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OPINIONS AND ORDERS

OPINION, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (JANUARY 8, 2024)

NOT RECOMMENDED FOR PUBLICATION
File Name: 24a0010n.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAMARR MONSON,

Plaintiff-Appellee,

v.

CITY OF DETROIT, MICHIGAN, ET AL.,

Defendants,

JOAN GHOUGOIAN and CHARLES BRAXTON (23-2050); BARBARA SIMON and VINCENT CROCKETT (22-2050/2122),

Defendants-Appellants.

Nos. 22-2050/2122

On Appeal from the United States District Court for the Eastern District of Michigan

Before: SUTTON, Chief Judge; STRANCH and MATHIS, Circuit Judges.

OPINION

JANE B. STRANCH, Circuit Judge.

Lamarr Monson brings this § 1983 case following his 2017 release from prison after serving 20 years for murder. In 1997, a jury convicted Monson of murdering 12-year-old Christina Brown, and the court sentenced him to 30 to 50 years in prison. In 2012, the Michigan Innocence Clinic undertook a review of Monson's case that continued through 2017 and uncovered a series of irregularities in the police investigation along with evidence implicating a different perpetrator. In 2017, a Michigan state circuit court judge granted Monson's motion for a new trial, the county prosecutor decided not to retry Monson, and the circuit court entered an order dismissing the case.

On February 23, 2018, Monson filed this § 1983 case against the City of Detroit, the Detroit Police Department, and individual named officers, alleging violations of his constitutional right in their actions leading to his conviction for murder. The district court narrowed the parties and issues leaving as defendants Officers Vincent Crockett, Charles Braxton, Barbara Simon, and Joan Ghougoian. The parties ultimately filed cross motions for summary judgment. The district court largely granted Monson's motion, and largely denied the Officers' motion, precluding a grant of qualified immunity. The Officers filed this interlocutory appeal challenging the district court's denials of qualified immunity. For the reasons stated below, we **AFFIRM IN PART AND REVERSE IN PART.**

I. Background

A. Factual Background[1]

This appeal centers on a 1996 murder. In late 1995, Lamarr Monson began regularly selling drugs out of an abandoned apartment (Apartment 7A) on West Boston Street. Monson resided with his parents, not at Apartment 7A. He sometimes went by the name "Marc Mason." In June of 1996, 14-year-old Cynthia Stewart, sometimes known as Paris Thompson, introduced Monson to Christina Brown, a runaway 12-year-old girl who, at five-feet, ten-inches tall, reportedly appeared grown. Brown, who ran away from home in early January 1996, began spending time with Monson at the apartment, and she became involved in his drug sales.

On January 19, 1996, the day before she was murdered, Brown was at Apartment 7A when Monson left to spend the night at the home of his daughter's mother, Tawanna Crawford. Monson returned to the apartment building the next day around 1:30 or 2 p.m. When he arrived, Linda Woods, a resident of the building, and Robert Lewis, who also went by his brother's name, Raymond, informed him that the door to 7A was open, but no one answered when they called. Monson, Lewis, and Woods entered the apartment and found Brown on the bathroom floor with a swollen head, face, and neck; hands covered in cuts; face covered in dried blood; and blood covering the surface

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[1] This background includes information as developed by the Detroit police at the time of the 1996 murder. As noted, the Michigan Innocence Clinic began an investigation in 2012 that uncovered other significant evidence. The latter evidence is also included with reference to the later dates of its disclosure.

of the shower, bathroom walls, and a shattered window. Brown waved her arms at Monson but could not speak.

"Hysterical," Monson immediately ran to the apartment next door and banged on the door, seeking help. When the occupant of that apartment opened the door, Monson asked him to call emergency services (EMS). Because the apartment lacked a telephone, Monson drove to his sister's house two blocks away and called EMS, and then returned to Apartment 7A, where he placed a blanket around Brown. When Brown appeared to stop breathing, Monson began performing chest compressions.

Around 2:10 p.m., Officers Crockett and Wilson arrived at the apartment building, and Monson met them at the entrance and directed them to Apartment 7A, where a few other building tenants, including Woods and Lewis, remained. Robert Lewis identified himself as Raymond Lewis. Crockett and Wilson instructed everyone at the scene to remain, and Monson complied. EMS arrived at the scene and transported Brown to the hospital, where she was pronounced dead on arrival. Her cause of death was listed in the preliminary police complaint and emergency room records as "stabbing."

Before 3:00 p.m., officers transported Monson, Lewis, and Woods to the Homicide Department Headquarters of the Detroit Police Department. Around 3:25 p.m., Barbara Simon, an officer with the Homicide Department, informed Monson of his constitutional rights, including his right to an attorney, and gave him a constitutional rights certificate of notice, which Monson signed "Marc Mason." While Simon read Monson his rights, Monson asked, but was not allowed, to use the

telephone. Simon questioned Monson for over four hours and repeatedly asked about the nature of Monson's relationship with Brown. Around 7:45 p.m., Simon drafted a statement for Monson to sign, which included a statement that Monson once had sex with Brown. It omitted, however, that Monson had spent the preceding night with Crawford. Only after Monson signed the statement did he get access to a telephone to call his parents.

Monson told his parents that he needed a lawyer, and was then escorted to a holding cell on the ninth floor. At approximately 5:30 a.m. the next morning, after sleeping approximately four hours, officers removed Monson from the holding cell and took him to the office of the Chief Inspector of the Homicide Department, Joan Ghougoian. At this point, Monson had not had anything to eat since the day prior and had little sleep. Ghougoian told Monson that police "had a stack of evidence against [him]," and were "going to charge [Monson] with first degree murder." She then said that "she wanted to help [Monson]," and stated that if Monson "were to do another statement, or sign a[n] information summary . . . she could have [him] home by that time tomorrow." Ghougoian raised "the need for a self-defense scenario," asking Monson, "do you want to get charged, or do you want to go home[?]" Monson responded that he "want[ed] to go home," and agreed to sign Ghougoian's proposed statement.

Around 8:25 a.m., Charles Braxton, a sergeant with the Department, arrived at Ghougoian's office to take a second statement from Monson**.** While Braxton typed the statement, he read from another piece of paper. Ghougoian also came "in and out of the room"

and spoke with Braxton while he prepared Monson's statement. Monson sat "there [a]sleep, half [a]sleep, laying on the desk." Braxton questioned Monson and typed his responses. This second statement reflected the "scenarios" Ghougoian discussed with Monson. In this second statement, Monson said he came home early the morning of January 20 after a night of drinking and got into a lovers' quarrel with Brown, which culminated in Brown charging at Monson with a knife, Monson grabbing Brown and pushing her head through the window, and Monson inadvertently pushing the knife in Brown's hand away from himself and into Brown's neck. Once Braxton finished the statement, he handed it to Monson, who signed his name and initialed where Braxton indicated. The next day, January 22, Monson was arraigned in Michigan state court on a charge of first-degree murder.

