

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

Atheris Mann, et al.,)	
Plaintiffs,)	
)	Case. No. 15 C 9197
v.)	
)	Judge Ronald A. Guzmán
Chicago Police Sergeant Frank)	
Ramaglia, et al.,)	
Defendants.)	

ORDER

For the reasons stated below, Defendants’ partial motion to dismiss [19] is granted in part and denied in part. Plaintiffs’ *Brady* claim is dismissed with prejudice. Wilson’s excessive force claim against Defendant Kane is dismissed, and the motion to dismiss Patrick’s excessive force claim against Kane is denied as moot. Plaintiffs are given 21 days from the date of entry of this order to replead the due process claim relating to the fabrication of evidence and their claim for civil conspiracy, which are dismissed without prejudice.

STATEMENT

Plaintiffs allege that they were wrongfully arrested, detained, charged, and prosecuted by Defendants, and were physically and psychologically abused at the Chicago Police Department’s purportedly unconstitutional detention center located at the intersection of South Homan Street and West Filmore Avenue in Chicago (“Homan Square”). (Compl., Dkt. # 1). Plaintiffs filed an eleven-count complaint, and Defendants move to dismiss portions of Count II (excessive force) as well as Counts III (violation of due process based on fabricating and withholding evidence), IV (*Brady* claim based on suppression of evidence) and IX (conspiracy). For the reasons stated herein, the motion is granted in part and denied in part.

Facts

The following facts are taken as true for purposes of this motion. On the morning of October 21, 2013, Anthony Speight was arrested around the corner from the 900 block of North St. Louis Avenue in Chicago, Illinois for possession of heroin with intent to deliver. Plaintiffs had no involvement with the illegal possession and delivery of the aforementioned heroin. On the morning of October 21, 2013, Plaintiffs Jessie Patrick and Atheris Mann were in a vehicle on the 900 block of North St. Louis Avenue, Chicago, running errands when they were pulled over by Chicago Police Officers Ramaglia and Connolly. According to Plaintiffs, Ramaglia and Connolly had no reasonable suspicion or probable cause to believe that Patrick and Mann had committed, were committing, or were going to commit any criminal offense nor did they have an arrest warrant or search warrant for Plaintiffs. Ramaglia approached Patrick and Mann’s vehicle, took their identification, conducted a pat down search of Plaintiffs, and handcuffed their hands together. Patrick and Mann were not in possession of any contraband, had not violated

any local ordinance, state or federal law, nor did Ramaglia did not find any drugs on their persons or in the vehicle.

About the same time, Defendant Connolly arrived on the scene with Anthony Speight, whom he had already handcuffed. Connolly placed Speight into the police vehicle, and Mann and Patrick were placed in the same vehicle with Speight shortly thereafter. When Patrick's mother and Mann's female partner asked the officers if the men were going to jail, one of the officers responded that at least one of them would be. Patrick and Mann were then transported by Ramaglia and Connolly to Homan Square. A few hours later, Plaintiff Deanda Wilson was at a store near the North 900 block of St. Louis Avenue buying a soda when Defendant Officer Miranda detained and handcuffed him. Miranda had no reasonable suspicion or probable cause to believe that Wilson had committed, was committing, or was going to commit any illegal offense nor did he have an arrest warrant or search warrant for Wilson. Although Miranda thoroughly searched Wilson and did not find a weapon or any other contraband, Miranda transported him to Homan Square.

At Homan Square, Mann and Patrick were taken into a room by Ramaglia, who conducted a full strip search of the two men. Ramaglia demanded that Mann and Patrick cooperate with him or be "locked up." Mann asked for his attorney, and Patrick asked to call his mother so she could call an attorney, but Ramaglia ignored both requests. Ramaglia took Mann and Patrick to separate windowless, dark cells where he handcuffed them to the wall and left the men alone in their cells.

Sometime later, Miranda transported Wilson to Homan Square, where Ramaglia was waiting. Ramaglia removed Wilson from the transport police vehicle and attempted to plant narcotics on him, but was stopped by Miranda. Ramaglia then directed Wilson to his own dark cell with no windows, where he was also handcuffed to the wall.

