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

Dennis Jackson,	)	
	)	
Plaintiff,	)	No. 22-cv-4337
	)	
-vs-	)	*(Judge Alonso)*
	)	
City of Chicago, et al.	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff opposes the grant of summary judgment to defendants Carreno, Garcia, and the City of Chicago; plaintiff does not oppose the grant of summary judgment to defendants Burmistrz, Evans, Foertsch, Higgins, Lau, and Lawson. Plaintiff therefore limits this memorandum to his claims against defendants Carreno, Garcia, and the City of Chicago.

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). Plaintiff, as the non-moving party, is 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).

Defendants' Local Rule 56.1 Statement (ECF No. 66) is not consistent with this well-established standard. As explained below, the key disputed issue in this case is whether Defendants Carreno and Garcia are truthful in their claims that they observed plaintiff and another man selling drugs. Plaintiff and the other man say that there were no drug transactions, and that Carreno and Garcia have made up a false story. In multiple paragraphs (29, 30, 36, 43, 46, 47), defendants contend that this key disputed issue is not disputed. The Court should strike these paragraphs.

In other paragraphs (35, 44, 45, 48, 62), defendants seek to rely on these same disputed facts by presenting them as the defendants' testimony. For example, defendants state in paragraph 35, "Officer Carreno testified that he observed Johnson engage in a hand-to-hand transaction with plaintiff and McIntyre." (ECF No. 66 ¶ 35.) The fact that Carreno testified to something that did not happen is immaterial to defendants' summary judgment motion, and the Court should not allow defendant to smuggle disputed facts into the record. The Court should strike these paragraphs as well.

II. Relevant Facts

The facts material to plaintiff's claims against defendants Carreno, Garcia, and the City of Chicago, viewed the record in the light most favorable to plaintiff, are as follows:

On November 6, 2017, Chicago police officers arrested plaintiff based on the instructions of defendants Efrain Carreno and Edward Garcia (Defendant' Rule 56.1(a)(2) Statement, ECF No. 66 ¶¶ 49, 63.) Carreno and Garcia claim that they observed plaintiff and another man, James McIntyre, engage in multiple drug transactions while the two sat in a car. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 11.) This claim is false. (*Id.* ¶ 4.) According to Carreno and Garcia's false story, in each transaction, a "buyer" would hand money to plaintiff through the car window then McIntyre would exit the car and walk from the street to a back alley to retrieve drugs for the "buyer." (*Id.* ¶¶ 12-13.)

At summary judgment, the Court must accept the testimony of plaintiff and McIntyre that they did not engage in any drug transactions. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 4, 6, 7.) No one approached the vehicle, no one handed plaintiff anything through the car window, and no one could have handed anything to plaintiff through the window because the window was not working. (*Id.* ¶¶ 4-5.) McIntyre never left the car between the time he entered it and the time he was arrested, and he never went behind the building on the night of his arrest. (*Id.* ¶¶ 6-7.) In fact, McIntyre could not have walked to the back alley multiple times because of a back injury (*id.* ¶ 8), which is corroborated by the fact that officers seized a back brace from McIntyre. (*Id.* ¶ 19.)

After the arrest, defendants Carreno and Garcia prepared police reports (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 9-10), containing the following falsehoods:

1. Carreno and Garcia falsely stated that they observed plaintiff engage in multiple drug transactions where a buyer would hand money to plaintiff through the car window and then McIntyre, would give drugs to the buyer. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 11-12.) At summary judgment, the Court must accept the testimony of plaintiff and McIntyre that they did not engage in any drug transactions. (*Id.* ¶¶ 4, 6, 7.) As explained above, no one approached the vehicle, no one handed plaintiff anything through the car window, and no one could have handed anything to plaintiff through the window because the window was not working. (*Id.* ¶¶ 4-5.)

2. Carreno and Garcia falsely stated that they observed McIntyre walk from the street to a back alley to retrieve drugs from a car during each transaction. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 13.) At summary judgment, the Court must accept the testimony of McIntyre that he did not walk to a back alley at any time. (*Id.* ¶¶ 6-7.) That testimony includes McIntyre's explanation that he could not have walked to the back alley multiple times because of a back injury (*id.* ¶ 8), which is corroborated by the fact that officers seized a back brace from McIntyre. (*Id.* ¶ 19.)

