McMann*, 397 U.S. at 770, and *Parker v. North Carolina*, 397 U.S. 790 (1970)).

This is necessarily based on the assumption that "a counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case." *Menna v. New York*, 423 U.S. 61, 62–63, n. 2 (1975). Accordingly, because "factual guilt is a sufficient basis for the State's imposition of punishment, [a] guilty plea…simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction, if factual guilt is validly established." *Id.* Therefore, Plaintiff's pleas function as superseding causes of any alleged constitutional harms he now claims; "[a] valid guilty plea [] renders irrelevant … the constitutionality of case-related government conduct that takes place before the plea is entered" and further "relinquishes any claim that would

contradict the 'admissions necessarily made upon entry of a voluntary plea of guilty.'" *Class v. U.S.*, 583 U.S. 174, 182-83 (2018).

To this end, the Supreme Court has been clear that the theory that "the police put me in an unwinnable situation by their misconduct so my only choice was to plead guilty" is not at all a valid basis to attempt to collaterally attack the consequences of an intelligently made guilty plea that took those considerations into account in the first instance. In fact, in *McMann* itself, the Supreme Court specifically rejected claims that a guilty plea supposedly "driven by" the existence of antecedent police conduct was a basis to absolve a criminal defendant of the consequences of his decision to avail himself of the benefits of pleading guilty.

McMann involved three criminal defendants who had pled guilty to various offenses. Each criminal defendant alleged that his guilty plea was the product of police officers' fabrication of evidence via coerced false confessions procured by the investigating police officers. *McMann*, 397 U.S. at 762-64. One criminal defendant claimed that "he had been beaten, refused counsel, and threatened with false charges prior to his confession" and that "his court-appointed attorney had advised pleading guilty since [he] did not 'stand a chance due to the alleged confession signed' by him." *Id.* Another claimed that "he was beaten into confessing the crime, that his assigned attorney conferred with him only 10 minutes prior to the day the plea of guilty was taken, that he advised his attorney that he did not want to plead guilty to something he did not do, and that his attorney advised him to plead guilty to avoid the electric chair, saying that 'this was not the proper time to bring up the confession' and that [he] 'could later explain by a writ of habeas corpus how my confession had been beaten out of me.'" *Id.* The third alleged that "he had been handcuffed to a desk while being interrogated, that he was threatened with a pistol and physically abused, and that his attorney, in advising him to plead guilty, ignored his alibi defense and represented that his plea would be to a misdemeanor charge rather than to a felony charge." *Id.* As here, each criminal defendant made allegations that this antecedent

police misconduct had left him with no real choice but to plead guilty and seek leniency because the police misconduct had, in essence, tampered with his ability to defend himself against false charges by virtue of the creation of falsified evidence. *Id.* Yet, the Court held that such allegations remained subject to being extinguished by a later guilty plea.

Accordingly, it is black letter law that Plaintiff's "I only pled guilty because they rigged my case" theory is in direct contravention of decades of Supreme Court precedent. Along these lines, as this Court may be aware (and as Plaintiff will no doubt argue in response), some other judges in this District addressed some of these issues at the pleading stage and determined that *Tollett* and its progeny did not bar claims. *See In re Watts Coordinated Pretrial Proceedings*, 2022 WL 9468253 (N.D.Ill. 2022); *Carter v. City of Chicago*, 2018 WL 1726421 (N.D.Ill. 2018). These rulings do not change the propriety of granting summary judgment in this case. Indeed, none of these can be (or were) squared with the above-described Supreme Court precedent.

The Courts in both of those cases noted the applicability of *Tollett* and its progeny but, in essence, held that the defendants' alleged antecedent unconstitutional conduct was the alleged "driving force" behind the decision to plead guilty and, thus, the claim survived. *In re Watts Coordinated Pretrial Proceedings*, 2022 WL 9468253, at *9 ("Here, Henderson alleges that he pled guilty in four cases because he knew that he could not prove that the individual Officer Defendants had brought false charges against him…It follows that without the fabricated evidence as the driving force, Henderson would not have pled guilty."); *Carter*, 2018 WL 1726421 at *5 ("Plaintiff alleges that the only reason he pled guilty in the two cases was because he knew he could not prove that the individual defendant officers had fabricated the evidence against him…Thus, it reasonably can be said that the fabricated evidence caused plaintiff to be deprived of his liberty."). This analysis simply cannot be squared with Supreme Court precedent. In fact, the reasoning in those cases is fundamentally at odds with the entirety of the legal basis underlying *Tollett* as well as the *Brady* trilogy which, in essence, is that antecedent violations

are extinguished by a guilty plea because it is the plea that produces the conviction *not the prior misconduct leading to the plea*.

