UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS JACKSON, Plaintiff, v. THE CITY OF CHICAGO, PATRICK BOYLE, JENNIFER BURMISTRZ, EFRAIN CARRENO, MATTHEW EVANS, JOHN FOERTSCH, EDWARD GARCIA, MICHAEL HIGGINS, GERALD LAU, and JEFFREY LAWSON, Defendants.	)	No. 1:22-cv-04337 Honorable Jorge L. Alonso

MEMORANDUM IN SUPPORT OF
AMENDED MOTION FOR SUMMARY JUDGMENT

Defendants, City of Chicago, Patrick Boyle, Jennifer Burmistrz, Efrain Carreno, Matthew Evans, John Foertsch, Edward Garcia, Michael Higgins, Gerald Lau, and Jeffrey Lawson, by and through one of their attorneys, Michael J. Dinard, Assistant Corporation Counsel, move for summary judgment on all claims pled in plaintiff's complaint. In support of their motion, defendants state as follows:

INTRODUCTION

On November 6, 2017, a team of Chicago police officers planned and effectuated a routine undercover narcotics operation. Officers Carreno and Garcia were conducting surveillance when they covertly observed plaintiff engage in multiple hand to hand narcotic transactions. The other named defendant officers were operating in an enforcement capacity—*i.e.*, they were not surveilling the actual conduct of plaintiff and were solely operating under the radioed direction of

Officers Carreno and Garcia. The central issue in this case is whether the recovered narcotic evidence was planted and whether the observations of Carreno and Garcia were fabricated. The undisputed facts show that plaintiff cannot meet the necessary factors to sustain a Fourth Amendment malicious prosecution claim and all officers except Carreno and Garcia were not personally involved in the alleged constitutional deprivation. The defendant officers, save Carreno and Garcia, are also entitled to qualified immunity. Additionally, the Fourteenth Amendment claim is duplicative of the Fourth Amendment claim and should be dismissed. Finally, plaintiff's state law malicious prosecution claim is simply not supported by the evidence. For these reasons, defendants' motion for summary judgement must be granted.

BACKGROUND

On the night of November 6, 2017, plaintiff and James McIntyre were in the plaintiff's vehicle, which was parked at 309 East 120th Place, Chicago Illinois. (Defendants' Statement of Material Facts (SOF ¶ 5.) Plaintiff was in the driver's seat and McIntyre was in the front passenger seat. (*Id*. ¶ 8.) McIntyre had been dropped off by his girlfriend before entering plaintiff's vehicle. (*Id*. ¶ 9.) Plaintiff and McIntyre were in the vehicle together for approximately 15 minutes. (*Id*. ¶ 10.)

Meanwhile, earlier that same day, Chicago police officers Efrain Carreno and Edward Garcia arrived at work and informed their sergeant, Patrick Boyle, that they were going to conduct a narcotics investigation near the 300 block of East 120th Place. (*Id*. ¶¶ 12-13.) Officers Carreno and Garcia alone planned the surveillance and were the only officers that surveilled the area of 313 East 120th Place. (*Id*. ¶¶ 16-18.) Officers Jennifer Burmistrz, Matthew Evans, John Foertsch, Michael Higgins, Gerald Lau, and Jeffrey Lawson were on the same team as Officers Carreno and Garcia and agreed to assist in the investigation by working in an enforcement capacity. (*Id*. ¶ 20.)

This means that they were near the location of Carreno and Garcia's surveillance but were not witnessing plaintiff's alleged narcotics transactions. (*Id.* ¶¶ 20-21.) These enforcement officers were present to provide backup for Carreno and Garcia's operation. (*Id.*) They were exclusively relying on what Carreno and Garcia were relating to them over the radio. (*Id.*)

Officers Carreno and Garcia testified that, during the course of their surveillance, they observed multiple individuals approach plaintiff and tender U.S. paper currency to him. (*Id.* ¶ 29.) McIntyre would then exit the vehicle and walk down a gangway to the rear of the plaintiff's grandmother's residence. (*Id.*) McIntyre would then return and tender a small item to the person waiting, who would then walk away. (*Id.*)

