UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Master Docket Case No. 19-cv-1717
	)	Judge Franklin U. Valderrama
	)	Magistrate Judge Sheila M. Finnegan

DEFENDANTS' REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS CERTAIN CLAIMS IN FLAXMAN PLAINTIFFS' COMPLAINTS

Defendant, City of Chicago (the "City"), Phillip Cline and Debra Kirby ("Supervisory Officials"), and Brian Bolton, Miguel Cabrales, Darryl Edwards, Robert Gonzalez, Alvin Jones, Manuel Leano, Douglas Nichols, Jr., Calvin Ridgell Jr., Elsworth J. Smith, Jr., Kenneth Young, David Soltis, John Rodriguez, Lamonica Lewis, Rebecca Bogard, Frankie Lane, Katherine Moses-Hughes, Nobel Williams, Michael Spaargaren, Gerome Summers, Jr., Matthew Cadman, Kallatt Mohammed, and Ronald Watts ("Defendant Officers") (collectively "defendants"), through their respective undersigned counsel, submit this reply in support of their joint motion to dismiss the Fourteenth Amendment claims and the federal malicious prosecution claim asserted in the complaints of plaintiffs represented by attorneys Kenneth and Joel Flaxman.[1]

INTRODUCTION

Although plaintiff[2] concedes there is no such thing as a Fourteenth Amendment claim for pre-

[1] Pursuant to the parties' February 23, 2012 Joint Stipulation Regarding Pleadings, defendants' joint motion applies only to those consolidated cases in which a responsive pleading has not previously been filed. (Dkt. #186, ¶2, see also Opposition to Defendants' Joint Partial Motion to Dismiss Claims in Flaxman Plaintiffs' Complaints, Dkt. #176, n. 1, 2.) The joint stipulation, however, does not affect defendants' rights to later seek reconsideration or summary judgment as the case law continues to develop on the issues raised herein.

[2] For ease of reference, the plaintiffs represented by Kenneth and Joel Flaxman will be referred to herein as "plaintiff."

trial detention without probable cause and denies he is attempting to bring federal malicious prosecution claims, his arguments in support of his federal due process claims essentially ask the Court to disregard federallaw. Unable to identify any federal due process violations, plaintiff begins his argument with a discussion of additional due process afforded under the Illinois Constitution that does not and cannot support his attempts at federal due process claims. And plaintiff's remedy for violations of that "additional due process" arising under state law is not a federal constitutional claim—it is a state law claim for malicious prosecution.

DISCUSSION

I. PLAINTIFF CONCEDES THERE IS NO SUCH THING AS A FOURTEENTH AMENDMENT CLAIM FOR "POST-LEGAL PROCESS, PRE-TRIAL DETENTION WITHOUT PROBABLE CAUSE."[3]

Plaintiff concedes that binding precedent holds that any claims for pre-trial detention without probable cause arise exclusively under the Fourth Amendment. (Dkt. #176, 9.) He nevertheless argues that the Court should decline to dismiss his Fourteenth Amendment claim for pre-trial detention without probable cause because *Savory v. Cannon*, 947 F.3d 409 (7th Cir. 2020) (en banc) "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)." (*Id.*) Not so.

Savory considered the issue of whether the *Heck* bar[4] lifted when the plaintiff was released from custody and could no longer challenge his conviction in habeas corpus proceedings (as the district

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[3] Plaintiff asserts he is not bringing federal malicious prosecution claims. (Dkt. #176,1, 9.) But his allegations and arguments suggest otherwise. (Dkt. #173-1, ¶¶14, 17-59, 66, 76, 96.) Accordingly, the Court should enter an order dismissing such claims with prejudice based on the precedent cited in defendants' joint motion (Dkt. #173, 6-8) as well as the Seventh Circuit's recent decision affirming that precedent. See *Young v. City of Chicago*, 987 F.3d 641, 646 (7th Cir. 2021) ("[T]here is no such thing as a constitutional right not to be prosecuted without probable cause." (internal quotation marks omitted)).

