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

Germin Sims and Robert Lindsey,	)	
	)	No. 19-cv-2347
Plaintiffs,	)	
	)	*(Judge Pallmeyer)*
-vs-	)	
	)	
City of Chicago, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO OFFICER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (ECF No. 128)

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Plaintiffs Germain Sims and Robert Lindsey were wrongfully convicted because the City of Chicago allowed a corrupt gang of Chicago police officers to terrorize residents of the Ida B. Wells housing project. Plaintiffs were wrongfully convicted of felonies because of this police misconduct. They brought this lawsuit after their convictions were vacated and they were certified innocent. Plaintiffs bring constitutional claims against eight present and former Chicago police officers; plaintiffs also bring constitutional claims and a state law claim against defendant City of Chicago.

Defendants Bolton, Gonzalez, Jones, Leano, Nichols, and Smith have filed a lengthy summary judgment motion (ECF No. 128) raising meritless legal theories, including theories that courts in this district repeatedly reject. Defendants Mohammed and Watts seek to join portions of the other individual defendants' summary judgment motion. (ECF Nos. 129, 134.)

The Court should deny summary judgment to the officer defendants.

I. Summary Judgment Standard

Summary judgment is proper when "the movant shows that 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). Plaintiffs, as the non-moving parties, are entitled to "the benefit of conflicting evidence and any favorable inferences that might be reasonably drawn from the evidence." *Runkel v. City of Springfield*, 51 F.4th 736, 741 (7th Cir. 2022). The Court does not

weigh the evidence, determine credibility, or make even "legitimate inferences" in favor of the moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

II. Defendants' Defective Submissions

Defendants have flouted this Court's local rules by omitting a statement of facts from their motion for summary judgment, a "frustrating" practice that "places an undue burden on the Court and its staff." *Allied Metal Co. v. Elkem Materials Inc.*, No. 21 C 1629, 2024 WL 4299018, at *1 (N.D. Ill. Sept. 26, 2024). As courts in this district repeatedly hold, "a Local Rule 56 .1 statement is not a substitute for a statement of facts section contained in the supporting brief." *Id.* The Court is entitled to strictly enforce Local Rule 56.1, *Thornton v. M7 Aerospace LP*, 796 F.3d 757, 769 (7th Cir. 2015), and should strike defendants' motion for summary judgment.

Rather than include a proper factual statement with citations, defendants ask the Court to consider unsupported and false factual assertions in their introduction section, including the groundless and irresponsible claim that plaintiffs invented their allegations after seeing defendants Watts and Mohammed on TV. (ECF No. 128 at 1.) This claim is false: Plaintiff Lindsey complained to the Chicago Police Department in 2011, swearing under penalty of perjury to the same factual claims that he raises in this case. (Plaintiffs' Additional Facts ¶¶ 12-13.) Watts and Mohammed were indicted a year

later, in 2012. (Plaintiffs' Additional Facts ¶ 41.) The Court should not tolerate defendants' attempt to play fast and loose with the facts.

Nor should the Court tolerate defendants' improper attempt to rely on plaintiff Lindsey's arrest history. (Defendants' Rule 56.1 Statement ¶ 29.) Defendants do not and cannot explain the relevance of this evidence at summary judgment when the Court does not make credibility determinations. The obvious explanation for the inclusion of this prejudicial evidence is that defendants are mounting an improper attack on Lindsey's character.

Defendants attempted a similar tactic when they attached a plaintiff's criminal history report to a motion to dismiss in the *Watts Coordinated Proceedings*. (No. 19-cv-1717, ECF No. 165.) Defendants withdrew the offending document in response to a motion to strike. (No. 19-cv-1717, ECF No. 169.)

Other lawyers for the City of Chicago sought to use this sharp practice in the Seventh Circuit in *Smith v. City of Chicago*, 19-2725, when lawyers for the City attached a collection of police reports as a supplemental appendix to their response brief, including the criminal history report of the plaintiff-appellant. The Seventh Circuit granted the plaintiff's motion to strike in *Smith* and ordered defendants-appellees to refile their brief

without the improper attachments.[1] *Smith v. City of Chicago*, 19-2725 (Order of August 20, 2020). This Court should follow suit and strike Paragraph 29 from defendants' Rule 56.1 Statement.

III. Relevant Facts

The facts material to plaintiffs' claims, viewing the record in the light most favorable to plaintiffs, are as follows:

Plaintiffs were arrested on October 15, 2009 based on a false police story that police saw plaintiff Sims selling drugs from the passenger seat of a car. (Additional Facts in Response to Officers' Motions ¶¶ 5-7, 23.) The police story included the false claims that the police saw Sims try to hide drugs under the passenger seat and then saw Lindsey drop drugs on the floor of the car as he exited the vehicle. (*Id.* ¶ 7, 23.)

