Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Germin Sims and Robert Lindsey, Plaintiffs, v. City of Chicago, Ronald Watts, Phillip Cline, Debra Kirby, Brian Bolton, Robert Gonzalez, Alvin Jones, Manuel Leano, Kallatt Mohammed, Douglas Nichols Jr., and Elsworth Smith Jr., Defendants.	)	Case No. 19-cv-2347 Hon. Rebecca R. Pallmeyer Jury Demanded

CERTAIN DEFENDANT OFFICERS' MOTION FOR SUMMARY JUDGMENT

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Defendants Brian Bolton, Robert Gonzalez, Alvin Jones, Manuel Leano, Douglas Nichols, Jr., and Elsworth J. Smith, Jr. (collectively "Defendant Officers" or "Defendants"), by their attorneys, move for summary judgment in their favor on all claims alleged in Plaintiffs' Complaint pursuant to Fed. R. Civ. Pro. 56. In support of this motion, Defendants state:

INTRODUCTION

Seeking to capitalize on the notoriety of Watts, Plaintiffs Sims and Lindsey, who have nothing to do with the Ida B. Wells complex (the site from which Watts' infamy was born), filed this action alleging "the Watts Gang" framed them for drug crimes after seeing Watts on T.V. in connection with his arrest and conviction.

Tellingly, the only Defendants they could identify were Watts and Mohammed, who was also arrested and on T.V. Sims and Lindsey also identified an officer "Brown" as a participant in their frame up when they first told their story to their lawyer. Now they conveniently say they have learned "Brown" is Defendant Jones.

In any event, Plaintiffs have failed to establish the elements necessary to sustain any of their claims and Defendant Officers are thus entitled to summary judgment on each and every claim they bring.

STATEMENT OF FACTS

The relevant facts are set forth in Defendant Officers' SOF[1] and Defendant the City of Chicago's CSOF.

[1] SOF refers to Defendant Officers' Rule 56.1 Statement of Facts filed concurrently with this motion and "CSOF" refers to Defendant the City of Chicago's Rule 56.1 Statement of Facts also filed on June 2, 2025.

LEGAL STANDARD

A court should grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." (Fed. R. Civ. P. 56(a)). The burden is on the moving party to identify those portions of the pleadings, depositions, and other discovery-related materials that demonstrate an absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

To defeat summary judgment, the non- moving party must set forth specific facts, through affidavits or other materials, that demonstrate disputed material facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "Merely alleging a factual dispute cannot defeat the summary judgment motion." *Samuels v. Wilder*, 871 F.2d 1346, 1349 (7th Cir. 1989). "Conclusory allegations by the party opposing the motion cannot defeat the motion[;]" rather, "[t]he party opposing the motion must come forward with evidence of a genuine factual dispute." *Hedberg v. Indiana Bell Telephone Co.*, 47 F.3d 928, 931 (7th Cir. 1995).

A scintilla of evidence in support of the non-moving party's position is insufficient to avoid summary judgment. *Anderson*, 477 U.S. at 251. And reliance on unsupported speculation does not meet a non-moving party's burden of providing sufficient defense to a summary judgment motion. *Hedberg*, 47 F.3d at 931-32 ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is the primary goal of summary judgment") (emphasis in original); *see also Brown v. Advocate South Suburban Hosp.*, 700 F.3d 1101, 1104 (7th

Cir. 2012) (Viewing evidence in the light most favorable to the non- moving party "does not extend to drawing inferences that are supported by only speculation or conjecture"). At the summary judgment stage, "saying so doesn't make it so; summary judgment may only be defeated by pointing to admissible evidence in the summary judgment record that creates a genuine issue of material fact[.]" *United States v. 5443 Suffield Terrace*, 607 F.3d 504, 510 (7th Cir. 2010).

DISCUSSION

Plaintiffs' Section 1983 claims are centered on allegations that Defendant Officers fabricated evidence by planting drugs on them after their arrest causing their allegedly unlawful pre-trial detentions under the Fourth Amendment and wrongful convictions under the Fourteenth Amendment.[2] Defendant Officers are entitled to summary judgment on all claims alleged in the Complaint because Plaintiffs have failed to adduce the evidence necessary to sustain those claims.

I. PLAINTIFFS' FOURTH AMENDMENT CLAIMS ARE TIME-BARRED.

Plaintiffs were arrested on October 15, 2009. (Dkt. 1 at ¶18.) Their pretrial detentions ended on July 12, 2010 (Sims) and on September 22, 2010 (Lindsey), the dates they pleaded guilty. (*Id.* at ¶¶26, 29.) They filed their Complaint on April 7, 2019. (*Id.* at 1.) Thus, Plaintiffs were released from any pretrial detention nearly a decade prior to filing suit in this case. Although §1983 claims are subject to the statute of limitations for personal injury actions in the state in which the alleged

[2] Plaintiffs have clarified that the only claims they are bringing against Defendant Officers are Fourth Amendment unlawful pre-trial detention and Fourteenth Amendment due process claims as well as derivative failure to intervene and federal conspiracy claims.

injury occurred, federal law governs the date of accrual. *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993).[3]