[4] The *Heck* delayed accrual rule, or "*Heck* bar," provides that a §1983 action for damages that would necessarily imply the invalidity of an underlying conviction does not accrue until the plaintiff's underlying conviction has been vacated. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

court found), or whether, notwithstanding his release from custody, the plaintiff's §1983 action remained barred until his conviction was invalidated. 947 F.3d at 411. In addressing the *Heck*-related accrual issue before it, the *Savory* court said nothing and reserved nothing about the nature and contours of a pre-trial detention without probable cause claim, much less contemplated that *McDonough* called into question *Manuel v. City of Joliet,* 137 S. Ct. 911 (2017) ("*Manuel I*"), or any of the abundant precedent defendants cited in their joint motion on this issue such as *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019).

Lewis and the precedent relied upon by defendants has been repeatedly affirmed by our circuit. (Dkt. #173, 4-6). Indeed, the Seventh Circuit has twice recently reaffirmed *Lewis* and rejected the very argument plaintiff makes here. *See Kuri v. City of Chicago*, --- F.3d ---, 2021 WL 926288, at *2 (7th Cir. Mar. 11, 2021); *Young v. City of Chicago*, 987 F.3d 641, 645-6 (7th Cir. 2021). In each case, the court declined to reverse *Lewis* and reaffirmed that *Manuel I* eliminated a due process claim for pretrial detention without probable cause. *Kuri*, 2021 WL 926288, at *2 (declining to revisit *Lewis*: "*Manuel* held that the Fourth Amendment supplies the basis for a claim until the suspect is either convicted or acquitted . . . [and] abrogated any due-process objection to pretrial detention that has been approved by a judge"); *Young*, 987 F.3d at 645-6 (declining to overturn *Lewis*, holding that it appropriately applied *Manuel I*, which held that a claim of pre-trial detention without probable cause "lies in the Fourth Amendment").

Any suggestion that *McDonough* put the nature and contours of a pre-trial detention without probable cause claim in question was conclusively refuted in *Young* and *Kuri* (not to mention *Williams* and *Patrick*,[5] both of which were also decided after *McDonough* and after *Savory*).

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[5] *Williams v. Dart*, 967 F.3d 625, 632–33 (7th Cir. 2020) , *reh'g denied (Aug. 21, 2020)* ("Wrongful pretrial custody is what plaintiffs complain of here. If plaintiffs' custody was wrongful, it was the Fourth Amendment that made it so, whether for want of probable cause, as in *Manuel*, or for want of a neutral decision-maker, as in *Gerstein*, where the Court 'decided some four decades ago that a claim challenging pretrial detention fell within the scope

This Court should decline plaintiff's invitation to follow *Culp v. Flores*, No. 17 C 252, 2020 WL 1874075, at *3 (N.D. Ill. Apr. 15, 2020), and *Mack v. Chicago*, 19 C 4001, 2020 WL 7027649, at *3 (N.D. Ill. Nov. 30, 2020), each of which declined to dismiss a Fourteenth Amendment due process claim for pre-trial detention without probable cause at the motion to dismiss stage because of *McDonough*. (Dkt. #176, 9) Respectfully, *Young* and *Kuri*—both decided after *McDonough*, *Savory*, *Culp* and *Mack*—conclusively establish that *Culp* and *Mack* were incorrect as to this issue. As *Young* articulated, a court should not "subvert Supreme Court precedent by adding a due process claim to the mix just so [a plaintiff] can have another bite at the apple." 987 F.3d at 646.

Accordingly, plaintiff's claims for "post-legal process, pre-trial detention without probable cause" under the Fourteenth Amendment (which are nothing short of federal malicious prosecution claims) fail as a matter of controlling law, and any such claims must be dismissed with prejudice.

II. PLAINTIFF'S GUILTY PLEAS DEFEAT HIS DUE PROCESS CLAIMS.

As defendants established in their motion, plaintiff cannot plead due process claims based on allegedly fabricated because that evidence was never admitted at any trials. (Dkt. #173, 8-11.) And because no trials took place, the only due process to which plaintiff was entitled was that his pleas were knowing and intelligent. (*Id.*, 12-13; *see also United States v. Ruiz*, 536 U.S. 622, 629 (2002) (defendant's guilty plea must be "voluntary" and "related waivers" must be made "knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences" (internal quotation marks omitted)).)

