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

In re: Watts Coordinated Pretrial Proceedings	)	No. 19-cv-1717
	)	*(Judge Valderrama)*
	)	*(Magistrate Judge Finnegan)*

OPPOSITION TO DEFENDANTS' JOINT PARTIAL MOTION TO DISMISS CLAIMS IN FLAXMAN PLAINTIFFS' COMPLAINTS

Defendants have filed a partial motion to dismiss aimed at plaintiff Rickey Henderson's claims arising under the Fourteenth Amendment. Defendants also seek dismissal of "federal malicious prosecution claims," but plaintiff does not bring any such claims. The Court should deny the motion for the reasons below.

I. Introduction

Plaintiff Rickey Henderson is one of many victims of the criminal enterprise run by former Chicago Police Sergeant Ronald Watts and his tactical team at the Ida B. Wells Homes in the 2000's. Plaintiff brings claims related to his four wrongful convictions caused by Watts and his gang that resulted in more than four years of unjust imprisonment. Plaintiff has been exonerated of each conviction and certified innocent.

Plaintiff is one of 75 victims with cases pending in federal court that have been consolidated for pretrial proceedings. Defendants have filed a partial motion to dismiss aimed at plaintiff Henderson's complaint, stating that the motion is intended to apply to all complaints filed by plaintiffs represented by the Law Office of Kenneth N. Flaxman P.C. (ECF No. 173 at 2.) This claim is inaccurate. Defendants have answered the complaints in three Flaxman Firm cases after losing motions to dismiss raising the same

arguments they raise here.[1] And defendants have answered the complaints in three other Flaxman Firm cases without filing a motion to dismiss.[2] That leaves thirteen Flaxman Firm cases, including this one, in which defendants have not filed an answer.[3]

II. Factual Background

The police officers in the Watts Gang, operating at the Ida B. Wells Homes in the 2000's, engaged in robbery, extortion, used excessive force, planted and fabricated evidence, and manufactured false charges. (Complaint in 19-cv-129, ECF No. 1, ¶ 11.) High ranking officials within the Chicago Police Department knew of the Watts Gang's criminal enterprise but failed to take any action to stop it. (*Id.* ¶ 12.) The Chicago Police Department's official policies or customs of failing to discipline, supervise, and control its officers and its "code of silence" were a proximate cause of the Watts Gang's criminal enterprise. (*Id.* ¶ 13.) Watts and another member of his gang, defendant Kallatt Mohammed, were charged in federal court in February 2012 after shaking down an informant they believed was a drug dealer. (*Id.* ¶ 88.) Both pleaded guilty.

Based on the evidence that has come to light about the nearly decade-long criminal enterprise of the Watts Gang, the Circuit Court of Cook County has vacated more than

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[1] *Carter v. Chicago*, No. 17 C 7241, 2018 WL 1726421 (N.D. Ill. Apr. 10, 2018); *White v. Chicago*, No. 17-CV-02877, 2018 WL 1702950 (N.D. Ill. Mar. 31, 2018); *Powell v. Chicago*, No. 17-CV-5156, 2018 WL 1211576 (N.D. Ill. Mar. 8, 2018).

[2] *Forney v. Chicago*, 18-v-3474, *Shenault v. Chicago*, 18-cv-3478, and *Shenault Jr. v. Chicago*, 18-cv-3478.

[3] *Jefferson v. Chicago*, 18-cv-08182, *Blair v. Chicago*, 19-cv-00127, *Curtis v. Chicago*, 19-cv-00128, *Henderson v. Chicago*, 19-cv-00129, *Ollie v. Watts*, 19-cv-00131, *Wilbourn v. Chicago*, 19-cv-00132, *Coleman v. Chicago*, 19-cv-02346, *Sims v. Chicago*, 19-cv-02347, *Lockett v. Chicago*, 19-cv-07232, *Lewis v. Watts*, 19-cv-07552, *Stokes v. Chicago*, 20-cv-00935, *Adams v. Chicago*, 20-cv-01896, and *Moye v. Chicago*, 20-cv-01897.