Evidence subsequently uncovered included a 2012 statement given by Shellena Bentley, who lived in the apartment building. Bentley recounted that on January 19, 1996, she and her boyfriend, Robert Lewis, decided to use drugs. Lewis made several trips to Apartment 7A to purchase drugs from Brown. After the last trip, early in the morning "between 4 and 5 AM" on January 20, Lewis returned to Bentley's apartment with his arm "scratch[ed]" and "covered in blood," and "his clothes were bloody." When Bentley asked him what happened, Lewis responded that he "had to kill that b--h" because she scratched [him]." Bentley said that Lewis forced her to leave their apartment, took her to her mother's house, and threatened to kill her and her children if she ever told anyone what happened. She said that she was coming forward in-person in July 2012 because she had learned that

Lewis and his brother had moved out of state. In December 2014, an officer from the City's Homicide Department conducted a telephone interview with Bentley, during which Bentley again stated that on January 19, 1996, Lewis returned from attempting to procure drugs at Apartment 7A with "blood" on his body and clothes, and stated "he th[ought] he killed the girl." During her 2018 deposition in this case, Bentley stated that she called the police at least twice within the first year after the murder to attempt to report what she observed on January 20, 1996.

On January 20, the day of Brown's death, Simon, Crockett, and other unknown officers questioned other potential witnesses, including Brown's young friend, Cynthia Stewart. Stewart signed a statement saying that Monson and Brown were living together and that Brown sold drugs for Monson. The statement also said that Monson had threatened Brown's life about a month before her death after someone stole drugs from Brown while Monson was away from the apartment, and that Monson regularly carried a knife.

Evidence obtained from the scene included the bloody top of the toilet tank wrapped in a mattress cover on the bedroom floor, on which investigators found Brown's fingerprint and other unidentified—but usable—fingerprints, as well as a palm print. Simon received these results on January 25, 1996. When asked during her 2019 deposition for this case whether she informed the prosecutor of "the fingerprint on the probable murder weapon that was not [Monson's]," Simon responded, "I don't recall."

On February 1, 1996, the medical examiner released his report on Brown's death, determining that injuries to Brown's skull and brain, not stabbing,

caused her death. Monson moved to suppress his second statement, and on May 17, 1996, the state trial court held a hearing where Monson testified that Ghougoian told him he could go home if he signed the statement, and Braxton testified that Monson's statement was voluntary. The court denied the motion.

Trial commenced on March 3, 1997. The prosecution called Stewart as a witness, and she testified that Monson and Brown lived together and that Brown sold drugs for Monson. When the prosecution recalled Stewart to the stand, she initially testified that she was not aware of Monson threatening Brown. The prosecution refreshed Stewart's recollection with her 1996 statement, at which point, Stewart said that Brown "did tell [her] that [Monson] had threatened her after the robbery." The jury found Monson guilty of second-degree murder on March 7, and the trial court sentenced Monson to 30 to 50 years in prison.

Based on the Innocence Clinic's work, on September 27, 2016, the state court ordered police to analyze the toilet tank top; the report determined that the two unidentified fingerprints belonged to Lewis, and none of the prints matched Monson's. On January 30, 2017, the trial court judge granted Monson's motion for a new trial. On August 25, 2017, the county prosecutor dropped the case against Monson, and the court entered an order dismissing the case. After spending more than 20 years in jail, Monson was released.

B. Monson's § 1983 Case

On February 23, 2018, Monson filed this action under 42 U.S.C. § 1983 against the City of Detroit, the Detroit Police Department, and individual named officers alleging violations of his constitutional rights.

Defendants moved to dismiss, and in 2019, the district court granted the motion as to the City and the Department, but denied it as to the individual defendants: Officers Charles Braxton, Vincent Crockett, Barbara Simon, Joan Ghougoian, and Jerome Wilson.[2]

Discovery commenced. Cynthia Stewart was deposed regarding here statement and testimony in Monson's case and explained that on the day of Brown's murder she was drunk, and two or three male police officers handcuffed her and transported her to the station. Two or three male officers—Stewart could not recall whether they were the same officers who drove her to the station—showed her a clear bag containing Brown's bloodied clothes, threatened her with "jail maybe or [that she would] end up like that, like [her] friend"; and told her that Brown and Monson had been selling drugs together—which Stewart denied having known at the time because she and Brown "had not seen each other for so long." She described the experience as "really, really scary," and "very terrifying," and said that the officers "intimidated" her. Stewart testified that during the state court trial, police told her what to say on the stand, and Stewart complied because she understood that "if I did not want to go to jail or end up like [Brown], I needed to say that I s[aw] things that I didn't." Additionally, Stewart stated that she did not recall Brown ever telling her that Monson threatened to kill Brown. She also described Monson and Brown's relationship as a friendship, not romantic or sexual. Stewart denied that the handwriting and signature on the 1996 statement were hers.

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[2] The court subsequently granted Wilson's motion for summary judgment, removing him from this case.

The parties filed cross-motions for partial and complete summary judgment. At argument, the court held that triable issues of genuine fact precluded granting qualified immunity on claims against Officers Crockett, Simon, Ghougoian, and Braxton. The court also memorialized its determinations in a written order. Monson responded to the court's invitation to provide record citations to support his fabrication of evidence claims related to Stewart's statement. The court found that:

[T]he following claims survive [summary judgment]: (1) a federal malicious-prosecution claim and a fabrication-of-evidence claim against Crockett; (2) a federal malicious-prosecution claim, a claim for violations of *Brady v. Maryland*, and a fabrication-of-evidence claim against Simon; (3) a federal malicious-prosecution claim, a coerced-confession claim, and a fabrication-of-evidence claim against Ghougoian; and (4) a federal malicious-prosecution claim and a fabrication-of-evidence claim against Braxton.

