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' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, Darryl Edwards, Alvin Jones, John Rodriguez, Calvin Ridgell, Jr., Elsworth J. Smith, Jr., Gerome Summers, Jr., and Kenneth Young, Jr. by and through their respective counsels, for their Reply in Support of Summary Judgment against Plaintiff, William Carter, state as follows:

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I. Plaintiff's Attempts To Keep Numerous Defendants In This Case Are Highly Unavailing And, At Times, Both Legally And Factually Frivolous.

As set forth in Defendants' opening brief, regardless of the legal viability of any of his underlying claims, there is simply no evidence whatsoever that certain individual Defendants had any personal involvement in the alleged misconduct forming the basis for various of Plaintiff's claims. *See* Dckt. No. 194 at 6-17. Rather than simply paring down his claims against the individuals for which there is actual testimony and evidence of personal involvement, Plaintiff stubbornly refuses to relent on any such claims and advances paper-thin and, at times, simply frivolous arguments to attempt to force various Defendants to stand trial in this case despite there being zero evidence on which to base any claims. This wasteful multiplication of proceedings should not be countenanced by this Court. For the reasons set forth below, various Defendants must be removed either from this case entirely or from various claims and allegations given Plaintiff's failure to provide any evidence to sustain his burden of proving their personal involvement.

A. Defendant Ridgell

Plaintiff's attempts to keep Defendant Ridgell in this case as a Defendant are both legally and factually frivolous.

1. Plaintiff Is Clearly Barred Under Rule 37 From Advancing His Previously Undisclosed Evidentiary Theories Against Defendant Ridgell.

At the outset, Plaintiff decided to play "hide the ball" in discovery regarding his claims against Defendant Ridgell and is, accordingly, now barred under Rule 37 from concocting a theory of personal involvement of Defendant Ridgell for which it is undisputed he failed to disclose. *See* Dckt. No. 194 at 9-10.

Plaintiff sues Defendant Ridgell exclusively on claims relating to his June 18, 2004 arrest. *See* Dckt. No. 227 at ¶ 62. It is undisputed that Plaintiff was specifically asked in discovery via Interrogatories to describe the role and/or actions he claimed Defendant Ridgell (and others)

performed relative to this arrest and it is undisputed that, while Plaintiff described certain actions he alleged were taken by other Defendants, Plaintiff provided no evidence nor even referenced Defendant Ridgell in any way, shape, or form in these answers. *Id.* at ¶¶ 63-66. These Interrogatories have never been amended or supplemented to include any information about Defendant Ridgell. *Id.* at ¶ 66. Indeed, despite Plaintiff now trying to salvage his claim with other extraneous information in his summary judgment response filings, Plaintiff has *still* not amended such discovery responses as of the date of this filing. Simply stated, for the entirety of the eight (8) years this case has been pending, Plaintiff has not advanced a single scintilla of evidence or explanation articulating what he claims Defendant Ridgell in particular did that forms the basis for this lawsuit.

Now, after advancing nothing for 8 years, Plaintiff now claims in response to a summary judgment motion that the mere listing of Defendant Ridgell's name on a Vice Case Report by some other officer is enough to proceed to trial on a claim that Defendant Ridgell "failed to intervene" to prevent the misconduct of other officers that Plaintiff claims Defendant Ridgell may have allegedly witnessed committing misconduct. *See* Dckt. No. 226 at 11-14. As set forth below, this is a frivolous theory on its face. But Plaintiff is not even entitled to pursue this newly concocted theory at this point because he blatantly violated Rule 37.

While Plaintiff admits that he did not, in fact, disclose the factual or evidentiary basis for his claims against Defendant Ridgell that he now relies upon, Plaintiff advances two equally baseless theories to defend his prior 8 years of non-disclosure. *See* Dckt. No. 226 at 11-14. The first argument is that the Interrogatory simply called for Plaintiff to provide an answer limited to his own subjective personal knowledge of each Defendants role but not those which might come from other sources. *See* Dckt. No. 226 at 13-14 ("Here, though, plaintiff was not asked the factual basis for his claim; he was asked for his personal knowledge about acts taking by the defendant officers and he properly answered."). This is a ludicrous position to take and frankly just an outright false representation. The

Interrogatory at issue asks in a straightforward manner for Plaintiff to describe "with specificity" the roles and/or actions that each individual he has sued allegedly engaged in with respect to his June 18, 2004 arrest. *See* Dckt. No. 195-30 at ¶ 15 ("Describe with specificity what the following officers' role and/or actions were during your June 18, 2004 arrest."). The suggestion that this simple Interrogatory stated (or even implied) that Plaintiff should only disclose what he himself personally witnessed is pure fiction. *Id.* And the suggestion that describing such actions with specificity is not a request that he provide a factual basis for his allegations is as well. *Id.* This is a classic contention interrogatory which asks for disclosure of Plaintiff's specific factual theories against each person he has sued.

Plaintiff appears to believe he is allowed to play "hide the ball" in discovery by claiming that, while he *individually* may not know what role Defendant Ridgell played, that the factual theories developed *by his legal team* need not be included in his discovery responses. *See* Dckt. No. 226 at 13-14. Plaintiff is just wrong on this point. The law has been clear for nearly 80 years that a party is required to include factual information in discovery known to his attorneys in his responses even if the party himself does not have personal knowledge of those facts. *See Hickman v. Taylor*, 329 U.S. 495, 504 (1947)(holding that party "cannot refuse to answer interrogatories on the ground the information sought is solely within the knowledge of his attorney"); *Trustees of Chicago Regional Council of Carpenters Pension Fund v. Drive Construction, Inc.*, 2022 WL 2341290, at *5 (N.D.Ill., 2022)("[T]he knowledge of plaintiffs' attorneys regarding the questionnaires and the Union's investigation of Drive is "available" to plaintiffs for the purpose of Federal Rule of Civil Procedure 33. The facts gleaned from this investigation must be disclosed to Drive when responsive to its interrogatories."); *Clark Equipment Co. v. Lift Parts Mfg. Co., Inc.*, 1985 WL 2917, at *7 (N.D.Ill. 1985)("A party clearly cannot refuse to answer interrogatories on the ground that the information sought is solely within the knowledge of his attorney."); *Priddy v. Health Care Serv. Corp.*, 2016 WL 6237800, at *4 (C.D. Ill. 2016)("[A] party cannot refuse to answer an interrogatory merely on the ground that the information sought is solely within

the knowledge of his attorney…A party must disclose in answers to interrogatories information in his attorney's possession, even though it may not have not been transmitted to a party."); *Estate of Swayzer v. Clarke*, 2019 WL 1980349, at *3 (E.D.Wis., 2019)("[R]esponding to a contention interrogatory is, at least in part, an obligation of counsel. 'An attorney who is faced with 'contention' type discovery must identify the witnesses and documents he/she has marshaled in a way to support his/her client's position and to help illuminate the issues to be resolved as the responses and answers are due.' Accordingly, the court rejects the plaintiffs' argument that the responses are sufficient because they reflect the extent of Swayzer's personal knowledge."); *Flomo v. Bridgestone Americas Holding, Inc.*, 2009 WL 5103311, at *3 (S.D.Ind. 2009)("First, to the extent that the interrogatories seek information known only to counsel or counsel's agents.., Plaintiffs claim that the interrogatories are improper. But that argument ignores well-established precedent to the contrary, which permits parties to obtain via interrogatory information known to opposing counsel.").