100 convictions.[4] Several exonerees have had multiple convictions vacated, but plaintiff is the only exoneree framed by the Watts gang four separate times.

A. Arrest on June 25, 2002

Plaintiff was arrested by defendants Bolton, Gonzalez, and Watts in front of a building at the Ida B. Wells Homes on June 25, 2002. (Complaint in 19-cv-129, ECF No. 1, ¶ 17.) There was no legal basis for the arrest. (*Id.* ¶ 18.) After arresting plaintiff, the arresting officers conspired, confederated, and agreed to fabricate a false story to justify the unlawful arrest, to cover-up their wrongdoing, and to cause plaintiff to be wrongfully detained and prosecuted. (*Id.* ¶ 19.)

The fabricated story included the false claim that the officers had arrested plaintiff after seeing him sell drugs from a bag and that when they approached him, he attempted to place the bag in his mouth. (Complaint in 19-cv-129, ECF No. 1, ¶ 20.) The officers used this fabrication to frame plaintiff by preparing police reports containing the false story, attesting through the official police reports that they were witnesses to the imaginary crime, and communicating the fabrication to prosecutors. (*Id.* ¶¶ 21(a), (b), (d).) Each officer participated in one of these three acts or failed to intervene to prevent the violation of plaintiff's rights. (*Id.*) In addition, defendant Watts formally approved the official police reports, knowing that they contained the false story. (*Id.* ¶ 21(c).)

Plaintiff was charged with a drug offense because of the officer's wrongful acts. (Complaint in 19-cv-129, ECF No. 1, ¶ 23.) Plaintiff knew that proving that the officers

[4] Cook County State's Attorney, *Foxx Reverses Six Convictions Tied to Corrupt Former Sergeant Ronald Watts* (Dec. 15, 2020), available at https://www.cookcountystatesattorney.org/news/foxx-reverses-six-convictions-tied-corrupt-former-sergeant-ronald-watts

had concocted the charges against him would not be possible. (*Id.* ¶ 24.) Accordingly, even though he was innocent, plaintiff pleaded guilty and received a sentence of three years imprisonment. (*Id.* ¶ 25.) Plaintiff was continuously in custody from his arrest on June 25, 2002 until he was released on parole ("mandatory supervised release") from the Illinois Department of Corrections on June 23, 2003. (*Id.* ¶ 26-27.)

B. Arrest on August 27, 2003

Plaintiff's second false arrest and wrongful prosecution arose out of his arrest on August 27, 2003 by defendants Bolton, Edwards, Jones, Mohammed, Ridgell, Spaargaren, Summers Jr., and Watts behind a building at the Ida B. Wells Homes. (Complaint in 19-cv-129, ECF No. 1, ¶ 28.) Again, there was no legal basis for the arrest. (*Id.* ¶ 29.) After arresting plaintiff, the arresting officers conspired, confederated, and agreed to fabricate a false story to justify the unlawful arrest, to cover-up their wrongdoing, and to cause plaintiff to be wrongfully detained and prosecuted. (*Id.* ¶ 30.)

The fabricated story included the false claim that the officers had arrested plaintiff after seeing him drop a bag containing drugs and run away. (Complaint in 19-cv-129, ECF No. 1, ¶ 31.) The officers used this fabrication to frame plaintiff by preparing police reports containing the false story, attesting through the official police reports that they were witnesses to the imaginary crime, and communicating the fabrication to prosecutors. (*Id.* ¶¶ 32(a), (b), (d).) Each officer participated in one of these three acts or failed to intervene to prevent the violation of plaintiff's rights. (*Id.*) In addition, defendant Watts formally approved the official police reports, knowing that they contained the false story. (*Id.* ¶ 32(c).)

