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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

DARNELL FONDER,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 18-CV-2281**
	)	
OFFICER JOSEPH MARTINEZ, and	)	
OFFICER MICHAEL SHREFFLER,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, Darnell Fonder, filed this action pursuant to 42 U.S.C. § 1983, against Defendants Officers Joseph Martinez and Michael Shreffler, alleging false arrest and fabrication of evidence in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution. Defendants filed a Motion to Dismiss (#7) on December 26, 2018, to which Plaintiff filed a Response (#10) on January 9, 2019. Defendants filed a Reply (#13) on January 28, 2019. For the following reasons, Defendants' Motion to Dismiss (#7) is GRANTED.

BACKGROUND

The following background is taken from the allegations in Plaintiff's Complaint (#1). At this stage of the proceedings, the court must accept as true all material allegations of the Complaint, drawing all reasonable inferences therefrom in Plaintiff's favor. See *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 966 (7th Cir. 2016).

Plaintiff was arrested by Defendants, Kankakee police officers, in May 2010. After his arrest, Defendants informed prosecutors that Plaintiff had resisted arrest and

had injured Defendant Martinez during the course of the arrest. Plaintiff did not resist arrest and did not injure or otherwise harm Martinez. Defendants knew at all relevant times that their story that Plaintiff had injured Martinez and resisted arrest was false.

On the basis of Defendants' above described fabricated evidence, Plaintiff was held in custody, prosecuted, found guilty of felony resisting arrest, and sentenced to a term of imprisonment in the Illinois Department of Corrections (IDOC), to be followed by a one year term of parole (mandatory supervised release). Plaintiff was continuously confined awaiting trial from his arrest on May 7, 2010, until he was convicted on December 7, 2011. Plaintiff was thereafter in custody until he paroled out of the IDOC on February 23, 2012. Plaintiff satisfied his sentence, including his parole term, on February 23, 2013.

The Illinois Appellate Court reversed Plaintiff's conviction of felony resisting arrest on September 30, 2013, and the mandate issued on December 2, 2013. Following remand, the prosecution announced its intention to retry Plaintiff on the felony resisting arrest charge. Plaintiff appeared in court on February 27, May 16, and September 25, 2014. He then appeared in court on January 12, January 20, and March 5, 2015. He failed to appear in court on June 2, 2015, and a bench warrant was issued for his arrest. He was arrested July 29, 2015, and was released on bond, subject to conditions of Illinois law, the next day. He appeared in court again on August 4, 2015, but did not appear on time for a scheduled court appearance on January 19, 2016. A bench warrant was immediately issued, but was vacated when Plaintiff appeared in court later that day.

Plaintiff appeared in court again on October 25, 2016. The prosecutor dismissed the resisting arrest charge against Plaintiff on November 1, 2016.

Plaintiff filed this lawsuit on October 29, 2018. Plaintiff contends that Defendants' fabrication of evidence violated his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

ANALYSIS

Plaintiff makes a claim for unlawful pretrial detention due to fabricated evidence based on the Fourth Amendment. Plaintiff also makes a Fourteenth Amendment due process claim, arguing that the Fourteenth Amendment applies to his pretrial detention before his original trial, and that he was "detained" for purposes of the Fourteenth Amendment following the reversal of his conviction but before he could be retried.

Defendants argue that the case should be dismissed based on the statute of limitations. Defendants argue that any claim for unlawful pretrial detention based on the Fourth Amendment began to accrue at the time he was released from custody, February 23, 2012, or even when his term of mandatory supervised release ended on February 23, 2013. Either way, Plaintiff's lawsuit, Defendants argue, was filed at least five years too late because the statute of limitations would have run in 2015. Defendants also argue that any due process claim would have accrued at the time Plaintiff's conviction was reversed, which was in September 2013, and thus the statute of limitations on that claim would have also run by the end of 2015.

Plaintiff responds that, based on the Seventh Circuit's recent decision in *Mitchell*

v. City of Elgin, 912 F.3d 1012 (7th Cir. 2019), a person can still be "seized," and therefore "in custody," for purposes of the Fourth Amendment when they are out on bond pending a trial, and thus he was still "in custody" until the charges against him were ultimately dropped on November 1, 2016, making his Fourth Amendment claim timely. Plaintiff argues the same holds true for his Fourteenth Amendment claim.