Plaintiff admits his pleas were voluntary, knowing and intelligent (Dkt. #176, 14), which

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of the Fourth Amendment.'" (quoting *Manuel I*, 137 S. Ct. at 917)); *Patrick v. City of Chicago*, 974 F.3d 824, 834 (7th Cir. 2020) ("We have recently clarified the contours of constitutional claims based on allegations of evidence fabrication. A claim for false arrest or pretrial detention based on fabricated evidence sounds in the Fourth Amendment right to be free from seizure without probable cause. If fabricated evidence is later used at trial to obtain a conviction, the accused may have suffered a violation of his due-process right to a fair trial.")

should end the inquiry. Plaintiff knowingly waived his rights to trials, and the constitutional protections those trials would have afforded him, in exchange for a sure thing. *McMann*, 397 U.S. at 769 (defendant could have chosen to go to trial and contest the State's tainted evidence, including through appellate and collateral proceedings; "[i]f he nevertheless pleads guilty the plea can hardly be blamed on the [tainted evidence]").

Plaintiff responds to this case law by shifting the focus of his arguments to the Illinois due process clause.[6] (Dkt. #176, 10.) But state law interpreting the state constitution cannot expand federal constitutional due process.

A. To Establish A Fabricated Evidence-Based Due Process Claim, The Evidence Must Have Been Used At Trial.

A fabricated evidence-based due process claim is viable only if the allegedly fabricated evidence was used at trial and material to the plaintiff's conviction at trial. (Dkt. #173, 8-11.) Because plaintiff pleaded guilty in each of his cases, the allegedly fabricated evidence could never have been used at trial and therefore cannot support a due process claim.

Plaintiff contends that a due process claim remains viable even if the allegedly fabricated evidence is not used against him at trial. His position, however, ignores the language in *Avery* and *Patrick* that expressly states a due process fabrication claim is predicated upon the admission of fabricated evidence *at trial* that caused a wrongful conviction, and the language in *Manuel I* that expressly states the Due Process Clause does not come into play until after a trial has occurred.[7] Plaintiff argues that defendants have "mistakenly read[]" *Avery*, then pivots to *Armstrong v. Dailey,* 786 F.3d 529 (7th Cir. 2015), and argues that nothing in *Avery* calls into question the express holding of

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[6] Contrary to plaintiff's argument (Dkt. #176, 10), defendants have not argued plaintiff's guilty pleas have "collateral estoppel or res judicata effect." See *infra*, at 11.

[7] Plaintiff also does not address the district court cases cited by defendants applying precedential law even before *Avery* and *Manuel I*. (Dkt. #173, n. 6.)

Armstrong, which allowed a due process claim in connection with a pre-trial detention subsequent to a vacated conviction and prior to a re-trial that never occurred. (Dkt. 176, 11.)

Unlike the circumstances here, the due process claim at issue in *Armstrong* was based on allegations of the bad faith destruction of exculpatory evidence by a prosecutor pending re-trial, and *not* on allegations of fabricated evidence. 786 F.3d at 532. Because the only evidence that could have conclusively established Armstrong's innocence was destroyed by the prosecutor, no re-trial could ever have been fair and Armstrong's right to a fair trial was "irreparably compromised." *Id.* at 536. In other words, the plaintiff in *Armstrong* was effectively denied his right to trial altogether. In that specific factual context, the issue analyzed in *Armstrong* was whether a claim based on the destruction of evidence could be brought even in the absence of a re-trial. *Id.* at 546-50 ("Though *Brady* did not announce a duty to preserve evidence, a duty to refrain from bad-faith *destruction* flows necessarily, and obviously, from its familiar holding that *suppression* of material exculpatory evidence violates due process" (emphasis original)); *id.* at 553 ("*Under these circumstances*, requiring a plaintiff to undergo a second trial and conviction to pursue a civil claim under §1983 would work an obvious injustice. It would deny victims of the most egregious evidence destruction—for whom dismissal is appropriate *because a fair trial is impossible*—a civil remedy for their loss of liberty." (emphasis added)). Accordingly, the plaintiff in *Armstrong* could state a due process claim under §1983 even though he was not re-tried if he could establish that he suffered a deprivation of liberty during the time period between the destruction of evidence and the dismissal of the charges against him. *Id.* Thus, *Armstrong* is clearly distinguishable from *Avery* and the facts alleged here.