In the case of an acquitted plaintiff, a Fourth Amendment unlawful pretrial detention claim accrues when that plaintiff is acquitted, whether at his original trial or upon retrial. *Thompson v. Clark,* 596 U.S. 36, 45, 49 (2022); ("A plaintiff need only show that the criminal prosecution ended without a conviction."); *Smith v. City of Chicago*, 2022 WL 2752603, at *1 (7th Cir. 2022) ("After *Thompson*, a Fourth Amendment claim for malicious prosecution accrues when the underlying criminal prosecution is terminated without a conviction. Here, that was Smith's acquittal date, so his claim was timely." (citing *Thompson*, 596 U.S. at 39)). For all other plaintiffs, the claim accrues immediately upon release from pretrial detention unless the claim is barred by the principles of *Heck v. Humphrey* 512 U.S. 477 (1994).[4] *Marshall v. Elgin Police Department & Detective Houghton*, 2023 WL 4102997, at *2 (7th Cir. 2023) "A claim of arrest without probable cause is one challenging an unlawful pretrial detention, and that claim accrues when the detention ceases."); *Manuel v. City of Joliet, Ill.*, 903 F.3d 667, 669–70 (7th Cir. 2018) (Fourth Amendment claim of

[3] In Illinois, personal injury actions are subject to a two-year statute of limitations. 735 ILCS 5/13-202. Thus, the statute of limitations applicable to §1983 actions in Illinois is two years. *Gekas v. Vasiliades*, 814 F.3d 890, 894 (7th Cir. 2016).

[4] "*Heck* holds that a person who seeks damages on account of supposedly unconstitutional acts that lead to imprisonment must—if the theory of relief would imply the invalidity of the conviction—show that the conviction has been set aside by a court or by executive clemency. As long as the conviction stands, no damages action that would be incompatible with the conviction's validity is permissible. The Court added that the claim does not accrue until the conviction has been vacated, which means that the statute of limitations does not begin to run until then." *Franklin v. Burr*, 535 F. App'x 532, 533 (7th Cir. 2013) (citing *Heck*, 512 U.S. at 489–90).

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.")

As discussed more fully below, Plaintiffs' convictions were caused by their guilty pleas not by the use of any allegedly fabricated evidence against them at trial (indeed, they expressly waived their right to a trial and all the rights attendant to a trial, including their right to challenge the evidence against them). *Burr*, 535 F. App'x at 533 ("[Defendant's] convictions rest on [his] guilty plea, not on the admissibility of any particular evidence.") The plaintiff in *Burr* was arrested for murder and aggravated battery. *Id.* During his interrogation, the plaintiff requested counsel but police and a state prosecutor continued to interrogate him and secured an inculpatory statement from him. *Id.* The plaintiff moved to suppress the statement and after the state court denied his motion, the plaintiff pleaded guilty. *Id.* Several years later and while still incarcerated, the plaintiff filed a §1983 action alleging that police and the prosecutor violated his privilege against self-incrimination. *Id.* The district court dismissed the action holding it was barred under *Heck*. *Id.*

The Seventh Circuit, however, rejected any notion that *Heck* applies to bar claims that *would have* impugned the validity of a conviction *if* a trial had occurred and the constitutionally infirm evidence had been admitted at the trial. *Id.* at 533-534. Because the plaintiff's conviction was *caused by his guilty plea* and not by the constitutionally infirm evidence, the Seventh Circuit held that, rather than *Heck*-

barred, the claim was untimely because it accrued when the statement was made. *Id.* As the court put it: "There is no necessary inconsistency between the propositions that (a) a conviction based on a guilty plea is valid, and (b) the police violated the accused's rights at the time of arrest or interrogation." *Id.*

Because Plaintiffs' Fourth Amendment claims are time-barred, Defendant Officers are entitled to summary judgment on them.

II. PLAINTIFFS' GUILTY PLEAS FORECLOSE ANY DUE PROCESS CLAIMS.

To prove fabrication, Plaintiffs must show that Defendant Officers: (1) manufactured evidence that they knew with certainty was false; (2) that the false evidence was used against him at trial; and (3) the evidence was material to his conviction. *Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020); *Coleman V. City of Peoria*, 925 F.3d 336, 344 (7th Cir. 2019).

A. Plaintiffs Cannot Establish the Requisite Elements of a Due Process Fabrication Claim.

Plaintiffs admit that they pleaded guilty in connection with their arrests. (Dkt. 1 at ¶¶.) Thus, they concede there were no trials in their case, much less the introduction of any evidence (fabricated or otherwise) against them at any trial. For that reason, they have failed to prove an essential element of their due process claims. *Moran v. Calumet City*, 54 F.4th 483, 498 (7th Cir. 2022) (To prevail on a claim alleging officers fabricated evidence, a plaintiff must prove that "'there is a reasonable likelihood the evidence ***affected the judgment of the jury***.'" (quoting *Patrick*, 974 F.3d at 835) (emphasis added)); *Brown v. Elmwood Park Police Dep't*, Civil Action No. 19-9565 (SDW), 2019 WL 2142768, at *2 (D.N.J. May 16, 2019) ("As Plaintiff pled

guilty, and the alleged fabricated evidence against him was not used at trial, Plaintiff has failed to plead a viable stand-alone fabricated evidence claim….")

In *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017), the Seventh Circuit held that a due process claim based on fabricated evidence is viable *only* when the allegedly fabricated evidence was admitted against a plaintiff at trial and caused the plaintiff's conviction:

> A §1983 claim requires a constitutional violation, and the due-process violation wasn't complete until the [fabricated evidence] **was introduced at Avery's trial**, resulting in his conviction and imprisonment for a murder he did not commit. **After all, it was the admission of the [fabricated evidence] that made Avery's trial unfair**.

