IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NOEL QUINTANA a/k/a CHRISTOPHER SANDLE,

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

CIVIL ACTION
No. 17-996

PAPPERT, J. **July 21, 2017**

MEMORANDUM

Noel Quintana was arrested and later charged with attempted murder, rape and other offenses. After his acquittal on all charges, Quintana sued the City of Philadelphia, the Philadelphia Police Department, the Philadelphia District Attorney's Office and eighteen individuals including officers, detectives and assistant district attorneys, asserting claims related to his arrest and prosecution under 42 U.S.C. §§ 1981, 1983, 1985 and state law.

The gravamen of Quintana's allegations seems straightforward enough: he was arrested, charged and prosecuted for crimes he did not commit, with those responsible for doing this to him ignoring purported evidence of his innocence to cover up for their own mistakes in an unrelated investigation. This alleged narrative becomes confused and sometimes lost entirely in an overreaching, duplicative, overlapping and at times inherently contradictory pleading. The Defendants have filed two separate motions to dismiss Quintana's Amended Complaint. For the following reasons, the Court grants the Defendants' motions and gives Quintana leave to amend some of his claims.

I.

Rachel Patterson was attacked on November 28, 2010 at approximately 10:45 p.m. on the 1900 block of Backius street in Philadelphia. (Am. Compl. ¶ 35, ECF No. 8.) Patterson's attacker grabbed her, put a box cutter against her neck and then attempted to rape her. (*Id.*) Patterson fought back and the attacker fled the scene. (*Id.*) Defendant police officers John Cole and Timothy Miller responded to a radio call to aid Patterson and then relayed information about the attack over police radio. (*Id.* ¶ 36.)

Fifteen minutes later, Quintana was walking on the 2000 block of Wheatsheaf lane (about a mile away from 1900 Backius) when Defendant police officers Jeffrey Schmidt and Sean Matrascez stopped him and asked for his identification. (*Id.* ¶ 33.) The officers, who had not yet received word of the Patterson attack, permitted Quintana to leave. (*Id.* ¶¶ 33 & 37.)

The next morning, Defendant detective Phillip Nardo interviewed Patterson. (*Id.* ¶ 40.) Nardo had been working on two other rape/murder investigations. (*Id.*) At the time, a so called "Kensington Strangler"—an individual police believed was responsible for a number of rapes and murders in the Kensington neighborhood of Philadelphia—was on the loose. (*Id.* ¶ 32.) During the interview, Detective Nardo showed Patterson a department of motor vehicles photograph of Quintana.[1] (*Id.* ¶ 40.) Patterson positively identified Quintana as her attacker. (*Id.* ¶ 41.) According to the Amended Complaint, it was at this time that the police believed Quintana was the Kensington Strangler and accordingly distributed his information online. (*Id.* ¶ 42.)

[1] Defendants never provided Quintana's defense counsel with this photograph. (Am. Compl. ¶ 67.)

Detective Nardo, with approval from Assistant District Attorney Jennifer Mitrick, then prepared an affidavit of probable cause regarding Quintana's attempted homicide.[2] (*Id.* ¶ 43.) Later that day, Quintana was brought into the homicide unit for questioning by Defendant detectives Bambrusky and Williams. (*Id.* ¶ 44.) Officers Cole and Miller then arrested Quintana.[3] (*Id.* ¶ 45.) Quintana, unable to make bail, would remain incarcerated until he was acquitted at trial on September 30, 2014. (*Id.* ¶ 62.)

At some point, Defendant detective McGoldrick interviewed Patterson. (*Id.* ¶¶ 50–51.) Patterson described her attacker as being a thirty-five-year-old, Puerto Rican male, who was five-foot-eleven-inches tall, with a medium build, light skin, and a goatee, who wore dark blue jeans, a gray hoodie and a yellow jacket. (*Id.* ¶ 51.) According to the Amended Complaint, however, Quintana is only five-feet-six-inches tall and 154 pounds. (*Id.* ¶ 59.) The Amended Complaint alleges that "by this point," Defendants Nardo, Bambrusky and Williams had provided Patterson with Quintana's "description and particulars" so that Patterson would repeat it to other police and detectives and could ultimately testify that Quintana was her attacker. (*Id.* ¶ 52.) The Amended Complaint also alleges that Patterson's statement was "approved by" Defendants Lieutenant Anthony Mirabella, Jr. and Sergeant John Morton "for the arrest of" Quintana.

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[2] Despite references in the Amended Complaint to an affidavit of probable cause, the pleading is unclear as to whether Quintana was arrested pursuant to a warrant.