Plaintiff's second argument is that his failure to disclose the basis on which he sued Defendant Ridgell was "harmless." *See* Dckt. No. 226 at 14. Plaintiff does not bother to develop this argument beyond simply concluding as much and, as the Seventh Circuit specifically held in *Moran*, sandbagging an evidentiary theory until a summary judgment response is, by definition, *not* harmless. *See Moran v. Calumet City*, 54 F.4th 483 (7th Cir. 2022)("[I]t would prejudice the defendants if they had to contend with allegations at summary judgment that Moran did not disclose during discovery."). To the extent that Plaintiff is asserting that this was harmless because they should have anticipated this factual theory given that they had the report in question, this is once again frivolous. Indeed, in *Moran*, the evidentiary theories which the Court found were barred under Rule 37 were also premised on police reports in the defendants' possession. *Id.*, at 54 F. 4th at 497 (barring plaintiff from relying on Brayd theory regarding suppression of a police dispatch log because the plaintiff did not disclose this in interrogatories as a basis for his claims). Defendant Ridgell was entitled to Plaintiff's theory of relief

against him years ago and Plaintiff's decision to wait until a summary judgment response to attempt to "spring" this theory on Defendant Ridgell is indefensible under governing law. This alone merits summary judgment in favor of Defendant Ridgell on all claims asserted against him.

2. The Mere Inclusion Of An Individual's Name On A Police Report Is Not Even Close To Sufficient To Establish Personal Involvement.

Even putting Plaintiff's blatant Rule 37 violation to the side, Plaintiff's newly concocted theory fails on the merits. Plaintiff either explicitly admits or fails to supply any citations to evidence in his Response to Defendant Ridgell's Local Rule 56.1 Statement of Material Facts (which omission operates as an admission by Rule (*see* Local Rule 56.1(e)(3)) that: (1) Defendant Ridgell did not prepare and his name does not appear anywhere on Plaintiff's Arrest Report (Dckt. No. 227 at ¶¶ 67-68); (2) Defendant Ridgell did not prepare and his name does not appear on the Criminal Complaint charging Plaintiff with any criminal offenses (*id.* at ¶¶ 70-71); (3) Defendant Ridgell did not prepare and his name does not appear on any inventory reports relating to Plaintiff's arrest (*id.* at ¶¶ 72-73); (4) Defendant Ridgell did not communicate with any prosecutors about any part of Plaintiff's arrest (*id.* at ¶¶ 77, 85); (4) Plaintiff was asked to describe what role Defendant Ridgell had in his arrest and simply referred to an OPS complaint that did not reference Defendant Ridgell in any way (*id.* at ¶¶ 83-84); and (5) Plaintiff was asked at length at his deposition to describe the events forming the basis for his claims and did not mention Defendant Ridgell on a single occasion (*id.* at ¶ 78).

The sole and exclusive basis on which Plaintiff seeks to proceed against Defendant Ridgell is that his name was apparently placed as an assisting officer on a Vice Case Report describing the arrest. *See* Dckt. No. 226 at 11-12; Dckt. No. 227 at ¶¶ 76, 80-81. While it is true that Defendant Ridgell's name is listed on a Vice Case Report by someone else as an assisting officer, Plaintiff supplies no evidence of any sort (nor even any attempt at any explanation) for what "assistance" Defendant Ridgell supposedly provided relative to Plaintiff's arrest or what he supposedly "witnessed." *Id.* He merely concludes that Defendant Ridgell must have witnessed "some portion" of Plaintiff's arrest. *Id.* Which

"portion" of the incident Plaintiff alleges that Defendant Ridgell "witnessed" is never explained. *Id.* Did Defendant Ridgell simply see Plaintiff being handcuffed? Did he simply see him being placed in a vehicle? Did he place Plaintiff in a vehicle after the arrest? Did he escort him into the police station? Was he simply in the general vicinity as an enforcement officer waiting on instructions to attempt to apprehend any fleeing offenders? Did Defendant Ridgell even witness or assist at all in any part of Plaintiff's arrest in particular?

On this latter point, it bears repeating that the Vice Case Report at issue does not only cover the circumstances of *Plaintiff's* arrest but also covers the arrests of ***two*** *other persons* in the vicinity for trespassing and loitering on CHA property. *See* Dckt. No. 227 at ¶ 75. Thus, even taking the report itself at face value, there is not even evidence from this report that Defendant Ridgell was even involved in *any* respect in Plaintiff's arrest in particular. *Id.*

These unanswered questions are enough themselves for Defendant Ridgell to be granted summary judgment. "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). "[M]ere presence at the scene fails to provide the requisite personal involvement..." *Hall v. Jung*, 2014 WL 12942863, at *3 (N.D.Ill., 2014); *Ortiz v. City of Chi.*, 2010 WL 3833962, at *8 (N.D. Ill. 2010).

Plaintiff stakes his entire argument on the supposition that merely being listed on a police report is enough to survive summary judgment. *See* Dckt. No. 226 at 11-12. Plaintiff cites not a single case where anything close to this has been found sufficient to proceed to trial against a defendant. *Id.*

And, again, the law is the opposite of what Plaintiff claims it to be. *See Rivera v. Guevara*, 319 F.Supp.3d 1004, 1051–52 (N.D.Ill., 2018). As explained in *Rivera* in rejecting an identical argument:

> To create a genuine dispute, Rivera points to the list of "Arresting Officers" on the September 16 report summarizing the Valentin investigation. Unchallenged evidence in the record shows that at the time, it was common practice to list every police officer involved in the investigation as an arresting officer to give the widest possible credit—even if the officer rode along on only one night of the investigation. Accordingly, the presence of these officers' names on lists of additional arresting officers in police reports does not, without more, create a fact issue on their personal involvement. *Id.*

Moreover, in response to Defendants' citation of a dozen or so cases holding summary judgment appropriate under similar circumstances, Plaintiff ignores almost all of them and focuses his attention on only attempting to distinguish one, *Walker v. White*, 2021 WL 1058096, *14 (N.D. Ill. 2021). *See* Dckt. No. 226 at 12-13. Plaintiff argues that *Walker* is distinguishable because, in that case, the defendants affirmatively stated they were not present during the relevant interactions while here Defendant Ridgell merely claims a lack of memory of these events. *Id.*

To say this argument is frivolous is an understatement. It should come as no surprise that Defendant Ridgell would have little or no memory of an incident that occurred over 20 years ago. But, more importantly, the Supreme Court held nearly 40 years ago that a defendant need not introduce *any evidence whatsoever* in order to shift the burden of proof on summary judgment to a plaintiff; rather, a defendant need only point out the absence of evidence and the burden then falls wholly on the plaintiff to show some actual admissible evidence supporting his claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The import of this rule is that a civil defendant need only state that no evidence exists to support some point or another in order to shift the burden back to a plaintiff to show that he or she is wrong by actually showing the affirmative existence of such evidence; no other obligation whatsoever is required. *See e.g. Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir.2013)(defendant's burden on summary judgment "may be discharged by showing—that is, point[ing] out to the district court—that there is an absence of evidence to support the nonmoving party's case."); *Wrenn v. Exelon*

Generation LLC, 2021 WL 2222677, *8 (N.D.Ill., 2021)("Because the movant on summary judgment need only show that there is 'an absence of evidence to support the nonmoving party's case,' ExGen has met its burden of production."). Thus, whether by affirmative statement or mere lack of memory, the burden to show actual evidence supporting claims against Defendant Ridgell is on Plaintiff and Plaintiff has unquestionably failed to provide such evidence.

B. Defendant Young

Plaintiff argues that Defendant Young should be held liable for Plaintiff's due process claim regarding his 2006 prosecution, because Defendant Young allegedly testified that he was "involved in the arrest." *See* Dckt. No. 226 at 7. This is not true. In response to counsel asking Defendant Young why he believed he was listed on the Vice Case Report for Plaintiff's May 19, 2006 arrest, Defendant Young stated, "I was at some form assisting the arresting officers with this particular arrest." ECF No. 195-10, p. 207:1-11. Said testimony does not establish that Defendant Young was "involved in the arrest."