At some point during the surveillance, Carreno and Garcia requested that the enforcement team stop a vehicle because they observed one of its occupants engage in a narcotics transaction with plaintiff and McIntyre. (*Id.* ¶¶ 24-25.) Enforcement officers received a physical description of the buyer who later turned out to be Nate Johnson, as well as a vehicle description and direction of flight. (*Id.* ¶ 36.) Officers Lau, Evans, Foertsch, and Higgins conducted a traffic stop nearby and asked only Johnson to exit the vehicle since he matched the description relayed by Carreno and Garcia. (*Id.* ¶ 37.) Officer Lau searched Johnson's person and recovered a knotted plastic bag of what he believed to be suspect narcotics in his wallet. (*Id.* ¶¶ 39.) The enforcement officers then relayed to Officers Carreno and Garcia that their stop of Johnson was positive for narcotics. (*Id.* ¶ 43.)

Officer Carreno then relocated to the rear of the residence on 120th Place to see if he could observe what McIntyre was doing when he went down the gangway to the rear of the residence. (*Id.*) From the new surveillance location, Officer Carreno testified that he observed McIntyre open the driver's side door of a vehicle parked in the rear of the residence (*Id.* ¶ 32.) He also saw the

dome light inside the vehicle activate and McIntyre lean into the front driver's seat area. (*Id.* ¶ 45.) It appeared to Officer Carreno that McIntyre would grab something, close the door, and then walk back towards the gangway to the front of the residence. (*Id*.) Carreno then related to Garcia that McIntyre was retrieving items from a parked car that was located behind the house. (*Id*. ¶¶ 45-46.) After several more transactions, Officer Garcia relocated to the rear of the residence with Officer Carreno to back him up for when they were going to break surveillance. (*Id.* ¶ 47.) At that point, Officer Garcia observed McIntyre return to the vehicle in the rear of the residence, retrieve a plastic bag from the driver's side door area, close the door, and return to the front. (*Id.* ¶ 48.) After observing this, Officers Garcia and Carreno broadcast a message over the radio, asking the enforcement officers to detain plaintiff and McIntyre. (*Id.* ¶ 49.)

Officers Garcia and Carreno broke surveillance and walked to the vehicle that was parked in the rear of the residence and observed on the driver's side seat, in plain view, two clear plastic knotted bags that contained multiple smaller items, which they suspected to be narcotics. (*Id.* ¶ 56.) Officer Garcia relocated to the front of the residence to relate to the enforcement officers that they had found suspect narcotics in the rear vehicle as well as to try and get keys for said vehicle. (*Id* ¶ 57.) Officer Carreno remained in the rear and eventually tried the driver door latch, which was unlocked. (*Id.* ¶ 58.) Officer Carreno then recovered two separate clear plastic bags containing smaller plastic bags of suspect crack cocaine. (*Id* ¶ 59.) Officer Carreno took possession of the suspect narcotics and kept them until after he arrived at the 5th District police station of the Chicago Police Department. (*Id* ¶ 60.) Both Officers Carreno and Garcia made it to the front of the residence where plaintiff and McIntyre were being detained. (*Id* ¶ 61.) Both Officers Carreno and Garcia identified plaintiff and McIntyre as the individuals they observed engaging in the narcotics transactions. (*Id.* ¶ 62.)

On the next morning of November 7, 2017, plaintiff received an I-bond and was released from custody. (*Id.* ¶ 64.) The only condition of plaintiff's release was that he was ordered to reach out to a pre-trial officer. (*Id.*) Plaintiff was never re-incarcerated in this matter. (*Id.* ¶ 66.) On September 2, 2021, plaintiff was found not guilty after a bench trial. (*Id.* ¶ 67.) On August 16, 2022, plaintiff filed his complaint in this civil matter. (*Id.* ¶ 68.)

STANDARD OF REVIEW

Summary judgment is appropriate "if 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); see also *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986). A genuine issue of material fact exists whenever "there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light most favorable to the nonmovant. *Horton v. Pobjecky*, 883 F.3d 941, 948 (7th Cir. 2018). To defeat summary judgment, a nonmovant must produce more than "a mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Johnson v. Advocate Health and Hospital Corp.*, 892 F.3d 887, 894 (7th Cir. 2018).