Plaintiff was charged with a drug offense because of the officer's wrongful acts. (Complaint in 19-cv-129, ECF No. 1, ¶ 34.) Plaintiff knew that proving that the officers had concocted the charges against him would not be possible. (*Id.* ¶ 35.) Accordingly, even though he was innocent, plaintiff pleaded guilty and received a sentence of 18 months imprisonment. (*Id.* ¶ 36.) Plaintiff was continuously in custody from his arrest on August 27, 2003 until he was released on parole ("mandatory supervised release") from the Illinois Department of Corrections on May 6, 2004. (*Id.* ¶ 37-38.)

C. Arrest on March 12, 2005

Plaintiff's third false arrest and illegal prosecution arose out of his arrest on March 12, 2005 by defendants Bolton, Cabrales, Gonzalez, Leano, Nichols, and Watts in a common area of a building at the Ida B. Wells Homes. (Complaint in 19-cv-129, ECF No. 1, ¶ 39.) Again, there was no legal basis for the arrest. (*Id.* ¶ 40.) After arresting plaintiff, the arresting officers conspired, confederated, and agreed to fabricate a false story to justify the unlawful arrest, to cover-up their wrongdoing, and to cause plaintiff to be wrongfully detained and prosecuted. (*Id.* ¶ 41.)

The fabricated story included the false claim that the officers had arrested plaintiff after seeing him try to hide drugs in a vent in the hallway of a building at the Ida B. Wells Homes. (Complaint in 19-cv-129, ECF No. 1, ¶ 42.) The officers used this fabrication to frame plaintiff by preparing police reports containing the false story, attesting through the official police reports that they were witnesses to the imaginary crime, and communicating the fabrication to prosecutors. (*Id.* ¶¶ 43(a), (b), (d).) Each officer participated in one of these three acts or failed to intervene to prevent the violation of plaintiff's rights.

(*Id.*) In addition, defendant Watts formally approved the official police reports, knowing that they contained the false story. (*Id.* ¶ 43(c).)

Plaintiff was charged with a drug offense because of the officer's wrongful acts. (Complaint in 19-cv-129, ECF No. 1, ¶ 45.) Plaintiff knew that proving that the officers had concocted the charges against him would not be possible. (*Id.* ¶ 46.) Accordingly, even though he was innocent, plaintiff pleaded guilty and received a sentence of 42 months imprisonment. (*Id.* ¶ 47.) Plaintiff was continuously in custody from his arrest on March 12, 2005 until he was released on parole ("mandatory supervised release") from the Illinois Department of Corrections on June 9, 2006. (*Id.* ¶¶ 48-49.)

D. Arrest on July 22, 2006

Plaintiff's fourth false arrest and illegal prosecution arose out of his arrest on July 22, 2006 by defendants Gonzalez, Jones, Mohammed, Nichols, Smith, and Watts in a common area of a building at the Ida B. Wells Homes. (Complaint in 19-cv-129, ECF No. 1, ¶ 50.) Again, there was no legal basis for the arrest. (*Id.* ¶ 51.) After arresting plaintiff, the arresting officers conspired, confederated, and agreed to fabricate a false story to justify the unlawful arrest, to cover-up their wrongdoing, and to cause plaintiff to be wrongfully detained and prosecuted. (*Id.* ¶ 52.)

The fabricated story included the false claim that the officers had arrested plaintiff after seeing him try to hide drugs in a closet in the hallway of a building at the Ida B. Wells Homes. (Complaint in 19-cv-129, ECF No. 1, ¶ 53.) The officers used this fabrication to frame plaintiff by preparing police reports containing the false story, attesting through the official police reports that they were witnesses to the imaginary crime, and

communicating the fabrication to prosecutors. (*Id.* ¶¶ 54(a), (b), (d).) Each officer participated in one of these three acts or failed to intervene to prevent the violation of plaintiff's rights. (*Id.*) In addition, defendant Watts formally approved the official police reports, knowing that they contained the false story. (*Id.* ¶ 54(c).)