[3] The Amended Complaint contains contradictory allegations. In paragraph 44, Quintana alleges that he was brought in "solely for questioning" by detectives Bambrusky and Williams. (Am. Compl. ¶ 44.) In the very next paragraph, Quintana alleges that Officers Cole and Miller arrested him and *then* took him to detectives Bambrusky and Williams. (*Id.* ¶ 45.)

Quintana alleges that Defendant detectives knew Quintana was not the Kensington Strangler, but falsely charged him with the attempted murder and rape of Patterson anyway. (*Id.* ¶ 53.) Mitrick, McGoldrick, Mirabella and Morton approved charging Quintana. (*Id.* ¶¶ 53, 58.)

The Amended Complaint next alleges that on December 1, 2010, Quintana was "fingerprinted, photographed and charged with three murders as the 'Kensington Strangler.'"[4] (*Id.* ¶ 63.) Despite this, "at no point in time" was Quintana prosecuted in court for murder. (*Id.* ¶ 64.) Patterson later failed to identify Quintana at a prison line-up, (*Id.* ¶ 65), something Defendants rationalized by claiming (without explanation) that Quintana had attempted to change his appearance. (*Id.* ¶¶ 66–67.)

On January 17, 2011, police arrested Antonio Rodriguez, a new suspect in the Kensington Strangler case. (*Id.* ¶ 68–69.) Despite this, Quintana alleges that Defendants in the District Attorney's Office did not produce any of the initial discovery that had led them to believe he was the Kensington Strangler. (*Id.* ¶ 68.) The police confirmed that Rodriguez was the real Kensington Strangler via DNA testing shortly after January 17, 2011. (*Id.* ¶ 71.) Defendants did not withdraw Quintana's charges—he remained in custody for the attempted rape and murder of Rachel Patterson. (*Id.* ¶ 70.)

On February 23, 2011, Quintana learned that the charges against him had changed: he was now charged with, among other crimes, attempted murder, aggravated assault, attempted rape, and unlawful restraint. (*Id.* ¶ 73.) The state parole board also placed a detainer on Quintana, who had been out on parole in an unrelated matter

[4] Earlier in the Amended Complaint, however, Quintana alleges that "[a]t no point whatsoever was [he] charged with actual homicide of the alleged victims of the "Kensington Rapist/Strangler." (Am. Compl. ¶ 46.)

prior to his arrest for attacking Patterson. (*Id.* ¶ 74.) On May 24, 2011, Quintana's bail was lowered to "ROR," but he remained incarcerated because of the state parole board's detainer. (*Id.* ¶ 75.) Quintana was acquitted of all charges at trial on September 30, 2014. (*Id.* ¶¶ 62, 94.)

The Amended Complaint alleges that after Defendants falsely arrested Quintana, they conspired to convict him for attacking Patterson in order to cover up their false arrest and malicious prosecution. (*Id.* ¶ 79.) Specifically, Defendants ignored "ample evidence" supplied to them by Quintana's defense attorney that exonerated Quintana.[5] (*Id.* ¶¶ 80, 82, 83, 84.) Defendants also allegedly conspired to present testimony at Quintana's preliminary hearing and trial about Quintana's physical appearance matching Patterson's description when they knew this information was false. (*Id.* ¶¶ 92–93.)

II.

To survive a motion to dismiss under Rule 12(b)(6), a complaint must provide "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citation omitted). While a complaint need not include detailed facts, it must

[5] Despite mentioning numerous times that "ample evidence" existed to clear Quintana's name, the Amended Complaint does not describe any such evidence. "The presumption of truth attaches only to those allegations for which there is sufficient factual matter to render them plausible on their face." *Schuchardt v. President of the United States*, 839 F.3d 336, 347 (3d Cir. 2016) (internal quotation and citation omitted). An "unadorned, the-defendant-unlawfully-harmed-me accusation" is never sufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

Twombly and *Iqbal* require the Court to take three steps to determine whether the second amended complaint will survive Defendants' motion to dismiss. *See Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). First, it must "take note of the elements the plaintiff must plead to state a claim." *Id.* (quoting *Iqbal*, 556 U.S. at 675). Next, it must identify the allegations that are no more than legal conclusions and thus "not entitled to the assumption of truth." *Id.* (quoting *Iqbal*, 556 U.S. at 679). Finally, where the complaint includes well-pleaded factual allegations, the Court "should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* (quoting *Iqbal*, 556 U.S. at 679).

This "presumption of truth attaches only to those allegations for which there is sufficient factual matter to render them plausible on their face." *Schuchardt v. President of the United States*, 839 F.3d 336, 347 (3d Cir. 2016) (internal quotation and citation omitted). "Conclusory assertions of fact and legal conclusions are not entitled to the same presumption." *Id.* This plausibility determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* (quoting *Connelly*, 809 F.3d at 786–87).