Had the claim at issue in *Armstrong* been a fabrication claim, the case would no longer be good law under *Manuel I*. Armstrong's deprivation of liberty from the time of the destruction of evidence until his charges were dismissed was a *pre-trial* detention. Thus, had the allegation been that the deprivation of liberty was secured through fabricated evidence, under *Manuel I* (and *Lewis* and *Patrick*

and *Young*), Armstrong would have had a Fourth Amendment claim for detention without probable cause but *not* a due process claim. *Manuel I*, 137 S. Ct. 911, 918-19. Only *Armstrong*'s unique facts and the specific nature of the *Brady*-based claim asserted there save it from *Manuel I*'s reach.

Plaintiff suggests the Seventh Circuit decisions "acknowledged" in its Pattern Jury Instruction 7.14 demonstrate that the circuit has recognized a Fourteenth Amendment due process fabrication claim after a plea (Dkt. #176, at 12)). However, those cases referenced by the Pattern Instruction were decided before *Manuel I* and are inapposite. For example, *Saunders-El* and *Alexander* each involved an acquitted plaintiff who did not suffer any pre-trial detention. *Saunders-El v. Rohde*, 778 F.3d 556, 560-61 (7th Cir. 2015); *Alexander v. McKinney*, 692 F.3d 553, 556-57 (7th Cir. 2012); *see also Bianchi v. McQueen*, 818 F.3d 309 (7th Cir. 2016) (same). Each case also cited to *Whitlock v. Brueggmann,* 682 F.3d 567, 580 (7th Cir. 2012) or quoted its "seminal" language regarding the viability of a fabrication of evidence claim:

> We have consistently held that a police officer who manufactures false evidence against a criminal defendant violates due process if that evidence is later used to deprive the defendant of her liberty in some way.

Saunders-El, 778 F.3d at 560-1; *Alexander*, 692 F.3d at 556-7; *Bianchi*, 818 F.3d at 319-20. And each case found that its respective plaintiff, having suffered no deprivation of liberty, could not bring a Fourteenth Amendment due process fabrication claim. *Saunders-El*, 778 F.3d at 560; *Alexander*, 692 F.3d at 559; *Bianchi*, 818 F.3d at 319. Had the plaintiffs in these cases suffered a pre-trial deprivation, their claims premised on the use of fabricated evidence to deprive them of liberty necessarily would have arisen under and been remedied *exclusively* by the Fourth Amendment, and *not* the Fourteenth Amendment. *Manuel I*, 137 S. Ct. at 918-19 (the Seventh Circuit was incorrect in invoking the due process clause to address a pre-trial deprivation of liberty); *Young*, 987 F.3d 641, 645-6. All that can now be said with respect to *Bianchi*, *Saunders-El*, and *Alexander* is that the due process fabrication claims attempted in those cases were claims asserted *after* a trial took place at which the allegedly fabricated

evidence was admitted, but the due process claims were disallowed because the plaintiffs were acquitted, hence the fabricated evidence was not material and their trials were fair.[8]

Petty v. City of Chicago, another case cited in the pattern instructions, also involved an acquitted plaintiff, but one who *was* held in custody before trial. 754 F.3d 416, 418, 419 (7th Cir. 2014). *Petty* quotes the seminal language in *Whitlock* but does not address the issue of how fabricated evidence must be used to establish a due process claim. *Id.* at 419. The court simply held that the plaintiff had no cognizable due process claim because his allegations were that witnesses were coerced, not that any evidence was manufactured. *Id.* at 422-23. However, had Petty's allegations established a genuine fabrication of evidence, his claim could not have been a due process fabrication claim; pursuant to *Manuel I* and *Young*, it would have been a Fourth Amendment claim for pre-trial detention without probable cause.