3. Carreno and Garcia falsely stated that they gave the other officers a description of an alleged buyer who was arrested. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 14.) The alleged buyer was Nathaniel Johnson. (*Id.*) At summary judgment, the Court must accept the testimony of plaintiff and Johnson that Johnson did not buy drugs from plaintiff. (*Id.* ¶¶ 4, 16.) In fact, it is undisputed that Johnson was arrested for possessing heroin, a fact contrary to defendants' claim that plaintiff was selling crack cocaine. (*Id.* ¶¶ 17-18.)

Defendant Garcia signed a criminal complaint charging plaintiff with Manufacture or Delivery of a Controlled Substance and thereby initiated the criminal prosecution. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 20-21.) Carreno and Garcia did not request and were not required to request a prosecutor to review a drug prosecution like the case against plaintiff. (*Id.* ¶ 22.)

Following his arrest, plaintiff remained in custody overnight at the police station until he was transported to the courthouse at 26th and California in the early morning hours on November 7, 2017. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 23-24.) Plaintiff waited in a lockup at the courthouse for several hours before he saw the judge in the afternoon, and the judge ordered that plaintiff be released on personal recognizance ("I bond"). (*Id.* ¶¶ 25-26.) The bond order was entered at 3:10 p.m. on November 7, 2017. (*Id.* ¶ 26.) Plaintiff remained in custody until he was released at about 9:00 p.m. on November 7, 2017. (*Id.* ¶ 27.)

Plaintiff remained on bond until he was falsely arrested for possession of a stolen vehicle on April 14, 2018. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 28.) Because of the pending drug charge that is the subject of this lawsuit, plaintiff was not allowed to bond out on the stolen vehicle charge, and he entered the Cook County Jail on April 15, 2018. (*Id.* ¶ 29.) Plaintiff's bond in the criminal case that is the subject of this lawsuit was revoked on April 16, 2018, because he had been falsely arrested for possession of a stolen vehicle. (*Id.* ¶ 30.)

Because plaintiff's bond was revoked, he remained in custody at the Cook County Jail. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 31.) The charges for possession of a stolen vehicle were dismissed on April 20, 2018. (*Id.* ¶ 32.) Following the court hearing at which the stolen vehicle charges were dismissed, plaintiff was held at the Cook County Jail until April 23, 2018, when he appeared before the judge presiding in the criminal case that is the subject of this lawsuit. (*Id.* ¶ 33.) The judge reinstated plaintiff's bond and he was released from the Jail later that day. (*Id.* ¶ 34) The drug charge that is the subject of this lawsuit was the only charge holding plaintiff in the Cook County Jail from April 20, 2018 and April 23, 2018. (Id. ¶ 35.)

While he was on bond, plaintiff was required to report to pretrial services, he was not allowed to leave the State, he was required to make regular court appearances, and he was subject to incarceration if he violated any of the conditions of his bond. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 36.)

At plaintiff's trial on September 2, 2021, defendant Carreno testified to the false police story. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 37.) After the state rested its case, Judge Adrienne E. Davis granted plaintiff's motion for a directed finding of not guilty. (*Id.* ¶ 38.)

III. Plaintiff's Claims

Plaintiff sues defendants Carreno and Garcia for depriving him of rights secured by the Fourth Amendment when they fabricated evidence that caused the wrongful prosecution ("federal malicious prosecution").

Plaintiff also seeks relief for his wrongful prosecution under the Fourteenth Amendment's Due Process Clause. The Seventh Circuit rejected this claim in *Lewis v. City of Chicago*, 914 F.3d 472, 479 (7th Cir. 2019), holding that this theory of relief was foreclosed by *Manuel v. Joliet*, 580 U.S. 357 (2017). After *Lewis*, the Supreme Court decided *McDonough v. Smith*, 588 U.S. 109 (2019), in which the Court assumed that relief under the Due Process clause was available. *McDonough* shows that *Lewis* was incorrect. Plaintiff includes this argument to preserve it for any appellate review.

Plaintiff's final claim is a supplemental state-law claim of malicious prosecution against defendant City of Chicago, which is liable for the conduct of its employees under the doctrine of respondeat superior. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163–64, 862 N.E.2d 985, 991 (2007).

A. Federal Malicious Prosecution

Defendants Carreno and Garcia do not dispute that a jury could find them responsible for the institution of criminal proceedings against plaintiff without probable cause or that the prosecution terminated in plaintiff's favor. (ECF No. 72 at 6.) Defendants' only argument against plaintiff's federal malicious prosecution claim is that plaintiff has not shown that he was seized because of defendants' conduct. Plaintiff shows below that the argument is wrong on the law: the seizure required for this claim can occur before and after legal process. The argument is also wrong on the facts: plaintiff was seized after legal process, first when he remained in custody for six hours after the bond order was entered and again when his bond was revoked after he was charged with a new offense.