This plausibility standard, however, "does not impose a heightened pleading requirement" and does not require a plaintiff to plead specific facts. *Id.* In other words, "courts cannot inject evidentiary issues into the plausibility determination." *Id.* The Third Circuit has also made it clear that "at least for purposes of pleading sufficiency, a complaint need not establish a *prima facie* case in order to survive a motion to dismiss"

because a "prima facie case is an evidentiary standard, not a pleading requirement and hence is not proper measure of whether a complaint fails to state a claim." *Connelly*, 809 F.3d at 789 (internal quotations and citations omitted). Instead, a plaintiff should plead "enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary elements." *Id.* (quoting *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008)).

III.

Quintana asserts sixteen disparate counts against numerous individuals and entities. The Amended Complaint, however, asserts duplicative claims sounding in false arrest, false imprisonment, malicious prosecution and equal protection violations brought under federal law (specifically, under 42 U.S.C. §§ 1981, 1983 and 1985) and Pennsylvania law (both state constitutional claims and state tort claims) against all Defendants.

A.

As an initial matter, City departments cannot be sued separately from the City of Philadelphia itself. *See* 53 P.S. § 16257; *Lee v. Abellos*, No. 13-0486, 2014 WL 7271363, at *1 n.2 (E.D. Pa. Dec. 19, 2014); *Costobile-Fulginiti v. City of Philadelphia*, 719 F. Supp. 2d 521, 525 (E.D. Pa. 2010). Instead, plaintiffs must sue the City directly. Article III, section 3-100 of Philadelphia's Home Rule Charter establishes the "offices, departments, boards, commissions, and agencies." The Police Department is listed among the departments; Quintana cannot separately sue the Department. *See* PHILA., PA, CHARTER ART. III, ch. 1 § 3-100(d) (2016); *see also Butler v. City of Philadelphia*, No. 12-1955, 2012 WL 1605759, at *3 (E.D. Pa. May 4, 2012); *Sorrentio v. City of*

Philadelphia, No. 96-6604, 1997 WL 597990, at *3 (E.D. Pa. Sept. 16, 1997) (collecting cases).

The District Attorney's Office, however, is "technically not a *department* of the City, but is a separate entity created by state law." *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 710 (E.D. Pa. 2015) (Robreno, J.) (citing 16 P.S. §§ 7701–42)); *but see Estate of Tyler ex rel. Floyd v. Grossman*, 108 F. Supp. 3d 279, 288 (E.D. Pa. 2015). Quintana may sue the District Attorney's Office in addition to the City, something the District Attorney's Office does not contest.[6]

B.

The individual district attorney Defendants—Seth Williams, Erin O'Brien, Rochelle Keyhan, Tiffany Oldfield and Jennifer Mitrick—contend that they are entitled to absolute immunity. The Court agrees and, with two small exceptions discussed below, dismisses these claims with prejudice.

i.

At common-law, prosecutors were immune from civil lawsuits for actions taken within the scope of their duties as prosecutors. *Imbler v. Pachtman*, 424 U.S. 409, 420 (1976). Without such immunity, courts feared that prosecutors would face "harassment

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[6] Quintana also apparently purports to sue the Pennsylvania Attorney General's office, the Pennsylvania Board of Probation and Parole and the Pennsylvania Department of Corrections. These entities are listed on the docket and on the caption of the Amended Complaint. They are not, however, identified in the Amended Complaint itself along with the other named Defendants. *See, e.g.*, (Am. Compl. ¶¶ 2–23 (listing all Defendants except for the Pennsylvania Attorney General's office, the Pennsylvania Board of Probation and Parole and the Pennsylvania Department of Corrections.)). No attorney has entered an appearance for these entities.

The Amended Complaint contains no allegations against the Pennsylvania Attorney General's office or the Pennsylvania Department of Corrections. Thus all claims, to the extent there are any, against these entities are dismissed. While the Amended Complaint does mention that the Board of Probation and Parole placed a detainer on Quintana after he was arrested, (Am. Compl. ¶ 74), it nowhere alleges that the Board did anything to violate Quintana's rights. Accordingly, all claims against the Board of Probation and Parole are also dismissed.

by unfounded litigation" which "would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust." *Id.* at 423. Courts also wanted to avoid placing "intolerable burdens" on a prosecutor, such as defending decisions made "under serious constraints of time and even information" often "years after they were made." *Id.* at 425–26.

Although § 1983 provides that "[e]very person" who acts under color of law to deprive another of a constitutional right "shall be liable to the party injured," 42 U.S.C. § 1983, the Supreme Court has consistently interpreted § 1983 "to be read in harmony with general principles of tort immunities and defenses rather than in derogation of them." *Imbler*, 424 U.S. at 427. Common-law principles of absolute immunity for prosecutors thus apply equally to claims brought under § 1983. *Id.* In extending such immunity to § 1983 actions, the Court recognized that it was "better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Id.* at 428 (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (Hand, J.)).

ii.