Moreover, Plaintiff himself testified that Defendant Jones arrested him in his 5th floor apartment and escorted him downstairs. When Plaintiff arrived on the first floor, specifically to the back hallway, Defendant Young were already there. When asked again, Plaintiff confirmed that only Defendant Jones was in his apartment and arrested him, and all other officers, including Defendant Young, were downstairs already. Dckt. No. 195, ¶¶105-107.

Plaintiff cites to *Padilla v. City of Chicago*, 932 F. Supp. 2d 907, 923 (N.D. Ill. 2012) for the proposition that a jury could conclude that Defendant Young was aware that Plaintiff was being falsely arrested and falsely charged but did not intervene to prevent the violations of his rights. *See* Dckt. No. 226 at 7-8. But *Padilla* is easily distinguishable. In *Padilla*, the court found that:

> "[E]ach Defendant Officer witnessed [Plaintiff] being arrested without probable cause, questioned in an alley, driven in a squad car around town and jailed, yet no officer intervened. There was ample opportunity for a non-participating Defendant Officer to attempt to talk his

> or her fellow officers out of the false arrest, to call a supervisor or to call for backup, but there is absolutely no evidence of any such intervention." *Padilla* at 923.

In the case at bar, there is no evidence that Defendant Young even witnessed Plaintiff being arrested; he was standing downstairs, five floors away. Nor is there any evidence he spoke to Plaintiff, transported him to jail, or completed any paperwork related to the arrest. Dckt. No. 194 at 23. This case is much more analogous to *Walker v. White*, 2021 WL 1058096, at *14 (N.D. Ill. 2021), where summary judgment was entered for several officers, in part, because the officers arrived on scene after the plaintiff was already detained.[1]

C. Defendants Edwards, Rodriguez, and Summers

Plaintiff argues that Defendant Edwards should be held liable for claims arising from Plaintiff's March 3, 2004 arrest, because Defendant Edwards "assisted in the arrest" and was "present for the arrest." *See* Dckt. No. 226 at 10-11. Defendants admit that in response to an OPS complaint made by Plaintiff, Defendant Edwards wrote in a memo that he "assisted in the arrest of Plaintiff" on March 3, 2004. See Defendant Officers' Response to Plaintiff's Local Rule 56.1(b)(3) Statement of Additional Material Facts, No. 6. However, that alone is insufficient to hold Defendant Edwards liable under the Fourth Amendment.

In support of his argument that Defendant Edwards was "present for the arrest," Plaintiff cites to a July 8, 2004 memo from OPS Investigator Richmond to the Chief OPS Administrator (C.R. # 296355). Dckt. No. 228, ¶ 3. However, the cited memo does not support the proposition that Defendant Edwards was present for Plaintiff's arrest; it only establishes that he was on scene when Defendant Young allegedly pushed Plaintiff's head into a wall. *See* Defendant Officers' Response to Plaintiff's Local Rule 56.1(b)(3) Statement of Additional Material Facts, No. 3.

[1] *Walker v. White* is discussed more thoroughly in Defendants' Motion for Summary Judgment, Dckt. No. 194 at 7.

It is undisputed that Defendants Mohammed and Young arrested Plaintiff on March 3, 2004. Dckt. No. 227 at ¶ 9. It is also undisputed 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"). Plaintiff is simply speculating that Defendant Edwards was present for and knew that Plaintiff was falsely arrest, and "speculation is insufficient to withstand summary judgment." *Morfin v. City of E. Chicago*, 349 F.3d 989, 1002 (7th Cir. 2003).

Plaintiff also argues that Defendants Young and Rodriguez are liable for Plaintiff's June 18, 2004 arrest because they are named in a box on a vice case report as "WITNESSED" and Defendant Jones allegedly testified that means the officers "witnessed some portion of the arrest." Pl.'s Response at 11-12. While Defendants Young and Rodriguez are named in a box as "WITNESSED," Defendant Jones testified as follows, "Q: And that's because those officers witnessed something? A: Yes." Dckt. No. 230-6 at 581:8-10. Witnessing "something" is not the same as witnessing an arrest. Contrary to Plaintiff's claims, there is simply not enough evidence for a jury to conclude that Defendants Young and Rodriguez had knowledge of the circumstances of Plaintiff's June 18, 2004 arrest and failed to intervene to prevent the violation of Plaintiff's rights. Pl.'s Response at 18.

Finally, Defendant Summers also moved for summary judgment regarding his alleged involvement in Plaintiff's June 18, 2004 arrest. Dckt. 194 at 22. Plaintiff did not address Defendant Summers in his Response, therefore, Defendant Summers is entitled to summary judgment on all claims arising from Plaintiff's June 18, 2004 arrest. *Betco Corp., Ltd. v. Peacock*, 876 F.3d 306, 309 (7th Cir. 2017)(underdeveloped or conclusory arguments in response to motion for summary judgement constitutes waiver); *Walton v. U.S. Steel Corp.*, 497 F. App'x 651, 655 (7th Cir. 2012)(non-movant waived

argument "by failing to raise it in response to summary judgment"); *Candell v. Shiftgig Bullpen Temp. Emp. Agency*, 2019 WL 2173797, at *3 (N.D.Ill. 2019)("A non-movant's failure to respond to arguments addressed in a summary judgment motion results in a waiver.").

II. Plaintiff's Claims Relating To His 2004 Arrests Are Barred By *Tollett* and Its Progeny And Plaintiff's Attempts To Distinguish Such Governing Law Is Unavailing.

As set forth in Defendants' opening filings (and as remains undisputed), with respect to Plaintiff's 2004 arrests, Plaintiff pleaded guilty to the underlying criminal offenses at issue and such guilty pleas were knowing and voluntary decisions by Plaintiff. *See* Dckt. No. 194 at 17-29; Dckt. No. 227 at ¶¶ 47-54. It is similarly undisputed that Plaintiff seeks to proceed on claims arising from his 2004 arrests which, in essence, rely upon alleged antecedent misconduct of various Defendants. *See* Dckt. No. 1 at ¶¶ 29-30, 45-46. Specifically, Plaintiff claims he pleaded guilty to offenses which he was actually innocent of committing because he "knew that proving that the [March 3, 2004 and June 18, 2004] Arresting Officers had concocted the charges against him would not be possible." *Id.*

In response, Plaintiff lodges a variety of responses including: (1) this Court's predecessor judge, Judge Gettleman rejected this argument on Defendants' motion to dismiss and, thus, this rejection is now "law of the case" which cannot be re-litigated (Dckt. No. 226 at 14-16); (2) the Supreme Court in *Haring v. Prosise*, 462 U.S. 306 (1983) held that the principles of *Tollett* and its progeny do not apply to Section 1983 claims (*id.* at 14, 16-19); and (3) that the applicability of *Tollett* on this issue "depends, in the first instance, on the collateral estoppel effect that would be given to the plea in the forum where the plea was entered" and that collateral estoppel does not apply since Plaintiff's guilty plea was vacated (*id.* at 18-20). None of these arguments stand up to scrutiny.