847 F.3d at 442 (internal citations omitted) (emphasis added). In so holding, the court emphasized that the allegedly fabricated evidence, defendants' police reports, *were admitted at trial* (*id.*) and *caused* Avery's conviction:

> [w]hen the detectives falsified their reports of a nonexistent confession, it was entirely foreseeable that this fabricated "evidence" would be used to convict Avery **at trial** for Griffin's murder. That was, of course, the whole point of concocting the confession.

Id. at 443 (emphasis added); *see also Moran*, 54 F.4th at 498 (To prevail on a claim alleging officers fabricated evidence, a plaintiff must prove that "'there is a reasonable likelihood the evidence ***affected the judgment of the jury***.'" (quoting *Patrick*, 974 F.3d at 835) (emphasis added))

In short, a due process claim based on fabricated evidence can arise only if the fabricated evidence is admitted at trial and causes the plaintiff's conviction. The Seventh Circuit has restated and upheld this principle for nearly a decade: from *Whitlock v. Brueggemann*, 682 F.3d 567, 582 (7th Cir. 2012) ("[Defendant] is correct

that the alleged constitutional violation here was not complete until trial."), to *Fields v. Wharrie,* 740 F.3d 1107, 1114 (7th Cir. 2014) ("*Fields II*") ("[T]he cases we've just cited involved not merely the fabrication, but the introduction of the fabricated evidence at the criminal defendant's trial. For if the evidence hadn't been used against the defendant, he would not have been harmed by it, and without a harm there is, as we noted earlier, no tort."), to *Avery* (as discussed above), to *Patrick*, 974 F.3d 824, 834-5 (a plaintiff must prove that the allegedly fabricated evidence was used at trial and was material to the plaintiff's conviction) to *Moran*.

And trial courts in this district routinely follow this black-letter law. *See, e.g., Fulton v. Bartik*, 20 C 3118, 2024 WL 1242637, at *22 (N.D. Ill. Mar. 22, 2024)("But when a plaintiff brings a fabricated evidence claim under the Fifth and Fourteenth Amendments, *Patrick* requires that the evidence have been used at trial."); *Zambrano v. City of Joliet*, 21-CV-4496, 2024 WL 532175, at *9 (N.D. Ill. Feb. 9, 2024) ("Zambrano wasn't 'convicted and imprisoned based on knowingly falsified evidence,' because the police report did not come into evidence." (quoting *Patrick*, 974 F.3d at 835)); *Brown v. City of Chicago*, 633 F. Supp. 3d 1122, 1159–60 (N.D. Ill. 2022)("Mr. Brown's evidence-fabrication claim regarding these reports fails because these reports were not used against him at trial. Neither report was introduced at either of Mr. Brown's trials, and neither report was used to refresh a witness's recollection during either trial.")[5]

[5]The list goes on: *Boyd v. City of Chicago*, 225 F. Supp. 3d 708, 725 (N.D. Ill. 2016) ("Here, nothing about the lineup procedure was introduced at plaintiff's criminal trial. Therefore, even assuming the defendant officers did fabricate their reports regarding the lineup, an evidence fabrication claim cannot be sustained because the allegedly fabricated evidence was

In *Patrick*, the Seventh Circuit reiterated that to sustain a due process claim based on fabricated evidence, a plaintiff must indeed prove that the allegedly fabricated evidence was used at the plaintiff's criminal trial and was material to the plaintiff's conviction:

> 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.

Id. at 834 (internal citations omitted) (emphasis added); *see also id.* at 835 ("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. A conviction premised on fabricated evidence will be set aside if the evidence was material—that is, if there is a reasonable likelihood the evidence affected the judgment of the jury."); *cf. Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 367 at n. 8 (2017) ("*[O]nce a trial has occurred*, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to

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not used at plaintiff's trial."); *Ulmer v. Avila*, 15 CV 3659, 2016 WL 3671449, at *8 (N.D. Ill. July 11, 2016) ("*Whitlock,* though, is distinguishable from the present case. The court in *Whitlock* found that the fabrication of evidence caused harm because it was introduced against the defendants at trial and 'was instrumental in their convictions.'" (quoting *Whitlock,* 682 F.3d at 582)); *Starks v. City of Waukegan*, 123 F. Supp. 3d 1036, 1048 (N.D. Ill. 2015) ("nowhere did *Fields* question the requirement that the fabricated evidence must be introduced at trial; to the contrary, it reaffirmed that requirement").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. A conviction premised on fabricated evidence will be set aside if the evidence was material—that is, if there is a reasonable likelihood the evidence affected the judgment of *the jury*." (emphases added)).

support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment." (emphasis added)).

This law makes crystal clear that, in the absence of a trial, the only constitutional remedy available to Plaintiffs based on Defendant Officers' alleged fabrication of evidence (if proven) would have been claims for post-legal process, pre-trial detention without probable cause under the Fourth Amendment and the Fourth Amendment alone (as discussed above, those claims fail too). Plaintiffs, unlike the plaintiff in *Avery* (or those in *Patrick*, *Whitlock* and *Fields II*), did not go to trial. They therefore cannot establish that the purportedly fabricated evidence was *admitted against them at trial*, a critical element in sustaining a fabrication of evidence claim under the due process clause. Defendant Officers are thus entitled to judgment in their favor on Plaintiffs' Fourteenth Amendment fabricated evidence-based due process claims.

B. Plaintiffs' Convictions Were Caused by Their Guilty Pleas Not By Any Allegedly Fabricated Evidence Per Supreme Court Law.