This immunity from § 1983 suits extends to all actions taken by a prosecutor "within the scope of his duties in initiating and pursuing a criminal prosecution." *Id.* at 410. In *Imbler*, the Court explained that a prosecutor is immune if his or her conduct is "intimately associated with the judicial phase of the criminal process." *Id.* at 430. There, the plaintiff sued the state prosecutor alleging that he knowingly used false testimony and suppressed material evidence. The Court held that the prosecutor was

entitled to absolute immunity from an action brought under § 1983 because he had acted within the scope of his duties in initiating and prosecuting the case.[7] The Court, however, specifically reserved the issue of whether a prosecutor is entitled to such immunity when acting as an investigator or administrator. *Id.* at 430–31.

The Supreme Court has continued to refine the doctrine of prosecutorial immunity since *Imbler*. The Court's approach is "functional," it "looks to 'the nature of the function performed, not the identity of the actor who performed it.'" *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993) (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). If a prosecutor is functioning as a prosecutor, he is entitled to immunity. If, however, he is functioning as an administrator or an investigator, he is not. For example, in *Mitchell v. Forsyth*, 472 U.S. 511 (1985), the Court held that the Attorney General of the United States did not have absolute immunity from suit arising out of

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[7] All justices agreed that a prosecutor accused of willful use of perjured testimony was entitled to absolute immunity. *Imbler v. Pachtman*, 424 U.S. 409, 431 n.34 (1976). Justice White's concurrence (joined by two other justices) distinguished the willful use of perjured testimony and the willful suppression of evidence. For the latter allegation, Justice White would only have extended qualified immunity.

In his response to the District Attorney Defendant's motion to dismiss, Quintana argues that, although his Amended Complaint alleges that prosecutors knowingly relied on false testimony, they are not entitled to absolute immunity. Quintana attempts to distinguish *Imbler*: "In that case, the gravamen of the plaintiff's malicious prosecution claim was that the prosecutor used testimony that he did not believe or should not have believed to be true." (Pl.'s Resp., at 8, ECF No. 13-1). Here, however, Quintana contends that the prosecutor *knew* that the testimony was false because the prosecutors "concocted the testimony" and that this difference makes *Imbler* inapposite. (*Id.*) This is a distinction without a difference. The *Imbler* Court explicitly characterized the prosecutor's alleged actions as the "willful use by a prosecutor of perjured testimony." *Imbler*, 424 U.S. at 431 n. 34. Quintana does not plausibly allege that prosecutors fabricated evidence (which would not be protected by absolute immunity, *see Buckley v. Fitzsimmons*, 509 U.S. 259 (1993)). Instead, the gravamen of his allegations is that prosecutors knowingly used false testimony at both the pretrial hearing and trial. This conduct is protected by absolute immunity. *Imbler*, 424 U.S. at 431.

Quintana also relies on Justice White's concurrence to support his contention that willful use of perjured testimony is not protected by absolute immunity. But Justice White's opening paragraph disavows such a position: "I agree with the Court that the gravamen of the complaint in this case is that the prosecutor knowingly used perjured testimony; and that a prosecutor is absolutely immune from suit for money damages under 42 U.S.C. § 1983 for presentation of testimony later determined to have been false, where the presentation of such testimony is alleged to have been unconstitutional solely because the prosecutor did not believe it or should not have believed it to be true." *Id.* at 432.

his conduct performing national security functions, such as authorizing wiretaps. *Id.* at 510. Because such conduct was not undertaken in the course of the Attorney General's "prosecutorial capacity," he was only entitled to qualified immunity. *Id.* at 521.

In *Burns v. Reed*, 500 U.S. 478 (1991), the Court held that a state prosecutor was absolutely immune from liability for his or her participation at a probable cause hearing, but not for giving legal advice to police officers. *Id.* at 487, 496. The Court remarked that the "prosecutor's actions at issue here—appearing before a judge and presenting evidence in support of a motion for a search warrant—clearly involve the prosecutor's 'role as advocate for the State,' rather than his role as 'administrator or investigative officer,' the protection for which we reserved judgment in *Imbler*." *Id.* at 491 (quoting *Imbler*, 424 U.S. at 430–431 & n.33). Additionally, "since the issuance of a search warrant is unquestionably a judicial act . . . appearing at a probable-cause hearing is 'intimately associated with the judicial phase of the criminal process." *Id.* at 492. In contrast, providing legal advice to the police about the legality of their prospective investigative conduct had no historical or common-law basis supporting immunity. *Id.*