A. Plaintiff's Argument That A Ruling On A Motion Dismiss Operates As "Law Of The Case" On Summary Judgment Is Baseless.

Plaintiff's opening argument on this issue is a procedural one, specifically, that the prior ruling on the pleadings somehow operates as "law of the case" preventing this Court from ruling on the

present motion *de novo*. *See* Dckt. No. 226 at 15-16 *citing Santamarina v. Sears, Roebuck & Co.*, 466 F.3d 570, 571-72 (7th Cir. 2006) and *HK Sys., Inc. v. Eaton Corp.*, 553 F.3d 1086, 1089 (7th Cir. 2009). Plaintiff is wrong. Neither case cited by Plaintiff holds that a ruling on a motion to dismiss somehow precludes (or is even relevant to) a subsequent ruling on a summary judgment motion. *See Santamarina*, 466 F.3d at 571-72 (denying application of law of the case despite that motion was identical motion as filed in previous stage of litigation); *HK Sys., Inc.*, 553 F.3d at 1089 (same). Indeed, despite both cases involving attempts to have a court reconsider the exact same motion in the exact same procedural posture, both cases cited by Plaintiff rejected application of "law of the case." *Id.*

More importantly, however, Plaintiff misunderstands this doctrine. The "law of the case" doctrine only applies to final orders on the exact same motion; it does not apply to the denial of motions for which a party later pursues the same or similar arguments rejected at an earlier stage of the proceedings. *See Cameo Convalescent Center, Inc. v. Percy*, 800 F.2d 108, 109 (7th Cir. 1986)(rejecting argument that refusing to grant motion to dismiss was law of the case which precluded granting later summary judgment motion); *Thornton v. Hamilton Sundstrand Corp.*, 54 F.Supp.3d 929, 938 (N.D.Ill., 2014)(""The law-of-the-case doctrine binds a court only where a court's order was final.... The denial of a motion to dismiss is an interlocutory order.' A denial of a motion to dismiss does not preclude the Court from considering the same argument on summary judgment.").

B. *Haring* Neither Controls This Case Nor Even Has Any Relevance To It.

Plaintiff wildly misconstrues the applicability of *Haring* to this case. The first clue that Plaintiff is grasping at straws is that, despite *Tollett* being addressed in Defendants' motion to dismiss proceedings in this case (*see* Dckt. No. 43 at 10-12), Plaintiff never made any such argument about *Haring* in response nor even cited *Haring*. *See* Dckt. No. 51. Thus, Plaintiff's current position that *Haring* is somehow a panacea to *Tollett* and its progeny is difficult to take seriously.

In any event, *Haring* is simply not relevant to this case and most certainly does not contradict the central import of *Tollett* and its progeny. The principles established in *Tollett* and its progeny could not have been clearer:

(1) the decision to plead guilty, unless the product of Constitutionally infirm advice from a criminal defense attorney which rendered such decision unknowing and involuntary, extinguishes all claims of antecedent governmental misconduct which is alleged to have produced the plea. *See* Dckt. No. 194 at 17-26; and

(2) Any claims of an involuntary or unknowing guilty plea may not be premised upon antecedent government misconduct, but, rather, may only be premised upon Constitutionally fault advice of a criminal defense attorney. *Id.;*

(3) This preclusion is not premised upon collateral estoppel but, rather, premised upon a bright line rule that a knowing and voluntary guilty plea acts as a supervening causation of a conviction which renders any alleged claims of antecedent governmental misconduct irrelevant in the production of the guilty plea. *Id.*

Plaintiff claims that *Tollett*'s application is limited solely to federal habeas cases and should not apply to civil rights claims. *See* Dckt. No. 226 at 16-17. In this regard, Plaintiff claims that *Haring* held that *Tollett* does not apply to Section 1983 claims. *Id.* ("The express holding of *Haring v. Prosise*, 462 U.S. 306 (1983) is that the habeas cases on which defendants seek to rely do not apply to plaintiff's § 1983 claims."). *Haring* held no such thing.

Despite Plaintiff's best attempts, *Haring* bears no factual or legal applicability to the present issues and, in fact, merely restates well-established law that free-standing Constitutional violations wholly unrelated to the crux of a criminal conviction may survive notwithstanding such conviction. However, the apparent suggestion that *Haring* somehow held that a plaintiff may knowingly and voluntarily plead guilty to the crimes he was charged with and then later just turn around and proceed unimpeded on a Section 1983 premised on governmental actors supposedly causing such guilty plea by their misconduct did not occur.

Haring involved an individual (Prosise) who pled guilty in state court in Virginia to a charge of manufacturing a controlled substance. *Id.,* 462 U.S. at 308. However, after pleading guilty, Prosise

turned civil plaintiff and sued his arresting officers relating to the search of his residence that turned up the contraband that formed the basis for his conviction. *Id.* at 309. Importantly, none of the claims raised by Prosise in his subsequent Section 1983 case sought to challenge or otherwise contradict his guilty plea or claim that governmental misconduct caused such plea; rather, the claims raised were solely and exclusively related to the conduct resulting in the discovery of evidence of his guilt (specifically, the propriety of the search of his residence) rather than fabrication of evidence relating to his guilt itself. *Id.*

The district court dismissed this complaint. However, the reason for this dismissal was that Prosise had supposedly waived his claims on the illegal search and seizure claims by failing to bring a motion to suppress in criminal court to litigate such claims. *Id.* at 309-10 ("The court reasoned that Prosise's failure to assert his Fourth Amendment claim in state court constituted a waiver of that right precluding its assertion in any subsequent proceeding."). The district court explained that "Prosise's plea of guilty constituted an implied admission that the search of his apartment was legal" and that "even though the constitutionality of the police conduct was not litigated in the state criminal proceedings, Prosise's 'plea of guilty estops him from asserting a fourth amendment claim in a § 1983 suit [because his] plea of guilty necessarily implied that the search giving rise to the incriminating evidence was lawful.'" *Id.*

On appeal, the Fourth Circuit Court of Appeals reversed. In so doing, the Court of Appeals held that any preclusive effect of subsequent claims based on underlying criminal proceedings was to be determined by the law of the state in which the conviction was entered (in that case the State of Virginia) and noted that "under Virginia law 'criminal judgments, whether by guilty plea or adjudicated guilt, *have no preclusive effect in subsequent civil litigation*.'" *Id.* (emphasis added). Moreover, the Court of Appeals noted that the preclusive effect of a guilty plea "should not 'have preclusive effect as to potential but not actually litigated issues respecting the exclusion of evidence on fourth amendment

grounds.'" *Id.* The Court of Appeals explained that "a defendant who pleads guilty has not necessarily had an adequate incentive to litigate 'with respect to potential but unlitigated issues related to the exclusion of evidence on fourth amendment grounds.'" *Id.*

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

First, the Supreme Court notably held that the general proposition that litigated claims in state court criminal proceedings do, in fact, bar subsequent Section 1983 claims so long as the law of the state in which the claims were adjudicated recognize such barring. *Id.* at 314. In that regard, the Court first needed to determine whether the State of Virginia would recognize the barring of a claim that was never actually litigated during the underlying criminal proceedings. *Id.* Looking to Virginia law, the Supreme Court held that it did not because Virginia law holds that "the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was entered." *Id.* at 314-15. Thus, because the legality of the search was both unrelated to the criminal defendant/civil plaintiff's guilty plea and was not litigated in the criminal proceedings, the Court held that, under Virginia law, it would be inappropriate to bar such claims in a subsequent civil proceeding. *Id.* at 316 ("The only question raised by the criminal indictment and determined by Prosise's guilty plea in Arlington Circuit Court was whether Prosise unlawfully engaged in the manufacture of a controlled substance. This question is simply irrelevant to the legality of the search under the Fourth Amendment or to Prosise's right to compensation from state officials under § 1983.").[2]

[2] It also bears noting here that the Seventh Circuit has recognized that Illinois law is not even the same as Virginia law on this point and *does* extend the preclusive effect to subsequent proceedings where a criminal defendant could have, but did not, challenge underlying Constitutional infirmities in his case. *See Del Vecchio v.*