Motions to Dismiss and the Statute of Limitations

A motion to dismiss on statute of limitations grounds qualifies as a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Ennenga v. Stans*, 677 F.3d 766, 773 (7th Cir. 2012). Generally, considering a statute of limitations on a motion to dismiss is inappropriate, because a statute of limitations represents an affirmative defense. *FDIC v. Kime*, 12 F.Supp.3d 1113, 1118 (N.D. Ill. 2014). Because a plaintiff need not anticipate or allege facts that would defeat affirmative defenses, a court typically cannot dismiss a complaint for failure to satisfy a statute of limitations until summary judgment. *Kime*, 12 F.Supp.3d at 1118. However, a court may properly rule on an affirmative defense where the complaint includes all the information necessary to do so. *Kime*, 12 F.Supp.3d at 1118-19. "Therefore, where 'the relevant dates are set forth unambiguously in the complaint,' a court may reach a statute of limitations argument on a motion to dismiss." *Kime*, 12 F.Supp.3d at 1119, quoting *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009).

Here, based on the Complaint, when the Motion to Dismiss was originally filed the relevant dates were set forth unambiguously in the complaint, and the court would have been able to reach a statute of limitations argument. However, following the

Mitchell decision, it became clear that, in addition to the dates, the court would need to know the conditions of bond in order to make a determination on the relevant date for Plaintiff's claim to accrue. Plaintiff, in his Response at pages 2 and 3, compares this case to *Mitchell*, and notes that this question cannot be resolved because, as in *Mitchell*, the court does not know the conditions of bond, and he is under no obligation to plead facts to demonstrate that his time on pretrial release constituted a Fourth Amendment seizure. In Defendants' Reply, Defendants attached as Exhibit 1 a copy of the Kankakee County Circuit Court bail bond for Plaintiff dated July 30, 2015.

In the *Ennenga* case the district court held that the statute of limitations issue could be resolved at the motion to dismiss stage "based on the allegations in the complaint and a few undisputable facts within its judicial-notice power[.]" *Ennenga*, 677 F.3d at 773. The Seventh Circuit affirmed, holding:

> This decision, too, was sound. Taking judicial notice of matters of public record need not convert a motion to dismiss into a motion for summary judgment. See *Doss* [*v. Clearwater Title Co.*], 551 F.3d [634] at 640 [(7th Cir. 2008)] (citing Fed. R. Civ. P. 12(d)). A court may take judicial notice of facts that are (1) not subject to reasonable dispute and (2) either generally known within the territorial jurisdiction or capable of accurate and ready determination through sources whose accuracy cannot be questioned. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081 (7th Cir. 1997). Here, the court took judicial notice of the dates on which certain actions were taken or were required to be taken in the earlier state-court litigation—facts readily ascertainable from the public court record and not subject to reasonable dispute. See *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994) (finding public court documents judicially noticeable).

Ennenga, 677 F.3d at 773-74.

Here, Defendants' attached a copy of the Kankakee County Circuit Court bail

bond for Plaintiff. Plaintiff has not filed any objection or requested a sur-reply to contest the accuracy of that document in the three months since Defendants' filed their Reply. The bail bond is a public court document, and thus is a fact readily ascertainable from the public record and not subject to reasonable dispute. See *Ennenga*, 677 F.3d at 774, citing *Henson*, 29 F.3d at 284. The court will therefore take judicial notice of it and consider it in ruling on Defendants' Motion to Dismiss.

Fourth Amendment Claim

Plaintiff makes a claim under the Fourth Amendment that his pretrial detention was unlawful because it was based on evidence fabricated by Defendants. Defendants argue that it is barred by the statute of limitations because it began to accrue when Plaintiff was released from custody. The disagreement centers on when Plaintiff was released from custody.

