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## High court case adds confusion to Section 1983 evidence claims

After the 7th U.S. Circuit Court of Appeals' ruling in a Civil Rights Act case last year, it seemed as though litigants could finally breathe a sigh of relief since there was finally a clear-cut statute of limitations for Section 1983 fabrication of evidence claims.

In *Manuel v. City of Joliet* ("Manuel II"), 903 F.3d 667 (7th Cir. 2018), the 7th Circuit clearly defined the contours of that claim and its accrual: "There is only a Fourth Amendment claim — the absence of probable cause that would justify the detention. The problem is the wrongful custody... Because the wrong is the detention rather than the existence of criminal charges, the period of limitations also should depend on the dates of the detention." Id. at 670.

Unfortunately, the U.S. Supreme Court's recent decision in *McDonough v. Smith*, 139 S.Ct. 2149, 2019 WL 2527474 (June 20, 2019), has muddied these waters. While headlines proclaimed that the Supreme Court had determined that "fabricated-evidence claims accrue only on favorable termination of prosecution," these pronouncements miss a key piece of context for the *McDonough* decision: The plaintiff's claim was under the due process clause and has no bearing on Fourth

Amendment fabrication-of-evidence claims like those brought in *Manuel v. City of Joliet*.

It is well-settled law that an accrual analysis "begins with identifying the specific constitutional right alleged to have been infringed." *McDonough* at 2155, citing *Manuel v. Joliet* ("Manuel I"), 137 S.Ct. 911, 920 (2017). Unfortunately, the majority opinion in *McDonough* dropped the ball with respect to the accrual date for a fabrication of evidence claim, much to the chagrin of the dissent.

In discussing the fact that the court accepted without question the 2nd Circuit's characterization of the plaintiff's fabrication of evidence claim as stemming from the due process clause, Justice Clarence Thomas, joined by Justices Elena Kagan and Neil M. Gorsuch, argued in dissent: "The better course would be to dismiss this case as improvidently granted and await a case in which the threshold question of the basis of a 'fabrication-of-evidence' claim is cleanly presented. Moreover, even if the 2nd Circuit were correct that [Edward] McDonough asserts a violation of the [d]ue [p]rocess [c]lause, it would be preferable for the [c]ourt to determine the claim's elements before deciding its statute of limitations."



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Without any guidance from the Supreme Court as to whether and how a due process fabrication of evidence claim is engendered, or even the propriety of such a claim at all, there is no reason to run afoul of the 7th Circuit's holding that the "injury of wrongful pretrial detention may be remedied under Section 1983 as a violation of the Fourth Amendment, not the [d]ue [p]rocess [c]lause." *Lewis v. City of Chicago*, 914 F.3d 472, 479 (7th Cir. 2019), applying the reasoning of

*Manuel v. City of Joliet* ("Manuel I"), 137 S.Ct. 911 (2017), and overruling *Hurt v. Wise*, 880 F.3d 831, 843–44 (7th Cir. 2018).

Yet that hasn't stopped the Central District of Illinois from starting the charge for an overly broad interpretation of *McDonough*. In *Switzer v. Village of Glasford*, the court stated that the Supreme Court in *McDonough* had found that "the statute of limitations for a fabricated-evidence claim, and ultimately for a [S]ection 1983 plaintiff, does not begin to run until the criminal proceedings against the defendant have terminated in his favor." No. 1:18-CV-1421, 2019 WL 3291519 at \*9 (C.D. Ill., July 22, 2019).

The court's characterization of *McDonough* fails to consider that the constitutional source of the fabrication of evidence claim in that case was the due process clause, and not the Fourth Amendment. This analysis stands at odds with the Supreme Court's emphasis on predicating the accrual of a cause of action on the contours of the constitutional right at issue.

While the Central District has found otherwise, the good news is that the Northern District appears to be on the right track. In *Mayo v. LaSalle County*, No. 18 CV 01342, 2019 WL 3202809

(N.D. Ill. July 15, 2019), the court examined the question of accrual.

After careful consideration of the differences between a claim arising out of the Fourth Amendment, rather than the due process claim, the court held that a Fourth Amendment claim accrues when the wrongful detention ends, even if the prosecution continues.

The reasoning behind this

is straightforward. Where an individual challenges the actions of the prosecutor in a trial against him, as the plaintiff did in the *McDonough* case, his claim arises under the due process clause and he is unable to challenge that prosecution while the case is pending. *Mayo*, 2019 WL 3202809 at \*3. However, a plaintiff bringing a Section 1983 fabrication of evidence claim

under the Fourth Amendment is not challenging the criminal prosecution itself, but rather detention without probable cause.

This type of claim may move forward without a determination one way or the other because the lack of probable cause is not necessarily an impediment to the continuation of prosecution. See *Mayo*, 2019 WL 3202809 at \*4.

Don't be fooled by headlines to the contrary, not all fabrication of evidence claims are created equal. *Mayo* is an excellent example of how to comport the McDonough ruling with the Fourth Amendment analysis of both *Manuel I* and *II* and demonstrates that *Manuel II* is still the best precedent and framework for analyzing fabrication of evidence claims in the 7th Circuit.