R. 397 at PageID 22387. Defendants filed an interlocutory appeal of the denial of qualified immunity.

II. Analysis

A. Jurisdiction and Standard of Review

This court has jurisdiction over appeals from "final decisions of the district courts[.]" 28 U.S.C. § 1291. "Interlocutory appeals of the denial of qualified immunity at the summary judgment stage are considered 'final decision[s]' within the meaning of 28 U.S.C. § 1291." *Raimey v. City of Niles*, 77 F.4th 441, 447 (6th Cir. 2023) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985)). "Our jurisdiction, however, is limited to

legal questions because 'circuit courts can review a denial of qualified immunity only to the extent that it turns on an issue of law.'" *Id.* (quoting *Brown v. Chapman*, 814 F.3d 436, 444 (6th Cir. 2016)).

We review a district court's denial of qualified immunity de novo. *See Peterson v. Heymes*, 931 F.3d 546, 553 (6th Cir. 2019). As to the facts, "'we follow the same path as did the district court' by 'drawing all reasonable inferences in the plaintiff's favor—and, ideally . . . look[ing] no further than the district court's opinion for the pertinent facts and inference.'" *Raimey*, 77 F.4th at 445 (quoting *Bunkley v. City of Detroit*, 902 F.3d 552, 560 (6th Cir. 2018)). "Where the parties ask us to resolve factual disputes, we set those issues aside for resolution by the trial court." *Moldowan v. City of Warren*, 578 F.3d 351, 371 (6th Cir. 2009). We lack jurisdiction over "the district court's determination of 'evidence sufficiency,' *i.e.*, which facts a party may, or may not, be able to prove at trial," as the fact-bound nature of that inquiry means it is "not an appealable 'final decision' within the meaning of 28 U.S.C. § 1291." *Thompson v. City of Lebanon*, 831 F.3d 366, 370 (6th Cir. 2016) (quoting *Johnson v. Jones*, 515 U.S. 304, 313 (1995)). "[W]e do not ourselves make any findings of fact or inferences for purposes of any subsequent proceedings." *Bunkley v*, 902 F.3d at 561 (collecting authorities).

B. Qualified Immunity

"Qualified immunity protects governmental officials from suit as long 'as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Raimey*, 77 F.4th at 448 (quoting *Harlow v. Fitzgerald*,

457 U.S. 800, 818 (1982)). To overcome qualified immunity at summary judgment, a plaintiff bringing a § 1983 case against state officials must demonstrate that "(1) the defendant violated a constitutional right and (2) that right was clearly established." *Thompson*, 831 F.3d at 369. "[T]he only issues appropriate for review are those that are 'strictly legal.'" *Beard v. Whitmore Lake Sch. Dist.*, 402 F.3d 598, 602 (6th Cir. 2005) (quoting *Solomon v. Auburn Hills Police Dep't*, 389 F.3d 167, 172 (6th Cir. 2004)). "Nonetheless, we may decide a challenge 'with any legal aspect to it,' even if the appellant makes improper fact-based arguments." *Raimey*, 77 F.4th at 448. Summary judgment is proper only if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[W]e view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in [his] favor." *Hicks v. Scott*, 958 F.3d 421, 430 (6th Cir. 2020).

A two-step analysis applies. First, we determine "whether the facts, 'when taken in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right.'" *Raimey*, 77 F.4th at 448 (quoting *Mullins v. Cyranek*, 805 F.3d 760, 765 (6th Cir. 2015)). We then ask "whether the right was 'clearly established' such 'that a reasonable officer would understand that what he is doing violates that right.'" *Id.* (quoting *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001)). We may "exercise [our] sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the

particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Defendants appeal the denial of qualified immunity on the following claims: (1) federal malicious prosecution against Officers Crockett, Simon, Ghougoian, and Braxton; (2) fabrication of evidence against the same four officers; (3) a *Brady* claim against Simon; and (4) a coerced confession claim against Ghougoian.

1. Probable Cause and Federal Malicious Prosecution

Our jurisdiction over an interlocutory appeal of denial of qualified immunity is limited to "defendants' claims to qualified immunity"; in this posture, we cannot exercise supplemental jurisdiction "over the remainder of the defendants' claims on appeal." *Bunkley*, 902 F.3d at 561. Defendants argue that the district court erred in determining that, "as a matter of law, there was no probable cause to arrest [] Monson." Because probable cause operates as "an absolute defense to a malicious prosecution claim," Defendants argue that the court improperly denied qualified immunity on Monson's federal malicious prosecution against Officers Crockett, Simon, Ghougoian, and Braxton. Monson responds that this "ruling was an evidentiary ruling, not the denial of a qualified immunity motion for summary judgment."

As a threshold matter, Monson moved for judgment as a matter of law on his claims that Crockett seized Monson at the murder scene and transported him to police headquarters without Monson's consent or probable cause, where he was detained without probable cause at police headquarters. Defendants asserted a qualified immunity defense, submitting that Monson

failed to demonstrate a lack of probable cause to arrest or continue to detain him. The district court found that Monson was "detained at the scene" because he "was not free to leave," and held that Defendants arrested Monson without probable cause because "[t]hough [D]efendants continue to argue in the briefing that Monson's mere presence at the scene [provided] probable cause to arrest him, [t]he Court has already ruled that it [did] not." *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) (holding that an individual's mere presence at a site where law enforcement possess probable cause that a crime has occurred does not, on its own, supply probable cause to search or seize that person, because "a search or seizure of a person must be supported by probable cause particularized with respect to that person"). The district court decided that "the jury will be advised that Monson was arrested without probable cause." This holding was not a direct ruling on Defendants' motion for qualified immunity—it established a certain fact as supported by the evidence, rather than adjudicating whether Defendants violated clearly established law. The district court clarified that "a limiting instruction will also be given that this finding is not relevant to any of the remaining claims and is being shared merely to give the jury the full factual background of Monson's prosecution."

If simply a challenge to the district court's evidentiary ruling, we would lack jurisdiction to consider the Defendants' argument that Monson voluntarily went to the police station. *See* 28 U.S.C. § 1291. But they argue that this issue bears on the malicious prosecution claim. Analogizing to false arrest cases, Defendants argue that if Monson voluntarily went to the

station and officers had probable cause to arrest him there for a different crime, then Monson's malicious prosecution claim becomes significantly weaker. While the Supreme Court has said that malicious prosecution is a kind of Fourth Amendment claim, *Thompson v. Clark*, 596 U.S. 36, 42 (2022), the question here is whether officers had probable cause to charge Monson, not to arrest him, *see id.* at 43 (malicious prosecution claim requires showing "the wrongful initiation of charges without probable cause"); *Webb v. United States*, 789 F.3d 647, 660 (6th Cir. 2015) (malicious prosecution concerns probable cause for "the crime charged") (quoting *MacDermid v. Discover Fin. Servs.*, 342 F. App'x 138, 146 (6th Cir. 2009)). Neither Monson's transport to the station nor his detainment for unrelated crimes bears on that question.