Prosecutors, however, are not entitled to absolute immunity when they are accused of fabricating evidence. *See Buckley*, 509 U.S. at 276. The *Buckley* court first clarified that *Imbler's* protections are not limited to "conduct occurring in the courtroom." *Id.* at 272. Thus, an "out-of-court effort to control the presentation of a witness' testimony was entitled to absolute immunity because it was fairly within the prosecutor's function as an advocate." *Id.* at 272–73 (quoting *Imbler*, 424 U.S. at 430 n.32). And "acts undertaken by a prosecutor in preparing for the initiation of judicial

proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity." *Id.* at 273. This includes "the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to seek an indictment has been made." *Id.*

When, however, a prosecutor "performs the investigative functions normally performed by a detective or police officer," he or she is not entitled to absolute immunity. *Id.* "A prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested." *Id.* at 274. In *Buckley*, because the alleged fabrication took place "well before" the prosecutors "could properly claim to be acting as advocates," they were not entitled to absolute immunity. *Id.* at 275. Thus, fabrication of evidence "during the preliminary investigation of an unsolved crime" is not conduct protected by absolute immunity. *Id.*; *see also Kalina v. Fletcher*, 522 U.S. 118, 129 (1997) (holding a prosecutor is absolutely immune from suit for activities in connection with the preparation and filing of charging documents, but only qualified immunity for her conduct in obtaining an arrest warrant by "personally attesting to the truth of the averments" in the application.).

Finally, in *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009), the Supreme Court further narrowed the administrative exception to qualified immunity. In *Van de Kamp*, the plaintiff sued a former district attorney and former chief deputy district attorney, alleging that both failed to adequately train their assistant district attorneys and implement an information system—both failures allegedly led to the prosecution failing to disclose impeachment material relevant to the plaintiff's underlying criminal case.

Id. at 339. The Court held the supervisors to be absolutely immune. *Id.* at 344. Because the alleged failure to supervise or train was directly connected to conduct at the trial and an individual prosecutor's error at trial constituted an essential element of the plaintiff's claim, the Court held that supervisors should also be immune. *Id.* at 344. To conclude otherwise would allow a trial prosecutor to remain immune, "even for *intentionally* failing to turn over" material information while allowing her supervisor to be sued for negligent training or supervision. *Id.* at 347. This type of "practical anomaly[ ]" was unacceptable to the Court. *Id.*

iii.

The Third Circuit Court of Appeals employs a two part (and somewhat overlapping) test to evaluate claims of absolute immunity.[8] *See Schneyder v. Smith*, 653 F.3d 313, 332 (3d Cir. 2011). First, a "court must "ascertain just what conduct forms the basis for the plaintiff's cause of action," and then it must "determine what function (prosecutorial, administrative, investigative, or something else entirely) that act served." *Id.*

Quintana alleges the individual district attorney Defendants did the following: (1) Mitrick approved an affidavit of probable cause written by Detective Nardo that alleged that Quintana attempted to murder Patterson, (Am. Compl. ¶ 43); (2) Mitrick obtained an arrest warrant for Quintana that was based on falsifications (*id.* ¶ 46); (3) Mitrick failed to review evidence suggesting that Quintana was the Kensington Strangler, (*id.* ¶ 48); (4) Mitrick approved charging Quintana with the attempted

[8] "In order for the defendants to succeed on a Rule 12(b)(6) dismissal based on absolute immunity, the allegations of appellant's complaint must indicate the existence of absolute immunity as an affirmative defense; the defense must clearly appear on the face of the complaint." *Wilson v. Rackmill*, 878 F.2d 772, 776 (3d Cir. 1989).

murder and rape of Rachel Patterson without properly investigating the charges, (*id.* ¶ 53); (5) Mitrick disregarded the differences in Patterson's physical description of her attacker and Quintana, (*id.* ¶ 60); (6) all assistant district attorney Defendants failed to provide Quintana's counsel with relevant discovery, including the photograph that Patterson used to identify Quintana, (*id.* ¶ 67–68); (7) all Defendants conspired to wrongfully convict Quintana despite "ample" evidence to the contrary, (*id.* ¶¶ 79, 82–84); and (8) the assistant district attorney Defendants conspired to present false testimony at Quintana's preliminary hearing and trial, (*id.* ¶ 92).

The basis for Quintana's claims appears to be that he was charged with attempted rape and murder despite prosecutors knowing their evidence was insufficient and false. Because the conduct alleged is prosecutorial in nature, the individual district attorney Defendants are entitled to absolute immunity.