Plaintiff was charged with a drug offense because of the officer's wrongful acts. (Complaint in 19-cv-129, ECF No. 1, ¶ 56.) Plaintiff knew that proving that the officers had concocted the charges against him would not be possible. (*Id.* ¶ 57.) Accordingly, even though he was innocent, plaintiff pleaded guilty and received a sentence of four years imprisonment. (*Id.* ¶ 58.) Plaintiff was continuously in custody from his arrest on July 22, 2006 until he was released on parole ("mandatory supervised release") from the Illinois Department of Corrections on January 18, 2008. (*Id.* ¶¶ 59-60.)

E. Plaintiff's Exonerations

Plaintiff challenged his convictions after he learned that federal prosecutors and lawyers for other wrongfully convicted individuals had uncovered evidence of the Watts Gang's criminal enterprise. (Complaint in 19-cv-129, ECF No. 1, ¶ 61.) On September 24, 2018, the Circuit Court of Cook County granted the State's motion to set aside plaintiff's convictions and granted the State's request to *nolle prosequi* the cases. (*Id.* ¶ 62.) The Circuit Court of Cook County granted plaintiff certificates of innocence in the four cases on November 2, 2018. (*Id.* ¶ 63.)

III. Plaintiff's Claims

Plaintiff's complaint follows the Seventh Circuit's admonition in *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073 (7th Cir. 1992) that, "while it is common to draft complaints with multiple counts, each of which specifies a single statute or legal rule,

nothing in the Rules of Civil Procedure requires this. To the contrary, the rules discourage it." *Id.* at 1078. Plaintiff's complaint also follows the teachings of the Seventh Circuit that a complaint need not plead legal theories. *See, e.g., Koger v. Dart*, 950 F.3d 971, 974-75 (7th Cir. 2020).

Plaintiff brings this lawsuit against sixteen defendants. Plaintiff sues the thirteen officers who falsely arrested and framed him: Watts, Bolton, Cabrales, Edwards, Gonzalez, Jones, Leano, Mohammed, Nichols, Ridgell, Smith, Spaargaren, and Summers. Plaintiff brings claims against these officers for fabricating evidence that caused him to be unreasonably seized and deprived of liberty in violation of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment.

Plaintiff also sues Philip Cline, the former Superintendent of the Chicago Police Department, and Debra Kirby who was formerly in charge of the Internal Affairs Division. Plaintiff contends that Cline and Kirby turned a blind eye to wrongdoing by Watts and his gang and were a cause of the Watts Gang's continuing misconduct, which included framing plaintiff in violation of the Fourth and Fourteenth Amendments.

Finally, plaintiff brings federal claims and a state law claim against the City of Chicago. Plaintiff contends that the City's official policies and customs of failing to discipline officers while maintaining a code of silence that required police officers to remain silent about misconduct were another cause of the Watts Gang's continuing misconduct, which included framing plaintiff in violation of the Fourth and Fourteenth Amendments. Plaintiff's state law claim is brought only against the City of Chicago for the Illinois tort

of malicious prosecution.[5] Plaintiff's complaint makes no other reference to "malicious prosecution," and plaintiff does not bring any "federal malicious prosecution claims," as defendants suggest. (ECF No. 173 at 6-8.)

IV. Plaintiff's Claims About His Unlawful Pretrial Detention

In all four of his false convictions, plaintiff was held in custody awaiting trial and again after pleading guilty. The Seventh Circuit has held that claims about unlawful pretrial detention arise under the Fourth Amendment, rather than directly under the Fourteenth Amendment. *Lewis v. Chicago*, 914 F.3d 472, 479 (7th Cir. 2019). In *Savory v. Cannon*, 947 F.3d 409, 416 n.3, n.4 (7th Cir. 2020), the *en banc* Seventh Circuit reserved the question of revisiting recent precedents in this area in light of the Supreme Court's recent opinion in *McDonough v. Smith*, 139 S. Ct. 2149 (2019). The Court of Appeals has been asked to revisit this issue in *Smith v. Chicago*, No. 19-2725 (argued Nov. 13, 2020).