Thus, while plaintiff is correct that the pattern instruction states: "knowingly fabricated evidence that was introduced against Plaintiff [at his criminal trial] [in his criminal case]," *Patrick* necessarily recognized, as the instruction itself does,[9] that more recent case law like *Lewis*, *Avery* and *Manuel I* make clear that the bracketed language "in his criminal case" could only address a *pre-trial* deprivation of liberty. *Patrick*, 974 F.3d 824, 834 ("We have recently clarified the contours of constitutional claims based on allegations of evidence fabrication. A claim for false arrest or pretrial detention based on fabricated evidence sounds in the Fourth Amendment right to be free from seizure

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[8] As *Saunders-El* expressly reiterated "allegations that sound in malicious prosecution *must* be brought pursuant to state law." 778 F.3d at 560 (emphasis added).

[9] The Committee relied on *Whitlock*'s seminal language and *Petty*, *Alexander*, and *Saunders-El*, each of which pre-dates *Avery*, *Manuel I* and *Lewis,* in including that bracketed language. Of significance here, the Committee warned that the law in this area was still evolving and new case law could further inform the pattern instruction. See Federal Civil Jury Instructions of The Seventh Circuit (2017) §7.14, Committee Comment, ¶d ("The law in this area is still in flux, however, and courts are advised to check for developments post-dating these instructions.") As presaged by the Committee, the law has evolved (*Avery*, *Manuel I*, *Lewis, Patrick*) and this new case law indeed will inform the pattern instruction going forward.

without probable cause. If fabricated evidence is later used at trial to obtain a conviction, the accused may have suffered a violation of his due-process right to a fair trial."). That is, the allegedly fabricated evidence in *Patrick* was admitted in his criminal case to secure charges and his pre-trial detention, yet the Seventh Circuit still held it was error to not instruct the jury that in order to find for the plaintiff on his due process fabrication claim, the jury had to find that the fabricated evidence was *admitted at trial* and *material*. *Id.* at 835 ("Th[e] instruction [submitted to the jury] was incomplete in that 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.")

Plaintiff's only attempt to address any of the language in *Patrick* or in the case law decided after the pattern instructions were approved is to argue that defendants incorrectly read *Patrick* and ignored the language in the case:

> 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.

(Dkt. #176, at 12 (quoting *Patrick*, at 835).) Plaintiff claims that in this language, the Seventh Circuit "defined the [fabrication] claim without reference to use of the [fabricated] evidence at trial." (*Id.*) But plaintiff fails to explain how the language quoted above could somehow define the claim without reference to its use at trial, when it plainly states that its use violates a plaintiff's "right to *a fair trial* and thus depriv[e]s him of liberty without due process."

Plaintiff then argues that, based on this language, the use of the allegedly fabricated evidence "to bring charges" and "initiate[]" each of his criminal cases is sufficient to support his due process claims. (Dkt. #173, at 12.) More doublespeak: this is just a recast of the federal malicious prosecution claims he denies bringing. Likewise, the suggestion that the allegedly fabricated evidence provided a "factual basis" for the pleas (*id.* at 13) is not the equivalent of using that evidence at trial (*i.e.,* submitting that evidence for consideration by a fact-finder to weigh its credibility, find it material, and convict).

In other words, plaintiff was not convicted because his prosecutors previewed the evidence they hoped to prove at trial or because a judge weighed that evidence; he was convicted based on his voluntary and knowing guilty pleas.

Unable to identify any constitutional violation with respect to his conviction, plaintiff asks the Court to allow him to proceed as though a trial had occurred and as though his right to fair trial was violated through the admission of allegedly fabricated evidence that was material to his conviction at trial. But none of that happened. Because of plaintiff's guilty pleas, the allegedly fabricated evidence was never "used at trial" or material to the plaintiff's conviction at a trial. Under *Avery* and the recent Seventh Circuit case law that has since followed, plaintiff does not have and can never state a fabricated evidence-based due process claim.[10]