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).

Because a guilty plea breaks the chain of events that 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*.

The reasoning in *Tollett*, *McMann*, *Brady v. United States,* and *Hurlow* goes hand in hand 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.*, the conviction and subsequent incarceration.

McMann is particularly instructive on this point. There, three defendants seeking to vacate their guilty pleas claimed their pleas were induced by constitutionally tainted evidence (physically coerced confessions) and therefore their pleas were involuntary and should be vacated. *McMann,* 397 U.S. at 761-64. Specifically, the defendants claimed the tainted evidence was crucial to the State's cases and, but for the existence of that evidence, they would not have pleaded guilty. *Id*. at 768. The Supreme Court rejected any notion that the pleas were involuntary, remarking:

> A more credible explanation for a plea of guilty by a defendant who would go to trial except for his prior confession is his prediction that the

> law will permit his admissions to be used against him by the trier of fact. At least the probability of the State's being permitted to use the confession as evidence is sufficient to convince him that the State's case is too strong to contest and that a plea of guilty is the most advantageous course. **Nothing in this train of events suggests that the defendant's plea, as distinguished from his confession, is an involuntary act**.

Id. at 769 (emphasis added).

Similarly here, Plaintiffs chose to plead guilty to charges stemming from their arrest, rather than take their chances at a trial, thereby ensuring a shorter sentence. Indeed, Lindsey admitted that he pleaded guilty because, with credit for time served, he would be released immediately and Sims admitted that he pleaded guilty because waiting for a trial would result in a longer incarceration than if he pleaded guilty. (SOF at ¶22.) And Sims testified that he pleaded guilty to ensure a 4 year sentence rather than risk receiving the 30 year sentence he was facing, given his criminal record. (*Id.* at ¶18.)

And in choosing to plead guilty, Plaintiffs also chose to waive the due process rights a trial would have afforded them. *United States v. Ruiz*, 536 U.S. 622, 629, (2002) (In holding that criminal defendants are not constitutionally entitled to disclosure of impeachment prior to entering a plea, the court explained: "impeachment information is special in relation to the *fairness of a trial,* not in respect to whether a plea is *voluntary* ('knowing,' 'intelligent,' and 'sufficient[ly] aware')." (emphasis original)). Having waived their right to a trial, the very purpose of which is to "effectuate due process" (*Saunders-El v. Rohde*, 778 F.3d 556, 561 (7th Cir. 2015)), Plaintiffs cannot now "blame" their guilty pleas, which caused their convictions and subsequent incarcerations, on due process violations that simply did

not occur: the allegedly fabricated evidence was never admitted against them at trial. *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]").[6]

In the simplest terms, the Fourteenth Amendment, which guarantees a fair trial, has nothing to do with guilty plea proceedings. The Supreme Court couldn't have spoken more plainly in instructing our circuit that it was absolutely incorrect in blurring the rights afforded under different amendments in the Constitution. *Manuel*, 580 U.S. at 367 (a pre-trial deprivation of liberty without probable cause claim arises exclusively under the Fourth Amendment and Seventh Circuit erred in ruling that such a claim is "founded on the Due Process Clause"); *see also id.* at n. 8 ("*[O]nce a trial has occurred*, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment." (emphasis added)).

Indeed, "the threshold inquiry in a §1983 suit [] requires courts to 'identify the specific constitutional right at issue." *Id.* at 370 (quoting *Albright v. Oliver*, 510 U.S.

[6] *U.S. v. Litos*, 847 F.3d 906, 910 (7th Cir. 2017); *Hurlow*, 726 F.3d at 966; *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.")

266, 271 (1994)). And with respect to guilty pleas, the due process the Constitution affords, that a defendant make a knowing and voluntary plea, is grounded in the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). That is the amendment that guarantees our right to counsel and having that counsel functions as the safeguard against an unknowing and involuntary plea. *McMann*, 397 U.S. at 770, 771. That means criminal defendants have the right to competent counsel who can advise them of the benefits and disadvantages of pleading guilty such that they can make a knowing and voluntary decision.

In short, criminal defendants do not have "trial rights" in the context of a guilty plea[7] and it is an absolute nonstarter for a defendant to blame his guilty plea on tainted evidence or any other alleged constitutional violation that occurred before the plea. *cf. Burr*, 535 Fed. App'x. at 533 ("[Defendant's] convictions rest on [his] guilty plea, not on the admissibility of any particular evidence.")

Defendant Officers are entitled to judgment in their favor on any fabricated evidence based Fourteenth Amendment claims arising from their arrests.

C. Defendant Officers Are Entitled To Qualified Immunity.

Defendant Officers are entitled to qualified immunity under § 1983 unless Plaintiffs can show: (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. *District of Columbia v. Wesby*, 583 U.S. 48, 62–63, (2018); *Holloway v. City of Milwaukee*, 43

[7] This is precisely the reason the Supreme Court held that "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Ruiz*, 536 U.S. at 633.

F.4th 760 (7th Cir. 2022); *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 1999) (burden of defeating qualified immunity rests with the plaintiff). "'Clearly established' means that, at the time of the officer's conduct, the law was 'sufficiently clear' that every 'reasonable official would understand that what he is doing' is unlawful." *Wesby*, 583 U.S. at 63. To be "clearly established," a legal principle must be "dictated by controlling authority, or a robust consensus of cases of persuasive authority," such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *Id.*

Furthermore, it is essential to evaluate the public official's conduct at the correct level of granularity. *Id.* ("The 'clearly established' standard also requires that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him. The rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.' This requires a high degree of specificity.")