Because the law is in flux and because dismissing a portion of plaintiff's Fourteenth Amendment claim would make no difference to discovery, the Court should decline defendants' invitation (ECF No. 173 at 4-6) to dismiss the freestanding Fourteenth Amendment claim about unlawful pretrial detention at this stage of the case. *Mack v. Chicago*, 19 C 4001, 2020 WL 7027649, at *3 (N.D. Ill. Nov. 30, 2020); *Culp v. Flores*, No. 17 C 252, 2020 WL 1874075, at *3 (N.D. Ill. Apr. 15, 2020).

[5] The City is liable for the conduct of its employees in causing plaintiff's malicious prosecution under the doctrine of *respondeat superior*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163–64, 862 N.E.2d 985, 991 (2007) ("employer's vicarious liability extends to the negligent, willful, malicious, or even criminal acts of its employees when such acts are committed within the scope of the employment").

V. Plaintiff's Guilty Pleas Do Not Bar His Due Process Claims

Plaintiff pleaded guilty in the four criminal proceedings, even though he was innocent, because he knew that a jury would not credit his claim that the individual officer defendants had concocted the charges against him. (Complaint in 19-cv-129, ECF No. 1, ¶¶ 24-25, 35-36, 46-47, 57-58.) The Circuit Court of Cook County subsequently vacated plaintiff's guilty pleas and convictions and certified plaintiff innocence. (*Id.* ¶¶ 62-63.)

There is no merit in defendants' argument that plaintiff's vacated guilty pleas bar his claims. (ECF No. 173 at 8-13.) Illinois law governs the preclusive effect of Illinois judgments in federal court, 28 U.S.C. § 1738, and "a vacated judgment has no collateral estoppel or res judicata effect under Illinois law." *Pontarelli Limousine, Inc. v. Chicago*, 929 F.2d 339, 340 (7th Cir. 1991). The Seventh Circuit rejected a similar argument as "absurd," explaining that there was "precious little upon which preclusion could be based" after a criminal defendant received a full innocence-based pardon. *Evans v. Katalinic*, 445 F.3d 953, 956 (7th Cir. 2006).

The Illinois Supreme Court recently held that even an extant guilty plea does not have the preclusive effect that defendants claim; the plea does not bar a defendant from seeking post-conviction relief on grounds of innocence. *People v. Reed*, 2020 IL 124940, ¶ 37. As the Illinois Supreme Court acknowledged, plea agreements are "not structured to 'weed out the innocent' or guarantee the factual validity of the conviction." *Id.* ¶ 33 (quoting *Schmidt v. State*, 909 N.W.2d 778, 788 (Iowa 2018).) That is so because a defendant must "engage in a cost-benefit assessment where, after evaluating the State's evidence of guilt compared to the evidence available for his defense, a defendant may choose

to plead guilty in hopes of a more lenient punishment than that imposed upon a defendant who disputes the overwhelming evidence of guilt at trial." *Id.* As the Illinois Supreme Court holds, "it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt." *Id.* ¶ 33.

Defendants do not discuss *Reed*. Nor do they acknowledge that their arguments have been repeatedly rejected, including in three cases in these consolidated proceedings.[6] The Court should reject defendants' invitation to ignore these rulings.