The Seventh Circuit recently considered the Fourth Amendment claim that plaintiff brings, explaining: "To prove a Fourth Amendment violation, a plaintiff must show first that a seizure occurred, and then, if so, that the seizure was unreasonable." *Washington v. City of Chicago*, No. 22-2467, — F.4th —, 2024 WL 1615022, at *6 (7th Cir. Apr. 15, 2024) (citing *Carlson v. Bukovic*, 621 F.3d 610, 618 (7th Cir. 2010).) In the next sentence of its opinion, the Seventh Circuit explained that pretrial detention is a seizure "both before formal legal process and *after*." *Id.* (citing *Lewis v. City of Chicago*, 914 F.3d 472, 477 (7th Cir. 2019); *Manuel v. City of Joliet*, 580 U.S. 357, 366-67 (2017).)

The rule that a claim for pretrial detention covers a seizure before and after legal process is not new. The Seventh Circuit adopted this rule in *Lewis* when it explained that the Supreme Court's opinion in *Manuel v. Joliet* "clarified that the constitutional injury arising from a wrongful pretrial detention rests on the fundamental Fourth Amendment principle that a pretrial detention is a 'seizure'—both before formal legal process and after—and is justified only on probable cause." *Lewis v. City of Chicago*, 914 F.3d 472, 476-77 (7th Cir. 2019) (citing *Manuel v. City of Joliet*, 580 U.S. 357, 366-67 (2017).)

Defendants do not dispute that plaintiff was seized before his bond hearing, and there is no basis for defendants' frivolous argument that detention before formal legal process does not satisfy the seizure required for a federal malicious prosecution claim. Defendants' arguments rests on two inapposite rulings, both of which have been overturned. (ECF No. 72 at 7.)

In *Smith v. City of Chicago*, 3 F.4th 332 (7th Cir. 2021), the Seventh Circuit considered when a Fourth Amendment claim for wrongful pretrial detention accrues, holding that the claim accrues when the plaintiff is released from custody. *Id.* at 335. The Supreme Court rejected this accrual theory in *Thompson v. Clark*, 142 S. Ct. 1332 (2022), granted the petition for certiorari in *Smith v. Chicago*, 142 S. Ct. 1665 (2022), and vacated the decision of the Seventh Circuit. 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.

Nothing in the Seventh Circuit's vacated opinion in *Smith* supports defendants' argument. There was no dispute in *Smith* that the plaintiff had suffered a pretrial detention. The only question was when the claim about that detention accrued. Defendants point to language in the vacated opinion in *Smith* stating that after the plaintiff was released from pretrial detention on bond, he was no longer seized under the Fourth Amendment. (ECF No. 72 at 7, citing *Smith*, 3 F.4th at 341-42.) But this language has no bearing on defendants' argument. As shown above, the Seventh Circuit squarely holds that federal malicious prosecution covers a seizure before and after the initiation of legal process.

The other case relied on by defendants, *Oliva v. City of Chicago*, No. 1:21-cv-06001, 2023 WL 2631575, at *5 (N.D. Ill. Mar. 24, 2023), applied the vacated rule of *Smith* without any additional analysis. Judge Kness recognized his error when he granted a motion to reconsider and vacated his ruling in *Oliva*. *Oliva v. City of Chicago*, No. 21-CV-06001, 2023 WL 11113914, at *1 (N.D. Ill. June 26, 2023). The City of Chicago did not object to the motion to

reconsider in *Oliva*, *id.*, but defendants fail to acknowledge that they are relying on a vacated order. (ECF No. 72 at 7.)

Even if a post-legal process seizure was required, plaintiff satisfies that requirement. Defendants seek to support their claim that plaintiff was never in custody by relying on the Cook County Clerk's Electronic Case Summary. (Defendants' Exhibit 14.) But that summary shows that a No Bail order was entered on April 15, 2018, that plaintiff was in custody on April 16, 2018, and that he was released on an I-Bond on April 23, 2018. (*Id.* at 8-9.) Defendants ignore this post-legal process seizure.

