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

TYRONE L. HENDRICKS (N-21303),	)	
Plaintiff,	)	
v.	)	Case No. 16 C 0627
CITY OF CHICAGO, et al.,	)	Judge Virginia M. Kendall
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Tyrone L. Hendricks brings six counts[1] against Defendants Officer Paul H Lauber, Detective Jacquelin Mok, Officer Michael A Rodriguez, and Detective M. Fuller, for Hendricks' arrests and detainment without probable cause. Defendants move to dismiss Count IV of the Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) arguing that Hendricks fails to state a claim upon which relief can be granted. For the reasons stated below, the Court grants Defendants' motion to dismiss Count IV [39].

BACKGROUND

On September 5, 2014, Defendants Lauber and Rodriguez arrested Plaintiff, absent probable cause, for urinating on the public way and possession of drug paraphernalia. (Second Amended Complaint ("Compl.") at ¶¶ 8-13, 22-32.) Defendants Lauber and Rodriguez subsequently detained Hendricks until September 8, 2014 at the District 11 lockup of the

[1] Hendricks brings the following counts: Count I under the Fourth Amendment and the Fourteenth Amendment against Defendants Lauber and Rodriguez; Count II under the Fourth and Fourteenth Amendments for False / Unlawful Arrest; Count III for State Law Malicious Prosecution against all Defendants; Count IV under § 1983 for Malicious Prosecution against all Defendants; Count V for Conspiracy under 42 U.S.C. § 1983; and Count VI for Intentional Infliction of Emotional Distress.

Chicago Police Department. *Id.* at ¶ 13. Defendants Lauber and Rodriguez did not provide Hendricks a phone call, and did not inform him of the charges against him. *Id.* On September 8, 2014, Officers Lauber and Rodriguez swore out complaints for Hendricks' public urination and possession of a crack pipe, even though the charges were untrue. *Id.* at ¶ 17. Detective Mok then swore out a complaint against Hendricks for failing to register as a sex offender, even though Plaintiff registered after he was released from custody.[2] *Id.* ¶ 16. Then, on September 14, 2014, Detective Fuller testified that Plaintiff failed to register as a sex offender in front of the Grand Jury. *Id.* ¶ 18. On September 18, 2014, a true bill was delivered. Plaintiff was detained without presentment to a magistrate until October 2, 2014. *Id.* ¶ 19. Although Plaintiff never appeared in front of a judge on bond, bond was set at $400,000. *Id.* at ¶ 20. Plaintiff was eventually acquitted on all three counts. Defendants now move to dismiss Count IV under § 1983 for Malicious Prosecution against all Defendants.

LEGAL STANDARD

To survive a motion to dismiss pursuant to 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In the complaint, a plaintiff must include "enough detail to give the defendant fair notice of what the claim is and the grounds upon which it rests, and, through his allegations, show that it is plausible, rather than merely speculative, that he is entitled to relief." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1083 (7th Cir. 2008) (quoting *Lang v. TCF Nat'l Bank*, 249 F.App'x. 464, 466 (7th Cir. 2007)). A plaintiff is required to allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Iqbal*,

[2] It is unclear whether Plaintiff means that he registered upon release from custody on September 8,2 014, or upon his release from custody for the underlying charge stemming from his sex offender status.

556 U.S. at 678 (quotations omitted). On a 12(b)(6) motion, "[C]ourts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Silha v. ACT, Inc.*, 807 F.3d 169, 173 (7th Cir. 2015) (quotation omitted).

DISCUSSION

Defendants argue that Count IV of Hendricks' complaint, a Section 1983 malicious prosecution claim, fails to state a claim upon which relief can be granted and should thus be dismissed with prejudice. Hendricks' Second Amended Complaint contains a claim that Defendants violated his Fourth and Fourteenth Amendment rights both times they arrested him without probable cause. "Federal courts are rarely the appropriate forum for malicious prosecution claims." *Ray v. City of Chicago, et al.*, 629 F.3d 660, 668 (7th Cir. 2011) (internal quotations and citations omitted). An individual does not have a "federal right not to be summoned into court and prosecuted without probable cause, under either the Fourth Amendment or the Fourteenth Amendment's Procedural Due Process Clause." *Id.* (citing *Tully v. Barada*, 599 F.3d 591, 594 (7th Cir. 2010).) While the Seventh Circuit permits § 1983 malicious prosecution suits when the relevant state's law does not provide an avenue to pursue such claims, Illinois recognizes tort claims for malicious prosecution. *Id.* (citing *Swick v. Liautaud*, 662 N.E.2d 1238, 1242 (1996).) Indeed, in Count III, Hendricks charges Defendants with malicious prosecution under Illinois State Law. (Second Amended Complaint, ¶¶ 46-53.) The appropriate venue for Hendricks' malicious prosecution claims, then, is Illinois state court.

While Plaintiff concedes that Defendants correctly articulate the current law, he asserts that a change in the law may be imminent. (Dkt. 45 at p. 2). There is a circuit split on whether a Fourth Amendment § 1983 claim is cognizable, and the Supreme Court heard oral arguments on the issue on October 5, 2016. *Manuel v. City of Joliet*, ––– U.S. ––––, 136 S.Ct. 890, 193

L.Ed.2d 783 (2016). Because the Supreme Court is set to decide whether there can be a federal malicious prosecution claim that stems from a Fourth Amendment violation, Hendricks requests the Court to reserve its decision on the Motion to Dismiss Count IV.

A possible "imminent change in law" is not a sufficient basis to deny Defendants' motion, and Hendricks does not cite to any case law suggesting that would be an appropriate action. When faced with this exact issue in *White v. City of Chicago*, 149 F. Supp. 3d 974, 976 (N.D. Ill. 2016), appeal dismissed (July 25, 2016), the district court dismissed the complaint with prejudice and noted that "unless and until the Supreme Court says otherwise," Fourth and Fourteenth Amendment malicious prosecution claims are not cognizable because Illinois allows an avenue to pursue such a claim in tort. A district court within the Fifth Circuit recently followed the same approach. *See Joseph v. City of Cedar Hill Police Dep't*, No. 3:15-CV-2443-K-BK, 2016 WL 1554270, at *3 (N.D. Tex. Mar. 21, 2016) (The court held that the recent grant of certiorari by the United States Supreme Court in *Manuel* had no impact in the court's malicious prosecution analysis unless or until the Fifth Circuit or the Supreme Court hands down new precedent.) Similarly, this Court will decide in accordance with binding precedent, unless or until the Supreme Court says otherwise.

CONCLUSION

For the reasons stated above, the Court grants Defendants' Motion to Dismiss Count IV of the Second Amended Complaint.

Virginia M. Kendall
United States District Court Judge
Northern District of Illinois

Date: October 24, 2017