At summary judgment, the Court must accept plaintiffs' testimony that these claims are false, that the defendants did not see plaintiffs selling or possessing drugs, and that they arrested plaintiffs after not finding any drugs in the car. (Additional Facts in Response to Officers' Motions ¶ 23.) At the police station, the officers framed plaintiffs by taking drugs from another man and charging plaintiffs with possession of those drugs. (*Id.* ¶ 24.)

[1] After striking the supplemental appendix, the Seventh Circuit affirmed, 3 F.4th 332 (7th Cir. 2010). The Supreme Court then granted certiorari and remanded, 142 S.Ct. 1665, resulting in a reversal and remand in orders available at 2022 WL 2752603 (7th Cir. 2022), as amended on denial of rehearing, 2022 WL 19562962 (7th Cir. 2022). *See below* at 17.

Defendants Bolton, Gonzalez, Jones, Leano, Mohammed, Nichols, Smith, and Watts were involved in the arrest. (Additional Facts in Response to Officers' Motions ¶¶ 8-9.)

Jones—Defendant Jones arrested both plaintiffs and claims that he saw each plaintiff with drugs. (Additional Facts in Response to Officers' Motions ¶¶ 5, 22.)

Mohammed—Defendant Mohammed was the second arresting officer; he claims that he saw plaintiff Sims engage in hand-to-hand drug transactions and stated in a 2011 memorandum that he arrested plaintiff Lindsey. (Additional Facts in Response to Officers' Motions ¶¶ 9, 10, 18.)

Bolton—Defendant Bolton assisted in the arrest Defendant; he approached the car at the same time as defendant Jones and stated in a 2011 memorandum that he assisted in the arrest. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 11, 20.)

Gonzalez—Defendant Gonzalez assisted in the arrest; he approached the car at the same time as defendant Jones. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 11.)

Leano—Defendant Leano assisted in the arrest, as he stated in a 2011 memorandum. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 19.)

Nichols—Defendant Nichols assisted in the arrest, as he stated in a 2011 memorandum. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 17.)

Smith—Defendant Smith assisted in the arrest and arrested plaintiff Lindsey, as he stated in a 2011 memorandum. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 16.)

Watts—Defendants Watts personally supervised the investigation that led to the arrest, as he confirmed in a 2011 memorandum. (Additional Facts in Response to Officers' Motions ¶¶ 8-9, 15.)

On October 16, 2009, defendant Jones signed Complaints for Preliminary Examination charging plaintiffs with drug offenses. (Defendants' Rule 56.1 Statement ¶ 7.) On November 4, 2009, defendant Jones testified to the false police story at a preliminary hearing, causing the state court judge to find probable cause for the prosecution. (Additional Facts in Response to Officers' Motions ¶¶ 21-22.)

On July 12, 2010, Plaintiff Sims pleaded guilty to the criminal charges, in part because he feared that the factfinder would believe the false police story and that the court would impose a lengthy sentence. (Additional Facts in Response to Officers' Motions ¶ 25.) At the guilty plea hearing, plaintiff Sims's attorney stipulated to a recitation of facts by the prosecutor that

mirrored the facts in the arrest report, and the judge found those facts sufficient for the plea. (*Id.* ¶¶ 26-27.) The judge told Sims that his possible sentence was between 4 and 30 years and sentenced him to 4 years. (*Id.* ¶ 28.)

On September 22, 2010, plaintiff Lindsey pleaded guilty to the criminal charges because he feared that he would receive a lengthy sentence if he went to trial. (Additional Facts in Response to Officers' Motions ¶ 30.) At the guilty plea hearing, plaintiff Lindsey's attorney stipulated to a recitation of facts by the prosecutor that mirrored the facts in the arrest report, and the judge found those facts sufficient for the plea. (*Id.* ¶¶ 31-32.) The judge told Lindsey that his possible sentence was between 1 and 7 years and sentenced him to 2 years. (*Id.* ¶ 33.)

Both plaintiffs received credit for time in custody awaiting trial, and each plaintiffs served his sentence in the Illinois Department of Corrections. (Additional Facts in Response to Officers' Motions ¶¶ 28-29, 33-34.) Plaintiff Lindsey served time for a parole violation at the same time he was in custody for the charges related to his arrest on October 15, 2009. (*Id.* ¶ 35.) The cause of plaintiff Lindsey's parole violation was the wrongful arrest at issue in this case. (*Id.* ¶¶ 36-38.)

On February 13, 2019, the Cook County Circuit Court entered orders vacating plaintiffs' convictions. (Additional Facts in Response to Officers'

Motions ¶ 39.) On March 18, 2019, the Cook County Circuit Court entered orders granting a certificate of innocence to each plaintiff. (*Id.* ¶ 40.)

IV. Plaintiffs' Claims

Plaintiffs sue the individual defendant officers for depriving them of rights secured by the Fourth Amendment when they fabricated evidence that caused the wrongful prosecutions ("federal malicious prosecution"). They also bring claims that they were deprived of liberty without due process of law because they were convicted based on fabricated evidence. Plaintiffs bring the same constitutional claims against defendant City of Chicago, and they bring a supplemental state law claim of malicious prosecution against the City only. Plaintiffs discuss their claims against the City of Chicago in a separate filing.