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

As defendants established in their motion (Dkt. #173, 12-13), the Seventh Circuit's requirement that the allegedly fabricated evidence be introduced at trial is consistent with—indeed, mandated by—long-standing Supreme Court precedent holding that a guilty plea breaks the causal chain between any unconstitutional acts that precede the plea and the conviction and imprisonment subsequent to the plea. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("We thus reaffirm the principle recognized in the *Brady* trilogy: a guilty plea represents a break in the chain of events which has preceded it in the criminal process.") (referring to *Brady v. United States*, 397 U.S. 742, 750 (1970), *McMann v. Richardson*, 397 U.S. 759, 770 (1970), and *Parker v. North Carolina*, 397 U.S. 790 (1970)); *see also*, *Hurlow v. United States*, 726 F.3d 958, 966 (7th Cir. 2013) ("[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.") (quoting *Tollett,* 411 U.S. at 267).

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[10] The *Baker*, *Powell*, *White* and *Carter* decisions (see Dkt. #176, n.6) provide little guidance for this Court, *Avery* was decided in the midst of the *Baker* briefing, and *Baker* was decided before the Seventh Circuit issued *Patrick* or *Young*. As for *Powell*, *White* and *Carter*, the motions to dismiss in those cases were fully briefed and decided before *Lewis*, *Patrick* or *Young* were decided and clarified Seventh Circuit law.

1. Plaintiff's Federal Due Process Claims Cannot Be Premised on Additional Due Process Rights Arising Exclusively Under Illinois Law.

Plaintiff initially mischaracterizes defendants' position as asserting that the guilty pleas have a "preclusive effect" that bar his fabrication claims, which allows plaintiff to argue that a vacated judgment has no collateral estoppel or *res judicata* effect under Illinois law. (Dkt. #176, 10.) Defendants, however, made no such arguments. As plainly stated in their motion, defendants contend that plaintiff waived his right to trial, the effect of which, under binding precedent, was to preclude his alleged fabrication of evidence claim. (Dkt. #173, 12-13.)

Implicitly conceding this bedrock principle of *federal* law, plaintiff misdirects the Court to a recent Illinois Supreme Court case that held a guilty plea does not bar a criminal defendant from seeking post-conviction relief on the grounds of innocence, and then chastises defendants for failing to discuss this case. (Dkt. #176, 10-11.) But the case, *People v. Reed*, 2020 IL 124940, has no applicability to plaintiff's federal claims. As *Reed* itself expressly states, its holding is based on "additional due process" afforded under the Illinois Constitution that is not afforded under federal law. *See generally Reed*, at ¶ 35.

Plaintiff's reliance on due process arising under state law to support his fabrication claim exposes the true nature of the actual claims he wants the Court to recognize—a federal malicious prosecution claim—notwithstanding his denial that he is bringing such claims. That is, the "additional due process" recognized under state law gives him nothing more than a state law malicious prosecution claim because §1983 exists to remedy the violation of *federal* constitutional rights: "Section 1983 is not itself a source of substantive rights; instead, it is a means for vindicating *federal rights* conferred elsewhere." *Ledford v. Sullivan*, 105 F.3d 354, 356 (7th Cir. 1997) (citing *Baker v. McCollan,* 443 U.S. 137, 144 n. 3 (1979)) (emphasis added).

2. The Only Due Process in the Context of a Guilty Plea is the Right to Have a Knowing and Voluntary Plea.

The Supreme Court has conclusively held due process is satisfied in the context of a guilty plea if the defendant had sufficiently competent counsel such that his/her plea was knowing and voluntary. (Dkt. #173, 12-13). In line with that precedent and *Ruiz* (536 U.S. 622), the Seventh Circuit has considered, in *dicta*, whether any §1983 claim could survive a guilty plea, and concluded that if one did, it would have to be a *Brady* due process claim because, arguably, a plea cannot be "knowing" if exculpatory evidence is withheld prior to the plea. *McCann*, 337 F.3d 782, 787–88. Thus, the Seventh Circuit explicitly recognized that, in the context of a guilty plea, the *Tollet* analysis (411 U.S. 258, 267) determines whether a plaintiff who pleaded guilty suffered any constitutional harm. *McCann*, 337 F.3d at 787-88.