We turn next to the malicious prosecution claims on which Defendants moved for summary judgment. A malicious prosecution claim requires a plaintiff to demonstrate:

> (1) the defendant made, influenced, or participated in the decision to prosecute the plaintiff; (2) there was no probable cause for the prosecution; (3) as a consequence of the legal proceedings, the plaintiff suffered a deprivation of liberty apart from the initial arrest; and (4) the criminal proceeding was resolved in the plaintiff's favor.

France v. Lucas, 836 F.3d 612, 625 (6th Cir. 2016) (citing *Sykes v. Anderson*, 625 F.3d 294, 308-09 (6th Cir. 2010)). "To demonstrate a favorable termination of a criminal prosecution" in satisfaction of the claim's final element, "a plaintiff need only show that his prosecution ended without a conviction." *Thompson*,

596 U.S. at 39. Plaintiffs must also "provide evidence that each defendant personally violated their rights." *France*, 836 F.3d at 625.

At the summary judgment hearing, the parties agreed that "the only elements at issue are the probable cause to prosecute Monson and the individual officers' participation in the decision to prosecute." The court determined that "a reasonable jury could conclude that there was no probable cause to believe that Monson had committed Brown's murder." The court then found that genuine issues of material fact remain regarding Officers Crockett, Simon, Ghougoian, and Braxton's influence on the decision to prosecute, foreclosing a grant of qualified immunity.

Defendants argue that even accepting the facts as Monson alleges, they still had probable cause to charge him with murder. They point to medical evidence that Brown's head trauma occurred shortly before her death, and to evidence that Monson was in the apartment with her shortly before her death. Yet none of the evidence as to the true cause or timing of Brown's death was known when the officers charged Monson. *Sykes*, 625 F.3d at 311 (explaining that a malicious prosecution claim looks at "whether probable cause existed to initiate the criminal proceeding") (emphasis added). The officers' medical evidence that Brown died from trauma to her head inflicted shortly before death came to light at Monson's preliminary examination, well after Monson was charged. In fact, when police sent the prosecutor their investigation report, they still identified the cause of death as "multiple stab wounds." What remains for probable cause are Monson's own statements and the statement of Linda Woods. But Monson provided evidence that none of these

statements presented a reliable picture. Crediting that evidence, the district court correctly concluded that a reasonable jury could find the officers lacked probable cause to charge him with murder.

2. Fabrication of Evidence

"It is well established that a person's constitutional rights are violated when evidence is knowingly fabricated and a reasonable likelihood exists that the false evidence would have affected the decision of the jury." *Gregory v. City of Louisville*, 444 F.3d 725, 737 (6th Cir. 2006) (citing *Stemler v. City of Florence*, 126 F.3d 856, 872 (6th Cir. 1997)). "An officer violates a person's constitutional rights when he knowingly fabricates evidence against them and a reasonable likelihood exists that the false evidence would have affected the jury's decision." *France*, 836 F.3d at 629. "A plaintiff does not need to show that the government lacked probable cause to prevail on a fabrication of evidence claim." *Id.* (citing *Stemler*, 126 F.3d at 872).

This standard is not new. Rather, as *Stemler* recognized, "[u]nder law that was clearly established in 1994, [an officer] would have violated [a defendant's] right to due process if he knowingly fabricated evidence against [the defendant] and if there is a reasonable likelihood that the false evidence could have affected the judgment of the jury." 126 F.3d at 872; *see id.* (collecting authorities); *see also Jackson v. City of Cleveland*, 925 F.3d 793, 826 (6th Cir. 2019) (amended opinion) (same). We have also recognized that a law enforcement official was "on notice in 1975 that it was unlawful for him to fabricate evidence" where such false evidence served "to procure testimony in conformance with it" at trial. *Jackson*, 925 F.3d at 826.

Defendants appeal the district court's denial of qualified immunity on Monson's fabrication of evidence claims against Officers Simon, Ghougoian, and Braxton, based on the statements they allegedly drafted and had Monson sign. They also challenge the denial of qualified immunity on Monson's claim that Officers Simon and Crockett knowingly fabricated Stewart's statement. We address each set of claims.

The Defendants contend that the court erred when it allowed Monson to claim Simon fabricated portions of his first statement. Invoking judicial estoppel and the sham affidavit doctrine, they point to an earlier hearing where Monson said his first statement was true and voluntarily given. The officers failed to raise this point below, forfeiting the argument. In any event, the sham affidavit doctrine applies when a party files an affidavit after a motion for summary judgment, which does not apply here. *Reid v. Sears, Roebuck & Co.*, 790 F.2d 453, 460 (6th Cir. 1986). As for estoppel, no prior court ever "accepted or relied upon" Monson's claim that his first statement was voluntary. *Pennycuff v. Fentress Cnty. Bd. of Educ.*, 404 F.3d 447, 453 (6th Cir. 2005).

Next, Defendants claim that Monson failed to present specific facts that Braxton knowingly fabricated the second statement. The district court did not err in concluding the opposite. Monson alleged that Braxton typed up a statement by reading off another piece of paper and speaking with Ghougoian—not simply by interrogating Monson. And the statement Braxton produced matched the self-defense scenario allegedly offered by Ghougoian. From this, a jury could reasonably conclude that Braxton knowingly fabricated Monson's second claim.

Defendants also challenge the denial of qualified immunity on Monson's claims that Simon and Crockett fabricated Stewart's statement. In addition to disputing the facts, Defendants urge that the district court improperly denied qualified immunity on Monson's claim of fabrication of evidence claims regarding Stewart's statement on the basis that Monson failed to demonstrate that Simon or Crockett violated his rights. And they argue that Stewart's inability to identify Simon or Crockett by name or discrete physical features renders Monson unable to prove that either officer violated his rights. They also contend that the prosecutor's "[i]ndependent decisions," including speaking with Stewart "about her statement and testimony on the morning of trial" constituted "break[s]" in "the chain of causation," which doom Monson's fabrication of evidence claims.

First, Defendants are incorrect that the record fails to provide specific evidence of Crockett and Simon's involvement. Crockett admitted he took information from Stewart. And Simon signed Stewart's statement. That provides a sufficient evidentiary foundation for a reasonable jury to infer their involvement with any alleged fabrication.