V. Plaintiffs' Due Process Claims Are Not Barred Because There Was No Trial

Defendants argue that plaintiffs' due process claims are barred because their guilty pleas meant there was no trial. (ECF No. 128 at 6-10.) The Court should reject this argument because the Seventh Circuit has "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." *Whitlock v. Brueggemann*, 682 F.3d 567, 579 (7th Cir. 2012). It is of no import whether the deprivation of liberty followed a trial or a plea: "How the fabricated evidence came into

play is not as critical to establish the constitutional violation as the fact that the fabricated evidence was a direct cause of a Defendants' conviction." *White v. City of Chicago*, 17-cv-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018) (citing *Whitlock*, 682 F.3d, at 582.)

In addition to *White*, every other court in this district to consider this argument has rejected it. *E.g.*, *Mendoza v. City of Chicago*, 23-cv-2441, 2024 WL 1521450, at *2 (N.D. Ill. Apr. 8, 2024); *Baker v. City of Chicago*, 483 F. Supp. 3d 543, 553 (N.D. Ill. 2020); *Carter v. City of Chicago*, No. 17 C 7241, 2018 WL 1726421, at *5 (N.D. Ill. Apr. 10, 2018).

As Judge Valderrama explained, defendants' theory "would reward egregious deliberate misconduct from state actors by making conviction following trial the only pathway to vindicate constitutional violations." *In re Watts Coordinated Pretrial Proceedings*, No. 19-CV-1717, 2022 WL 9468253, at *5 (N.D. Ill. Oct. 14, 2022). Defendants are unable to explain why this Court should depart from the uniform consensus on this issue.

Defendants' argument rests on an interpretation of Seventh Circuit precedent that no district court has accepted and is based on a misreading of the decision of the Seventh Circuit in *Patrick v. City of Chicago*, 974 F.3d 824 (7th Cir. 2020). (ECF No. 128 at 6-7.)

In *Patrick*, the plaintiff was convicted of a double murder because his coerced confession and a falsified lineup report had been used against him at trial. *Patrick*, 974 F.3d at 835-36. A civil suit followed, resulting in a verdict for the plaintiff. *Id.* at 830-31. On appeal, the Seventh Circuit held that the district court committed harmless error by providing an incomplete jury instruction that failed to explain that plaintiff had the burden to prove that the fabricated evidence was used against him at his criminal trial and was material. *Id.* at 835.

Nothing in *Patrick* suggests that the Court should depart from the rule that there is a due process violation when a criminal defendant shows that he pleaded guilty because the police fabricated evidence. *Patrick* did not overrule the holding of *Whitlock v. Brueggemann*, 682 F.3d 567, 579 (7th Cir. 2012) that it is denial of Due Process when fabricated evidence is "used to deprive the defendant of her liberty in some way." *Id.* at 582. On the contrary, *Patrick* states a rule that applies only when there has been a trial.[2]

[2] The same is true for district court rulings cited by defendants. (ECF No. 128 at 8 & n.5.) As in *Patrick*, there were trials in *Fulton v. Bartik*, 20 C 3118, 2024 WL 1242637 (N.D. Ill. Mar. 22, 2024); *Zambrano v. City of Joliet*, 21-CV-4496, 2024 WL 532175 (N.D. Ill. Feb. 9, 2024); *Brown v. City of Chicago*, 633 F. Supp. 3d 1122 (N.D. Ill. 2022); *Boyd v. City of Chicago*, 225 F. Supp. 3d 708 (N.D. Ill. 2016); and *Starks v. City of Waukegan*, 123 F. Supp. 3d 1036, 1048 (N.D. Ill. 2015). These cases are distinguishable from a case with a guilty plea. Defendants also seek to rely on *Ulmer v. Avila*, No. 15 CV 3659, 2016 WL 3671449, at *8 (N.D. Ill. July 11, 2016), but that ruling is distinguishable because the plaintiff was never convicted.

The Seventh Circuit held in *Armstrong v. Daily*, 786 F.3d 529 (7th Cir. 2015), a case that arose from the destruction of exculpatory evidence, that a trial is not required for police misconduct to violate the Due Process Clause. *Id.* at 551-55. Other decisions from the Seventh Circuit likewise define the due process right without regard to whether the fabricated evidence was used at trial. In *Avery v. City of Milwaukee*, 847 F.3d 433, 439 (7th Cir. 2017), the Court held that "convictions premised on deliberately fabricated evidence will *always* violate the defendant's right to due process." *Id.* at 439 (emphasis added). The Court repeated this formulation in *Lewis v. City of Chicago*, 914 F.3d 472, 479 (7th Cir. 2019). This rule does not have a carve-out for convictions that follow a guilty plea.