Absolute immunity also bars the allegations against Mitrick and other individual assistant district attorneys because they are complaints about: (1) insufficient investigation before formally charging Quintana; (2) insufficient review of the evidence; (3) failure to disclose discovery; (4) ignoring contrary evidence; (5) and putting forward testimony from Patterson that they knew to be false. These allegations are simply complaints about conduct "intimately associated with the judicial phase of the criminal process." *Imbler*, 424 U.S. at 430. Indeed, the assistant district attorneys are entitled to immunity for conduct related to: preparing the charging documents, *Kalina*, 522 U.S. at 129; *see also Kulwicki v. Dawson*, 969 F.2d 1454, 1464 (3d Cir. 1992) ("A prosecutor is absolutely immune when making [the decision to initiate a prosecution], even when he acts without a good faith belief that any wrongdoing has

occurred."); preparing for trial, including evaluating the evidence assembled by police and investigators, *Buckley*, 509 U.S. at 259; *see also Schrob v. Catterson*, 948 F.2d 1402, 1411 (3d Cir. 1991) ("A prosecutor's alleged failure to properly investigate before imitating a prosecution is also conduct within the scope of absolute immunity."); participating in a pretrial hearing, *Burns*, 500 U.S. at 478; willful use of perjured testimony, *Imbler*, 424 U.S. at 430–31 & n.34; and suppression of material evidence. *Id.*; *see also Yarris v. County of Delaware*, 465 F.3d 129, 137 (3d Cir. 2006) ("It is well settled that prosecutors are entitled to absolute immunity from claims based on their failure to disclose exculpatory evidence, so long as they did so while functioning in their prosecutorial capacity.").

Quintana also accuses former District Attorney Seth Williams of assigning Mitrick to act on his behalf in the case, (Am. Compl. ¶ 47), knowing and acquiescing in the behavior of the assistant district attorneys, (*id.* ¶ 68), developing and maintaining polices or customs exhibiting deliberate indifference to the constitutional rights of persons in the City of Philadelphia, (*id.* ¶ 114), and failing to supervise and train his assistant district attorneys, (*id.* ¶ 116).

Williams's alleged failure to train or supervise his subordinates and his alleged creation of policies which resulted in the alleged misconduct by prosecutors described above is protected by absolute immunity. *See Van de Kamp*, 555 U.S. at 335. While these claims "focus upon a certain kind of administrative obligation," they also are "directly connected with the conduct of a trial," such that "an individual prosecutor's

error in the plaintiff's specific criminal trial constitutes an essential element of the plaintiff's claim."[9] *Id.* at 344.

C.

Quintana sues all remaining Defendants under § 1983 for false arrest, false imprisonment, malicious prosecution, and equal protection violations under the Fourth and Fourteenth Amendments. To establish a *prima facie* case under § 1983, Quintana must first demonstrate that a person acting under color of law deprived him of a federal right. *See Groman v. Twp. of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). Quintana must also show that the person acting under color of law "intentionally" violated his constitutional rights or acted "deliberately indifferent" in violation of those rights. *See, e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 843–44 (1998); *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989) (citing *Hill v. California*, 401 U.S. 797, 802–05 (1971)); *see also Berg v. County of Allegheny*, 219 F.3d 261, 269 (3d Cir. 2000).

i.

Quintana asserts § 1983 claims for false arrest. "To state a claim for false arrest under the Fourth Amendment, a plaintiff must establish: (1) that there was an arrest; and (2) that the arrest was made without probable cause." *James v. City of Wilkes-Barre*, 700 F.3d 675, 680 (3d Cir. 2012).

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[9] In his response, Quintana argues that the district attorney Defendants "failed to correct the arrest warrant and charges against [Quintana] as the Kensington rapist strangler which caused him to remain in prison under a state detainer under charges of murder." (Pl.'s Resp., at 9, ECF No. 13-1.) This, Quintana contends, was an administrative failure which is not protected by absolute immunity. *See Odd v. Malone*, 538 F.3d 202 (3d Cir. 2008). His Amended Complaint, however, is ambiguous with respect to the state parole board's detainer. Quintana may attempt to replead this allegation.

Moreover, to the extent Quintana can allege facts that fall within an exception to absolute immunity, he may do so in a Second Amended Complaint.

Quintana's claims are barred by the statute of limitations. Section 1983 claims are subject to a two-year limitations period. *See Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 80 (3d Cir. 1989); *see also McCracken v. Wells Fargo Bank NA*, 634 F. App'x 75, 79 (3d Cir. 2015). "[T]he statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." *Wallace v. Kato*, 549 U.S. 384, 397 (2007). Quintana was arraigned on December 1, 2010. (Am. Compl. ¶ 63); (Defs.' Mot., Ex. B, at 42, ECF No. 12.) Quintana did not file this suit until September 29, 2016, well beyond the statute of limitations. These claims are dismissed with prejudice.

ii.