Plaintiff dismisses the Supreme Court precedent relied upon by defendants simply because the cases arose in the criminal context. (Dkt. #176, 13-14). Such argument is unreasoned. Plaintiff is alleging that his constitutional rights *as a criminal defendant* were violated by defendants, and "[s]ection 1983 is not itself a source of substantive rights; instead, it is a means for vindicating federal rights conferred elsewhere." *Ledford*, 105 F.3d at 356 ((citing *Baker,* 443 U.S. at 144 n. 3). *McCann* itself relied on *United States v. Nash*, 29 F.3d 1195, 1202–03 n. 5 (7th Cir. 1994), *a criminal case,* in discussing whether a plaintiff can bring a §1983 action after pleading guilty. *McCann*, 337 F.3d at 787.

The Supreme Court has considered the scope of a criminal defendant's rights in connection with a guilty plea and has determined that, if the plea was voluntary and knowing, the plea breaks the causal chain between any pre-plea constitutional violations and the defendant's conviction. *Tollett*, 411 U.S. at 267. As the Supreme Court also explained in *McMann*:

> A conviction after trial in which a coerced confession is introduced rests in part on the coerced confession, a constitutionally unacceptable basis for conviction. It is that conviction and the confession on which it rests that the defendant later attacks in collateral proceedings. The defendant who pleads guilty is in a different posture. He is

> convicted on his counseled admission in open court that he committed the crime charged against him. *The prior confession is not the basis for the judgment[and] has never been offered in evidence at a trial* . . .

McMann v. Richardson, 397 U.S. 759, 773 (1970). As such, unless that plea was unknowing and involuntary, a criminal defendant cannot claim that his conviction was wrongful—that is, secured through a violation of due process—based on a violation that occurred prior to his plea. (Dkt. #173, 12-13).[11]

Plaintiff's only allegation with respect to his guilty pleas is he thought it "would not be possible" to prove that the arresting officers concocted the charges against him. (Dkt. #173-1, ¶¶24-25, 35-36, 46-47, 57-58). Nothing about this allegation impugns the knowing or voluntary nature of his pleas. Plaintiff does not claim evidence was suppressed, and his fear of a harsher sentence if convicted at trial does not render his pleas involuntary. And plaintiff himself admits that he weighed his risks and made a choice to plead guilty. (Dkt. #176, 14.)

Plaintiff makes the general statement that district courts "following *McCann* have rejected the argument that a vacated guilty plea forecloses a due process claim" and cites *Garcia v. Hudak*, 156 F. Supp. 3d 907 (N.D. Ill. 2016) and *Ollins v. O'Brien*, No. 03 C 5795, 2005 WL 730987 (N.D. Ill. Mar. 28, 2005) for support. (*Id.*). Plaintiff's failure to discuss the details of those cases is understandable as they do not assist his position. *Garcia* and *Ollins* involved *Brady* claims that were allowed to proceed because the court in each case, citing *McCann* and some of the same Supreme Court precedent cited by defendants here, found that the plaintiffs' guilty pleas could not have been voluntary and knowing if material exculpatory evidence was not disclosed to them. *Garcia*, 156 F. Supp. 3d at 916 ("Applying

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[11] Plaintiff argues that *Manuel* somehow rejects the legal principle that a guilty plea breaks the causal chain between pre-plea unconstitutional acts and the conviction resulting from the plea. (Dkt. #176, 13). This argument overstates *Manuel*'s language. In the footnote cited by plaintiff, *Manuel* rejects the principle that *any* type of pre-trial legal process, including a grand jury indictment, "expunge[s]" *a Fourth Amendment claim*. 137 S. Ct. at 920 n. 8.

the reasoning articulated in *McCann*, the Court concludes that the State has a constitutional duty to disclose material exculpatory evidence to a criminal defendant before the defendant pleads guilty. This conclusion is bolstered by the fact that a criminal defendant's guilty plea is not voluntary if the prosecution withholds factual exculpatory evidence." (citing *Brady*, 397 U.S. 742, 757)); *Ollins*, 2005 WL 730987, at *11 ("'When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees.' However, 'the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary'...'" (quoting *Ruiz,* 536 U.S. 622, 628-9 and *Brady,* 397 U.S. 742, 748)).[12] These cases are inapplicable here as plaintiff does not assert a *Brady*-based due process claim.