In 2009, it was not well-established that criminal defendants had Fourteenth Amendment rights in the context of a guilty plea or that police officers could somehow violate those rights without even participating in the guilty plea proceedings. Nor was it well-established that antecedent claims survived a guilty plea and could be a basis for a Fourteenth Amendment claim for damages in a civil case. Qualified immunity applies not just to unsettled application of laws to facts but also to whether the law itself is settled on the viability of a legal claim on a particular topic. *Bianchi v. McQueen*, 818 F.3d 309, 323 (7th Cir. 2016) (granting

qualified immunity because it was unsettled whether a Fourth Amendment malicious prosecution claim was legally cognizable at time of incident). In fact, the Supreme Court has explicitly held that ambiguities about the viability of legal claims is itself a reason to apply qualified immunity to police officers. *Bianchi*, 818 F.3d at 323; *Ziglar v. Abbasi*, 582 U.S. 120, 154 (2017) ("[T]he fact that the courts are divided as to whether or not a § 1985(3) conspiracy can arise from official discussions between or among agents of the same entity demonstrates that the law on the point is not well established. When the courts are divided on an issue so central to the cause of action alleged, a reasonable official lacks the notice required before imposing liability."); *Wilson v. Layne*, 526 U.S. 603, 618 (1999) (noting it would be "unfair" to subject officers to damages liability when even "judges ... disagree"); *Reichle v. Howards*, 566 U.S. 658, 669–670 (2012) (same). Here, it simply was not well-established that antecedent claims of governmental misconduct could survive a guilty plea under *Tollett* and the *Brady* trilogy. Thus, even were this Court to hold that such claims do survive a knowing and voluntary guilty plea, Defendant Officers would nevertheless be entitled to qualified immunity on any such antecedent civil claims.

III. LINDSEY'S CLAIMS ALSO FAIL BECAUSE HE DID NOT SUFFER ANY PRE-TRIAL OR POST-PLEA DEPRIVATION OF LIBERTY.

Plaintiff Lindsey's Fourth and Fourteenth Amendment claims also fail because each and every day of his pre-trial detention and post-plea incarceration was credited to a lawful sentence he received for a valid conviction in a prior criminal case against him. (SOF at ¶¶22-23.) "[A] section 1983 plaintiff may not receive damages for time

spent in custody, if that time was credited to a valid and lawful sentence." *Ewell v. Toney*, 853 F.3d 911, 917 (7th Cir. 2017); *Ramos v. City of Chicago*, 716 F.3d 1013, 1019 (7th Cir. 2013) (although the plaintiff's bond issued for a prior charge was revoked because of his allegedly wrongful arrest/charging in the subsequent case, that detention remained a detention based on the prior charge because every day of his detention was credited to the sentence he ultimately received after pleading guilty to the prior charge). Because Lindsey's time in pre-trial detention and post-plea incarceration was credited to his lawful prior conviction and sentence, Lindsey has no injury and therefore no standing to bring any damages claim based on his pre-trial detention. *Ewell*, 853 F.3d at 917 ("[W]e conclude that [plaintiff] is not entitled to seek damages related to her detention and therefore to this extent has no injury that a favorable decision by a federal court may redress. Without a redressable injury, [plaintiff] lacks Article III standing to press this claim."). As such, Lindsey's Fourth and Fourteenth Amendment claims (as well as his derivative failure to intervene and federal conspiracy claims) also fail because he lacks standing to bring the claims.

IV. PLAINTIFFS HAVE FAILED TO ADDUCE ANY EVIDENCE THAT ANY DEFENDANT OFFICER OTHER THAN WATTS, MOHAMMED AND JONES WAS PERSONALLY INVOLVED IN THEIR ARREST OR PROSECUTION.

Both Plaintiffs' testimony makes clear that the only Defendant Officers they claim participated in their allegedly false arrest and subsequent fabrication of evidence are Watts, Mohammed and Jones. (SOF at ¶¶16-17, 25-28, 30-34, 37.) And because there is zero admissible evidence from any other witness or document that the remaining Defendant Officers, Bolton, Gonzalez, Leano, Nichols, and Smith, were

personally involved in any of the alleged misconduct forming the basis for Plaintiffs' claims, these officers are entitled to summary judgment in their favor on all those claims.

"Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996); *see also Grieveson v. Anderson*, 538 F.3d 763, 776 (7th Cir. 2008) ("A plaintiff bringing a civil rights action must prove that the defendant personally participated in or caused the unconstitutional actions."). Plaintiffs must demonstrate "a causal connection between (1) the sued officials and (2) the alleged misconduct." *Colbert v. City of Chicago*, 851 F.3d 649 (7th Cir. 2017).

Thus, to avoid summary judgment in favor of Bolton, Gonzalez, Leano, Nichols and Smith, Plaintiffs must establish that each and every one of them actually participated in committing the alleged misconduct. *Wolf- Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983); *Eades v. Thompson*, 823 F.2d 1055, 1063 (7th Cir. 1987) ("Each individual defendant can be liable only for what he or she did personally, not for any recklessness on the part of any other defendants, singly or as a group.").

Speculation and vague references to the "Watts Gang" won't cut it. *Morfin v. City of E. Chicago*, 349 F.3d 989, 1002 (7th Cir. 2003) ("[s]peculation is insufficient to withstand summary judgment."); *Nunez v. Dart*, 2011 WL 5599505, *3 (N.D. Ill. 2011) ("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.). Indeed, summary judgment "is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Steen v. Myers*, 486 F.3d 1017, 1022 (7th Cir. 2007).