Defendants begin their argument by mistakenly reading *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017) as *requiring* that the fabricated evidence was used at trial. (ECF No. 173 at 9-10.) This is incorrect: the fabricated evidence was used at trial in *Avery*, but nothing in that opinion calls into question the express holding of *Armstrong v. Daily*, 786 F.3d 529 (7th Cir. 2015), that use at trial of fabricated evidence is not required to state a Due Process claim. *Id.* at 551. In a section of the opinion in that case entitled, "Is a Trial Needed for a Constitutional Violation?", the Seventh Circuit provided a simple answer of "No." *Id.*

Defendants give the same incorrect reading to *Patrick v. Chicago*, 974 F.3d 824 (7th Cir. 2020), but *Patrick* likewise does not hold that a fabricated evidence claim requires proof that the evidence was used at trial. (ECF No. 173 at 9-11.) On the contrary, *Patrick* recognizes that showing use at trial is merely one way to prove such a claim: "If

[6] *Carter v. Chicago*, No. 17 C 7241, 2018 WL 1726421, at *5 (N.D. Ill. Apr. 10, 2018); *White v. Chicago*, No. 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018); *Powell v. Chicago*, No. 17-CV-5156, 2018 WL 1211576, at *7-*8 (N.D. Ill. Mar. 8, 2018); *Saunders v. Chicago*, No. 12-cv-09158, 2014 WL 3535723, at *4 (N.D. Ill. July 11, 2014).

fabricated evidence is later used at trial to obtain a conviction, the accused may have suffered a violation of his due-process right to a fair trial." *Patrick*, 974 F.3d at 834. The Court then defined the claim without reference to use of the evidence at trial:

> The essence of a due-process evidence-fabrication claim is that the accused was convicted and imprisoned based on knowingly falsified evidence, violating his right to a fair trial and thus depriving him of liberty without due process.

Id at 835.

The rule that emerges from the decisions of the Court of Appeals is acknowledged in Seventh Circuit's Pattern Jury Instruction 7.14: the conviction and imprisonment must be based on the fabricated evidence, whether the evidence is used at trial or in some other way. *Patrick* holds that the district court should have used the pattern instruction. *Patrick*, 974 F.3d at 835. The first element of the pattern instruction is:

> Defendant [knowingly concealed [from the prosecutor] exculpatory and/or impeachment evidence, and the evidence was not otherwise available to Plaintiff, through the exercise of reasonable diligence, to make use of at his criminal trial] [and/or] [knowingly fabricated evidence that was introduced against Plaintiff [at his criminal trial] [in his criminal case].

SEVENTH CIRCUIT'S PATTERN JURY INSTRUCTION § 7.14 (2017). That is, the fabricated evidence must have been introduced against plaintiff "at his criminal trial" or "in his criminal case." *Id.* Defendants cite the pattern instruction, but fail to acknowledge that it includes both use at trial as well as use in the criminal case. (ECF No. 173 at 11.)

In plaintiff's cases, the fabricated evidence was used in his criminal cases in several ways. First, the fabricated evidence caused each criminal case to be initiated. (Complaint in 19-cv-129, ECF No. 1, ¶¶ 23, 34, 45, 56.) The fabricated evidence was also introduced in each case to bring charges against plaintiff either by presenting the evidence at a

preliminary hearing or to a grand jury, as required by Illinois law for a felony prosecution. 725 ILCS 5/111-2. Finally, the fabricated evidence was introduced at each guilty plea hearing where the prosecutor provided the judge with a factual basis for the plea, as required by Illinois Supreme Court Rule 402(c): "The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea." Plaintiff's allegations are therefore consistent with the Seventh Circuit's pattern jury instruction.

Defendants next argue that plaintiff's vacated pleas of guilty broke the causal chain between defendants' wrongful acts and plaintiff's wrongful detentions. (ECF No. 173 at 12-13.) The Supreme Court rejected a similar argument in *Manuel v. Joliet*, 137 S. Ct. 911 (2017) when it held that a grand jury indictment does not break the chain of causation between a police officers' fabrication of evidence before the indictment to pretrial detention after the indictment. *Id.* at 920 n.9 (2017). As in *Manuel*, "the proceeding is tainted," *id.*, and plaintiff's guilty pleas did not break the chain.

