

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

DERRICK SCHAEFFER,)	
)	
Plaintiff,)	Case No. 19-cv-7711
)	
v.)	Judge Robert M. Dow, Jr.
)	
CITY OF CHICAGO, OFFICER JAMES)	
A. BRANDON #7634, OFFICER)	
MARIO PEREZ #18936, OFFICER)	
JAMES KINSEY #16189, and)	
DETECTIVE JOCELYN GREGOIRE-)	
WATKINS, #20974,)	
)	
Defendants.)	

ORDER

For the reasons stated below, Defendants' joint partial motion to dismiss [16] is granted in part. Plaintiff's Fourteenth Amendment claim is dismissed without prejudice.

STATEMENT

On November 21, 2019, Plaintiff filed this Section 1983 action alleging that Defendants violated his Fourth and Fourteenth Amendment rights during a February 1, 2017 arrest. See generally [1].¹ Plaintiff alleges that he was arrested without a warrant based on fabricated witness stories identifying Plaintiff as a burglar. [*Id.*, ¶¶ 7, 9–14]. Plaintiff's burglary charges were dropped on May 6, 2019, after a prosecutor learned that Defendants had made false allegations—but not before Plaintiff had spent more than a year in the Cook County Jail. [*Id.*, ¶¶ 9–14]. Along with Fourth Amendment unreasonable seizure and state law malicious prosecution claims, Plaintiff claims that his arrest and charges based on the allegedly fabricated evidence violated his Fourteenth Amendment due process rights.

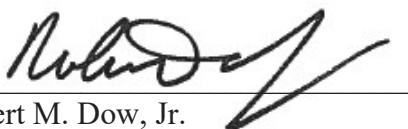
The parties agree that as the law stands now, Plaintiff cannot succeed on his freestanding Fourteenth Amendment claim and it should be dismissed, as the Fourth Amendment alone governs claims challenging unlawful pre-trial detention. See generally [16]; [22]; see also *Manuel v. City of Joliet*, 137 S. Ct. 911, 914, 920 (2017); *Lewis v. City of Chicago*, 914 F.3d 472, 478 (7th Cir.

¹ For purposes of Defendants' motion to dismiss, the Court assumes as true all well-pled allegations set forth in Plaintiff's complaint. *Calderon-Ramirez v. McCament*, 877 F.3d 272, 275 (7th Cir. 2017) (quoting *Kubiak v. City of Chicago*, 810 F.3d 476, 480-81 (7th Cir. 2016)).

2019). As the Seventh Circuit recently explained, the Due Process Clause in the Fourteenth Amendment does not provide plaintiffs a basis for relief for any evidence fabrication that led to detention and charging. *Lewis*, 914 F.3d at 479. Instead, any constitutional injury that Plaintiff suffered follows from the Fourth Amendment's protection against unreasonable seizures—including both Plaintiff's pretrial detention without probable cause and any of Defendants' ham-handed attempts to cover their tracks with fabricated evidence. *Manuel*, 137 S. Ct. at 917–18; *Lewis*, 914 F.3d at 479.

The parties disagree, however, as to whether dismissal of Plaintiff's Fourteenth Amendment claim should be with or without prejudice in light of more recent developments in this area of law. [22]. Specifically, Plaintiff points to the Supreme Court's recent decision in *McDonough v. Smith*, 139 S. Ct. 2149 (2019), which assumed without deciding that evidence fabrication claims *can* be brought under the Due Process Clause. 139 S. Ct. at 2155. Plaintiff argues that this decision calls *Lewis* into doubt. [22]. While most courts have dismissed similar Fourteenth Amendment claims following *Manuel* and *Lewis*, the Seventh Circuit has yet to squarely address the effect of *McDonough* on its broad holding in *Lewis*. Compare, *e.g.*, *Mayo v. LaSalle County*, 2019 WL 3202809, at *3 n.3 (N.D. Ill. July 15, 2019) (following binding Seventh Circuit precedent and dismissing Fourteenth Amendment evidence fabrication claim notwithstanding *McDonough*); *Young v. City of Chicago*, 425 F. Supp. 3d 1026, 1034 (same); *Serrano v. Guevara*, 2020 WL 3000284, at *17 n.42 (N.D. Ill. June 4, 2020) (same), with *Culp v. Flores*, --- F. Supp. 3d ----, 2020 WL 1874075, at *3 (N.D. Ill. Apr. 15, 2020) (allowing due process evidence fabrication claim to proceed past a motion to dismiss because of uncertainty in the case law); *cf. Savory v. Cannon*, 947 F.3d 409, 416 nn.3 & 4 (7th Cir. 2020) (*en banc*) (acknowledging that *McDonough* may call other Seventh Circuit precedents into doubt). Here, where the Fourth and Fourteenth Amendment claims share the same factual predicate and the Court already has jurisdiction over the Fourth Amendment claim, it is virtually costless to hold the door open for the Fourteenth Amendment claim, should the relationship between *Lewis* and *McDonough* come into greater focus. See *Culp*, 2020 WL 1874075, at *3. Accordingly, the Court dismisses Plaintiff's Fourteenth Amendment claim without prejudice. If either the Seventh Circuit or the Supreme Court determines that evidence fabrication claims are cognizable under the Due Process Clause of the Fourteenth Amendment, Plaintiff may file a motion to reinstate that claim or for leave to amend the operative complaint to assert such a claim.

Dated: June 19, 2020



Robert M. Dow, Jr.
United States District Judge