Plaintiff's Fourth Amendment claim is made pursuant to 42 U.S.C. § 1983, and a two-year limitations period, borrowed from state law, govern § 1983 claims in Illinois. *Mitchell*, 912 F.3d at 1015. In *Manuel v. City of Joliet*, 903 F.3d 667 (7th Cir. 2018) (known as *Manuel II*, to distinguish it from the U.S. Supreme Court's decision in *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017) also known as *Manuel I*), the Seventh Circuit held that, for Fourth Amendment unlawful pretrial detention claims, the cause of action begins to accrue when detention ceases. *Manuel II*, 903 F.3d at 670. The question for the court then, is when did detention cease in this case?

The Seventh Circuit recently addressed this situation in *Mitchell*. In that case, the plaintiff was arrested on August 17, 2011, on charges of electronic communication

harassment. She posted bond and was released the same day. The plaintiff's amended complaint was silent about the conditions of release. The case dragged on for two years, until August 22, 2013, when the plaintiff was acquitted following a bench trial. On May 23, 2014, the plaintiff filed a lawsuit under § 1983 against the police officers seeking damages for violations of her Fourth Amendment right to be free from unlawful pretrial detention. The district court dismissed the claim and the plaintiff appealed.

On appeal, the plaintiff contended that her Fourth Amendment claim accrued on August 22, 2013, when the trial court entered a verdict of acquittal in her criminal case, making her May 23, 2014, lawsuit timely. To overcome the Seventh Circuit's holding in *Manuel II* that a Fourth Amendment claim for unlawful pretrial detention accrues when the detention ends, not when the prosecution ends, the plaintiff argued that "despite her pretrial release, she remained 'in custody' until she was exonerated at trial." *Mitchell*, 912 F.3d at 1015-16.

The Seventh Circuit's analysis turned on the issue of whether Plaintiff was "seized" for the purposes of the Fourth Amendment when she was out on bond, writing that the Fourth Amendment guards against unreasonable seizures. *Mitchell*, 912 F.3d at 1016. The defendants argued that once the plaintiff was released on bond on August 17, 2011, the plaintiff's seizure ended, and thus the accrual period began at that moment, making her claim untimely. The Seventh Circuit responded that "[t]his argument overlooks the possibility that pretrial release might be construed as a 'seizure'

for Fourth Amendment purposes if the conditions of that release impose significant restrictions on liberty." *Mitchell*, 912 F.3d at 1016. The court of appeals noted that while some circuits have gone so far as to characterize the obligation to appear in court, standing alone, as a seizure, it has not given seizure under the Fourth Amendment "quite such a broad definition." *Mitchell*, 912 F.3d at 1016, citing *Bielanski v. County of Kane*, 550 F.3d 632, 642 (7th Cir. 2008) (characterizing a summons, travel restriction, and interview requirement as "insufficient restraints on freedom of movement to constitute a seizure"). The court then went on to cast doubt on adopting the standard that a mere obligation to appear in court represented a seizure, writing:

> We have misgivings about construing a simple obligation to appear in court—a uniform condition of any pretrial release—as a "seizure" for Fourth Amendment purposes. Converting every traffic ticket into a nascent Fourth Amendment claim strikes us as an aggressive reading of the constitutional text. And the canonical test for seizures remains whether a state official has "terminate[d] or restrain[ed]" an individual's "freedom of movement" such that "a reasonable person would have believed that he was not free to leave." *Brendlin v. California*, 551 U.S. 249, 254–55, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007) (citations omitted). Whether pretrial-release conditions satisfy that standard—and if so, which ones—will have to be resolved in this circuit in the wake of *Manuel I* and *II*.

Mitchell, 912 F.3d at 1017.

The court then concluded that, based on the record before it, it could not decide the matter one way or the other:

> On this record, however, we are unable to decide the matter. The parties haven't briefed the legal question of the scope of a Fourth Amendment "seizure" in this context. And even if we decided to reach the merits, we lack sufficient information about Mitchell's conditions of release to determine if she remained "seized" while on pretrial release. In

> her supplemental filing, Mitchell simply pointed to the bond conditions imposed by Illinois law. See 725 Ill. Comp. Stat. 5/110-10(a)(1)–(3) (2006) (requiring a person released on bond to attend a court hearing and seek permission before leaving the state). She also noted that a judge may impose additional release conditions. But we don't know whether the judge did so in her case.
>
> For now, all we can say is that in light of *Manuel I*, Mitchell's Fourth Amendment claim was wrongly dismissed based on our now-abrogated circuit caselaw. But the timeliness of the claim remains an open question, and gaps in the briefing and record preclude our ability to answer it. We therefore reverse and remand for further proceedings consistent with this opinion.