A plaintiff may raise a fabrication of evidence claim where "the statement coerced [a witness] to testify in conformance with it." *Jackson*, 925 F.3d at 817. When initially recalled to the stand during the state court trial, Stewart denied knowing that Monson threatened Brown due to a robbery. The prosecutor then refreshed Stewart's recollection with the fabricated statement. After reading the statement, Stewart testified that Brown "did tell [her] that [Monson] had threatened [Brown] after the robbery," and that Monson

told Brown he would "kill her if she didn't get out of his face." This scenario parallels *Jackson*. *See* 925 F.3d at 804-05. As explained by the district court, here "a reasonable jury could conclude that the fabricated statement—which recounted Monson explicitly threatening Brown's life a few weeks before her murder—affected the decision of the [murder trial] jury." Accordingly, the court correctly denied qualified immunity on the fabrication of evidence claim related to Stewart. *See id.* at 825-26.

Defendants also urge that the prosecutor's charging decision broke the chain of causation between the alleged fabrication and Monson's conviction. But this argument ignores *Jackson*. The district court ruled that Defendants' argument regarding the prosecutor's role was "not relevant here" because Monson's fabrication of evidence claims against Simon and Crockett stem from the false statement's coercion of Stewart's testimony at trial, not the prosecutor's charging decision. This determination coheres with *Jackson*. *See* 925 F.3d at 817. Defendants fail to identify a legal infirmity with this conclusion, and so we affirm.

3. Coerced confession

"In determining whether a confession is compelled, the constitutional inquiry is whether 'a defendant's will was overborne in a particular case,' considering 'the totality of all the surrounding circumstances.'" *Peterson*, 931 F.3d at 555 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). The Supreme Court has explained that "the constitutional inquiry is not whether the conduct of state officers in obtaining the confession was shocking, but whether the confession

was 'free and voluntary,'" meaning not "extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." *Malloy v. Hogan*, 378 U.S. 1, 7 (1964) (quoting *Bram v. United States*, 168 U.S. 532, 542-43 (1897)). Coercion, moreover, can include "so mild a whip as the refusal, under certain circumstances, to allow a suspect to call his wife until he confessed." *Id.*

In response to the district court's ruling, Defendants point out that Monson voluntarily endorsed a notification of his constitutional rights and that he had "not been threatened or promised anything." This, they argue, defeats any coercion claim. A waiver can be voluntary, however, and a subsequent confession can still be coerced. We have held as much in the past. *See Williams v. Withrow*, 944 F.2d 284, 289 (6th Cir. 1991) (finding a confession involuntary even after *Miranda* warnings), *rev'd on other grounds*, 507 U.S. 680 (1993). The same is true here. Monson alleged that Ghougoian induced him to sign the statement based on false promises. Even if he chose to endorse this constitutional notification, his resulting statement may still qualify as coerced.

Monson's statements at an earlier hearing do not alter this analysis. Defendants submit that because of minor differences between Monson's earlier and later statements about Ghougoian's conduct, he should be prevented from arguing that Ghougoian promised him anything. But here, too, judicial estoppel does not apply—there is no evidence any court relied on the minor differences between Monson's testimony, and in any event, Monson lost the earlier proceeding. *Pennycuff*, 404 F.3d at 453.

Defendants also argue that Ghougoian's conduct did not violate clearly established law. By 1996, courts, including this one, recognized "that a promise of lenient treatment or of immediate release may be so attractive as to render a confession involuntary." *United States v. Wrice*, 954 F.2d 406, 411 (6th Cir. 1992). The district court pointed to Monson's contention "that the second statement [he signed] was coerced because Ghougoian, with Braxton's help, made an illusory promise that Monson could go home if he signed the second statement[,] which admitted to stabbing Brown in self-defense." Monson testified that he did not voluntarily give the information in the second statement to Braxton. He signed the statement, rather, because the "only thing [he was] looking for [was] the release" from detention. Taking "the facts that the district court assumed," as we must, *see Johnson*, 515 U.S. at 319, "early [on January 20], Ghougoian interrogated Monson and promised him that he could go home if he signed a Second Statement." "[Monson] agreed to the deal, and Braxton typed up the self-defense story that Ghougoian had contrived." The court held that "the evidence amply supports Monson's allegations that Ghougoian made false promises of leniency to Monson which Ghougoian knew would not be fulfilled." Defendants' arguments do not undermine this legal conclusion, and we therefore affirm.

4. Brady violation

Under the Fourteenth Amendment's Due Process Clause, a state cannot "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. *Brady v. Maryland*, 373 U.S. 83, 87 (1963), recognized "that the suppression by the prosecution of evidence favorable to an accused upon

request violates due process where the evidence is material either to guilt or to punishment." *Brady* violations can occur where "undisclosed evidence demonstrates that the prosecution's case includes perjured testimony[,]" "the prosecution knew, or should have known, of the perjury," and the prosecution withheld the material evidence requested by the defense. *United States v. Agurs*, 427 U.S. 97, 103-04 (1976). The Supreme Court has long held that *Brady* obligations extend beyond prosecutors "to preclude other governmental 'authorities' from making a 'calculated effort to circumvent the disclosure requirements established by *Brady* [] and its progeny.'" *Moldowan*, 578 F.3d at 379 (quoting *California v. Trombetta*, 467 U.S. 479, 488 (1984)) (alteration in *Moldowan*). "[E]ven though the state's obligation under *Brady* is managed by the prosecutor's office, that obligation 'applies to relevant evidence in the hands of the police, whether the prosecutors knew about it or not, whether they suppressed it intentionally or not, and whether the accused asked for it or not.'" *Id.* at 378 (quoting *Harris v. Lafler*, 553 F.3d 1028, 1033 (6th Cir. 2009)).

A *Brady* violation consists of "three components": (1) "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching;" (2) "that evidence must have been suppressed by the State, either willfully or inadvertently;" and (3) "prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Prejudice requires demonstrating "that the allegedly suppressed evidence was 'material.'" *Jackson*, 925 F.3d at 815 (quoting *Strickler*, 527 U.S. at 280). "Evidence is material when 'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the

proceeding would have been different.'" *France*, 836 F.3d at 630 (quoting *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995)). "A 'reasonable probability' is 'a probability sufficient to undermine confidence in the outcome.'" *Id.* (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

Defendants contend that the district court erred in denying Simon qualified immunity on Monson's *Brady* claims. The only material relevant for qualified immunity purposes is the fingerprints on the toilet tank. Monson has consistently identified Simon's failure to turn over the usable, unidentified latent prints on the toilet tank's top as the source of his *Brady* violation. And the district court expressly confined its analysis of the *Brady* claim to that issue at both the motion to dismiss, and summary judgment stages. This issue, then, bears on the legal qualified immunity analysis—and we can exercise jurisdiction over it on interlocutory review. *See Bey v. Falk*, 946 F.3d 304, 316 (6th Cir. 2019).