In *Patrick*, the Seventh Circuit endorsed its pattern jury instruction on fabricated evidence. *Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020). That instruction provides two paths to show that fabricated evidence was used to deprive a plaintiff of his liberty: plaintiff must prove either that the fabricated evidence was "introduced against plaintiff at his criminal trial" or "in his criminal case." SEVENTH CIRCUIT'S PATTERN JURY INSTRUCTION § 7.14 (2017). The plaintiff in *Patrick* relied on the first path; plaintiffs in this case rely on the second path.

It is unsurprising that the *Patrick* court referenced only the "trial" prong of this instruction because there had been a criminal trial in that case. The other cases defendants cite are also distinguishable because they involved plaintiffs convicted after a trial, rather than a guilty plea. *Moran v. Calumet City*, 54 F.4th 483 (7th Cir. 2022); *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014); *Avery v. City of Milwaukee*, 847 F.3d 433 (7th Cir. 2017). The same is true for another recent opinion, *Zambrano v. City of Joliet*, No. 24-1277, — F.4th —, 2025 WL 1733500 (7th Cir. June 23, 2025).

The plaintiffs in this case did not have a trial, but the fabricated evidence was indisputably used in their "criminal case," as contemplated by the second prong of the pattern jury instruction. The fabricated evidence was used in the complaints that initiated the charges against plaintiffs (Defendants' Rule 56.1 Statement ¶ 7), the fabricated evidence was presented at a preliminary hearing that ended in a probable cause finding (Additional Facts in Response to Officers' Motions ¶¶ 21-22); it caused plaintiffs to plead guilty (*id.* ¶ 25, 30); and the fabricated evidence was presented to the trial judge before the court accepted plaintiffs' guilty pleas. (*Id.* ¶¶ 26-27, 31-32.)

VI. Plaintiffs' Due Process Claims Are Not Barred by Their Vacated Guilty Pleas

The Court should reject defendants' frivolous argument that plaintiffs' vacated guilty pleas broke "the causal chain between any

unconstitutional acts that precede the plea and the conviction and imprisonment subsequent to the plea." (ECF No. 128 at 10.) Defendants base this argument on reasoning from federal habeas cases that the Supreme Court held inapplicable to Section 1983 claims in *Haring v. Prosise*, 462 U.S. 306 (1983).

Defendants are unable to support their argument with any case involving a civil rights plaintiff seeking damages after fabricated evidence was used to induce a guilty plea, where the plea has been set aside. Instead, defendants seek to rely (ECF No. 128 at 10-11) on cases that are readily distinguishable because each one arose in a federal habeas proceeding where a prisoner sought to challenge a guilty plea that had not been vacated. *Tollett v. Henderson*, 411 U.S. 258 (1973); *McMann v. Richardson*, 397 U.S. 759 (1970); *Brady v. United States*, 397 U.S. 742 (1970); *Parker v. North Carolina*, 397 U.S. 790 (1970); *Hurlow v. United States*, 726 F.3d 958 (7th Cir. 2013). The rule of these cases is that a federal habeas petitioner who pleaded guilty cannot attack the conviction based on constitutional deprivations unrelated to the plea. This rule does not apply here because plaintiffs are not seeking release from custody nor are they challenging their pleas. Plaintiffs' convictions and guilty pleas have been vacated and they are not in custody on a vacated conviction.

The express holding of *Haring v. Prosise*, 462 U.S. 306 (1983), is that the habeas cases on which defendants seek to rely do not apply to Section 1983 claims. *Id.* at 322. But defendants make no attempt to discuss *Haring*. The Court should reject this litigation strategy: "The ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist is as unprofessional as it is pointless." *Hill v. Norfolk & W. Ry. Co.*, 814 F.2d 1192, 1198 (7th Cir. 1987)

The plaintiff in *Haring* pleaded guilty to a drug offense and brought a civil rights claim challenging the legality of the search that led to his conviction. *Haring v. Prosise*, 462 U.S. 306, 308-309 (1983). The district court reasoned that the plaintiff's guilty plea barred his claim based on the exact argument that defendants' raise here. As the Supreme Court explained in rejecting this reasoning, the district court

> [R]elied primarily on this Court's decision in *Tollett v. Henderson*, 411 U.S. 258 (1973), which held that when a state criminal defendant has pleaded guilty to the offense for which he was indicted by the grand jury, he cannot in a later federal habeas corpus proceeding raise a claim of discrimination in the selection of the grand jury.

Id. at 309. The argument accepted by the district court in *Haring* is identical to that advanced by defendants in this case.

The Supreme Court in *Haring* squarely rejected the district court's reasoning, holding that the "the justifications for denying habeas review of

Fourth Amendment claims following a guilty plea are inapplicable to an action under § 1983." *Haring v. Prosise*, 462 U.S. 306, 322 (1983). This Court should reach the same result in this case.

The holding of the Supreme Court in *Haring* that *Tollett* and its progeny have no application in a civil rights action dooms defendants' argument. *Haring*, which was decided in 1983, long before the conduct at issue in this case, also dooms defendants' perfunctory argument about qualified immunity. (ECF No. 128 at 14-16.) Plaintiffs address defendants' qualified immunity arguments in greater detail below in Section X.