Mitchell, 912 F.3d at 1017.

Plaintiff argues that *Mitchell* stands for the proposition that, because he was subjected to bond conditions, he was still seized for Fourth Amendment purposes until his case was dismissed or, at the very least, that the court cannot make this decision at the motion to dismiss stage and most wait until summary judgment, at the earliest. Both of these arguments are in error.

First, clearly, the Seventh Circuit did not want to go as far as its sister circuits in holding that merely requiring a defendant to appear represented a Fourth Amendment seizure, keeping the door open that release on bond under *some* conditions may not constitute a seizure. *Mitchell*, 912 F.3d at 1017.

Second, the court could not reach the issue on the merits to begin with because, based on the record, it could not decide the matter due to the parties failing to brief the issue and the record itself not disclosing what actual bond conditions were imposed on the plaintiff. *Mitchell*, 912 F.3d at 1017. The plaintiff simply cited to the bond conditions imposed by Illinois law (725 Ill. Comp. Stat. 5/110-10(a)(1)-(3) (West 2006)), that

required a person released on bond to attend a court hearing and seek permission before leaving the state, and the plaintiff also argued that a judge could impose additional release conditions. The Seventh Circuit, presumably referring to those "additional release conditions," noted that it did not know whether the judge "did so" in the plaintiff's case. *Mitchell*, 912 F.3d at 1017.

Here, by contrast, the there is no gap in the record concerning Plaintiff's bond conditions, as the court is taking judicial notice of the bond conditions imposed by the trial court in Plaintiff's case. The record reflects that, as of July 30, 2015, when the plaintiff was released on bond following his missed court date while awaiting retrial, the only bond conditions on Plaintiff were that he (1) appear to answer the charge in court until discharge or final order of court; (2) obey all court orders and process; (3) Plaintiff not leave Illinois without permission of the court and report changes of address to the clerk within 24 hours; and (4) Plaintiff not commit any criminal offense while awaiting final order in the case.

These conditions are the bond conditions imposed by Illinois law cited by the *Mitchell* court that can be found at 725 Ill. Comp. Stat. 5/110-10(a)(1)-(4). The condition not cited by the *Mitchell* court, found at 110-10(a)(1)(4), is that Plaintiff not commit any criminal offenses while awaiting final order in this case, which, it should go without saying, is something all citizens attempt to abide by and is not in any way a "seizure."). While the *Mitchell* court, when directly discussing those standard Illinois conditions, did not weigh in specifically on whether they would consider those conditions to

constitute a seizure, the court did take care to note that the *Mitchell* plaintiff also argued that a judge may impose "additional release conditions," but the court did not know if the judge did so in her case.

However, earlier the court had cited to *Bielanski* for the proposition that the Seventh Circuit has not given broad construction to the Fourth Amendment's seizure requirement. *Mitchell*, 912 F.3d 1016. In *Bielanski*, the plaintiff was falsely accused of child molestation and sued alleging that the defendants violated her rights under the Fourth Amendment by compelling her to attend numerous court hearings and restricting her freedom when there was no probable cause to charge her with two felonies. *Bielanski*, 550 F.3d at 635. Specifically, the plaintiff was given a summons to appear in court, ordered to be interviewed by a probation officer, and a pretrial order directed her not to leave Illinois without the permission of the court. *Bielanski*, 550 F.3d at 637. The Seventh Circuit rejected her argument that these pretrial conditions constituted a seizure under the Fourth Amendment, concluding "that a summons alone does not equal a seizure for Fourth Amendment purposes" because "[t]o hold otherwise would transform every traffic ticket and jury summons into a potential Section 1983 claim[,]" and that "[a]lthough the travel restriction and the interview with the probation officer might be somewhat more onerous than the summons alone, we conclude that they are insufficient restraints on freedom of movement to constitute a seizure." *Bielanski*, 550 F.3d at 642. Regarding the travel restriction, the court noted that the plaintiff did "not claim that the court denied her any request to travel outside the state,

only that she was required to request permission[,]" and that "[s]uch a requirement is, at most, a precursor to a possible seizure rather than a seizure itself." *Bielanski*, 550 F.3d at 642.