In fact, the theory advanced in *In re Watts Coordinated Pretrial Proceedings* and *Carter* is essentially the exact same reasoning that the Supreme Court held in *McMann* was erroneous by the lower court. In *McMann*, the Second Circuit followed essentially a proximate cause analysis in which the antecedent governmental misconduct producing the guilty plea was permitted as a collateral attack on the validity of the plea itself. *McMann*, 397 U.S. at 766 ("The core of the Court of Appeals' holding is the proposition that if in a collateral proceeding a guilty plea is shown to have been triggered by a coerced confession—if there would have been no plea had there been no confession—the plea is vulnerable..."). The Supreme Court explicitly held this was *not* the law. *Id.*

The Court in *McMann* held that a person who believes that the evidence against him has been unconstitutionally obtained or fabricated has the binary choice to *either,* on the one hand, contest his guilt and these underlying issues at the criminal trial (and on appeal if necessary), *or*, on the other hand, accept the benefits that come with a guilty plea and admit culpability for the crimes he was accused of committing. *McMann*, 397 U.S. at 766. But because the person is availing himself of benefits from the judicial system by making an admission of guilt to obtain a benefit, he may not capture these benefits of his admission of guilt while also later seeking to challenge the underlying conduct that he claims "forced" him into this binary choice. *Id.* ("[A] guilty plea…is nothing less than a refusal to present his [antecedent claims of misconduct] to the state court in the first instance—a choice by the defendant to take the benefits, if any, of a plea of guilty and then to pursue his [antecedent claims] in collateral proceedings…The Constitution, however, does not render pleas of guilty so vulnerable.").

As a result, the law is clear that alleged factual innocence/guilt and governmental misconduct driving a plea is essentially immaterial in this analysis. *McMann*, 397 U.S. at 769 ("[T]he decision to plead guilty before the evidence is in frequently involves the making of difficult judgments. All the

pertinent facts normally cannot be known unless witnesses are examined and cross-examined in court. Even then the truth will often be in dispute. In the face of unavoidable uncertainty, the defendant and his counsel must make their best judgment as to the weight of the State's case… Waiving trial entails the inherent risk that the good-faith evaluations of a reasonably competent attorney will turn out to be mistaken either as to the facts or as to what a court's judgment might be on given facts."). Indeed, state-induced antecedent conduct was *specifically contemplated* to fall within the scope of conduct for which claims are extinguished via a guilty plea. As explained in *Tollett* in differentiating between convictions at trial based on antecedent unconstitutional conduct and guilty pleas based on this exact same conduct:

> 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, has never been offered in evidence at a trial, and may never be offered in evidence.

Tollet, 411 U.S. at 773.

Thus, the cases hold that a party cannot establish the unknowing and involuntary nature of a guilty plea by merely pointing to their alleged factual innocence and claims that governmental misconduct put them in a position where they had no rational choice but to plead guilty. *See Merriweather v. United States*, 2022 WL 1746768, at *6 (S.D.Ill. 2022)(rejecting petitioner's claims that guilty plea was product of involuntary plea because he advised attorney he was innocent of crime and only pleaded guilty to obtain a more favorable sentence); *U.S. v. Hackbarth*, 2006 WL 3488974, at *1 (E.D.Wis. 2006)("The thrust of Hackbarth's allegations are actual innocence and insufficiency of the evidence. Nowhere does he even hint that his counsel's alleged errors induced his guilty plea."); *U.S. v. Stanley*, 616 F.Supp. 1567, 1568–69 (N.D.Ill. 1985)("[O]f the possible duress arguments is one challenging the guilty plea itself, for an essential condition of its validity is 'that defendant's plea be

the voluntary expression of her own choice.' But that kind of duress challenge must go to the taking of the plea itself, *not to the circumstances causing the underlying crime*."); *Christensen v. Secretary of the Fla. Department of Corrections and Fla. Attorney General*, 2024 WL 4025230, *16–17 (M.D.Fla. 2024)(noting that claim that police fabricated evidence leading to guilty plea was waived under *Tollett's* extinguishment rule). The reason for this, again, is that the relevant involuntariness of a plea only relates to the *circumstances of the plea itself* not the underlying circumstances that precipitated it. *Id.* As explained bluntly in *Stanley* in rejecting a similar argument:

> [A]n essential condition of its validity is "that [defendant's] plea be the voluntary expression of [her] own choice." But that kind of duress challenge must go to the taking of the plea itself, *not to the circumstances causing the underlying crime*. And here Stanley clearly cannot surmount *McMann*, which held a guilty plea could not be attacked on grounds a coerced confession had induced the plea. In terms of the constitutional validity of a plea, duress that has allegedly triggered the plea can stand on no different footing from a coerced confession that has had the same result.