The holding of *Haring* is that the viability of a civil rights claim following a guilty plea turns on the collateral estoppel effect of the plea in the forum where the plea was entered. *Haring v. Prosise*, 462 U.S. 306, 314 (1983). Defendants do not discuss state law. Illinois law does not afford *any* collateral estoppel effect to a vacated plea of guilty: Under Illinois law, collateral estoppel applies only when there is "a final judgment on the merits in the prior adjudication." *Givens v. City of Chicago*, 2023 IL 127837, ¶ 48, 234 N.E.3d 22, 36 (2023).

The Illinois Supreme Court in *People v. Washington*, 2023 IL 127952, 226 N.E.3d 1218 (2023) made plain that a vacated guilty plea does not bar a claim for relief related to the conviction. There, the Court squarely held that

persons (like plaintiffs) who pleaded guilty but then secured vacatur of the plea are not barred from obtaining a certificate of innocence. 2023 IL 127952, ¶ 62, 226 N.E.3d at 1237. The Court should therefore reject the City's attempt to rely on plaintiffs' vacated guilty pleas.

Every district court to consider defendants' argument has rejected it. *Mendoza v. City of Chicago*, 23-cv-2441, 2024 WL 1521450, at *2 (N.D. Ill. Apr. 8, 2024); *In re Watts Coordinated Pretrial Proceedings*, 19-cv-1717, 2022 WL 9468206, at *7 (N.D. Ill. Oct. 14, 2022); *Baker v. City of Chicago*, 483 F. Supp. 3d 543, 553 (N.D. Ill. 2020); *Carter v. City of Chicago*, No. 17 C 7241, 2018 WL 1726421, at *5 (N.D. Ill. Apr. 10, 2018); *White v. City of Chicago*, 17-cv-02877, 2018 WL 1702950, at *3 (N.D. Ill. Mar. 31, 2018); *Powell v. City of Chicago*, 17-cv-5156, 2018 WL 1211576, at *8 (N.D. Ill. Mar. 8, 2018); *Saunders v. City of Chicago*, 12-cv-09158, 2014 WL 3535723, at *4 (N.D. Ill. July 11, 2014); *Ollins v. O'Brien*, 03 C 5795, 2005 WL 730987, at *11 (N.D. Ill. Mar. 28, 2005). Defendants provide no reason for the Court to depart from this uniform consensus. The Court should therefore reject defendants' guilty plea argument.

VII. Plaintiffs' Fourth Amendment Claims Are Timely

Defendants also raise a frivolous timeliness argument about plaintiffs' Fourth Amendment claims. "To succeed on [a Fourth Amendment malicious prosecution claim under 42 U.S.C. § 1983], a plaintiff must show that a

government official charged him without probable cause, leading to an unreasonable seizure of his person." *Chiaverini v. City of Napoleon*, 144 S.Ct. 1745, 1748 (2024).

Defendants assert that any claim based on unlawful pretrial detention accrued when the pretrial detention ended. (ECF No. 128 at 3-4.) Although the Seventh Circuit adopted that theory in *Smith v. City of Chicago*, 3 F.4th 332 (7th Cir. 2021), the Supreme Court thereafter granted the petition for certiorari in *Smith* and vacated the decision of the Seventh Circuit. *Smith v. City of Chicago*, 142 S. Ct. 1665 (2022). The Supreme Court's action came after it specifically rejected the accrual theory urged by defendants in *Thompson v. Clark*, 596 U.S. 36 (2022).

The Seventh Circuit acknowledged the change in circuit law in its orders on remand in *Smith*, available at 2022 WL 2752603 (7th Cir. 2022), as amended on denial of rehearing, 2022 WL 19572962 (7th Cir. 2022): "After *Thompson*, a Fourth Amendment claim for malicious prosecution accrues when the underlying criminal prosecution is terminated without a conviction." 2022 WL 2752603 at *1. There is no dispute that the prosecutions against plaintiffs were terminated without a conviction when plaintiffs' convictions were vacated on February 13, 2019. (Additional Facts in Response

to Officers' Motions ¶ 39.) Plaintiffs' claims are timely because they filed this case on April 7, 2019 (Complaint, ECF No. 1.)

Defendants make the frivolous argument that *Thompson* and *Smith* do not control because those cases only apply when the plaintiff is acquitted at a trial. (ECF No. 128 at 4.) Defendants provide no support for this argument, which is flatly inconsistent with the holding of the Seventh Circuit on remand in *Smith* that the claim accrues "when the underlying criminal prosecution is terminated without a conviction." 2022 WL 2752603 at *1.