Later that day, Ramaglia re-entered Mann's cell and advised him to "help yourself." Ramaglia interrogated him about a person named Shardell Green and advised Mann that if he offered information on Green, he could go free. Because Mann did not know anything about Green, he was unable to supply any information, and remained detained in his cell. While interrogating Mann, Ramaglia assaulted him with a stream of insults, racial slurs, and threats. A few minutes after Ramaglia left Mann's cell, Kane entered his cell and repeated Ramaglia's demand to "help yourself" by sharing information about Green. Kane grabbed Mann by the collar with both hands and threatened his family. Once again, Mann did not have any information to offer and could not supply information, and remained detained in his Homan Square cell.

Shortly thereafter, Ramaglia entered Patrick's cell. Ramaglia interrogated Patrick, and told him to "help yourself" by revealing information about the location of illegal guns in Patrick's neighborhood. Patrick was both unable and unwilling to provide any information, and Ramaglia assaulted him with a stream of insults and threats. Minutes later, Kane entered Patrick's cell and advised him that he would go to jail for a long time if he did not share information about the location of illegal guns in his neighborhood. Kane repeatedly threatened

and insulted Patrick. Patrick was unable to share any information and Kane left. Later the same day, Defendant John Doe entered Wilson's cell, advised him that they did not want to keep him detained because he had not done anything wrong, and instructed him to provide information on the sale of illegal drugs in his neighborhood so that he could go free. Wilson was both unable and unwilling to supply any information, so Defendant Doe advised Wilson that he would go to jail. Wilson asked Defendant Doe for permission to use the bathroom but was met with no response.

Soon after, Defendant Doe re-entered Wilson's cell, and when Wilson asked for an attorney, Doe did not respond. Later, Ramaglia entered Wilson's cell and stated "give me something and I'll let you go." Wilson had nothing to reveal, asked for an attorney, and asked again to use the bathroom. Ramaglia did not respond, but instead spoke with Defendant Connolly at the cell's entrance. Ramaglia then once again approached Wilson and held a knife to Wilson's neck, which he used to cut off strings that hung down from the neck of Wilson's sweatshirt. Minutes later, Ramaglia and Kane re-entered the cell, and Kane advised Wilson that he did not have to go to jail and that he should "help" himself. Wilson again asked for his lawyer and to use the bathroom but Defendants ignored his request, leaving him alone in the cell. Sometime later Wilson urinated on himself because he was not permitted to use the restroom.

Plaintiffs Mann, Patrick and Wilson remained detained in their cells at Homan Square all day without access to an attorney, food, a bathroom, or family members despite their persistent pleas. At no time did the Defendants question any of the Plaintiffs about the crime for which they were ultimately wrongfully charged.

After being held at Homan Square, Plaintiffs were transported to the 11th District Police Station where they were charged with the manufacture and delivery of heroin. This was the first time that any of the Plaintiffs were given a purported reason for their arrest. Plaintiffs were then transported to Cook County Jail and held for trial. In support of Plaintiffs' arrest and prosecution, McCann, Ramaglia, Connolly, and Kane filled out and filed purportedly false and incomplete police reports, McCann falsely testified at Plaintiffs' grand jury proceedings, and McCann, Connolly, and Kane falsely testified at Plaintiffs' trial. Additionally, some or all of the Defendants made false statements concerning the evidence to the prosecutors.

Plaintiffs were tried before Judge William O'Brien, who issued a directed finding of not guilty at the conclusion of the State's case. In making his finding of not guilty as to all three Plaintiffs, Judge O'Brien found that McCann and Connolly were so thoroughly impeached that the State was unable to meet its burden of proof. Anthony Speight was found guilty of possession of what appeared to be the same heroin that Defendant police officers relied upon in their false arrests of the Plaintiffs. Plaintiffs spent a total of approximately fifteen months in Cook County Jail.

According to the complaint, Defendants agreed among themselves and with other individuals to act jointly and in concert in order to deprive each Plaintiff of his constitutional rights. In furtherance of the conspiracy, each of the Defendant officers engaged in and facilitated one or more overt acts, including, but not limited to, those set forth above – including

falsely arresting Plaintiffs, illegally detaining and coercively interrogating them in Homan Square, fabricating evidence, withholding exculpatory evidence, writing false reports, committing perjury during hearings and trials, and otherwise willfully participating in joint activities.