Stanley, 616 F.Supp. at 1568–69 (emphasis added).

In fact, factual guilt or innocence plays no part in whether antecedent claims are extinguished by a guilty plea. To this end, the United States Supreme Court has long held that even a factually innocent person can still make a knowing and intelligent guilty plea purely as a matter of strategic balancing between the consequences of contesting one's guilt and taking a case to trial and risking a heavier sentence. *See Henderson v. Morgan*, 426 U.S. 637, 648 (1976)("We have permitted judgment to be entered against a defendant on his intelligent plea of guilty accompanied by a claim of innocence."); *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)("An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.").

C. Plaintiff Has Not Alleged That His Attorney Gave Him Constitutionally Infirm Advice On His Guilty Plea And, Even If He Had, This Itself Would Cut Off Defendants' Liability.

In the present case, Plaintiff has not even attempted to argue that his attorney gave him unconstitutionally infirm advice under *McCann*. In fact, he appears to claim the exact opposite, specifically, that he made a reasoned strategic decision to plead guilty because he would not have to do jail time. SMF at ¶ 54. To that end, Plaintiff was given simply probation on these cases until he violated the terms of this by committing unrelated crimes in violation of the terms of his probation. *Id.* at ¶¶ 51-52. Even then, Plaintiff was ultimately just concurrently sentenced to "boot camp" for both his 2004 arrests as well as his unrelated crimes he committed in the interim. *Id.* at ¶¶ 51-52. "If a prisoner pleads guilty on the advice of counsel, he must demonstrate that the advice was not 'within the range of competence demanded of attorneys in criminal cases.'" *Tollett*, 411 U.S. at 266 *quoting McMann*, 397 U.S. at 771. In this regard, as held by *McMann* and numerous other cases, the decision to plead guilty is one that requires an examination of all manner of things regarding the potential outcomes at trial and advising a person to plead guilty in the face of significant evidence against them (even if a person claims they are innocent) is not Constitutionally infirm advice. In fact, if the contrary were true, courts could never accept *Alford* or no contest pleas because these, by definition, would always be the result of Constitutionally deficient advice if a person maintained his or her innocence.

Here, in a nutshell, Plaintiff appears to be implying that he had the right to lie to the criminal court by pleading guilty in order to secure a better sentence and then later turn around and profit off contrary claims that he was innocent all along. Separate and apart from the causation issues arising from *Tollett* and the *Brady* trilogy, this tactical gamesmanship is simply not allowed under Seventh Circuit precedent. A plaintiff is not "entitled to lie in state court to ensure that the judge accepted the favorable plea bargain," and thereafter ask a separate court to disregard his earlier admissions of guilt to obtain compensation beyond his deal. *Dye v. Wargo*, 253 F.3d 296, 298 (7th Cir. 2001). Simply put, this "sort of game is not one the criminal justice system tolerates" nor "a position any judicial system can, or does, tolerate." *Id.* (referencing *U.S. v. Stewart*, 198 F.3d 984 (7th Cir.1999)); *Hugi*, 164 F.3d at

381 (adding that "[t]his [plea] agreement represents, in Hugi's own words, that he committed every element of the offense, and within the statute of limitations. The document is not agnostic about these subjects. If as Hugi now says he did not know for sure in 1994 that an interstate wire communication occurred on July 27, 1989, then he should not have signed his name to a representation that it did occur. Courts take the plea process seriously and hold defendants to their representations") *citing Brady*, 397 U.S. 742 at 748); *U.S. v. McFarland,* 839 F.2d 1239, 1242 (7th Cir.1988) (stating that "disingenuous conduct by a defendant should not be allowed to thwart the process of determining guilt or innocence" and concluding that the defendant was "bound by his admissions of guilt and his assertions that his plea was voluntary" during his plea colloquy); *Escamilla v. Jungwirth*, 426 F.3d 868, 870 (7th Cir. 2005), *abrogated on other grounds by McQuiggin v. Perkins*, 569 U.S. 383 (2013) (pondering "[h]ow could any court credit statements made by a litigant such as [Plaintiff] who trumpets a willingness (indeed, asserts an entitlement) to lie under oath whenever deceit serves his interests?"); *Wrice v. Byrne*, 488 F. Supp. 3d 646, 672–73 (N.D. Ill. 2020).[5]