Accordingly, case after case holds that merely establishing proximity to alleged misconduct (for example, being listed on a police report, showing up on a scene after alleged misconduct has occurred, or otherwise not being linked in any material way to the specific misconduct at issue) is insufficient to create an issue of fact that precludes summary judgment. *Molina ex rel. Molinva v. Cooper,* 325 F.3d 963, 973 (7th Cir. 2003) (finding that evidence that defendant was in a truck was not sufficient to link defendant, one of seventeen officers who could have damaged the truck, to the damage); *Walker v. White*, 2021 WL 1058096, at *14 (N.D. Ill. 2021) (entering summary judgment for officers responding to scene of police chase in which plaintiff alleged officers detained him and planted drugs because officers were on scene after person was detained, did not search him, did not author any police reports, did not testify at any proceedings); *Nunez,* 2011 WL 5599505 at *3 (finding that plaintiff could not hold defendant officers collectively liable simply because they were present at the home during the search); *Billups v. Kinsella,* 2010 WL 5110121, *5 (N.D. Ill. 2010) ("Officer Kinsella did not slam Billups on the floor, handcuff her, or lift her off the floor and push her onto the couch. Thus, he cannot be held personally responsible for any allegedly excessive force to which Billups was subjected.")

And the Seventh Circuit has left no doubt 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 e.g., 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"); *De Jesus v. Odom,* 578 F. App'x. 598 (7th Cir. 2014)(affirming summary judgment in favor of defendant where there was no evidence that the defendant had any role in placing the inmate plaintiff into segregation)*; Cherry v. Washington County*, 526 F. App'x 683, 688 (7th Cir. 2013) (plaintiff's failure to identify who shoved him during the arrest doomed claim for excessive force); *Harper v. Albert*, 400 F.3d 1052, 1062 (7th Cir. 2005) (affirming dismissal of two inmates' section 1983 excessive force claims against thirteen defendant prison guards because the plaintiffs "failed to even establish that each and every one of the defendants ever touched [them]...").

In addition, to establish liability on the part of any Defendant Officer for allegedly fabricating evidence, Plaintiffs must also "prove not only that the evidence was false but that [each officer] 'manufactured' it." *Coleman*, 925 F.3d at 344. To clear this "high bar," Plaintiffs must prove that Bolton, Gonzalez, Leano, Nichols and Smith "knew with certainty" that Mohammed and Jones' account of the circumstances of Plaintiffs' arrests was allegedly false and that Watts, Mohammed and Jones

allegedly planted drugs on Plaintiffs. *Id.* Mere evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity in insufficient." *Id.* at 345.

Plaintiffs have not and cannot satisfy these standards for Defendant Officers Bolton, Gonzalez, Leano, Nichols and Smith and the Court should therefore enter judgment in their favor on all claims here.

A. Plaintiffs Failed to Comply With Fed. R. Civ. P. 37.

As an initial matter, Plaintiffs are barred under Fed. R. Civ. P. 37 from contesting summary judgment in favor of Bolton, Gonzalez, Leano, Nichols and Smith in this case. The Complaint makes no specific allegations of misconduct against them individually whatsoever. (See generally, Dkt. #1.) Instead, Plaintiffs simply make a few conclusory allegations regarding some conspiracy to fabricate a false story to cover up their alleged misconduct and to cause Plaintiffs' allegedly wrongful detention and prosecution. (*Id.* at ¶¶18-22.)

Given the utter lack of specific allegations against *any* Defendant Officer, Plaintiffs were asked in written discovery to describe the personal involvement of each Defendant Officer in the misconduct alleged in their Complaint. (SOF at ¶37.) Plaintiffs again failed to describe any conduct committed by the officers with any particularity. (*Id.*) In fact, all they could muster was:

> Those officers are on the reports of my arrest. They helped write the reports or they knew the reports were false and didn't do anything about it.

(*Id.*) Plaintiffs' failure to supply the evidentiary proof of Bolton, Gonzalez, Leano, Nichols and Smith's specific involvement in their interrogatory responses bars them

from relying on any additional such evidence to oppose summary judgment in favor of them on this claim. *See Moran*, 54 F.4th at 496.

In *Moran*, as here, a plaintiff was asked to specifically list the evidence he intended to use to support his claims and failed to include various matters that he later attempted to use to defeat summary judgment. *Id.* at 497-98. The Seventh Circuit held that the plaintiff was barred from relying on such evidence:

> Parties have a duty to update interrogatory answers that are "incomplete or incorrect." Fed. R. Civ. P. 26(e)(1)(A). [The plaintiff's] failure to do so means he "is not allowed to use that information ... to supply evidence" at summary judgment "unless the failure was substantially justified or is harmless." *Id*. r. 37(c)(1). Moran argues that any Rule 26(e) violation was harmless because the allegations in question were part of a single Brady suppression claim, not a freestanding claim, so they did not prejudice or surprise the defendants. Rule 37(c)(1) refers to "information," not "claims," however, and it would prejudice the defendants if they had to contend with allegations at summary judgment that [the plaintiff] did not disclose during discovery. Rule 37(c)(1) thus precludes [the plaintiff] from basing his Brady suppression claim on this assertion.