Motion to Dismiss Standard

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must ‘state a claim to relief that is plausible on its face.’” *Adams v. City of Indianapolis*, 742 F.3d 720, 728 (7th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Adams*, 742 F.3d at 728 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A court must accept all of the plaintiff’s factual allegations as true when reviewing the complaint, but conclusory allegations merely restating the elements of a cause of action do not receive this presumption. *See Iqbal*, 556 U.S. at 679.

Analysis

A. Count II – Excessive Force

Defendants move to dismiss Wilson and Patrick’s excessive force claims against Kane. Wilson states that he is voluntarily dismissing his excessive force claim against Kane, and Patrick did not bring an excessive force claim against Kane. Therefore, the Court grants the motion to dismiss Wilson excessive force claims against Kane. Defendants’ motion to dismiss Patrick’s excessive force claim is denied as moot.

B. Count III – Due Process (Fabrication of Evidence)

Defendants contend that Count III fails to state a plausible fabrication of evidence claim. In response, Plaintiffs refer to allegations that Plaintiffs were not involved in the illegal possession and delivery of heroin; Defendants lacked reasonable suspicion and probable cause to justify the stop, searches and arrest of Plaintiffs; Defendants did not find any drugs on Plaintiffs; Ramaglia attempted to plant narcotics on Wilson; Plaintiffs were charged with the manufacture and delivery of heroin that appears to be the same heroin for which an unrelated suspect, Anthony Speight, was found guilty of possessing; Plaintiffs wrongfully served time in prison; Defendants filled out and filed false and incomplete police reports; McCann falsely testified at Plaintiffs’ grand jury proceedings, and McCann, Connolly and Kane falsely testified at Plaintiffs’ trial.

But none of these allegations provides any facts supporting a due process claim for fabricating evidence. Plaintiffs allegations are conclusory and contain no detail as to what statements were false, why they were false, or when they were made. Simply alleging that Defendants “filled out false police reports” and made “false statements to prosecutors” does not meet the pleading standards under Federal Rule of Civil Procedure 8(a). *See Munoz v. Rivera*,

No. 14 C 6794, 2015 WL 3896917, at *3 (N.D. Ill. June 23, 2015) (noting that “plaintiff claims vaguely that defendants ‘falsely reported’ either what plaintiff had told them during his post-arrest questioning, . . . or what they had perceived at the scene of [the victim’s] death” but does “not allege . . . when defendants made these reports, *to whom* they made them, or *how* the false reports were used in the course of plaintiff’s criminal trials.”); *Alvarado v. Hudak*, No. 14 CV 9641, 2015 WL 4978683, at *2 (N.D. Ill. Aug. 20, 2015) (“With respect to the falsified reports, Alvarado does not provide any factual particulars about the reports and how they were used to secure his conviction.”); *Miles v. McNamara*, No. 13 C 2395, 2014 WL 948884, at *6 (N.D. Ill. Mar. 11, 2014) (“Moreover, it is unclear to the court what evidence was fabricated that could have been detrimental to Miles.”). Accordingly, the Court finds that Plaintiffs’ due process claims based on false reports or false statements (*i.e.*, fabrication of evidence) fail to state a claim.

To the extent that Plaintiffs allege that any of Defendants testified falsely at the grand jury or trial, Plaintiffs concede that Defendants are absolutely immune from liability for a due process violation based on such testimony.

C. Count VI – Brady Claim

Count IV of Plaintiffs’ complaint alleges that “Defendants Ramaglia, Kane, McCann, Connolly, Miranda and John Doe, acting individually, jointly and in concert . . . , deprive[d] Plaintiffs of their constitutional right to due process of law, by suppressing and otherwise depriving prosecutors and Plaintiffs of exculpatory material and information.” (Compl., Dkt. # 1, ¶ 81.) To prevail on a civil *Brady* claim against an officer, an accused must show that (1) the evidence is favorable to him; (2) the evidence was concealed by the officer; and (3) the concealed evidence resulted in prejudice. *Cairl v. Alderden*, --- F.3d ---, 2016 WL 2641836 (7th Cir. May 5, 2016).