Defendants mistakenly rely on *Prince v. Garcia*, No. 22-CV-05703, 2024 WL 4368130 (N.D. Ill. Sept. 30, 2024).[3] (ECF No. 128 at 5.) There, a conviction had been reversed on appeal and the criminal defendant brought a variety of claims, including one for Fourth Amendment malicious prosecution. *Id.* at *5-*6. The defendants argued that the claim was untimely, but the district court rejected this defense because "the Seventh Circuit in *Smith* found that a Fourth Amendment malicious prosecution claim accrues when the underlying prosecution is terminated." *Id.* at *6 (cleaned up).

Defendants also make a confusing but meritless argument about *Heck v. Humphrey*, 512 U.S. 477 (1994). (ECF No. 128 at 5-6.) Even under the

[3] Other cases cited by defendants are distinguishable because the plaintiff's conviction in those cases had not been vacated. *Marshall v. Elgin Police Dep't*, No. 22-3159, 2023 WL 4102997 (7th Cir. June 21, 2023); *Franklin v. Burr*, 535 F. App'x 532, 533 (7th Cir. 2013).

accrual theory proffered by defendants, plaintiffs' fourth amendment claims would be timely because plaintiffs were "*Heck* barred" from bringing § 1983 claims until their convictions were vacated. As the Supreme Court stated in *Heck v. Humphrey*, 512 U.S. 477 (1994):

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983.

Id. at 486–87 (1994).

Pursuant to *Heck*, the claims at issue in this case did not become "cognizable under § 1983" until February 13, 2019, when the state court set aside plaintiffs' convictions. As the Seventh Circuit has explained, "*Heck* holds that a claim that implies the invalidity of a criminal conviction does not accrue, and the statute of limitations does not begin to run, until the conviction is set aside by the judiciary or the defendant receives a pardon." *Moore v. Burge*, 771 F.3d 444, 446 (7th Cir. 2014).

VIII. Plaintiff Lindsey Suffered a Deprivation of Liberty

Defendants make a meritless argument about the time plaintiff Lindsey served for a parole violation in an unrelated case. (ECF No. 128 at 16-

17.) This argument ignores the cause of the parole violation: Lindsey's wrongful arrest by defendants on October 15, 2009 that underlies this case. (Plaintiffs' Additional Facts ¶ 35-38.) Thus, plaintiff's incarceration for the parole violation and his incarceration for the vacated conviction at issue in this case were both caused by the conduct of defendants.

The cases relied on by defendants are inapposite. In *Ramos v. City of Chicago*, 716 F.3d 1013 (7th Cir. 2013), the plaintiff was on bond for a weapons charge when his bond was revoked because he had been arrested for residential burglary. *Id.* at 1015. Ramos was acquitted of residential burglary and then pleaded guilty to the weapons charge, receiving credit for the time he had spent in custody awaiting trial on the residential burglary charge. *Id.*

The Seventh Circuit rejected a wrongful prosecution claim in *Ramos* because the plaintiff could not show that his time in custody for the residential burglary charge "was attributable to the allegedly false statements by the officers." *Ramos*, 716 F.3d at 1019. The same is not true here.

For plaintiff Lindsey, the false statements by the officers (that Lindsey had committed a drug offense) caused his parole violation. Unlike the plaintiff in *Ramos*, plaintiff Lindsey did not serve time for an unrelated

alleged offense; he served time for a parole violation caused by the fabricated drug charge.

In *Ewell v. Toney*, 853 F.3d 911 (7th Cir. 2017), the Seventh Circuit held that the plaintiff could not seek damages for a false arrest claim when the time she spent in custody on the arrest was later credited to an unchallenged sentence. *Id.* at 917. *Ewell* is not at all like this case, where Lindsey's time in custody cannot be attributed to anything other than the defendant officers' conduct.

Counsel has located just one case with similar facts to plaintiff Lindsey's, the ruling of the Texas Supreme Court in *In re Smith*, 333 S.W.3d 582 (Tex. 2011). In that case, the state body responsible for payments to wrongfully imprisoned individuals had reduced an exoneree's payment because the exoneree also served time for a parole violation. Like Lindsey, the exoneree was on parole at the time of his wrongful conviction, and his parole was revoked because of the wrongful conviction. The exoneree argued that "he would not have been imprisoned but for the wrongful conviction and that the resulting revocation of his parole should not be used to reduce his award." *Id.* at 583. The Texas Supreme Court agreed, holding that the exoneree was entitled to full compensation because the cause of the time served for the parole violation was the wrongful conviction. *Id.* at 591.

The reasoning of the Texas Supreme Court is sound, and it is consistent with the general principles of causation from tort law that apply in § 1983 cases. *E.g.*, *Hunter v. Mueske*, 73 F.4th 561, 567–68 (7th Cir. 2023).

IX. All Defendants Were Involved in the Arrest of Plaintiffs

Plaintiffs seek to hold defendants Jones, Mohammed, Smith, Leano, Nichols, Bolton, Gonzalez, and Watts liable for their wrongful convictions. Defendants Watts, Mohammed, and Jones do not dispute that plaintiffs have adduced sufficient evidence of their involvement in the arrest and prosecution of plaintiffs. The other defendants contend that there is insufficient evidence of their involvement. (ECF No. 128 at 17-24.)