"[T]he loss"—which can include both "destruction or concealment"—of "'materially exculpatory' evidence directly threatens the fundamental fairness of a criminal trial, and thus undoubtedly implicates the Due Process Clause." *Moldowan*, 578 F.3d at 385. Under such circumstances, "[*Arizona v.*] *Youngblood* [488 U.S. 51 (1988)] says, 'the interests of justice' simply impose a higher burden on state actors, including the police." *Id.* (quoting *Youngblood*, 488 U.S. at 58). What matters here is Simon's alleged failure to disclose the unidentified print on the toilet tank top to the prosecution. As stressed by the district court, the key is that "once Simon learned Brown died as a result of a blunt force trauma to the head, sitting on the

unidentified fingerprints meant she was hiding evidence that, at the very least, contradicted the state's" theory of the case. The fingerprint evidence on the toilet tank "undercut the state's theory of a stabbing precipitated by a lover's quarrel" and therefore, a jury could find that "Simon violated *Brady* because she sat on evidence that could have exculpated Monson." Simon's inability to "recall" whether she informed the prosecutor about the unidentified fingerprints "on the probable murder weapon" provides grounds for a reasonable jury to conclude that she failed to disclose this fact to the prosecution, because the potential "'exculpatory value' of the evidence" was "apparent." *Moldowan*, 578 F.3d at 388. These prints could—and, in fact, did—belong to another suspect: Robert Lewis. Moreover, the report indicated that none of the prints matched Monson's. "[E]vidence that someone else was in the room was more than neutral," the district court aptly observed, "when coupled with phone calls from a tipster"—Bentley—"that another resident committed the murder."

The murder trial record complicates matters, however. On the one hand, the prosecutor's statement that she "had asked Barbara Simon if there had been any prints because I knew prints had been taken, and her representation was that there were no usable prints" could support a reasonable trier-of-fact's finding that Simon failed to disclose the latent print report to the prosecution. "*Brady* obliges a police officer to disclose material exculpatory evidence only to the prosecutor"; therefore, if Simon never informed the prosecutor of the existence of a usable, unidentified print on the probable murder weapon, then she violated her duties under *Brady*. *D'Ambrosio v. Marino*, 747 F.3d

378, 389 (6th Cir. 2014). Such a failure to inform prosecutors of potentially exculpatory evidence frustrates criminal courts' central purpose to effectuate "the truth-seeking function of trial." *Portuondo v. Agard*, 529 U.S. 61, 69 (2000) (quoting *Perry v. Leeke*, 488 U.S. 272, 282 (1989)). It was only through the work of the Michigan Innocence Clinic, after Monson had spent more than a decade incarcerated for Brown's murder, that investigators conducted tests matching the print on the toilet tank top to another suspect, Lewis.

Absent a showing of prejudice so great that it "prevented [the defendant] from receiving his constitutionally guaranteed fair trial," however, "[t]he government will fulfill its constitutional obligation by disclosure at trial." *United States v. Farley*, 2 F.3d 645, 654 (6th Cir. 1993). Although Monson's defense counsel at the murder trial objected to the introduction of Monson's fingerprint on the mirror, he later stipulated to the introduction of the latent print report into evidence. Defense counsel's acquiescence to introduction of the prints recovered at the scene, including the unidentified, usable print on the toilet tank lid, precludes a finding of prejudice. Due to the parties' stipulation at trial, this set of facts does not satisfy the third requirement of *Brady*. We therefore reverse the denial of qualified immunity to Simon on Monson's *Brady* claim.

C. Motion for Sanctions

Monson also moves for sanctions under Rule 38 of the Federal Rules of Appellate Procedure. That rule authorizes this court to "award just damages and single or double costs to the appellee" if we "determine[] that an appeal is frivolous." Fed. R. App. P. 38.

"An appeal is frivolous if it is obviously without merit and is prosecuted for delay, harassment, or other improper purposes." *Bridgeport Music, Inc. v. Smith*, 714 F.3d 932, 944 (quoting *Vic Wertz Distrib. Co. v. Teamsters Loc. 1038*, 898 F.2d 1136, 1143 (6th Cir. 1990)). Features that may indicate a frivolous appeal include untimeliness, *see id.*; "when the result is obvious or when the appellant's argument is wholly without merit," *Dubay v. Wells*, 506 F.3d 422, 433 (6th Cir. 2007) (quoting *Pieper v. Am. Arb. Ass'n*, 336 F.3d 458, 465 (6th Cir. 2003)); or where an appeal is "clearly futile and apparently prosecuted for improper purposes," *McDonald v. Flake*, 814 F.3d 804, 817 (6th Cir. 2016). A case that "may indeed be quite weak" does not, absent some indicators of impropriety, merit sanctions. *Uhl v. Komatsu Forklift Co., Ltd.*, 512 F.3d 294, 308 (6th Cir. 2008).

The parties essentially restate their merits arguments in their briefing on sanctions. Monson also references *Sanford v. City of Detroit*, 815 F. App'x 856 (6th Cir. 2020), for the proposition that Defendants' counsel here (who represented the defendants in *Sanford*, as well as "the City of Detroit, [] and other municipalities in" § 1983 cases) filed this appeal for improper purposes. Monson points to our affirmance of the denial of qualified immunity on the fabrication of evidence, coerced confession, and malicious prosecution claims in *Sanford*, 815 F. App'x at 859, for the proposition that counsel "filed the present appeal knowing it was without merit and with no reasonable expectation of prevailing." Referencing the other side's "experienced . . . counsel," Monson argues that Defendants filed this appeal to "delay and to increase the cost of this litigation." The filing of an appeal necessarily

increases costs and delays resolution of litigation. *See Yates v. City of Cleveland*, 941 F.2d 444, 448 (6th Cir. 1991) (discussing the reality that "*Forsyth* appeals [of denial of qualified immunity] can be employed for the sole purpose of delaying trial"). This record is insufficient, however, to establish an improper motive for Defendants' appeal. Absent such facts, we decline to award sanctions, and DENY the motion.