According to Plaintiffs’ response, the purported *Brady* materials are Defendants’ false police reports “despite having knowledge of Plaintiffs’ innocence,” and the fact that Defendants “withheld from prosecutors the fact that the heroin they relied upon in their arrest was actually heroin found in the possession on an unrelated suspect Anthony Speight.” (Pls.’ Resp., Dkt. # 37, at 9.) But the Court has already found that the allegations of false police reports fail under Rule 8(a). In any event, Plaintiffs’ claim is unavailing under Seventh Circuit precedent. *See Saunders–El v. Rohde*, 778 F.3d 556, 562 (7th Cir. 2015) (holding that where a plaintiff “seeks to charge the officers with a *Brady* violation for keeping quiet about their wrongdoing . . . our case law makes clear that *Brady* does not require the creation of exculpatory evidence, nor does it compel police officers to accurately disclose the circumstances of their investigations”); *Harris v. Kuba*, 486 F.3d 1010, 1017 (7th Cir. 2007) (“Harris essentially seeks an extension of *Brady* to provide relief if a police officer makes a false statement to a prosecutor by arguing that an officer is ‘suppressing’ evidence of the truth by making the false statement. This court has already foreclosed this extension.”).

Plaintiffs also confusingly assert that they “could not have known that the heroin they were charged with possessing was in fact possessed by another unrelated individual” (Pls.’

Resp., Dkt. # 37, at 10.) But they allege that they were not in possession of any contraband (Compl., Dkt. # 21, ¶ 16), so they had to have known that the heroin they were charged with possessing came from somewhere else. This information was not concealed.

Therefore, Plaintiffs' *Brady* claim is dismissed.

D. Count IX—Conspiracy

Defendants assert that Plaintiffs have failed to allege sufficient facts to state a plausible claim for civil conspiracy under Illinois law. Plaintiffs allegations of conspiracy state:

101. As described more fully in the preceding paragraphs, the Defendant Officers named in this Complaint, acting jointly and in concert with other known and unknown conspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means.

102. In furtherance of this conspiracy, the Defendant Officers committed overt acts and were otherwise willful participants in joint activity including but not limited to malicious prosecution of Plaintiffs and the intentional infliction of emotional distress upon them.

(Compl., Dkt. # 1, ¶¶ 101-102.)

However, as noted by the Seventh Circuit:

The Rules of Civil Procedure set up a system of notice pleading. Each defendant is entitled to know what he or she did that is asserted to be wrongful. A complaint based on a theory of collective responsibility must be dismissed. That is true even for allegations of conspiracy. Although every conspirator is responsible for others' acts within the scope of the agreement, it remains essential to show that a particular defendant joined the conspiracy and knew of its scope. [Plaintiff's] complaint does not get even that far.

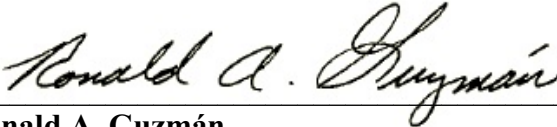
Bank of Am., N.A. v. Knight, 725 F.3d 815, 818 (7th Cir. 2013); *see also Cooney v. Rossiter*, 583 F.3d 967, 970-71 (7th Cir. 2009) (“Even before” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), “a bare allegation of conspiracy was not enough to survive a motion to dismiss.”).

Here, the complaint alleges at most collective responsibility, but no facts in support of an intentional agreement to maliciously prosecute Plaintiffs or intentionally inflict emotional distress upon them. Therefore, the Court grants the motion to dismiss the conspiracy claim.

Conclusion

For the reasons stated above, the motion to dismiss is granted in part and denied in part. Plaintiffs' *Brady* claim is dismissed with prejudice. Plaintiffs' due process claim relating to the fabrication of evidence and their claim for civil conspiracy are dismissed without prejudice. Plaintiffs are given 21 days from the date of entry of this order to replead these two claims to the extent they are able in accordance with their responsibilities under Federal Rule of Civil Procedure 11. As to the excessive force claim, Wilson has voluntarily withdrawn this claim against Kane, so Defendants' motion to dismiss that claim is granted. Because Patrick did not bring an excessive force claim against Kane, the motion to dismiss that claim is moot.

Date: July 19, 2016



Ronald A. Guzmán
United States District Judge