This argument is frivolous: Defendant Jones testified that all the officers were involved in the arrest. (Additional Facts in Response to Officers' Motions ¶¶ 8-9.) Defendants seek to discount this testimony by wrongly claiming that it relies on hearsay statements in a police report. (ECF No. 128 at 30-31.) This is argument is incorrect; plaintiffs do not rely on hearsay.[4]

Federal Rule of Civil Procedure 56(c)(2) states that a "party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Whether or not the reports

[4] This argument is also surprising when defendants themselves seek to rely on the police reports. (Defendants' Statement of Facts ¶ 6, ECF No. 121 at 2.)

are admissible, the material cited can be presented through the testimony of defendant Jones, who authored the reports.

In addition to his testimony about the reports, Jones testified under oath that Gonzalez and Bolton approached the car with him before they arrested plaintiffs. (Additional Facts in Response to Officers' Motions ¶ 11.) Moreover, defendants Smith, Leano, Nichols, and Bolton all admitted their involvement and claimed to have personal knowledge of the arrests when they wrote memoranda in response to plaintiff Lindsey's 2011 police misconduct complaint. (*Id.* ¶¶ 16, 17, 19, 20.)

A jury could therefore conclude that the officers were aware that plaintiffs were being falsely arrested and falsely charged but failed to intervene and prevent the violations of plaintiffs' rights. *See Padilla v. City of Chicago*, 932 F. Supp. 2d 907, 923 (N.D. Ill. 2013).

The Seventh Circuit endorsed plaintiffs' failure-to-intervene theory in *Cherry v. Washington County*, 526 F. App'x 683, 688 (7th Cir. 2013), a case defendants cite. (ECF No. 128 at 20.) There, the plaintiff's excessive force claim failed because he could not identify which of three defendants used force against him. *Id.* But the Seventh Circuit explained: "We add the caveat, though, that a plaintiff who was assaulted by one police officer in the presence of others need not identify the officer who struck him if the assault

was ongoing and other officers had 'a realistic opportunity to intervene.'" *Id.* (quoting *Miller v. Smith*, 220 F.3d 491, 495 (7th Cir. 2000); citing *Sanchez v. City of Chicago*, 700 F.3d 919, 925–26 (7th Cir. 2012).) Because the defendant officers other than Watts, Mohammed, and Jones were involved in the arrest, a jury could conclude that they knew the police story about the arrest was false, that they had a realistic opportunity to intervene and prevent the violation of plaintiffs' rights, and that they failed to do so.

Defendants raise a frivolous challenge to plaintiffs' failure-to-intervene theory, asking the Court to follow Judge Easterbrook's concurring opinion in *Mwangangi v. Nielsen*, 48 F.4th 816, 831 (7th Cir. 2022), and overrule Seventh Circuit precedent recognizing claims for failure to intervene. (ECF No. 128 at 24-25.) Another judge in this district rejected this tactic when attempted by City of Chicago lawyers, explaining that a district court "lacks the authority to hold that failure to intervene claims are impermissible." *Blackmon v. City of Chicago*, No. 19-cv-767, 2023 WL 7160639, at *21 (N.D. Ill. Oct. 31, 2023). "If Defendants' aim in making this argument was to preserve the issue for appeal, it would have been better form to make that intention clear rather than ask this Court to overrule Seventh Circuit precedent." *Id.*

Defendants also proffer an artificially high standard for personal involvement based on rulings in easily distinguishable cases. (ECF No. 128 at 19-20.)

First, this is not a case like *Walker v. White*, No. 16 CV 7024, 2021 WL 1058096, at *14 (N.D. Ill. Mar. 19, 2021), where unrebutted evidence showed that certain defendants were not present when the alleged misconduct occurred. (ECF No. 128 at 19.) Such evidence is not before the Court in this case because plaintiffs have presented evidence of the personal involvement of each defendant, and defendants have not presented contrary evidence.

Next, defendants attempt to import the standard that applies when a witness has made a false statement to police. (ECF No. 128 at 20-21.) In that setting, as the Seventh Circuit held in *Coleman v. City of Peoria*, 925 F.3d 336 (7th Cir. 2019), the defendant officer could only be liable for acting on the statement if the officer knew the statement was false and the officer caused the witness to give the false statement. *Id.* at 344. This standard for direct liability does not apply to the defendants whom plaintiffs in this case seek to hold liable under a failure-to-intervene theory. And even if the requirement that an officer knew "with certainty" that a witness statement was false applies here, plaintiffs meet that requirement. Any officer who was involved in plaintiffs' arrest would know that that police officers were

framing plaintiffs and would have a duty to intervene to prevent the violation of plaintiffs' rights.