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

Third, beyond this, the civil defendants further argued that the Court should create "a special rule of preclusion which nevertheless would bar litigation of his § 1983 claim" even if unlitigated and not inconsistent with his plea of guilt simply because the criminal defendant/plaintiff had an opportunity to litigate such issue in the underlying proceeding. *Id.* at 317-321. The Court refused to recognize such a special rule. *Id.* In so doing, the Court analyzed *Tollett* and its progeny and held that it "simply recognized that when a defendant is convicted pursuant to his guilty plea rather than a trial, the validity of that conviction cannot be affected by an alleged Fourth Amendment violation because the conviction does not rest in any way on evidence that may have been improperly seized" and that "a plea of guilty does not rest on any notion of waiver, but rests on the simple fact that the claim is irrelevant to the constitutional validity of the conviction." *Id.* To this end, the Court merely held that barring an unlitigated Constitutional claim that was wholly unrelated to the question of guilt cannot bar a subsequent Section 1983 claim. *Id.* at 322 ("While Prosise's Fourth Amendment claim is irrelevant to the constitutionality of his criminal conviction, and for that reason may not be the basis of a writ of habeas corpus, that claim is the crux of his § 1983 action which directly challenges the

Illinois Dept. of Corrections, 31 F.3d 1363, 1380–81 (7th Cir. 1994). Thus, *Haring* is not even applicable on its face to the very issue at bar.

legality of police conduct."). This rule barring such unlitigated and unrelated claims, according to the Court, would be contrary to the purpose of Section 1983. *Id.*

Stated simply, no part of *Haring* in any way, shape, or form holds that all Section 1983 claims survive in the face of *Tollett*. To the contrary, the holding of *Tollett* was strictly confined to the barring of unlitigated claims which had no relation to the guilt or innocence of an individual. In this regard, *Haring* is merely a rehashing of well-established law holding that certain Constitutional claims may survive a conviction (whether by guilty plea or otherwise) so long as the claims do not imply the invalidity of the basis for the conviction. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994)("[W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit."). Thus, consistent with *Haring*, the law is clear that claims for illegal searches remain viable even in the face of evidence of actual guilt but that a plaintiff may not proceed on damages claims which contradict such evidence of guilt. *McWilliams v. City of Chi.*, 2022 WL 135428, *2 (7th Cir. 2022)(illegal contraband discovered after illegal search provides probable cause defeating both federal and state claims because exclusionary rule does not apply in civil cases); *Martin v. Marinez*, 934 F.3d 594, 598 (7th Cir. 2019)(same). But, again, the law even subsequent to *Haring* has made clear - fully consistent with *Tollett* and its progeny - that arguments about predicate Constitutional misconduct which produced a conviction cannot be used to attack guilt itself. *Id.*; *see also Torres v. City of Chi.*, 2021 WL 392703, at *10-11 (N.D. Ill. 2021)(granting summary judgment on all claims except for brief detention prior to discovery of contraband during search; "[E]ven if constitutional violations preceded the officers'

probable cause determination because, as the Seventh Circuit recently clarified, 'the exclusionary rule does not apply in a civil suit under § 1983 against police officers.' In other words, even if the evidence providing probable cause was the fruit of a warrantless entry and search without Plaintiff's consent, probable cause still insulates Defendants from liability.").

But, here, Defendants do not seek to bar Plaintiff from contesting ancillary misconduct claims unrelated to his guilt that were not part of the guilty plea proceedings. Rather, consistent with the principles of *Tollett*, Defendants seek to bar Plaintiff from attempting to blame them (and recover money) for a conviction for which he knowingly and voluntarily brought about by his own decision to plead guilty. Again, the issue is one of causation which is equally at play in Section 1983 litigation as in habeas proceedings. The Supreme Court through *Tollett* and its progeny slammed the door shut on theories of causation for guilty pleas when it is undisputed (as here) that such plea is knowing and voluntary. *Tollett*, 411 U.S. at 266–67 ("[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*.")(emphasis added).

Nor does Plaintiff even attempt to explain why applying *Tollett*'s strict causation rule should differ in Section 1983 cases than in federal habeas proceedings. Again, the rationale behind this strict causation rule is, in part, a policy rationale which seeks to protect the conclusiveness of guilty pleas which serve an important function in our judicial system. Dckt. No. 194 at 18-20. Thus, if a criminal defendant avails himself of the benefits that come with a guilty plea (leniency, expedience, etc.), the Supreme Court holds that the lower courts must hold them to the bargain they made. *Id.* There is simply no rational explanation for why the Supreme Court would strictly extinguish the rights of a

criminal defendant in freeing themselves from incarceration while at the same time permitting plaintiffs in much lower stakes Section 1983 litigation over money to casually sidestep the consequences of their own knowing and voluntary choices. The fact of the matter is that *Tollett* was premised upon a causation issue and causation is obviously equally applicable to civil claims as it is to habeas claims.

In this regard, contrary to Plaintiff's argument, several courts (including one as recently as 2014-many years after both *Haring* and the incidents in this case) have held that *Haring* **does not** bar all Section 1983 claims under *Tollett* and its progeny but rather only applies to those seeking to bar unlitigated antecedent claims unrelated to guilt. *See Procknow v. Curry*, 26 F.Supp.3d 875, 883 (D.Minn., 2014)(declining to apply *Haring* to case where alleged antecedent misconduct was not litigated at underlying case); *Daubenmire v. City of Columbus*, 507 F.3d 383, 390 (6th Cir. 2007)(distinguishing *Haring* in § 1983 action where plaintiffs had litigated the legality of their arrests in prior criminal case); *Coney v. Smith*, 738 F.2d 1199, 1199–200 (Dist. Fl. 1984)(noting in Section 1983 claim that *Haring* did not extinguishment based upon claim actually litigated in underlying criminal case; "[I]t appears that Coney litigated the issue of illegality of arrest and search prior to his plea of guilty. Although the state court proceedings on the suppression issue were not made a part of the record before the district court, we may take judicial notice of the same. *Haring*, therefore, does not apply.").

C. Plaintiff's Straw Man Argument Regarding Collateral Estoppel Is Irrelevant

Plaintiff's final attempt to distinguish the clear applicability of fifty years of Supreme Court precedent relies on a straw man argument. Specifically, Plaintiff claims that the issue here is whether a vacated guilty plea is entitled to collateral estoppel effect and then proceeds to cite to Illinois state law supposedly holding that "a vacated guilty plea does not bar a a claim for relief related to the conviction." *See* Dckt. No. 226 at 18-19. Collateral estoppel has no bearing on whether *Tollett* applies to bar Plaintiff's claims.

Again, *Tollett* and its progeny are not founded upon concepts of "collateral estoppel" but rather on concepts of causation, specifically, that a knowing and voluntary guilty plea, as a matter of law, is what causes the conviction as opposed to what government official may have done prior to this plea allegedly to produce it. *Tollett*, 411 U.S. 258, 267 (1973)("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."); *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."). Thus, it does not matter whether Plaintiff's guilty plea has been vacated or not because, under *Tollett*, it was Plaintiff's undisputedly voluntary acts that produced his conviction rather than the acts of the Defendants he has sued. *Id.*[3]

C. At Minimum, Defendants Are Entitled To Qualified Immunity On All Claims Arising From Antecedent Misconduct Allegedly Causing His Guilty Pleas.

[3] Relatedly, Plaintiff feigns confusion about Defendants' argument regarding the continuing applicability of the underlying findings in the criminal proceeding that Plaintiff's guilty plea was a knowing and voluntary. *See* Dckt. No. 226 at 19. There should be no confusion on this but, regardless, Plaintiff does not contest that his guilty plea was knowing and voluntary. *See* Dckt. No. 227 at ¶¶ 47-54. Thus, whether the underlying findings are binding or not are immaterial for the purposes of this Motion.