Moreover, even if Plaintiff *had* attempted to mount a claim in this case that his attorney's advice to him to plead guilty plea was constitutionally infirm, this would not be sufficient to advance a claim *against police officers* for the underlying Constitutional violations. As noted above, the crux of *Tollett* and the *Brady* trilogy is one of supervening causation which produces a result, specifically, a guilty plea producing a conviction rather than the underlying facts of the alleged crime producing it. And, of course, all claims under Section 1983 follow general tort principles on causation. *See Whitlock*

[5] For what it's worth, it also does not matter whether Plaintiff's guilty plea was made under oath as opposed to simply allocating a naked plea of guilty in court without being sworn. Plaintiff represented in open court that he was, in fact, guilty of criminal offenses and then received a benefit from the court for this admission in the form of substantially reduced criminal penalties. Indeed, even had Plaintiff expressly reserved his claims of factual innocence, the guilty plea would still extinguish all of his antecedent claims of police misconduct. *See Gomez v. Berge*, 434 F.3d 940, 942–43 (7th Cir. 2006)("By pleading no contest, a defendant impliedly admits all allegations in the indictment. In this way, a no contest plea is indistinguishable from a guilty plea, in that it forecloses any opportunity to contest any alleged antecedent constitutional deprivations.").

v. Brueggemann, 682 F.3d 567, 582-85 (7th Cir. 2012) (recognizing that general tort principles governing causation apply equally to § 1983 claims). In this regard, even were it assumed that Plaintiff's criminal defense attorney himself violated Plaintiff's constitutional rights by providing ineffective assistance to Plaintiff by advising him to plead guilty, this independent alleged constitutional violation would cut off any liability for any acts which preceded it because the advice caused the guilty plea. Stated another way, Plaintiff would perhaps have some claim against his attorney for violations of the Sixth Amendment based on him giving bad legal advice but that, of course, has nothing whatsoever to do with police officers who were not involved in any "bad" advice given.

Furthermore, in accepting Plaintiff's guilty pleas, Judge Ford of the Circuit Court of Cook County, specifically found that Plaintiff understood the nature of the charges against him, understood the possible sentences he faced, understood the rights he was waiving, and found that his pleas were being made freely and voluntarily. SMF at ¶ 48. There is no evidence that Judge Ford's findings were the subject of any direct appeal or challenged as part of his post-conviction proceedings either. As a result, even were Plaintiff to decide to attempt to cobble together a claim that his guilty pleas were not knowing and voluntary, the findings that Plaintiff made a knowing and voluntary guilty plea by the criminal court remains binding upon him and cannot now be challenged anyway. *See Wallace v. City of Chicago*, 472 F.Supp.2d 942, 948 (N.D.Ill. 2004) *aff'd on other grounds*, 440 F.3d 421 (7th Cir. 2006) (criminal defendant turned plaintiff is collaterally estopped from contesting pretrial rulings in criminal case even after conviction vacated if appeal did not challenge this pretrial ruling and it was not the basis for vacating of conviction); *Thompson v. Mueller*, 976 F.Supp. 762 (N.D.Ill.1997)(same except acquittal).

D. Defendants Are Entitled To Qualified Immunity To Any Claims Arising From His 2004 Arrests.

At minimum, Defendants are clearly entitled to Qualified Immunity. In 2004-05 (the time periods in which Plaintiff's March 8, 2004 and June 18, 2004 arrests and criminal cases were pending),

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). Indeed, 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, the Individual Defendants would nonetheless be entitled to Qualified Immunity on any such antecedent civil claims.

III. Plaintiff's Fourteenth Amendment Claims Based On His 2004 Arrests Are Barred Because Plaintiff Did Not Go To Trial On Those Claims.

Separate and apart from the extinguishment of claims arising from Plaintiff's guilty pleas to the charges arising from his 2004 arrests, Plaintiff's claims of Fourteenth Amendment violations independently fail because Plaintiff did not go to trial on such claims there can be no Fourteenth Amendment claim for fabrication of evidence without a trial.