Quintana also asserts § 1983 claims for false imprisonment. "To state a claim for false imprisonment, a plaintiff must establish: (1) that [ ]he was detained; and (2) that the detention was unlawful. *James*, 700 F.3d at 682–83. "A false imprisonment claim under § 1983 which is based on an arrest made without probable cause," as Quintana's appears to be here, "is grounded in the Fourth Amendment's guarantee against unreasonable seizures." *Id.* at 683. Quintana's false imprisonment claims are similarly barred by the statute of limitations. *See Wallace*, 549 U.S. at 390; *McCracken*, 634 F. App'x at 79 ("[F]alse arrest and false imprisonment claims accrued . . . when [plaintiff's] preliminary arraignment took place."). These claims are dismissed with prejudice.

iii.

Quintana also asserts claims under § 1983 for malicious prosecution.[10] To prevail on a Fourth Amendment malicious prosecution claim, Quintana must show that: "(1) the defendant initiated a criminal proceeding; (2) the criminal proceeding ended in his favor; (3) the defendant initiated the proceeding without probable cause; (4) the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of the legal proceeding." *Johnson v. Knorr*, 477 F.3d 75, 81–82 (3d Cir. 2007) (citing *Estate of Smith v. Marasco*, 318 F.3d 497, 521 (3d Cir. 2003)).

As explained above, Quintana's Amended Complaint is ambiguous as to the circumstances surrounding his arrest. At times, it appears that he was arrested pursuant to a warrant, but other allegations in the Amended Complaint suggest otherwise. The Court will not analyze his malicious prosecution claim without further clarification of the events surrounding his arrest. This claim is dismissed without prejudice.[11]

iv.

Quintana also purports to bring a § 1983 claim for a violation of his rights under the Fourteenth Amendment's Equal Protection Clause. "To bring a successful claim

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[10] To the extent he seeks to bring a claim for malicious prosecution under the Fourteenth Amendment, his claim fails as a matter of law. *See Wheeler v. Wheeler*, 639 F. App'x 147, 151 (3d Cir. 2016) ("[R]edress for alleged false arrest or malicious prosecution 'cannot be based on substantive due process considerations, but instead must be based on a provision of the Bill of Rights' such as the Fourth Amendment." (quoting *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 792 (3d Cir. 2000))).

[11] Unlike his claims for false arrest and false imprisonment, Quintana's malicious prosecution claim is not barred by the statute of limitations because it did not begin to run until the criminal proceedings terminated in his favor. *Curry v. Yachera*, 835 F.3d 373, 379 (3d Cir. 2016); *see also Manuel v. City of Joliet*, 137 S. Ct. 911, 921 (2017).

under 42 U.S.C. § 1983 for a denial of equal protection, plaintiffs must prove the existence of purposeful discrimination." *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1478 (3d Cir. 1990). Quintana does not further elaborate on what Equal Protection Clause violation is at issue. It is possible that Quintana meant to assert a § 1983 Equal Protection Claim violation related to racial discrimination. The Amended Complaint, however, is devoid of any facts alleging racial discrimination by any Defendant in the case. Quintana concedes as much with respect to his claim under § 1985. *See infra* at Section III.E. The Court dismisses this claim without prejudice.

v.

The Court analyzes Quintana's claims against the City and the District Attorney's Office under the standard for municipal liability set forth in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). Generally, a municipality will not be held liable under the doctrine of *respondeat superior* for the misconduct of its employees. *See Andrews*, 895 F.2d at 1480. Rather, a municipality can only be liable under § 1983 when a constitutional injury results from the implementation or execution of an officially adopted policy or informally adopted custom. *See Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (citing *Monell*, 436 U.S. 658). A successful *Monell* claim must establish: (1) an underlying constitutional violation; (2) a policy or custom attributable to the municipality; and (3) that the constitutional violation was caused by the municipality's policy or custom. *See Monell*, 436 U.S. at 658.

Quintana has not stated a claim for an underlying constitutional violation; his *Monell* claims accordingly fail. Regardless, he must also establish a policy or custom

attributable to the municipality and plead facts sufficient to show that the policy or custom caused the alleged constitutional violation. *See Monell*, 436 U.S. at 658. He has not done so. Quintana's *Monell* claims are dismissed without prejudice.

D.