As set forth in Defendants' opening brief. Plaintiff's argument against the application of Qualified Immunity starts and ends with his citation of *Haring* as the supposed well-established law showing that *Haring* does not bar all Section 1983 claims. *See* Dckt. No. 226 at 18, 30-32. Neither *Haring* nor any of the district court cases cited by Plaintiff hold any such thing. Whether the Supreme Court will carve out a rule to the contrary at some later date remains to be seen but this is irrelevant given that the clarity of the law must have been established as of 2004 when the relevant events occurred. The fact is that *Tollett* and its progeny clearly establish a bright line rule on causation for guilty pleas and there is no principled reason why this rule would be applied strictly in habeas contexts (where freedom and liberty is at stake) but loosely in comparatively more minor civil litigation (where only money is at stake). To this end, the courts have held repeatedly held that the Qualified Immunity analysis cannot be applied using anything other than an exactingly high level of specificity which places the issue beyond any reasonable dispute to all government officials. *See Royal v. Norris*, 776 Fed. Appx. 354, 357–58 (7th Cir. 2019); *see also Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015); *Kisela v. Hughes*, 138 S.Ct. 1148, 1152 (2018).

Nor are Plaintiff's attempts to have this Court ignore *Bianchi*'s application of Qualified Immunity to unsettled law on the viability of legal claims availing. According to Plaintiff, Qualified Immunity only looks to the unsettled nature of conduct rather than the availability of a remedy. *See* Dckt. No. 226 at 30-32. In support of this argument, Plaintiff cites only pre-*Bianchi* cases. *Id.* Not only was *Bianchi* itself crystal clear that Qualified Immunity applies to the unsettled nature of the law regarding the establishment of a cause of action but, indeed, in the last several years numerous courts have come to the same conclusion in addressing federal Malicious Prosecution claims that were first recognized in *Thompson v. Clark*. *See e.g. Moore v. City of Dallas, Texas,* 2024 WL 913368, at *3 (5th Cir. 2024)(same)(pre-*Thompson* was barred by Qualified Immunity because viability of claim was not well-established prior to *Thompson*); *Guerra v. Castillo*, 82 F.4th 278, 289 (5th Cir. 2023) (same); *Frias v.*

Hernandez, 2024 WL 1252945, at *8 (N.D.Tex. 2024)("The court concludes that plaintiffs have not adequately pleaded a malicious prosecution claim under § 1983 because, between 2003 and 2021, Fifth Circuit precedent explicitly denied the possibility of a constitutional malicious prosecution claim."); *Rose v. Collins*, 2022 WL 1251007, at *1 (E.D. Ark., 2022)("The Supreme Court recently clarified that Rose's pretrial detention claim is one under the Fourth Amendment for malicious prosecution. Collins, Hodges, and Ellis are entitled to qualified immunity on that claim, however, because Rose's constitutional right against malicious prosecution was not clearly established when he was arrested in 2013.").

With respect to *Bianchi*, Plaintiff cites a district court case (*Serrano v. Guevara*, 315 F. Supp. 3d 1026, 1038 (N.D. Ill. 2018)) which referenced that *Bianchi*'s holding appeared to be based on the first rather than the second prong of the Qualified Immunity analysis. *See* Dckt. No. 226 at 32. While citation of a district court case to contradict case precedent from the Court of Appeals is problematic for obvious reasons, Plaintiff also does not bother to explain why the "prong" of Qualified Immunity on which *Bianchi* rested matters in the first place. *Id.* The reason for this conspicuous omission is plain: it is irrelevant. Plaintiff bears the burden on this Motion of establishing the non-existence of *both* prongs of the Qualified Immunity analysis. *Jones v. Wilhelm*, 425 F.3d 455, 460–61 (7th Cir. 2005); *J.N.J.C. by Tye v. Cooper*, 2017 WL 5634242, at *4 (E.D.Wis. 2017)("A plaintiff must establish both prongs of the qualified immunity doctrine.").

III. Allowing Plaintiff To Proceed On A Fabrication Of Evidence Claim In The Absence Of A Trial Would Explicitly Violate Seventh Circuit And Supreme Court Precedent.

All of Plaintiff's Fourteenth Amendment Fabrication of Evidence claims are barred because Plaintiff never stood trial on those claims. *See* Dckt. No. 194 at 30-33. Because there was never a trial, Plaintiff cannot have been deprived of his liberty based on the fabrication of evidence at any such non-existent trial. *Id.* The inviability of a Fourteenth Amendment Fabrication of Evidence claim in the absence of a trial has been well-established for several years and Plaintiff's attempt to resurrect

this long-moribund theory that evidence "used to deprive a Plaintiff of their liberty in any way" is highly unavailing. *See* Dckt. No. 226 at 21-25.

While it is undoubtedly true that the courts at times have come to differing conclusions regarding whether evidence never introduced at an actual criminal trial could form the basis for a Fourteenth Amendment Fabrication of Evidence claim, this issue was conclusively resolved by the Seventh Circuit in 2019 and has been re-affirmed several times since 2019. *Lewis v. City of Chicago,* 914 F.3d 472, 478-79 (7th Cir. 2019)(overruling *Hurt v. Wise,* 880 F.3d 831, 844 (7th Cir. 2018) and holding that any claim based on the fabrication of evidence not introduced at a criminal trial must be brought under the Fourth Amendment); *Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020) (finding that a jury instruction merely requiring the jury to find that allegedly fabricated "evidence was used to deprive Plaintiff of his liberty in some way" was incomplete because "it failed to explain that Patrick had the burden to prove that the fabricated evidence was used against him *at his criminal trial* and was material"); *Moran v. Calumet City*, 54 F.4th 483, 499 (7th Cir. 2022) (holding that "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"). Simply stated, the Fourteenth Amendment is a trial right and, while a plaintiff may attempt to pursue claims under the *Fourth* Amendment for, for example, unlawful pretrial detention or Malicious Prosecution, a plaintiff who does not stand trial can never make out a Fourteenth Amendment claim for Fabrication of Evidence because such evidence cannot cause any deprivation at trial. *Id.*

To this end, the cases cited by Plaintiff are either Seventh Circuit cases that pre-date *Lewis, Patrick*, and *Moran* or are district court cases which rely on the moribund "used in some way to deprive a person of liberty" standard eschewed by such cases. *See* Dckt. No. 226 at 21-25. Whether *Lewis*, *Patrick*, or *Moran* involved guilty pleas as a basis for a conviction versus a jury trial is wholly immaterial.

According to Plaintiff, there should be some carve out where the Fourteenth Amendment applies both to actual trials as well as pretrial proceedings which precede a guilty plea. *See* Dckt. No. 226 at 23 ("Patrick states a rule that applies when there is a trial, but nowhere does Patrick state that use of fabricated evidence at trial is always required to make out a Fourteenth Amendment due process violation."). In other words, according to Plaintiff, both the Fourth Amendment and the Fourteenth Amendment can both cover conduct occurring prior to a trial depending on the procedural posture of the criminal case. *Id.* Plaintiff is simply wrong. Indeed, the issue of whether pretrial fabrication of evidence can coextensively be addressed by both the Fourth Amendment (which governs pretrial conduct) and Fourteenth Amendment (which concerns trial rights) was put to bed in *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 357 (2017)(Fourth Amendment and Fourteenth Amendment cannot co-extensively cover same conduct at same stage of criminal proceedings).