To prevail on a Fourteenth Amendment Due Process claim based on fabrication of evidence, Plaintiff must establish: (1) the existence of false/suppressed evidence; (2) that was introduced against Plaintiff at his criminal trial, and (3) was "material" to securing his conviction. *Fields v. Wharrie*, 740 F.3d 1107, 1114 (7th Cir. 2014); *Whitlock v. Brueggemann*, 682 F.3d 567, 682 (7th Cir. 2012); *Gray v. City of Chicago,* 2022 WL 910601, * 12 (N.D. Ill. 2022); *Brown v. City of Chicago*, 633 F.Supp.3d 1122, 1160 (N.D.Ill. 2022); *Watts*, 2022 WL 9468206, at *12; *Bolden v. City of Chicago*, 2019 WL 3766104, *19 (N.D.Ill. 2019); *Hyung Seok Koh v. Graf*, 307 F.Supp.3d 827, 857–60 (N.D.Ill. 2018). The very "essence of a due process evidence-fabrication claim is that the accused was convicted and imprisoned based on knowingly falsified evidence" and, thus, evidence not introduced at trial cannot, by definition, form the basis for a fabrication of evidence claim *See Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020); *Moran v. Calumet City*, 54 F.4th 483, 499 (7th Cir. 2022)("Because the evidence we assume was fabricated—the police report and the detectives' pretrial testimony—was not introduced at the trial, it could not have influenced the jury's verdict."); *Avery v. City of Milwaukee*, 847 F.3d 433, 442 (7th Cir. 2017)("A §1983 claim requires a constitutional violation, and the due-process violation wasn't complete until the [fabricated evidence] was introduced at Avery's trial, resulting in his conviction and imprisonment for a murder he did not commit. After all, it was the admission of the [fabricated evidence] that made Avery's trial unfair." (internal citations omitted); *Brown*, 633 F.Supp.3d at 1160 (noting "deprived of liberty in some way" standard was improper; "The Seventh Circuit rejected this standard, clarifying that fabricated evidence must be 'used against [plaintiff] in his criminal trial.'…No reasonable jury could find that [fabricated material not admitted into evidence at trial] were "used" against him at trial, so Defendants are entitled to summary judgment on this claim.").

Introduction at trial is necessary because "if the evidence hadn't been used against the defendant, he would not have been harmed by it, and without a harm there is… no tort." *Fields*, 740 F.3d at 1114; *Whitlock*, 682 F.3d at 682 ("[I]f an officer fabricates evidence and puts the fabricated

evidence in a drawer, making no further use of it, then the officer has no violated due process[.]"). Even testimonial references to a police report or non-substantive use of same does not transform out of court evidence into an actionable item for a fabrication claim. *Brown*, 633 F.Supp.3d at 1159–60 ("The fact that [defendants] testified to a version of events consistent with the reports makes no difference. … This is so even when the false testimony is consistent with fabricated but unadmitted police reports."). Thus, fabrication of evidence claims premised on guilty pleas are routinely dismissed under this legal analysis. *Id.; see also Boyd v. City of Chicago*, 225 F. Supp. 3d 708, 725 (N.D. Ill. 2016)("[E]ven 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*, 2016 WL 3671449, at *8 (N.D. Ill. 2016)("*Whitlock*…is distinguishable from the present case," as the *Whitlock* court "found that the fabrication of evidence caused harm because it was introduced against the defendants at trial and 'was instrumental in their convictions'"); *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").

Here, Plaintiff pled guilty and did not proceed to trial on either of his 2004 arrests. Therefore, there can be no fabrication of evidence-based Due Process claim. Indeed, while the Seventh Circuit itself made this crystal clear in *Patrick* and later in *Moran*, as explained above, the entire crux of the rationale behind the intervening causation impact of a guilty plea is that a guilty plea-based conviction is premised entirely on the plea and admissions in court rather than any evidence that might exist supporting the conviction. *See Tollet,* 411 U.S. at 773 ("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, has never been offered in evidence at a trial, and may never be offered in evidence."). Thus, under well-established law, any Fourteenth Amendment claims based on Plaintiff's 2004 arrests are legally deficient.

Moreover, again, even were this Court to find any daylight in the *Patrick* and *Moran* decisions on this issue, the fact that there continues to be debate about the contours of the law on this topic and whether this can support a claim in the first instance means that Qualified Immunity would bar any such claim regardless. *Bianchi*, 818 F.3d at 323; *Ziglar*, 582 U.S. at 154; *Wilson*, 526 U.S. at 618.