Each of the cases cited by defendants to support their guilty-plea argument is readily distinguishable. All but one are federal habeas proceedings in which a prisoner sought to challenge a guilty plea that had not been vacated.[7] The rule of these cases is that a federal habeas petitioner who has pleaded guilty cannot challenge his conviction based on constitutional deprivations unrelated to the plea. This rule does not apply here because plaintiff is not seeking release from custody and he is not challenging his guilty

[7] *Tollett v. Henderson*, 411 U.S. 258 (1973); *McMann v. Richardson*, 397 U.S. 759 (1970); *Brady v. United States*, 397 U.S. 742, 750 (1970); *Parker v. North Carolina*, 397 U.S. 790 (1970); *Hurlow v. United States*, 726 F.3d 958 (7th Cir. 2013).

pleas. Plaintiff's convictions and guilty pleas have already been vacated and he is not in custody on any of the vacated convictions.

Plaintiff pleaded guilty in four cases because he knew that he could not prove that the individual officer defendants had concocted the charges against him. (Complaint in 19-cv-129, ECF No. 1, ¶¶ 24-25, 35-36, 46-47, 57-58.) He took the pleas after "taking stock of the lack of exculpatory evidence in his possession (complete or not) and inculpatory evidence in the government's possession (false or not)." *Saunders v. Chicago*, No. 12-CV-09158, 2014 WL 3535723, at *5 (N.D. Ill. July 11, 2014). As *Saunders* holds, defendants' misconduct was the source of plaintiff's injuries because the misconduct caused plaintiff to plead guilty and therefore gives rise to his constitutional claims. *Id.*

The only civil case cited by defendants is *McCann v. Mangliardi*, 337 F.3d 782 (7th Cir. 2003), which did not consider whether a plaintiff's rights are violated when he pleads guilty because of fabricated evidence. The question in *McCann* was whether the defendants had violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose evidence before the plaintiff pleaded guilty. *McCann*, 337 F.3d at 787. The Seventh Circuit did not reach that question, stating in *dicta* that it is "highly likely that the Supreme Court would find a violation of the Due Process Clause if prosecutors or other relevant government actors have knowledge of a criminal defendant's factual innocence but fail to disclose such information to a defendant before he enters into a guilty plea." *Id.* at 787-88. District Courts following *McCann* have rejected the argument that a vacated guilty plea forecloses a due process claim. *Garcia v. Hudak*, 156 F. Supp. 3d 907, 916 (N.D. Ill. 2016); *Ollins v. O'Brien*, No. 03 cv 5794, 2005 WL 730987, at *11 (Mar. 28, 2005).

Plaintiff presents straightforward claims that evidence fabrication caused him to plead guilty. Courts presiding over three other cases in these consolidated proceedings have rejected the arguments raised by defendants here.[8] Defendants are unable to cite any case that bars such a claim based on plaintiff's foreseeable act of pleading guilty because of the fabricated evidence. The Court should therefore reject this argument.

VI. Plaintiff's Remaining Claims

Defendants' partial motion to dismiss does not seek dismissal of plaintiff's Fourth Amendment claims nor of his state law malicious prosecution claims. The only other claims that defendants ask the Court to dismiss are claims that rely on the due process claims: failure to intervene, conspiracy, and claims against the City of Chicago for maintaining policies and practices causing constitutional injuries. (ECF No. 173 at 14.) Defendants argue that these claims must be dismissed if the underlying due process claims are dismissed. As shown above, the Court should not dismiss the due process claims, so the Court also should not dismiss these claims.

VII. Conclusion

The Court should therefore deny defendants' partial motion to dismiss.

Respectfully submitted,

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[8] *Carter v. Chicago*, No. 17 C 7241, 2018 WL 1726421, at *5 (N.D. Ill. Apr. 10, 2018), *White v. Chicago*, No. 17-CV-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018), and *Powell v. Chicago*, No. 17-CV-5156, 2018 WL 1211576, at *7-*8 (N.D. Ill. Mar. 8, 2018).