The only case cited by plaintiff that allowed a "fabrication claim" to proceed notwithstanding a guilty plea is *Saunders v. City of Chicago*, 2014 WL 3535723 (N.D. Ill. July 11, 2014). *Saunders*, however, is not helpful to the Court's analysis because (1) it was decided before *Avery*, *Manuel I* and *Patrick*, and (2) like *Bianchi*, *Saunders-El*, *Alexander,* and *Petty*, it focused only on *Whitlock*'s "seminal" language without considering the additional requirement from *Whitlock* (and other then existing precedent such as *Fields II*) that to state a constitutional claim, the fabricated evidence must have been used at trial. *Whitlock*, 682 F.3d at 582 ("[Defendant] is correct that the alleged constitutional violation here was not complete until trial."); *see also Fields II,* 740 F.3d 1107, 1114 ("[T]he cases we've just cited involved

[12] Although *Garcia* held that allegations that police officers failed to disclose they planted evidence on the plaintiff stated a *Brady* claim (156 F. Supp. at 917), the Seventh Circuit has expressly held that police officers do not have a *Brady* duty to disclose their misconduct. *Saunders-El v. Rohde*, 778 F.3d 556, 562 (7th Cir. 2015). The plaintiff in *Saunders-El* attempted to base a *Brady* claim on allegations that the defendant police officers planted blood evidence at the crime scene in an attempt to frame him for a crime he did not commit and failed to disclose their misconduct to the prosecutor. *Id.* at 561. The plaintiff claimed "that the police officers' failure to admit their misdeeds to the prosecution amounts to a withholding of exculpatory evidence in violation of *Brady* . . . ." *Id.* The court rejected the claim, explaining: "In the end, Saunders– El seeks to charge the officers with a *Brady* violation for keeping quiet about their wrongdoing, not for failing to disclose any existing piece of *evidence* to the prosecution. But our case law makes clear that *Brady* does not require the creation of exculpatory evidence, nor does it compel police officers to accurately disclose the circumstances of their investigations to the prosecution." *Id.* at 562 (emphasis in original).

not merely the fabrication, but the introduction of the fabricated evidence at the criminal defendant's trial. For if the evidence hadn't been used against the defendant, he would not have been harmed by it, and without a harm there is, as we noted earlier, no tort."). Moreover, the *Saunders* court engaged in no analysis whatsoever, instead merely finding that because it had previously ruled that the plaintiff's *Brady* claim could proceed notwithstanding his plea, so could his fabrication claim. The court did not discuss any of the Supreme Court authority that holds otherwise.

Because a guilty plea breaks the chain of events which preceded the plea, any constitutional violations that occurred prior to the plea cannot form the basis of attacking the plea. *Tollett,* 411 U.S. at 267. Instead, the plea can be constitutionally attacked only by establishing that the plea was not voluntary or knowing, *id.,* which plaintiff nowhere alleges. The reasoning in *Tollett*, *McMann*, *Brady,* and *Harlow* is consistent with the requirement in *Patrick*, *Avery*, *Whitlock* and *Fields II* that the allegedly fabricated evidence must both be admitted at trial *and* material to a conviction in order for that tainted evidence to be deemed the cause of the injury, *i.e.*, a conviction and subsequent incarceration. Because the only injury plaintiff suffered as a result of the allegedly fabricated evidence was any pre-plea detention, the only available §1983 claims based on the use of that evidence are Fourth Amendment claims for post-legal process, pre-trial detention without probable cause.

CONCLUSION

For the forgoing reasons, the Fourteenth Amendment and federal malicious prosecution claims, as well as any derivative claims, should be dismissed with prejudice because they fail to state claims upon which relief may be granted.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amy A. Hijjawi, an attorney, hereby certify that, on the date stamped on the margin above, I served a copy of this pleading on all counsel of record via the ECF System.

/s/ Amy A. Hijjawi