Finally, defendants raise a meritless argument based on Federal Rule of Civil Procedure 37. (ECF No. 128 at 21-22.) The Seventh Circuit applied that rule against a plaintiff in *Moran v. Calumet City*, 54 F.4th 483 (7th Cir. 2022). In that case, an interrogatory requested the plaintiff to state the factual basis for a specific allegation. *Id.* at 497. The Seventh Circuit held that the plaintiff could not rely on a particular piece of evidence not included in the answer to this interrogatory. *Id.* Here, though, plaintiff Lindsey was not asked the factual basis for his claim; he was asked for his personal knowledge about acts of the defendant officers and he properly answered. (Defendant Officers' Rule 56.1 Statement ¶ 37.)

The evidence on which plaintiffs rely is not their personal knowledge but the testimony of defendant Jones, the police reports authored by Jones, and memoranda that the other defendants authored. Any shortcoming in plaintiff Lindsey's interrogatory answer was harmless. FED. R. CIV. P. 37(c)(1); *see Stolarczyk ex rel. Est. of Stolarczyk v. Senator Int'l Freight Forwarding, LLC*, 376 F. Supp. 2d 834, 843 (N.D. Ill. 2005).

X. Defendants Are Not Entitled to Qualified Immunity

Defendants argue that they are entitled to qualified immunity on plaintiffs' claims because it was not clearly established that they could be

held liable for misconduct claims of an exoneree who did not have a trial because he pleaded guilty. (ECF No. 128 at 14-16.) This argument is without merit. Plaintiffs showed above that the law on claims following guilty pleas has been clearly established since the Supreme Court rejected defendants' legal theory in *Haring v. Prosise*, 462 U.S. 306 (1983).

In addition, this qualified immunity argument relies on the same reasoning rejected by the Seventh Circuit in *Armstrong v. Daily*, 786 F.3d 529, 556 (7th Cir. 2015). The only arguably unsettled area of the law was about the remedy available for particular constitutional violations, but a question about a remedy cannot be the basis for qualified immunity:

> This argument is built on a basic misunderstanding about qualified immunity. The issue is not whether issues concerning the availability of a remedy are settled. The qualified immunity defense focuses instead on whether the official defendant's conduct violated a clearly established constitutional right.

Armstrong, 786 F.3d at 556. As explained in *Fields v. Wharrie*, 740 F.3d 1107 (7th Cir. 2014), "when the question is whether to grant immunity to a public employee, the focus is on his conduct, not on whether that conduct gave rise to a tort in a particular case." *Id.* at 1114.

The Seventh Circuit applied this rule and rejected the argument advanced by defendants in *Kingsley v. Hendrickson*, 801 F.3d 828, 832 (7th Cir. 2015), on remand from 576 U.S. 389 (2015). There, the Supreme Court held that the excessive force claim of a pretrial detainee was governed by

an objective standard rather than by a subjective standard. *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015). On remand, the Seventh Circuit held that this change in the standard did not give rise to qualified immunity because the standard for the type of conduct permitted by the Constitution had not changed. *Kingsley*, 801 F.3d at 832. As the Court explained,

> To accept the defense of qualified immunity here, we would have to accept the dubious proposition that, at the time the officers acted, they were on notice only that they could not have a reckless or malicious intent and that, as long as they acted without such an intent, they could apply any degree of force they chose.

Id. at 832-33.

The Court should reject defendants' qualified immunity argument because it is limited to issues "concerning the availability of a remedy." *Armstrong v. Daily*, 786 F.3d 529, 556 (7th Cir. 2015). Defendants wisely refrain from arguing that causing an arrestee to be detained by fabricating evidence and falsifying police reports did not violate clearly established rights. The Supreme Court has long condemned such conduct as "inconsistent with the rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). It has long been established that the Fourth Amendment guarantees "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint." *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975). In addition, "innumerable decisions . . . have clearly established the right to be

free from arrest without probable cause." *Driebel v. City of Milwaukee*, 298 F.3d 622, 652 (7th Cir. 2002).

Rather than argue that their misconduct did not violate clearly established constitutional rights, defendants rely on *Bianchi v. McQueen*, 818 F.3d 309, 323 (7th Cir. 2016), to seek dismissal on the ground that the availability of a remedy was uncertain. (ECF No. 128 at 16.) *Bianchi* does not support that position. As another court in this district has explained, *Bianchi*'s "holding is based on the first prong of the qualified immunity analysis—whether a constitutional violation was alleged—and not the second—whether the right was clearly established at the time of violation." *Serrano v. Guevara*, 315 F. Supp. 3d 1026, 1038 (N.D. Ill. 2018). "Otherwise, the holding would conflict with the principle that qualified immunity is concerned with the conduct, not the tort." *Id.*

The Court should reject the "dubious proposition" described by the Seventh Circuit in *Kingsley* that even though defendants were on notice that they could neither arrest plaintiffs without probable cause nor create the appearance of probable cause by fabricating evidence, they reasonably believed that their liability for such wrongdoing would end if plaintiffs pleaded guilty and were convicted without trial.

XI. Conclusion

For all these reasons, the Court should deny the defendant officers' motions for summary judgment.

Respectfully submitted,

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