Quintana also brings claims against all defendants under 42 U.S.C. § 1981. Quintana's § 1981 claims fail, however, because there is no implied private right of action against state actors under § 1981. *McGovern v. City of Philadelphia*, 554 F.3d 114, 117 (3d Cir. 2009) ("[W]hile § 1981 creates *rights*, § 1983 provides the *remedy* to enforce those rights against state actors."); *see also Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 733 (1989) ("[Section] 1983 constitutes the exclusive federal remedy for violation of the rights guaranteed in § 1981 by state governmental units."). Quintana contends that because he is suing state actors in their individual capacities, his § 1981 claims are not barred by *Jett* and *McGovern*. Courts generally have rejected this argument, and have interpreted *Jett* and its progeny to bar claims against individual state actors in their individual capacities. *See, e.g.*, *Wooden v. Pa. Liquor Control Bd.*, No. 13-3498, 2015 WL 1344756, at *3 (E.D. Pa. Mar. 25, 2015); *Hills v. Borough of Colwyn*, 978 F. Supp. 2d 469, 475 (E.D. Pa. 2013); *Young v. Bethlehem Area Vo-Tech Sch.*, No. 06-2285, 2007 WL 674617 at *5 (E.D. Pa. Feb. 27, 2007). *But see Whaumbush v. City of Philadelphia*, 747 F. Supp. 2d 505, 518 (E.D. Pa. 2010). Quintana's claims under § 1981 are dismissed with prejudice.[12]

[12] In any event, Quintana's § 1981 claims (for violation of Quintana's Fourteenth Amendment Equal Protection Clause rights) are identical to his claims brought against the same Defendants under § 1983. *Compare* Count I, ¶ 93, *with* Count II.

E.

Quintana also brings conspiracy claims against all individual defendants. *See* 42 U.S.C. § 1985. "Section 1985 creates a private civil action for certain persons injured by certain types of conspiracies to interfere with civil rights." *Ekwunife v. City of Philadelphia*, ___ F.3d ___, No. 16-0148, 2017 WL 1102770, *11 (E.D. Pa. Mar. 24, 2017). Section 1985 prohibits two types of conspiracies: (1) a conspiracy "for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws," 42 U.S.C. § 1985(2), and (2) a conspiracy to "go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." *Id.* § 1985(3). "Each of these portions of the statute contains language requiring that the conspirators' actions be motivated by an intent to deprive their victims of the equal protection of the laws." *Kush v. Rutledge*, 460 U.S. 719, 725 (1983). This "means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

Quintana concedes in his response that he has not pleaded sufficient facts to state a claim under § 1985. (Pl.'s Resp., at 11, ECF No. 13-1.) The Court will grant leave to amend. The absolute immunity analysis applied to Quintana's claims under § 1983, however, applies with equal force to claims brought under § 1985. *See Waits v. McGowan*, 516 F.2d 203, 205 (3d Cir. 1975) (treating § 1983 and § 1985 claims the same for purposes of immunity); *Segers v. Williams*, 12 F. Supp. 3d 734, 738, n.6 (E.D. Pa.

2014); *Patterson v. City of Philadelphia*, No. 08-2140, 2009 WL 1259968, at *9 (E.D. Pa. May 1, 2009) (collecting cases and concluding that "[t]he doctrine of absolute prosecutorial immunity precludes conspiracy-based claims as well"); *cf. Tenney v. Brandhove*, 341 U.S. 367 (1951) (holding that members of a state legislature have absolute immunity from suits for damages under § 1983 and § 1985); *Aitchison v. Raffiani*, 708 F.2d 96, 98 (3d Cir. 1983).

G.

Quintana also asserts state law tort and constitutional claims. Because Quintana's Amended Complaint has not stated a federal claim, the Court declines to exercise supplemental jurisdiction over his remaining state law claims. *See* 28 U.S.C. § 1367(c)(3); *see also Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000). Should Quintana attempt to reassert state false arrest and false imprisonment claims, they are also likely to be barred by the statute of limitations. *See* 42 Pa. Cons. Stat. Ann. § 5524(1); *Pocono Intern. Raceway, Inc. v. Pocono Produce, Inc.*, 468 A.2d 468, 471 (Pa. 1983) ("[T]he statute of limitations begins to run as soon as the right to institute and maintain a suit arises."). Moreover, there is no private right of action under the Pennsylvania Constitution. *See Gary v. Braddock Cemetery*, 517 F.3d 195, 207 (3d Cir. 2008) ("The prevailing view is that Pennsylvania does not recognize a private right of action for damages in a suit alleging violation of the Pennsylvania Constitution.").

IV.

"[I]n civil rights cases district courts must offer amendment—irrespective of whether it is requested—when dismissing a case for failure to state a claim unless

doing so would be inequitable or futile." *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007); *see also Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002). Under Federal Rule of Civil Procedure 15(a), "courts may grant . . . amendments 'when justice so requires.'" *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107, 116 (3d Cir. 2004) (citing FED. R. CIV. P. 15(a)). Quintana is free to file a Second Amended Complaint, subject to the limitations outlined in this Memorandum.[13]

An appropriate order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

[13] The Court's Memorandum does not analyze the issue of Quintana's state Court default. Defendants are free to raise this issue again should Quintana elect to file a Second Amended Complaint.