Id. Thus, Plaintiffs are stuck with their testimony and interrogatory answers. And that evidence gets them nowhere: it utterly fails to raise a genuine issue of fact with respect to Bolton, Gonzalez, Leano, Nichols and Smith's personal involvement in or knowledge of the alleged misconduct here.

B. Plaintiffs Have Failed to Adduce Any Evidence Establishing Bolton, Gonzalez, Leano, Nichols and Smith's Personal Involvement In, Or Knowledge of, Any Alleged Misconduct.

There is no evidence that Bolton, Gonzalez, Leano, Nichols or Smith witnessed (or claimed to have witnessed) any crimes committed by Plaintiffs before their arrest nor is there any evidence that they witnessed or otherwise knew about any alleged evidence fabrication by Watts, Mohammed and Jones. (SOF at ¶¶16-17, 25-28, 30-34,

37.) There is no evidence that these officers authored or signed any paperwork related to the arrests or contributed to the substance of any of that paperwork. (*Id.* at ¶7.) There is no evidence that either Bolton, Gonzalez, Leano, Nichols or Smith authored or signed any criminal complaints, communicated with any prosecutors, testified in court, or was otherwise involved in any way with the prosecution.[8] (*Id.* at ¶¶7-8.)

The extent of evidence relating to Bolton, Gonzalez, Leano, Nichols and Smith's purported "involvement" in this case is the mere inclusion of their names on the Case Incident Report and Arrest Report that were prepared by Jones and only Jones. (*Id.* at ¶¶6, 35-36.) But the reports are hearsay and thus not properly considered for the purposes of this motion. *See Logan v. Caterpillar, Inc.*, 246 F.3d 912, 925 (7th Cir.2001) (inadmissible hearsay cannot preclude summary judgment). Moreover, neither Plaintiffs' arrests nor the police reports caused Plaintiffs' pre-trial detentions.[9] A judicial finding of probable cause did. And none of these officers

[8] Even if they had, a police officer need not have personal knowledge of the facts providing probable cause, the officer is entitled to rely on the "collective knowledge of the agency he works for," here the Chicago police department. *Tangwall v. Stuckey*, 135 F. 3d 510, 517 (7th Cir. 1998); *United States v. Williams*, 627 F.3d 247, 253 (7th Cir. 2010) (DEA's knowledge of facts supporting probable cause imputed to a local law enforcement officer). Thus, absent proof that Bolton, Gonzalez, Leano, Nichols, and Smith knew to a certainty that Mohammed and Jones were allegedly lying about witnessing the underlying crimes and/or that Watts, Mohammed and Jones allegedly planted drugs on Plaintiffs after their arrests, they cannot be held liable for any actions they took in reliance on the information they received from Watts, Jones or Mohammed. *Coleman*, 925 F.3d at 345 (evidence that "suggests [the officers] had reason to doubt [fellow officers'] veracity in insufficient" to sustain a fabrication claim).

[9] *Mitchell v. Doherty*, 37 F.4th 1277, 1283 (7th Cir. 2022) (A judge, relying on the criminal complaint, which was based on fabricated evidence, found probable cause for further detention, thus beginning the 'legal process.'"); *Manuel*, 580 U.S. at 360 ("And those constitutional protections apply even after the start of 'legal process' in a criminal case—here, that is, after the judge's determination of probable cause.") Put another way, police officers do not initiate criminal prosecutions. *Evans v. Matson*, 23-2954, 2024 WL 2206638, at *3 (7th Cir. May 16, 2024); *Reed v. City of Chicago*, 77 F. 3d 1049, 1053 (7th Cir. 1996). Although an arrest could be the first step towards a prosecution, the chain of causation is

testified at Plaintiffs' preliminary hearing or at any other point during Plaintiffs' pre-trial proceedings.

Plaintiffs have not and cannot establish the requisite personal involvement of Bolton, Gonzalez, Leano, Nichols and Smith in the alleged misconduct or knowledge of the alleged misconduct and the Court should therefore enter judgment in their favor on all the claims here.

V. PLAINTIFFS HAVE FAILED TO ADDUCE ANY EVIDENCE SHOWING THAT DEFENDANT OFFICERS HAD A DUTY TO INTERVENE OR THAT THEY CONSPIRED TO FRAME THEM.

Because Plaintiffs have failed to adduce any evidence that Bolton, Gonzalez, Leano, Nichols or Smith were present when Watts, Mohammed and Jones allegedly planted drugs on them and because Plaintiffs have failed to adduce any evidence that these officers knew that drugs were allegedly planted on Plaintiffs and that Mohammed and Jones allegedly lied about witnessing Plaintiffs commit the underlying crimes here, they cannot establish that the officers failed to intervene. *Culp v. Reed*, No. 19-cv-106, 2021 WL 4133703, at *5 (N.D. Ind. Sep. 9, 2021), *citing Byrd v. Clark,* 783 F.2d 1002, 1007 (11th Cir. 1986) (duty to intervene only arises if a constitutional violation occurs in another officer's **presence**); *Jacobs v. Village of*

broken by indictment. *Evans*, 2024 WL 2206638, at *3. In general, to hold a defendant responsible for initiating the prosecution, Plaintiff must identify "some post-arrest action which influenced the prosecutor's decision to indict." *Colbert*, 851 F.3d at 655 (quoting *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 902 (7th Cir. 2001) This could be post-arrest "pressure or influence exerted by the police officers or *knowing* misstatements by the officers to the prosecutor." *Reed*, 77 F.3d at 1053 (emphasis added). In this case, however, Plaintiffs have failed to show that Bolton, Gonzalez, Leano, Douglas Nichols or Smith "did anything after the arrest that made [them] responsible for the prosecution, such as misleading the prosecutors." *Evans,* 2024 WL 2206638, at *3.