ANALYSIS

I. The Section 1983 Malicious Prosecution Claim[1]

All of the defendant police officers are entitled to summary judgment on plaintiff's federal malicious prosecution claim because plaintiff was not seized pursuant to judicial process.

[1] Although plaintiff's complaint brings a claim for "unlawful pretrial detention," we understand him to bring a malicious prosecution claim pursuant to the Supreme Court's decision in *Thompson v. Clark*, 596 U.S. 36 (2022)

Additionally, Seargent Boyle and Officers Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson are entitled to summary judgment for two other reasons. First, they lacked the requisite personal involvement and causal link required to sustain the claim. And second, these officers are entitled to qualified immunity in this matter.

A. Plaintiff was not Seized Pursuant to Legal Process.

Plaintiff has alleged a malicious prosecution claim housed in the Fourth Amendment. The existence of such a claim was confirmed by the Supreme Court in *Thompson v. Clark*, 596 U.S. 36 (2022). The Court held that, like a common law malicious-prosecution claim, this Fourth Amendment claim required that (1) the criminal proceedings were instituted without any probable cause, (2) that the prosecution resulted in a seizure of the plaintiff, and (3) that the proceedings terminated in the plaintiff's favor. *Id.* at 1337-38, 1341 & n.2. Plaintiff cannot show that he was seized pursuant to the legal process surrounding his criminal case. Because plaintiff was not seized pursuant to this legal process, defendants must prevail at summary judgment.

When a warrantless arrest occurs, as is the case here, legal process begins when an individual "is bound over by a magistrate or arraigned on charges." *Wallace v. Kato*, 549 U.S. 384, 389 (2007). In a similar finding, the Seventh Circuit has held that legal process begins when a judge, relying on a criminal complaint, finds probable cause for the warrantless arrest. *Mitchell v. Doherty,* 37 F.4th 1277, 1283 (7th Cir. 2022). Finally, in *Serino v. Hensley*, the Seventh Circuit held that "when the arrest takes place without a warrant, the plaintiff only becomes subject to legal process afterward, at the time of arraignment." 735 F.3d 588, 594 (7th Cir. 2013).

Even under a most favorable reading of the record, plaintiff cannot say that he was seized pursuant to the legal process of his criminal case. Plaintiff was immediately released at his bond hearing in front of a Cook County Judge with an I-bond and he had no meaningful restrictions on

his freedom of movement; in fact, the only condition of his bond was to communicate with a pre-trial officer. (SOF ¶ 64.) This bond condition, however, does not amount to a seizure. See *Oliva v. City of Chicago*, No. 1:21-cv-06001, 2023 WL 2631575, at *5 (N.D. Ill. Mar. 24, 2023) ("bond conditions generally do not work a seizure"); see also *Smith v. City of Chicago*, 3 F.4th 332, 341–42 (7th Cir. 2021) ("There is no restriction on the defendant's freedom of movement unless he is denied permission to leave."), *vacated on other grounds by* 142 S. Ct. 1665 (2022). In sum, plaintiff's bond condition, which required him to contact a pretrial officer, did not—as a matter of law—amount to deprivation of his freedom of movement. Since no genuine issue of material fact exists on the question of whether plaintiff was seized pursuant to legal process, judgment in the officers' favor is appropriate as a matter of law.

B. Lack of Personal Involvement / Proximate Cause

Even if this court finds that plaintiff's Fourth Amendment claims are timely—which they are not—Seargent Boyle and Officers Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson are entitled to summary judgment for a separate and independent reason: none of them personally participated in the conduct that allegedly deprived plaintiff of his constitutional rights.