III. Conclusion

For the reasons set forth above, we AFFIRM the judgment of the district court denying qualified immunity as to the federal malicious prosecution claims against Crockett, Simon, Ghougoian, and Braxton, the fabrication of evidence claims against Crockett, Simon, Ghougoian, and Braxton, and the coerced confession claim against Ghougoian. We REVERSE as to the *Brady* claim against Simon; DENY the motion for sanctions; and REMAND the case to the district court for trial.

JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (JANUARY 8, 2024)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAMARR MONSON,

Plaintiff-Appellee,

v.

CITY OF DETROIT, MICHIGAN, ET AL.,

Defendants,

JOAN GHOUGOIAN and CHARLES BRAXTON (23-2050); BARBARA SIMON and VINCENT CROCKETT (22-2050/2122),

Defendants-Appellants.

Nos. 22-2050/2122

On Appeal from the United States District Court for the Eastern District of Michigan at Detroit

Before: SUTTON, Chief Judge; STRANCH and MATHIS, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED IN PART, REVERSED IN PART, and REMANDED for a new trial consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

OPINION AND ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (DECEMBER 6, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMARR MONSON,

Plaintiff,

v.

JOAN GHOUGOIAN, ET AL.,

Defendants.

Case No. 18-10638

On Appeal from the United States District Court for the Eastern District of Michigan at Detroit

Before: Honorable Laurie J. MICHELSON, United States District Judge.

OPINION AND ORDER ON PLAINTIFF'S POST-ORAL-ARGUMENT SUPPLEMENTAL BRIEF IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [291]

In 1996, Christina Brown was killed in the bathroom of an apartment that she sometimes shared with plaintiff Lamarr Monson. Monson "confessed" and was

convicted of her murder. But years later—with the discovery of exculpatory evidence and the help of the Michigan Innocence Clinic—a state judge granted Monson a new trial. The prosecutor's office declined to retry Monson, and the state judge then dismissed the case. Monson was released in 2017 after serving more than 20 years in prison.

In 2018, Monson filed this lawsuit, alleging that various Detroit Police Officers (and others) violated his constitutional rights during the murder investigation and trial. After years of motion practice and extensive discovery, the Court ruled on the parties' cross-motions for summary judgment at a hearing on October 28, 2022. (ECF Nos. 292-293.) Many of Monson's claims survived. Defendants appealed. (ECF No. 294.)

But one loose end still needs to be tied up by this Court. At the October 2022 hearing, the Court invited Monson to submit citations to the record to connect a 1996 witness statement from Brown's childhood friend, Cynthia Stewart, to the outcome of Monson's 1997 criminal trial. (ECF No. 292, PageID.22316.) For the reasons explained below, these citations are necessary to sustain Monson's fabrication-of-evidence and coerced-testimony claims against certain Defendants. Monson accepted the Court's invitation and submitted a supplemental brief, and the Defendants responded. (ECF Nos. 291, 296.) (Because the Defendants did not appeal these claims, the Court believes it still has jurisdiction to decide them. *See Krycinski v. Packowski*, 556 F. Supp. 2d 740, 741 (W.D. Mich. 2008) (citing *Yates v. Cleveland*, 941 F.2d 444, 447 (6th Cir. 1991)).

Though the Court has already provided an extensive factual summary of the case (*see* ECF No. 293), a

brief summary of the facts related to Cynthia Stewart is in order here.

On January 20, 1996, the day of Brown's murder, the police interrogated and took a statement from Brown's childhood friend, Cynthia Stewart (also known as Paris Thompson). (ECF No. 293, PageID.22349-22350.) Specifically, two of the Defendants in this case, Detroit Police Officers Barbara Simon and Vincent Crockett, were involved in taking her statement, among other unknown officers. (*Id.*) Stewart's statement said that Monson had threatened Brown's life about one month prior to her death, that the two were "boyfriend and girlfriend," and that Monson routinely carried a knife. (*Id.*) (At the time, the police believed that Brown had been stabbed to death. (*See id.* at PageID.22346.))

About a year later, in March 1997, Stewart was the prosecution's first witness at Monson's criminal trial. (ECF No. 241-4, PageID.12853, 12879.) She testified that she had introduced Monson and Brown three or four months prior to Brown's death. (*Id.* at PageID.12880-12881.) And she said that Monson and Brown lived together, though she denied having ever been to the semi-abandoned apartment building where they allegedly lived. (*Id.* at PageID.12882-12883.) And she said that she had not seen Brown at all during the last month of her life. (*Id.* at PageID.12884.)

Later in the day, Stewart was recalled to the stand. (*Id.* at PageID.12994.) The prosecutor then inquired about Monson's alleged threat to kill Brown. (ECF No. 241-4, PageID.12998.) She asked, "Had Brown been threatened as a result of [a] robbery?" (*Id.*) Stewart replied, "Not that I know of." (*Id.*) At that point, the prosecutor showed Stewart her 1996 statement, which

mentioned the robbery and Monson's alleged threat. (*Id*. at PageID.12999.) Only after reading the statement did Stewart testify that Brown "did tell [her] that [Monson] had threatened her after the robbery." (ECF No. 241-4, PageID.12999.) After the court overruled Monson's hearsay objection, Stewart clarified that Monson had threatened to "kill [Brown] if she didn't get out of his face." (*Id*. at PageID.13003.)

At her deposition in this case, Stewart told an entirely different story. As explained in the Court's prior order, Stewart said that she was picked up by the police on the day of Brown's murder, handcuffed, and taken to the police station. (ECF No. 293, PageID. 22349.) When she arrived there, the officers told her that Brown had been murdered, showed her a clear bag of Brown's blood-stained clothes, and kept asking her "if [she] wanted to go to jail maybe or end up like that, like [her] friend." (*Id*. at PageID.22350.) Brown understood that to mean that the police would be "mad" at her and that Monson might hurt her if she did not cooperate. (*Id*.) She continued, "they told me [Brown] was with . . . Lamarr Monson selling drugs somewhere. I did not even know [Brown and Monson] were together . . . this was all told to me by the [police]. I did not know that stuff. We had not seen each other for so long. . . . I didn't really know nothing about nothing." (*Id*.) And she denied that the signature on the statement was hers. (*Id*.)

Monson relies on these facts to suggest that his fabrication-of-evidence claims against Simon and Crockett should survive summary judgment. (*See* ECF No. 291.) The Court agrees.