Defendants may argue that this custody was caused by plaintiff's charge in a new case, but those charges were dismissed on a finding of no probable cause. (Plaintiff's Rule 56.1(b)(3) Statement ¶ 32.) This is not a case where the time spent in custody was credited to a valid and lawful sentence. *E.g.*, *Ewell v. Toney*, 853 F.3d 911, 917 (7th Cir. 2017). Moreover, plaintiff remained in custody after dismissal of the new case; the drug charge that is the subject of this lawsuit was the only charge holding plaintiff in the Cook County Jail from April 20, 2018 and April 23, 2018. (*Id.* ¶ 35.)

Defendants also ignore plaintiff's post-legal process seizure that immediately followed his bond hearing. Plaintiff was held in custody for about six hours from the time the bond order was entered until he was released. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 25-27.) Defense counsel may be

unfamiliar with the procedures of the Cook County Sheriff to hold detainees after a judge has ordered their release on bond. *See, e.g., Harper v. Sheriff of Cook County*, 581 F.3d 511, 513 (7th Cir. 2009).

For all these reasons, the Court should hold that a trial is required on plaintiff's Fourth Amendment claims against defendant Carreno and Garcia.

B. State Law Malicious Prosecution

The City of Chicago's argument about the state law malicious prosecution claim is difficult to understand. The elements of this claim are "(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff." *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 26. Defendant attempts to challenge the first and fourth elements only.

The Court should reject defendant's frivolous assertion that there is no evidence that an officer commenced or continued the prosecution. (ECF No. 72 at 13.) Defendant Garcia signed the criminal complaint that initiated the prosecution, and both defendants Garcia and Carreno testified that signing a criminal complaint begins a prosecution. (Plaintiff's Rule 56.1(b)(3) Statement ¶¶ 17, 18.) Carreno and Garcia were not required to have a prosecutor review a drug case such as the case against plaintiff before charging. (*Id.* ¶ 19.)

Rather than support their argument about the first element, defendants simply ignore the evidence that Garcia and Carreno commenced the prosecution. Courts considering similar evidence routinely find that the first element is satisfied. *E.g.*, *Cefalu v. Vill. of Glenview*, No. 12 C 5995, 2013 WL 12618204, at *2 (N.D. Ill. Jan. 29, 2013); *Armstrong v. Maloney*, 2012 WL 567427, *10 (N.D. Ill. Feb. 21, 2012). As in *Padilla v. City of Chicago*, 932 F. Supp. 2d 907, 929 (N.D. Ill. 2013), this is a case where the prosecution was based solely on the false evidence provided by defendants Garcia and Carreno.

Defendant also makes the frivolous argument that plaintiff's allegation that the officers framed him is a "mere hunch." (ECF No. 72 at 13.) This is incorrect. The central issue of this case is whether defendants Carreno and Garcia created a false story that was the basis of plaintiff's prosecution, and plaintiff's allegation that the officers framed him is not a hunch; it is disputed testimony that the Court must credit at summary judgment. *Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013); *Payne v. Pauley*, 337 F.3d 767, 771 (7th Cir. 2003). The Court should reject defendants' attempt to rewrite the summary judgment standard.

The other disputed element of this claim is malice (ECF No. 72 at 14), but defendants ignore the well-settled rule that a jury can infer malice from an absence of probable cause. *Holland v. City of Chicago*, 643 F.3d 248, 255 (7th Cir. 2011). The Illinois Supreme Court recently reiterated this rule, explaining:

> "[w]here two conflicting inferences may be drawn from the evidence—one of good-faith actions on the part of the defendant and the other of actions inconsistent with good faith or, in other words, malicious actions—the question whether the defendant acted with malice is for the trier of fact to determine."

Beaman v. Freesmeyer, 2021 IL 125617, ¶ 141 (quoting *Frye v. O'Neill*, 166 Ill. App. 3d 963, 977-78 (1988).) As explained above, a jury could find from the disputed evidence in this case that Carreno and Garcia "created evidence to support their conclusion that [plaintiff] was guilty." *Id.* ¶ 149. Accordingly, a jury could find the malice element satisfied by inferring that these officers "acted with the improper purpose to obtain a conviction regardless of the evidence." *Id.*

Trial is therefore required on the state-law malicious prosecution claim.

IV. Conclusion

For all these reasons, the Court should deny summary judgment to defendants Carreno, Garcia, and the City of Chicago. Plaintiff does not oppose the grant of summary judgment to defendants Burmistrz, Evans, Foertsch, Higgins, Lau, and Lawson.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
Attorneys for Plaintiff