Section 1983 individual liability "requires that the public official defendant was personally involved in the alleged constitutional deprivation." *Barnhouse v. City of Muncie*, 499 F. Supp. 3d 578, 588 (S.D. Ind. 2020) (quoting *Colbert v. City of Chicago*, 851 F.3d 649, 657 (7th Cir. 2017)); see also *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) ("Section 1983 creates a cause of action based on personal liability and predicated upon fault. An individual cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation.... A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary.") As such, for plaintiff's claim of wrongful pre-trial detention to succeed, he

must show that each officer personally participated in the alleged fabrication of evidence. *Brown v. City of Chicago*, 633 F. Supp. 3d 1122, 1157 (N.D. Ill. 2022). More specifically, plaintiff has the burden to point to evidence in the record showing that each individual defendant "created evidence that they knew with certainty to be false." *Id*. (quoting *Petty v. City of Chicago*, 754 F.3d 416, 423 (7th Cir. 2014)); see also *Anderson v. City of Rockford*, 932 F.3d 494, 510 (7th Cir. 2019).

There needs to be some sort of causal connection between these officers' personal conduct and the alleged illegal conduct. In this matter, one simply does not exist. No evidence has been elicited that even hints towards Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau or Lawson having anything to do with the alleged planting of narcotics in McIntyre's vehicle. The entire basis for plaintiff's illegal pre-trial detention claim rests on his own hunch that the officers "put cocaine on us." (SOF ¶ 71.) Plaintiff cannot point to any evidence in the record that indicates Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau or Lawson had anything to do with the surveillance and/or recovery of suspect narcotics. It has been well-established through fact discovery that only Officers Carreno and Garcia were participating in the actual surveillance of plaintiff and McIntyre. (*Id*. ¶ 14.) Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson, acting as enforcement officers, were wholly relying on what was relayed to them over the radio by Carreno and Garcia. (*Id*. ¶ 16.) Even if, for the purpose of summary judgment, one assumes that Carreno and Garcia either planted narcotics or lied about what they observed during the surveillance, Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau or Lawson cannot be held liable. No set of facts exist that implicate these officers. At the summary judgement stage, plaintiff must put forth evidence that shows personal involvement for each of these officers. *Colbert*, 851 F.3d at 657. Simply put, none exists.

It must be noted that the above analysis applies regardless of whether plaintiff has pleaded a particular legal theory. *Colbert*, 851 F.3d at 658. Section 1983 claims generally have an

individual-responsibility requirement that requires plaintiff to at a minimum have "(1) pled a claim that plausibly forms a causal connection between the official sued and some alleged misconduct, and (2) introduced facts that give rise to a genuine dispute regarding that connection." *Id*. In *Colbert*, that plaintiff alleged that four of ten officers damaged his property during a search but failed to identify those responsible for the damage. *Id*. The *Colbert* defendants prevailed on summary judgement, just as Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson should. The only conduct in question at this stage is that of officers Carreno and Garcia.

Now, plaintiff claims in his complaint that "each of the other officer defendants failed to intervene to prevent the violation of plaintiff's rights." (Ex. 1, Pl.'s Complaint ¶¶ 8b, 8c.) However, the opportunity to intervene must be "realistic." *Colbert*, 851 F.3d at 659-660. The *Colbert* Court refers to *Miller v. Smith*, 220 F.3d 491 (7th Cir. 2000), to elucidate an example where a failure to intervene would succeed. *Id*. In *Miller*, that plaintiff identified officers that stood by and witnessed an incident of excessive force. 220 F.3d at 495. However, in this case, Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson had no realistic opportunity to discover either the alleged false surveillance or the planting of narcotics. Carreno and Garcia were the only officers observing the alleged drug transactions and the only officers who discovered and recovered the suspected crack cocaine from McIntyre's car. (SOF ¶¶ 18, 37.) The only officers able to turn a blind eye to malfeasance were Carreno and Garcia. The other individual officers were under no obligation to ask Carreno and Garcia if the suspect narcotics they recovered, or the observations they relayed over the radio, actually occurred. *See Fitzgerald v. Sontoro,* 842 F.Supp.2d 1064, 1068 (7th Cir. 2012) (holding that an officer may reasonably rely on information provided by other officers in assessing whether probable cause for an arrest exists); *United States v. Hensley*, 469 U.S. 221, 231 (1985) (stating that "effective law enforcement cannot be conducted unless police officers can act

on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." (Internal quotation marks omitted)). Because Officers Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson were not personally involved in the alleged constitutional deprivation of plaintiff, summary judgment must be granted in their favor.