IV. Any Fourth Amendment Unlawful Pretrial Detention Claim Is Time-Barred.

As set forth in Defendants' opening brief, Plaintiff's sparse pleadings merely allege the violation of the Fourth Amendment without specifying the nature of the claim being asserted (i.e. a claim for pretrial detention or a claim for federal Malicious Prosecution). *See* Dckt. No. 194 at 33-34 If it is the latter, the claim is clearly time-barred. *Id.* Plaintiff attempts to dodge this argument by asserting that a claim for unlawful pretrial detention is the "same" as one for federal Malicious Prosecution under *Thompson v. Clark*, 596 U.S. 36, 49 (2022). In support of this claim, Plaintiff cites to footnote 2 of the *Thompson* decision as support for this conclusion. *See* Dckt. No. 226 at 25-26. Plaintiff then moves along to arguing that Malicious Prosecution claims under *Thompson* do not accrue until a conviction is vacated as a result of a *Heck* bar. *Id.* at 26-28.

Plaintiff is wrong. Neither the footnote cited nor any other part of *Thompson* held that it governed accrual for both unlawful pretrial detention claims and Malicious Prosecution claims. *See Thompson v. Clark*, 596 U.S. at 43 n.2. This footnote merely notes that one of the parties to the appeal

had argued that a federal Malicious Prosecution claim should be analyzed under the Due Process clause but that the Court had no occasion to consider that argument because it analyzed it under the Fourth Amendment instead. *Id.*

As set forth by Defendants, the Seventh Circuit has repeatedly held both post-*Manuel* and post-*Thompson* that unlawful pretrial detention claims are *not* the same, are *not* barred by *Heck* and accrue immediately on release from detention. *See* Dckt. No. 194 at 34 *citing 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.").

On this point, several weeks ago (while this motion was pending but before Plaintiff filed his response in this case), Plaintiff's attorney appears to have expressly conceded as much in another similar case in electing not to pursue an unlawful pretrial detention claim under the Fourth Amendment but electing to pursue only a Fourth Amendment Malicious Prosecution claim. *See Jackson v. City of Chicago*, 2024 WL 5264703 (N.D.Ill. 2024).

In *Jackson*, (where the plaintiff was represented by the same attorney who represents Plaintiff here), Judge Alonso explained that Fourth Amendment claims brought for unlawful pretrial detention are *not the same* as those brought for Fourth Amendment Malicious Prosecution and that the accrual period for each such claim differ (with the former accruing at the release from custody while the latter accruing when the criminal charges terminate in the plaintiff's favor). *Id.* at *4-5. In this regard, Plaintiff's attorney specifically limited his claims to the Malicious Prosecution claim because of the untimeliness of his other Fourth Amendment claims. *Id.* To wit:

> [T]he determination of whether a Fourth Amendment pretrial-detention claim is more specifically a false imprisonment claim (related to a pre-legal-process seizure), a malicious-prosecution claim (related to a post-legal-process seizure), or both, matters—it determines when the two-year statute of limitations begins to run. For a false-imprisonment claim, the statute of limitations begins to run when a person is released or begins to be held pursuant to legal process; for a malicious-prosecution claim, it begins when the person is found not guilty. That certainly matters in this case—Jackson's case was filed in 2022, more than two years after his detentions in 2017 and 2018 but less than two years after he was found not guilty in 2021. Therefore, a malicious-prosecution claim would be timely but a false-imprisonment claim wouldn't be. Jackson apparently recognizes this because he limits his Fourth Amendment claim to one for malicious prosecution and confirms that he is not bringing a false-imprisonment claim. *Id.* (citations omitted).

As Plaintiff's counsel full well knows as demonstrated by *Jackson*, he is wrong on the accrual date of his non-Malicious Prosecution Fourth Amendment claims. To the extent Plaintiff seeks to proceed on any Fourth Amendment claim other than a Malicious Prosecution claim, such claim is clearly barred by the statute of limitations.

V. Plaintiff's Fourth Amendment Malicious Prosecution Claims Arising From His 2004 Arrests Are Barred Because His Pre-Bond Detention Was Not A Seizure Made Pursuant to Legal Process Under The Fourth Amendment.

Defendants argued in their opening brief that Plaintiff's Fourth Amendment Malicious Prosecution claim fails because Plaintiff was never actually in pretrial detention; rather, he was immediately released on bond after a bond hearing. *See* Dckt. No. 194 at 37-39. Plaintiff admits this is a factually accurate description of his alleged "pretrial detention" with respect to his 2004 arrests. *See* Dckt. No. 227 at ¶¶ 44-45 ("Plaintiff's Exhibit 15 shows that plaintiff was in custody in March 4, 2004,

and released on bond that day. Plaintiff's Exhibit 16 shows that plaintiff was in custody on June 19, 2004, and released on bond that day."). However, Plaintiff alleges that his time spent overnight in police custody prior to being released on bond after his bond hearings is sufficient to establish that he was seized for the purposes of a Fourth Amendment claim. *See* Dckt. No. 226 at 28-29 *citing Wilson v. Smith*, No. 22 C 04413, 2024 WL 4753670, at *7 (N.D. Ill. Nov. 12, 2024).

Plaintiff is incorrect. Once again, as Plaintiff's counsel full well knows, this exact argument was rejected in *Jackson v. City of Chicago*, 2024 WL 5264703 (N.D.Ill. 2024) several weeks ago and *Smith* distinguished on the exact same grounds as applicable here. In *Jackson*, as here, Plaintiff alleged that his detention by police prior to being given a bond constituted a seizure for the purposes of his Fourth Amendment Malicious Prosecution claim. *Id.* at *4. Judge Alonso explicitly rejected this argument and expressly distinguished *Smith* in rejecting this argument. *Id.*

Judge Alonso explained that Fourth Amendment claims require that a "seizure [be] made pursuant to legal process" and that an arrest and detention thereon prior to a judicial determination cannot constitute such a seizure. *Id.* ("Jackson first claims that the time he was detained following his arrest, including while he waited several hours to be released after appearing in court and being ordered released on bond, supports his federal claim. But though Jackson's initial arrest and detention constituted a seizure, it was not a seizure made pursuant to legal process and thus cannot support his claim."). Prior to this, any detention by police officers merely constitutes a possible false arrest or false imprisonment (which as set forth above in Part IV is an untimely claim in this case). *Id.* ("Before legal process is instituted, a pretrial seizure instead constitutes a false arrest or false imprisonment—the institution of legal process thus transforms a Fourth Amendment challenge to pretrial detention without probable cause from a false-imprisonment claim to a malicious-prosecution claim."). As a result, Judge Alonso held that any Fourth Amendment Malicious Prosecution claim could not be supported by detention by officers prior to a bond hearing and that the release on bond immediately

pursuant to such bond hearing resulted in the plaintiff not being seized for the purpose of any Fourth Amendment Malicious Prosecution claim. *Id.* ("The Court concludes that Jackson's initial pre-release arrest and detention does not support his § 1983 malicious-prosecution claim under the Fourth Amendment because the seizure at that time was not pursuant to legal process.").

In so finding, Judge Alonso distinguished *Smith* thusly:

> [I]n [*Wilson v. Smith*] the parties had not squarely addressed the issue of whether the seizure was made pursuant to legal proceedings, the judge did not address it, and, unlike in the present case, the charges were approved by a prosecutor before the plaintiff was seized, which somewhat suggested that a legal process had been instituted. *Id.*

As here, *Smith* is distinguishable because the alleged seizure via arrest was not done via an arrest warrant approved by a prosecutor but rather, like *Jackson*, by an on-view arrest by the police. Accordingly, *Smith* is simply not applicable to the facts of this case.

As far as Plaintiff's violation of his probation for his 2004 arrests, Plaintiff is blatantly attempting to confuse the Court regarding the relevant procedural history. According to Plaintiff, he should be able to proceed on his Fourth Amendment Malicious Prosecution claim because "[h]is sentence for the misdemeanor domestic violence conviction was probation." *See* Dckt. No. 226 at 29. That is true but irrelevant. Plaintiff was sentenced to custody as a result of his unrelated misconduct in committing a domestic battery and other criminal offenses and pleading guilty to same. *See* Dckt. No. 227 at ¶ 52. Stated another way, had Plaintiff not committed unrelated criminal conduct, he would never have been in custody at all. *Id.* There is no causation issue to litigate here. The conduct that landed Plaintiff in detention was the direct result of wholly unrelated supervening criminal conduct for which he admitted his guilt and for which he does not attempt to ascribe to any conduct of any Defendant. There is nothing for any trier of fact to resolve on this issue.