IV. Plaintiff's Fourth Amendment Claims Are Legally Deficient On Numerous Grounds.

With respect to Plaintiff's Fourth Amendment claim, as noted above, it is unclear exactly what claim Plaintiff is attempting to make in this case insofar as Plaintiff simply claims a violation of the Fourth Amendment without further explanation. *See* Dckt. No. 1 at ¶¶ 32, 48, 74, 112. To this end, the only possible options appear to be either a claim for Fourth Amendment unlawful *pretrial* detention claim or a Fourth Amendment Malicious Prosecution under *Thompson v. Clark*, 596 U.S. 36, 49 (2022) seeking recovery for a *posttrial* deprivation of liberty and prosecution.[6] Regardless of the theory, neither of these claims survive summary judgment.

First, to the extent Plaintiff seeks to proceed on a Fourth Amendment claim based on unlawful pretrial detention (as opposed to a Fourth Amendment claim trial/posttrial Malicious Prosecution), such a claim is legally invalid because it is untimely. Plaintiff was released from any pretrial detention on each of his cases well over a decade prior to filing suit in this case. SMF at ¶¶ 44-45. Plaintiff was arrested on March 3, 2004, appeared in bond court on March 4, 2004, and was released from custody

[6] The other options, theoretically, could be false arrest and/or excessive force but those claims are so obviously time-barred that Defendants do not anticipate that Plaintiff seeks to proceed on these. However, if this reading is incorrect, those claims are barred by the two-year statute of limitations applicable to such claims.

on an I-bond at that time. *Id.* at ¶44. Court documents reflect that Plaintiff was not in custody, but rather out on bond, for every court hearing until he pled guilty to both 2004 arrests on December 16, 2004. *Id.* at ¶ 45.

Fourth Amendment pretrial detention claims (as distinct from Fourth Amendment *Malicious Prosecution* claims) accrue immediately upon release from pretrial detention and are not barred by the principles of *Heck v. Humphrey* 512 U.S. 477 (1994). *See Smith v. City of Chicago*, 3 F.4th 332, 339 (7th Cir. 2021)(claims for unlawful pretrial detention prior to conviction accrue at time when arrestee is released from detention) *rev'd on other grounds by Smith v. City of Chicago*, 2022 WL 2752603, at *1 (7th Cir. 2022)(reversing to the extent Fourth Amendment claim was construed as one for Malicious Prosecution under *Thompson v. Clark*); *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."); *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* on Fourth Amendment Malicious Prosecution claims); *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."). Accordingly, any claim for unlawful pretrial detention in violation of the Fourth Amendment is time barred and Defendants are entitled to summary judgment on all such claims.

To the extent that Plaintiff seeks to proceed on a Fourth Amendment "Malicious Prosecution" claim recognized in *Thompson v. Clark*, 596 U.S. 36, 49 (2022) and seeks recovery for damages relating to his prosecution, such a claim is unambiguously barred by Qualified Immunity. From the period well before the arrests/prosecutions in this case until 2022, it was well-established that there was no

such federal claim for malicious prosecution under Section 1983. *See Newsome v. McCabe*, 256 F.3d 747, 750–52 (7th Cir.2001); *Albright v. Oliver*, 510 U.S. 266, 270–71 (1994). In 2022, however, the Supreme Court for the first time recognized such a claim under the Fourth Amendment. *Thompson v. Clark*, 596 U.S. 36, 49 (2022). While that jurisprudence may govern liability for cases which have occurred *subsequent* to *Thompson*, the unsettled nature of whether this was a claim means that such claims during the *Newsome/Albright* era are barred by Qualified Immunity. *See Bianchi*, 818 F.3d at 323. Indeed, even in the years leading up to *Thompson*, the Seventh Circuit held that the developing law and challenges to whether *Newsome* and its progeny should be overturned was a perfect application of Qualified Immunity given the unsettled nature of the law. *Id.* To wit:

> [T]he Court in *Wallace* [*v. Kato*, 549 U.S. 384, 386–87 (2007)] specifically declined to address whether a malicious-prosecution claim is *ever* cognizable as a Fourth Amendment violation remediable under § 1983. The plaintiff in *Wallace* had expressly abandoned that issue, which was left unresolved in the Court's split decision in *Albright v. Oliver*, [510 U.S. 266, 270–71 (1994)]. Although some circuits have recognized such a claim, this circuit has not. With the law this unsettled, qualified immunity applies. *Id.* (emphasis in original and citations omitted).

To that end, numerous courts around the country post-*Thompson* have held that the federal claim for Malicious Prosecution recognized in *Thompson* in 2022 is, in essence, not retroactive as far as Qualified Immunity is concerned. *See 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. *Thompson v. Clark*, 142 S. Ct. 1332, 1337 (2022). 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.").