C. Qualified Immunity

Next, judgement should be entered in Sgt. Boyle and Officers Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson's favor because they are entitled to qualified immunity.

"The doctrine of qualified immunity protects government officials from liability for civil damages when their conduct does not clearly violate statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity serves to balance the competing interests of protecting public officials from harassment, liability, and distractions while at the same time needing to hold public officials accountable when they exercise their power unreasonably. *Id*. at 231. The protection of qualified immunity applies regardless of whether the officer's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson*, 555 U.S. at 231; *Tebbens v. Mushol*, 692 F.3d 807, 820 (7th Cir. 2012) ("Qualified Immunity protects officers who are 'reasonable, even if mistaken' in making probable cause assessments."). In terms of qualified immunity, an officer needs only "arguable" probable cause. *Huff v. Reichert*, 744 F.3d 999, 1007 (7th Cir. 2014). Arguable probable cause exists when a reasonable officer in the same circumstances and with the same knowledge as the officer in question could have reasonably believed that probable cause existed in light of well-established law. *Id.*; *Tebbens*, 692 F.3d at 821 ("The qualified immunity defense

… provides ample protection to all but the plainly incompetent or those who knowingly violate the law.").

In the case *sub judice*, Officers Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson were operating on what was relayed to them by Carreno and Garcia. Additionally, it is a reasonable inference to assume that Officer Carreno emerged from the rear of the residence with a bag full of crack cocaine, planted or otherwise. The enforcement officers were operating with the apparent knowledge that plaintiff and McIntyre had engaged in multiple hand to hand transactions, a buyer had been stopped with narcotics, and Officer Carreno had recovered a significant amount of crack cocaine in relation to the narcotics operation. No reasonable officer with the information Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson had would have conducted himself or herself in a different manner. This is precisely why qualified immunity exists. It stands that the test for qualified immunity is: "the objective legal reasonableness of an official's acts. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action." *Fields v. Wharrie*, 740 F.3d 1107, 1114 (7th Cir. 2014) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982)). No officer would have hesitated in arresting plaintiff and McIntyre, seeing Carreno emerge from behind the residence with a bag of suspect narcotics, claiming to have seen plaintiff selling said narcotics. Nothing was out of the ordinary as far as Boyle, Burmistrz, Evans, Foertsch, Higgins, Lau and Lawson were concerned. This was a typical, run of the mill undercover narcotics operation (SOF ¶ 51.) As such, they must prevail on summary judgment because they all objectively were operating with reasonableness based on the information given to them.

II. 14th Amendment Due Process Claim

Next, in paragraph 11 of his complaint, plaintiff makes a stray reference to the 14th Amendment. To the extent plaintiff brings such a claim, defendants are entitled to judgment in their favor as a matter of law.

"The Fourth Amendment, not the Due Process Clause, is the source of the right in a § 1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process." *Lewis v. City of Chicago*, 914 F.3d 472, 479 (7th Cir. 2019). Additionally, a wrongful pretrial detention based on fabricated evidence is distinct from a claim of wrongful conviction based on the fabrication of evidence. *Avery v. City of Milwaukee*, 847 F.3d 433, 439 (7th Cir. 2017) ("[C]onvictions premised on deliberately fabricated evidence will always violate the defendant's right to due process."). The Seventh Circuit has consistently held that a plaintiff released on bond following his arrest and who was later acquitted could not sustain a due process claim for fabrication of evidence. *Towne v. Donnelly*, 2021 WL 3022327, at *3 (N.D. Ill. July 16, 2021), aff'd, 44 F.4th 666 (7th Cir. 2022) (citing *Cairel v. Alderden*, 821 F.3d 823, 831 (7th Cir. 2016)).