VI. Even If Plaintiff Could Establish A Seizure, Defendants Are Entitled To Summary Judgment On Plaintiff's Malicious Prosecution Claims.

In addition to the above, Plaintiff's Malicious Prosecution claims fail for several other reasons. First, as set forth by Defendants, the Supreme Court only first recognized such a claim for Malicious Prosecution in 2022 and, prior to that date including during the time period in which the claims at issue here arose, the Supreme Court explicitly rejected such claims for decades including during the time period in which this case arose. *See* Dckt. No. 194 at 34-36. Again, the Seventh Circuit specifically and unambiguously held in *Bianchi* in 2016 that any future recognition of a Fourth Amendment Malicious Prosecution claim would entitle any Defendants who were sued during the past jurisprudence on the matter to Qualified Immunity. *Id.* Because it so clearly resolves this issue, the Court's statements on this matter in *Bianchi* bear repeating again:

> [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).

These statements cover the exact scenario presented in this case and were prescient indeed as the Supreme Court eight (8) years later did exactly what the Seventh Circuit contemplated could occur. And, as foreshadowed by the Seventh Circuit, numerous cases decided after *Thompson* have held that *Thompson*'s recognition of this previously unrecognized claim still required that Defendants sued under the prior jurisprudence be granted Qualified Immunity for claims that arose prior to such recognition. *See* Dckt. No 194 at 35-36 *citing Moore*, 2024 WL 913368, at *3; *Guerra*, 82 F.4th at 289; *Frias*, 2024 WL 1252945, at *8; *Rose*, 2022 WL 1251007, at *1. Indeed, since the filing of Defendants' Motion, *another* district court has also adopted this rationale in finding that Qualified Immunity applied given the new recognition of Fourth Amendment claims in *Thompson*. *See Alexander v. City Police of Lafayette*, 2024 WL 5181962, at *9 (W.D.La., December 18, 2024)(qualified immunity barred federal malicious prosecution claims under *Thompson* when such claims arose in 2011 because prior jurisprudence barred such claims

and holding that "the Court must consider the law that was clearly established at the time of the alleged misconduct").

Plaintiff entirely ignores the post-*Thompson* cases cited above, attempts to convince this Court that the Seventh Circuit did not mean what it said in *Bianchi*, and relies entirely on pre-*Biacnchi* cases. *See* Dckt. No. 226 at 30-32. Citing pre-*Bianchi* cases and district court cases is quite obviously not a basis to ignore precedent. The Seventh Circuit's holding in *Bianchi* could not have been clearer. Regardless of whether any of the other elements of a federal Malicious Prosecution claim can be satisfied in this case, Defendants are clearly entitled to Qualified Immunity at minimum.

Second, Plaintiff gives short shrift to Defendants' probable cause and causation arguments. *See* Dckt. No. 226 at 20-21. According to Plaintiff, his past admissions of engaging in criminal conduct are irrelevant because his guilty plea has since been vacated. *Id.* Plaintiff cites no legal authority that any of this matters and Plaintiff is, once again, simply incorrect. Whether or not the guilty plea was vacated years later does not mean that Plaintiff did not present himself in open court and admit having engaged in the conduct for which he was charged. Once again, admission of engaging in criminal conduct, by definition, suffices to establish probable cause for a prosecution and conviction. *See* Dckt. No. 194 at 36-37.

Relying on the later vacating of his conviction to attempt to rebut the prior admission of probable cause ignores well-established law that probable cause is evaluated at the time the criminal charges are pending and is not impacted in any respect by the later favorable disposition of the criminal charges at issue. *See Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979)("The validity of the arrest does not depend on whether the suspect actually committed a crime; the mere fact that the suspect is later acquitted of the offense for which he is arrested is irrelevant to the validity of the arrest."); *Swearnigen-El v. Cook Cnty. Sheriff's Dep't*, 602 F.3d 852, 863 (7th Cir. 2010)("[F]act that [the defendant] was eventually acquitted…does not negate the existence of probable cause at the relevant time.");

Pogodzinski v. Village of Skokie, 2021 WL 4502171, at *5 (N.D.Ill. 2021)("[T]he mere fact that the suspect is later acquitted of the offense for which he is arrested is irrelevant to the validity of the arrest.").

Plaintiff also does not even hazard an attempt to rebut Defendants' argument that his Malicious Prosecution claims fail for lack of causation. *See* Dckt. No. 226 at 1-33. This alone is waiver on which summary judgment should be granted. *See Betco Corp., Ltd.*, 876 F.3d at 309; *Walton*, 497 F. App'x at 655; *Candell*, 2019 WL 2173797, at *3.

Beyond this, given the clarity with which the Supreme Court has spoken on this issue, there is really no credible argument supporting causation when it is undisputed, as here, that a plaintiff has made a knowing and voluntary guilty plea. In such circumstances, the plea itself becomes the sole causation for the conviction and acts as a supervening cause which cuts off any prior alleged misconduct as a cause. See *Tollett*, 411 U.S. 258, 267 (1973)(a guilty plea operates as "a break in the chain of events that preceded it in the criminal process."); *see also Spaeth*, 69 F.4th at 1212 ("*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."). Thus, either by operation of the principles in *Tollett* and its progency or by waiver, it is clear that both Plaintiff's federal and state Malicious Prosecution claims fail.

VII. Any Conspiracy Claim Is Legally And Factually Deficient.

Plaintiff claims that Defendants "do not address plaintiff's conspiracy claim" and thus, any "argument about this claim is forfeited." *See* Dckt. No. 226 at 33. This is incorrect. Defendants *did* address all claims asserted against them which would include, by definition, any claims that any Defendants are guilty of conspiracy. Specifically, Defendants alleged that numerous Defendants lacked any personal involvement in *any* of his claims. *See* Dckt. No. 194 at 6-17 ("[I]t 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."). Conspiracy carries the same exact personal involvement requirements as any other claims asserted under Section 1983. *See e.g. Almodovar v. Guevara*, 2025 WL 71735, at *1 (N.D.Ill. 2025)("Without sufficient evidence of Olszewski's involvement in a conspiracy , there is insufficient evidence to raise a genuine dispute of fact as to whether he was personally involved in the federal constitutional violations that plaintiffs assert. Thus, for the reasons set forth below, Olszewski's motions for summary judgment are granted on plaintiffs' federal claims…"). Moreover, Defendants have moved for summary judgment based on the principles set forth *Tollett* and its progeny which, quite obviously, would include all antecedent claims of misconduct prior to a knowing and voluntary guilty plea including, but not limited to, claims of conspiracy.

And, finally, it is axiomatic that a conspiracy claim never survives summary judgment if substantive underlying claims have been disposed of. *See New Era Transmission Repair & Wholesale, Inc. v. O'Leary*, 2025 WL 257233, at *8 (N.D.Ill., 2025)("Plaintiffs cannot maintain a conspiracy claim when all of their underlying constitutional violations have been dismissed."); *Smith v. Gomez*, 550 F.3d 613, 617 (7th Cir. 2008)("[C]onspiracy is not an independent basis of liability in § 1983 actions."); *Hicks v. City of Chicago*, 2017 WL 4339828, at *7 (N.D. Ill. 2017)("In other words, there is no such thing as a stand-alone claim for 'conspiracy'—there must be an underlying constitutional violation.").

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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