Based on the Seventh Circuit's reticence in *Mitchell* to expand the Fourth Amendment seizure definition to the standard Illinois bond conditions, and on the *Mitchell* court's uncritical specific citation to *Bielanski*'s holding that a requirement to appear in court and receive court permission before leaving Illinois did not constitute a seizure, the court cannot say that Plaintiff was "seized" for Fourth Amendment purposes based on the bond conditions imposed while awaiting retrial. Thus, the latest Plaintiff was actually in custody was July 29-30, 2015. At the very latest, the two-year statute of limitations accrual period would have begun at that time, and run out on July 29-30, 2017, more than a year before Plaintiff filed suit in this case. Thus, Plaintiff's Fourth Amendment unlawful pretrial detention claim is untimely and Defendants' motion is GRANTED on that ground.

Fourteenth Amendment

Plaintiff also makes a Fourteenth Amendment due process claim for unlawful pretrial detention based on fabricated evidence. In *Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019), the Seventh Circuit took care to distinguish between Fourth Amendment unlawful pretrial detention claims, and unlawful detention claims based on due process under the Fourteenth Amendment. The court noted that, in *Manuel II*, it had determined that all § 1983 claims for wrongful pretrial detention- whether based on fabricated evidence or some other defect- sound in the Fourth Amendment. *Lewis*, 914

F.3d at 479. "In other words, the Fourth Amendment, not the Due Process Clause, is the source of the right in a § 1983 claim for unlawful pretrial detention, whether before or after the initiation of formal legal process." *Lewis*, 914 F.3d at 479. Thus, the Due Process Clause of the Fourteenth Amendment would not cover a claim of unlawful pretrial detention. Therefore, based on the Seventh Circuit's decision in *Lewis*, to the extent Plaintiff is premising an unlawful pretrial detention claim based on fabricated evidence on the Fourteenth Amendment's Due Process Clause, that claim is dismissed.

If Plaintiff has any surviving due process claim, it is for "wrongful conviction." See *Lewis*, 914 F.3d at 479-80. Defendants cite to the Seventh Circuit's decision in *Johnson v. Winstead*, 900 F.3d 428 (7th Cir. 2018), to support their argument that Plaintiff's claim in this regard is untimely because the accrual period for the statute of limitations began on the day Plaintiff's conviction was reversed by the Illinois Appellate Court in November 2013, and thus Plaintiff's 2018 Complaint is untimely.

In *Johnson*, the plaintiff was charged with murder after admitting to two Chicago police department detectives that he drove the shooter to and from the scene but claimed to know nothing about the shooter's plan to kill the victim. The plaintiff's motion to suppress his statements, based on the detectives' non-compliance with *Miranda*, was denied. The case proceeded to trial in 2007 and the detectives testified about the plaintiff's statements. The plaintiff was convicted. However, in 2010 the Illinois Appellate Court reversed the conviction and remanded the case for a new trial based on an instructional error. At a second trial in March 2012, the detectives repeated

their testimony and the plaintiff was convicted again. The Illinois Appellate Court again reversed the conviction on December 31, 2013, this time based on insufficient evidence to support accountability liability. In August 2015 the plaintiff filed a § 1983 suit alleging the officers violated his Fifth Amendment right against self-incrimination by interrogating him without *Miranda* warnings and giving testimony at trial about his unwarned statements. The detectives moved to dismiss the claims as untimely because the plaintiff filed suit more than two years after his statements were introduced at trial and accrual was not deferred under *Heck v. Humphrey*, 512 U.S. 477 (1994). The district court agreed and dismissed the claims.