Third, consistent with the analysis in Part II *supra*, Plaintiff has a causation and probable cause problem with any Fourth Amendment claim premised upon his loss of liberty for his 2004 arrests. Once again, via his guilty pleas, Plaintiff admitted his involvement in the underlying criminal activity. Admission of criminal activity is more than sufficient to establish probable cause for a prosecution. *See Cairel v. Alderden*, 821 F.3d 823, 834 (7th Cir. 2016)(noting that allegedly coerced confession would provide probable cause barring malicious prosecution claim); *Zolicoffer v. City of Chicago*, 2013 WL 1181501, at *4 (N.D.Ill. 2013)(admissions of criminal activity provide probable cause barring malicious prosecution claim); *Kasey v. McCulloh*, 2011 WL 1706092, a*4 (N.D.Ill. 2011). Thus, by pleading guilty, Plaintiff supplied the necessary probable cause for his conviction which bars any malicious prosecution claim.

The Seventh Circuit faced a similar claim in *Bontkowski v. U.S.*, 28 F.3d. 36 (7th Cir. 1994). In that case, the plaintiff appealed the dismissal of his malicious prosecution claim despite his guilty plea to bank fraud. As part of the plea deal, the plaintiff testified that "it was never [his] intention to defraud [the] bank." *See Bontkowski v. U.S.*, 850 F.2d 306, 310 (7th Cir. 1988). At the time of the guilty plea, the law did not require the Government to prove that the plaintiff shared the primary offenders' criminal intent to defraud. *Id.* at 314. Subsequently, the Seventh Circuit in *U.S. v. Bruun*, for the first time, set out the elements for aiding and abetting bank fraud and held that if there was no evidence that the aider knew that the funds were stolen, then the aider lacked the shared criminal intent to convict him of aiding and abetting. *Bontkowski*, 850 F.2d at 310 *citing Bruun*, 809 F.2d 397, 411-12 (7th Cir. 1987). Because the *Bruun* case changed the elements of the offense and Bonkowski's plea agreement did not state that he knew the funds were stolen, the court granted his unopposed petition to vacate his conviction. *Bontkowski*, 28 F.3d at 37. After the court vacated his sentence, he filed a claim for

malicious prosecution. *Id.* The Seventh Circuit affirmed dismissal of his claim and in so doing, the court noted that "as a matter of common sense, by pleading guilty Bontkowski forfeited his chance to dispute the existence of probable cause for his prosecution" because he "may not on one day admit that he did the things he is charged with, and then on a later date claim that it was malicious to charge him with doing the things he admitted he did." *Id.* at 37-38.

Other cases are in accord. *See Gray v. Burke*, 466 F.Supp.2d 991, 997 (N.D.Ill. 2006)(granting summary judgment on false arrest and malicious prosecution claims; "When plaintiff pled guilty…she admitted that there was probable cause for that charge, and for the underlying charges."); *Gribben v. Village of Summit*, 2011 WL 289420, at *2 (N.D.Ill. 2011)("If the defendants had probable cause to arrest him on the damage to property claim—a fact established by his guilty plea—they had probable cause to arrest him, even if the other charges had ultimately turned out to be unfounded.").

Relatedly, Plaintiff's prosecution cannot satisfy the causation element of any Fourth Amendment Malicious Prosecution claim based on his 2004 arrests. Indeed, the fact that a conviction triggered by a guilty plea cuts off the causal chain of any antecedent conduct was precisely one of the rationales for the holding in *Tollett* itself. *See Tollet,* 411 U.S. at 773 ("The defendant who pleads guilty is in a different posture [than someone convicted after a trial]. 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, has never been offered in evidence at a trial, and may never be offered in evidence.").

V. Plaintiff Was Not Detained Prior To Trial As A Result Of His 2004 Arrests And Any Detention/Sentence Relating Thereto Is Credited To An Intact Lawful Sentence.

Plaintiff's claims relating to his 2004 arrests are also barred because Plaintiff did not, in fact serve any time in pretrial detention and because his entire period of post-guilty plea detention was credited concurrently to a lawful sentence for unrelated intact convictions and probation violations.

Plaintiff was arrested on March 3, 2004, appeared in bond court on March 4, 2004, and was released from custody on an I-bond at that time. SMF at ¶ 44. Court documents reflect that Plaintiff was not in custody, but rather out on bond, for every court hearing until he pled guilty to both 2004 arrests on December 16, 2004. *Id.* at ¶ 45. Defendant was sentenced to two years of probation on each arrest, to be served concurrently. *Id.* at ¶ 46.