Here, there is no dispute that plaintiff was found not guilty following a bench trial. In other words, plaintiff was never convicted; the process guaranteed by the Constitution did not fail; and the officers' alleged misconduct did not violate section 1983 via the due process clause. In accordance with *Lewis*, any effort plaintiff exudes to maintain a Fourteenth Amendment Claim must be quelled at this summary judgment stage. Plaintiff is simply not entitled to a Fourteenth Amendment claim based on an alleged unlawful pretrial detention and judgment must be entered in the officers' favor to extent plaintiff brings a 14th Amendment due-process claim.

III. State Law Malicious Prosecution Claim

To establish a claim for malicious prosecution under Illinois law, a plaintiff must prove

that: (1) the defendant commenced or continued an original criminal proceeding against the plaintiff; (2) there was no probable cause for the criminal proceeding; (3) the defendant acted with malice; (4) the criminal proceeding terminated in the plaintiff's favor; and (5) the defendant's conduct caused the plaintiff harm. *Gonzalez v. City of Elgin,* 578 F.3d 526, 541 (7th Cir.2009). The failure to establish any of these elements bars a plaintiff's malicious prosecution claim. *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 24.

To start, plaintiff cannot point to any facts demonstrating that defendants commenced or continued an original criminal prosecution. "[T]he relevant inquiry is whether the officer proximately caused the commencement or continuance of the criminal proceeding." *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 33. Under the significant role test, plaintiff must establish that:

> "[a persons'] participation in the criminal case was so active and positive to amount to advice and co-operation [citation] or those persons who improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct instrumental in the initiation of the prosecution." (Internal quotation marks omitted.) *Id*. ¶ 45.

In this case, there is no evidence that plaintiff can point to that even remotely suggests any officer, and by extension the City, played a significant role in causing plaintiff's prosecution. Plaintiff's entire suit relies on his own mere hunch that the officers planted drugs on him. There are no facts regarding the role the officers played in the underlying prosecution or whether their participation in the criminal case was so active and positive to amount to advice and cooperation. Nor are there any facts demonstrating that the officers improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence, or otherwise engaged in wrongful or bad-faith conduct that was instrumental in the initiation of the prosecution. As such, it is impossible to discern whether the officers did anything to pressure or influence the prosecutor's decision to charge plaintiff.

Instead, plaintiff hangs his hat on the smallest of hooks. His entire suit relies on his own mere hunch that the officers planted drugs on him. Police officers must rely on more than mere hunches to effectuate arrests. However, plaintiff asks this Court to allow his malicious prosecution claim to see a finder of fact based on conjecture and speculation.

Moreover, there is no evidence of record that the officers acted with malice—an essential element of a malicious prosecution cause of action. "Malice is defined as the initiation of a prosecution for any reason other than to bring a party to justice." *Rodgers v. Peoples Gas, Light & Coke Co.,* 315 Ill. App. 3d 340, 349 733 N.E.2d 835 (2000).

Plaintiff cannot present any evidence that points to an inference of malice. Plaintiff's entire case rests on a hunch that evidence was planted on him and McIntyre. However, there simply is no evidence of record that substantiates this, beyond the plaintiff's own self-serving statements. While a plaintiff need not prove his case during summary judgment proceedings, he must present some evidentiary facts to support the elements of his cause of action. *Benamon v. Soo Line R.R. Co*., 294 Ill.App.3d 85, 87 (1997). Plaintiff cannot present any facts indicating that the bags of cocaine were planted. It is for this reason that defendants are entitled to summary judgment on the state law malicious prosecution claim.

CONCLUSION

The undisputed facts show that officers Patrick Boyle, Jennifer Burmistrz, Matthew Evans, John Foertsch, Michael Higgins, Gerald Lau, and Jeffrey Lawson had no personal involvement in the alleged constitutional deprivation. These officers are entitled to summary judgment. Additionally, summary judgment must be granted for all defendant officers regarding plaintiff's section 1983 claim, as plaintiff was not seized pursuant to legal process. Plaintiff cannot prevail on his Fourteenth Amendment claim as it duplicative of his Fourth Amendment claim. Finally,

plaintiff's state law malicious prosecution claim cannot prevail as plaintiff cannot point to any facts of record that substantiate what ultimately is a hunch.

DATED: April 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 8, 2024, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *Michael J. Dinard*
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