The Seventh Circuit reversed the dismissal of the claim relating to the 2012 trial, but affirmed the dismissal of the claim relating to the 2007 trial. Under *Heck*, a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated. *Morgan v. Schott*, 914 F.3d 1115, 1120 (7th Cir. 2019), citing *Heck*, 512 U.S. at 489-90. Thus, the *Johnson* court needed to determine if the Fifth Amendment violation alleged by the plaintiff qualified under *Heck* so that his claim, which accrued at trial when the detectives' improperly testified to the unwarned statements, was deferred until the Illinois Appellate Court set aside the conviction. The Seventh Circuit discussed *Heck*'s application with reference to an earlier Seventh Circuit case, *Moore v. Burge*, 771 F.3d 444 (7th Cir. 2014), writing:

> Moore continues with a passage that helpfully illuminates the *Heck* question presented here: "To the extent that [the four plaintiffs] may be

> arguing that [the] police violated their rights by giving false testimony, or that during trial prosecutors withheld material exculpatory evidence about misconduct during their interrogations, *Heck* indeed bars relief until a conviction is set aside." *Id*. That's because a § 1983 claim alleging a trial-based constitutional violation necessarily seeks damages for the resulting conviction; to recover, the plaintiff must prove that the constitutional violation at trial caused his unlawful conviction. Such a claim, if successful, necessarily conflicts with a still-valid conviction.

Johnson, 900 F.3d at 438.

The court went to write:

> *Moore* points the way toward greater consistency in evaluating *Heck* questions. Applying it here, we hold that *Heck*'s rule of deferred accrual applies to § 1983 claims for violation of the Fifth Amendment right against self-incrimination. A claim of this kind seeks a civil remedy for a trial-based constitutional violation that results in wrongful conviction and imprisonment. Such a claim, if successful, necessarily implies the invalidity of the conviction and under *Heck* is neither cognizable nor accrues until the conviction has been overturned.

Johnson, 900 F.3d at 439.

Importantly, for our case, the court concluded:

> Our holding that *Heck* applies does not mean that all of Johnson's Fifth Amendment claims may proceed. To the extent that Johnson seeks damages associated with alleged Fifth Amendment violations at his first trial in 2007, the claims are indeed time-barred. That conviction was reversed in 2010, and the two-year time clock began to run then. The limitations period expired long before he filed this suit in 2015. The claims arising from the second trial in 2012 are timely, however. That conviction was reversed in 2014, and Johnson filed suit less than a year later.

Johnson, 900 F.3d at 439.

Thus, Plaintiff's Fourteenth Amendment due process claim, based on Defendants' alleged fabrication of evidence at trial leading to Plaintiff's conviction, seeks a civil remedy for a trial-based constitutional violation that resulted in wrongful

conviction and imprisonment and "[s]uch a claim, if successful, necessarily implies the invalidity of the conviction and under *Heck* is neither cognizable nor accrues until the conviction has been overturned." See *Johnson*, 900 F.3d at 439. Applying *Johnson*, Plaintiff's conviction was reversed in 2013, and the two-year clock began to run then, with the limitations period expiring long before he filed this suit in 2018. See *Johnson*, 900 F.3d at 439.

Plaintiff attempts to distinguish *Johnson* with one sentence, stating that "[t]his case does not involve a self-incrimination violation and the special accrual rule for such claims does not apply." However nowhere in *Johnson* does the court state it is crafting a "special rule" for such claims, but rather, as noted by Defendants, the Seventh Circuit stated that the accrual rule in question extends to claims that "seek [] a civil remedy for a trial-based constitutional violation that results in a wrongful conviction and imprisonment." *Johnson*, 900 F.3d at 439. That is precisely the kind of due process claim Plaintiff is making in this situation. Indeed, Plaintiff's due process claim must be for wrongful conviction, because the court in *Lewis* rejected any attempt to make an unlawful pretrial detention due process claim based on fabricated evidence, holding that was the exclusive province of the Fourth Amendment. *Lewis*, 914 F.3d at 479. Thus, to the extent Plaintiff is attempting to extend *Mitchell*'s holding to a Fourteenth Amendment due process claim in the instant case, that case is inapplicable. However, based on the court's holding above, even if *Mitchell* were applied, Plaintiff's claim would be untimely because the bond conditions did not constitute a Fourth

Amendment seizure. Defendants' motion is GRANTED on the Fourteenth Amendment claim.

IT IS THEREFORE ORDERED:

(1) Defendants' Motion to Dismiss (#7) is GRANTED in full. This case is dismissed with prejudice.

(2) This case is terminated.

ENTERED this 1st day of May, 2019.

s/ COLIN S. BRUCE
U.S. DISTRICT JUDGE