While on probation, a violation of probation was filed against Plaintiff and a warrant was issued for his arrest. SMF at ¶ 51. Plaintiff was arrested on that warrant on May 12, 2005. *Id.* at ¶ 51. Plaintiff pled guilty to violating the terms of his probation on July 8, 2005. *Id.* at ¶ 52. During his plea to the probation violation, Judge Ford noted that Plaintiff had pled guilty to a domestic battery case, Plaintiff failed to report on his probation, and Plaintiff picked up two new cases while on probation. *Id.* at ¶ 52. Plaintiff's attorney stipulated that Plaintiff failed to report on his probation and that Plaintiff was found guilty of a domestic battery charge as the basis for the violation of probation plea. *Id.* Plaintiff was sentenced to Cook County Department of Corrections Boot Camp on the violation of probation. *Id.* In other words, the criminal sentence that resulted in Plaintiff actually being confined and losing some measure of liberty was not solely related to his 2004 arrests but, rather, also pertained to his involvement in unrelated criminal conduct.

Because Plaintiff either spent no time in pretrial detention or had his detention run concurrent with an unrelated intact conviction/probation violation, Plaintiff cannot proceed on his claims arising from his 2004 arrests. *See Patrick v. City of Chicago*, 81 F.4th 730, 737 (7th Cir. 2023)("As Patrick's counsel stated during oral argument, the five years Patrick spent in pretrial detention—the same time during which he now contends that he was unlawfully detained—was ultimately credited toward his sentence for aggravated discharge of a weapon. '[A] section 1983 plaintiff may not receive damages for time spent in custody, if that time was credited to a valid and lawful sentence.' In reviewing the state court criminal proceedings, we agree with Patrick's counsel that the five years Patrick spent in

custody following his arrest was credited to his valid and lawful sentence of aggravated discharge of a weapon. Because this time was allotted to a lawful sentence, Patrick cannot 'seek damages related to [his] detention and therefore to this extent has no injury that a favorable decision by a federal court may redress.' And without a redressable injury, Patrick does not have Article III standing to pursue this claim."); *Ewell v. Toney*, 853 F.3d 911, 917 (7th Cir. 2017)("[A] section 1983 plaintiff may not receive damages for time spent in custody, if that time was credited to a valid and lawful sentence."); *Ramos v. City of Chicago*, 716 F.3d 1013, 1019 (7th Cir. 2013)(same). Accordingly, Plaintiff has no injury and therefore no standing to bring any damages claim based on this prosecution. *Id.* ("[W]e conclude that [plaintiff] is not entitled to seek damages related to her detention and therefore to this extent has no injury that a favorable decision by a federal court may redress. Without a redressable injury, [plaintiff] lacks Article III standing to press this claim.").

VI. Insofar as Plaintiff's May 2006 Prosecution Is Based On False Testimony, Such Claims Are Barred By Absolute Immunity.

Plaintiff also makes reference to supposed false testimony of certain Individual Defendants as the bases for his claims, in particular, those forming the basis for his 2006 arrest and conviction. *See e.g.* Dckt. No. 1 at ¶ 71. Plaintiff cannot pursue any claim premised upon the alleged false testimony of any of the Individual Defendants *See, e.g., Rehberg v. Paulk*, 566 U.S. 356, 369 (2012)(grand jury witnesses are absolutely immune "from any § 1983 claim based on the witness' testimony" and neither initiate prosecutions nor decide whether to pursue prosecution); *Johnson v. Winstead*, 900 F.3d 428, 440 (7th Cir. 2018); *Washington v. City of Chicago*, 2022 WL 2905669, *12 (N.D. Ill. July 22, 2022), *aff'd*, (7th Cir. 2024); *Colbert v. City of Chicago*, 851 F.3d 649, 655 (7th Cir. 2017); *Reed v. City of Chicago*, 77 F.3d 1049, 1053 (7th Cir. 1996). This immunity also includes preparation of testimony. *See Canen v. Chapman*, 847 F.3d 407, 415 (7th Cir. 2017)("It is long-established that witnesses enjoy absolute immunity, and we have acknowledged that this protection covers the preparation of testimony as well as its actual delivery in court."). Accordingly, to the extent Plaintiff seeks to pursue any claims premised on false

testimony during trial proceedings, pretrial proceedings (i.e. grand jury, suppression hearing, etc.) or the preparation of any testimony with the prosecution, these claims are legally deficient and judgment must be entered on them.

CONCLUSION

WHEREFORE for the reasons stated above, Defendants are entitled to summary judgment in their favor and for whatever other relief this Court deems fit.

Respectfully submitted,

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