Ottawa Hills, 5 F. App'x 390, 395-96 (6th Cir. 2001) ("While officers must affirmatively intervene to prevent other officers from violating an individual's constitutional rights, [citation omitted] **that obligation does not extend to questioning the basis for a fellow officer's reasons for arrest**." (emphasis added)).

Furthermore, as Justice Easterbrook has pointed out, failure to intervene claims have no basis in the Constitution and should not be used to hold officers liable under § 1983. *Mwangangi v. Nielsen*, 48 F.4th 816, 834 (7th Cir. 2022) (Easterbrook concurring). Indeed, Section 1983 supports only direct, not vicarious, liability and a failure to intervene sounds like vicarious liability. *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009); *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978)). The Constitution establishes negative liberties – the right to be free from official misconduct – not positive rights to have public employees protect private interests. *Id.*

Nor is there any evidence of a conspiracy. To prove a §1983 conspiracy, a plaintiff must show that multiple people reached an agreement to deprive the plaintiff of a constitutional right, an overt act in furtherance of the conspiracy, and that the acts actually deprived the plaintiff of the constitutional right. *Beaman v. Freesmeyer,* 776 F.3d 500, 506 (7th Cir. 2015). Circumstantial evidence can prove an agreement since conspiracies often do not depend on explicit agreements, but evidence must be more than merely speculation. *Id.* at 511. An agreement is a "necessary and important" element of this cause of action, and "[a] defendant who

innocently performs an act which happens to fortuitously further the tortious purpose of another is not liable under the theory of civil conspiracy." *Turner v. Hirschbach Motor Lines*, 854 F.3d 926, 930 (7th Cir. 2017).

To sustain a claim at summary judgment that defendants conspired to deny a plaintiff's constitutional rights, a plaintiff must come forward with facts tending to show that defendants "directed themselves toward an unconstitutional action by virtue of a mutual understanding[,]" and support such allegations with facts suggesting a "meeting of the minds." *Amundsen v. Chicago Park Dist.*, 218 F.3d 712, 718 (7th Cir. 2000); *see also Redwood v. Dobson*, 476 F.3d 462, 466 (7th Cir. 2007)("The minimum ingredient of a conspiracy [ ] is an agreement to commit some future unlawful act in pursuit of a joint objective"). When considering whether a plaintiff can establish the existence of a conspiratorial agreement, "[t]he conspirators must act with a single plan, the general nature and scope of which is known to each would-be conspirator." *Hernandez v. Joliet Police Dept.*, 197 F.3d 256, 263 (7th Cir. 1999) (*citing Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir. 1979)). "The agreement may be inferred from circumstantial evidence, but only if there is sufficient evidence that would permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's objectives." *Id.* A conspiracy claim cannot survive summary judgment based on vague conclusory allegations that include no overt acts reasonably related to promoting the conspiracy. *Amundsen*, 218 F.3d at 718.

Here, there is no evidence, circumstantial or otherwise, that Defendant

Officers made any agreement to violate Plaintiffs' rights. Thus, the entirety of Plaintiffs' conspiracy claims amounts to nothing more than conclusory allegations about their arrests. But "saying so doesn't make it so; summary judgment may only be defeated by pointing to admissible evidence in the summary judgment record that creates a genuine issue of material fact[.]" *United States v. 5443 Suffield Terrace*, 607 F.3d 504, 510 (7th Cir. 2010); s*ee also Cooney v. Casady*, 735 F.3d 709, 718 (7th Cir. 2012) ("vague and conclusory allegations of the existence of a conspiracy are not enough to sustain a plaintiff's burden at summary judgment."); *U.S. v. Sullivan*, 902 F.3d 1093, 1099 (7th Cir. 1990)(hypothesizing that activities were part of a conspiracy based on "piling inference upon inference [is] a practice disapproved of by the Supreme Court."); *Wrice v. Burge,* 187 F. Supp. 3d 939, 955 (N.D. Ill. 2015) ("Nothing in the compliant plausibly suggests that Wrice's coerced confession was part of a grand conspiracy among nine state actions, seven of whom were unaware of the underlying coercion and three of whom did not assume office until years after Wrice's trial."). And Plaintiffs themselves testified that the only officers who engaged in any alleged misconduct were Watts, Mohammed and Jones. (SOF at ¶¶16-17, 25-28, 30-34, 37.)

Finally, failure to intervene and conspiracy claims are derivative. Absent an underlying constitutional violation, there can be no independent claim for failure to intervene or conspiracy. *See Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005); *Reynolds v. Jamison,* 488 F.3d 756, 764 (7th Cir. 2007) (Section 1983 conspiracy claim depends upon the viability of the underlying constitutional claim).

Because Plaintiffs failed to adduce any evidence establishing that Bolton, Gonzalez, Leano, Nichols or Smith failed to intervene in any alleged misconduct or conspired to allegedly frame them and because the underlying Fourth and Fourteenth Amendment claims fail as discussed above, their failure to intervene and federal conspiracy claims also fail.

CONCLUSION

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

Dated: June 2, 2025

Respectfully submitted,

/s/ *Amy Hijjawi*

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2025, I electronically filed the foregoing CERTAIN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

/s/ *Amy A. Hijjawi*