As the Court already discussed, "[i]t is well established that a person's constitutional rights are violated

when evidence is knowingly fabricated and a reasonable likelihood exists that the false evidence would have affected the decision of the jury." (ECF No. 292, PageID.22313-22314 (citing *Gregory v. City of Louisville*, 444 F.3d 725,737 (6th Cir. 2006)).)

There are genuine disputes of material fact as to whether Simon and Crockett knowingly fabricated Stewart's statement. As explained, Stewart testified in this case that the police implicitly threatened her and then fed her the information contained in her statement. (ECF No. 293, PageID.22349-22350.) For his part, Crockett acknowledged that he participated in Stewart's interrogation at Monson's criminal trial, but he said he merely relayed the information that Stewart gave him. (*Id.*; ECF No. 241-13, PageID.14298.) And despite the fact that Simon's signature is on the statement, Stewart did not recall speaking to a female officer that day. (ECF No. 293, PageID.22350.) So a reasonable jury could conclude that Simon and Crockett knowingly fabricated Stewart's statement.

And there is a reasonable likelihood that the fabricated statement affected the decision of the jury. "[T]he relevant question is not whether the fabricated evidence was shown to the jury; it is whether the statement affected the decision of the jury." *See Jackson v. City of Cleveland*, 925 F.3d 793, 816 (6th Cir. 2019). In Jackson, the Sixth Circuit found that a reasonable jury could conclude that a falsified statement affected the decision of the jury "because the statement coerced [a key witness] to testify in conformance with it." *Id.* at 817. The court also noted that the witness "would have faced a real threat of prosecution for perjury had his testimony conflicted with his earlier signed statement." *Id.* The same is true here. Stewart testified at

trial that she did not know of Monson ever threatening Brown. But once she was shown her witness statement, she altered her testimony to conform with it. And her belief that the police might be "mad" at her if she did not cooperate in the investigation suggests that she had reason to fear a perjury charge. So, as in *Jackson*, a reasonable jury could conclude that the fabricated statement—which recounted Monson explicitly threatening Brown's life a few weeks before her murder—affected the decision of the jury.

Defendants' cursory arguments to the contrary do not alter this conclusion. Defendants argue that "*Jackson* illustrates that a fabrication of evidence claim must be based upon 'evidence' introduced at trial." (ECF No. 296, PageID.22378.) As explained, *Jackson* says just the opposite. See 925 F.3d at 816 (noting that the falsified witness statement was introduced in only one of the three plaintiffs' criminal trials and concluding that the statement could still form the basis of a fabrication-of-evidence claim for all three plaintiffs). And Defendants' argument that the prosecutor's habit of interviewing witnesses prior to trial is not relevant here. (ECF No. 296, PageID.22379.) Indeed, that portion of *Jackson* related to a separate way that the statement affected the decision of the jury in that case: the statement affected the prosecutor's decision to bring charges in the first instance. *See Jackson*, 925 F.3d at 816-17 ("If [the officers] had not fabricated [the witness] statement . . . charges would not have been brought, and, of course, a jury that is never empaneled is a jury that does not return a guilty verdict."). But Monson does not make a similar argument here. He only relies on the portion of *Jackson* addressed above, which found that "the falsified statement caused the

criminal verdicts because the statement coerced [the witness] to testify in conformance with it." *Id.* at 817. So Defendants' argument on this front is misplaced.

In conclusion, the Court finds that genuine issues of material fact exist with respect to Monson's claim that Simon and Crockett fabricated Cynthia Stewart's witness statement and that the statement affected the jury's decision to convict Monson. And the Court finds that neither Simon nor Crockett are entitled to qualified immunity. *See Jackson v. City of Cleveland*, 925 F.3d 793, 826 (6th Cir. 2019) (holding that the defendant "was on notice in 1975 that it was unlawful for him to fabricate evidence" in the same manner alleged here). So the motion for summary judgment on these fabrication-of-evidence claims is DENIED.

But despite the Court's invitation (ECF No. 292, PageID.22317), Monson made no arguments about his coerced-testimony claims based on these facts (*see generally* ECF No. 291). So the Court sees no reason to revisit its prior decision dismissing those claims. (ECF No. 292, PageID.22317.)

So, with the limitations already noted on the record (see ECF Nos. 292-293), the following claims survive: (1) a federal malicious-prosecution claim and a fabrication-of-evidence claim against Crockett; (2) a federal malicious-prosecution claim, a claim for violations of *Brady v. Maryland*, and a fabrication-of-evidence claim against Simon; (3) a federal malicious-prosecution claim, a coerced-confession claim, and a fabrication-of-evidence claim against Ghougoian; and (4) a federal malicious-prosecution claim and a fabrication-of-evidence claim against Braxton.

SO ORDERED.

/s/ Laurie J. Michelson
United States District Judge

Dated: December 6, 2022

SUMMARY JUDGMENT ORDER, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (NOVEMBER 9, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMARR MONSON,

Plaintiff,

v.

JOAN GHOUGOIAN, ET AL.,

Defendants.

Case No. 18-10638

Before: Honorable Laurie J. MICHELSON, United States District Judge.

ORDER ON PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT [237] AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [241]

The Court heard argument on the parties' cross-motions for summary judgment on October 28, 2022. And, as explained in more detail on the record and below, the Court granted Lamarr Monson's partial motion for summary judgment (ECF No. 237) and

granted in part and denied in part Defendants' motion for summary judgment (ECF No. 241).

Although the Court ruled on the two summary-judgment motions at the hearing, in the interest of completeness and to aid the parties' efforts going forward, the Court will set out the facts and then restate its ruling. As the Court noted on the record, the factual landscape post-discovery is not so different than the factual allegations in the pleadings. (*See* ECF Nos. 43, 187.)

I. Background

Monson claims that his constitutional rights were violated when he was investigated for and convicted of the murder of 12-year-old Christina Brown in 1997. The factual bases of his claims thus center on the investigation into her death and his eventual conviction.

But before proceeding, a brief word on the standard. When there are cross-motions for summary judgment, as there are here, the Court must consider each motion separately and take the facts in the light most favorable to the non-moving party. *See Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 442 (6th Cir. 2021). But, helpfully, the cross-motions here focus on different points of the investigation into Brown's murder. Monson's summary-judgment motion focused on his arrest at the crime scene. (*See generally* ECF No. 237.) While Defendants' motion focused on claims pertaining to the investigation into Brown's death and Monson's eventual prosecution, which generally started when Monson arrived at the police station. (*See generally* ECF No. 241.) So the Court takes the facts related to Monson's arrest at the scene in the light

most favorable to Defendants (to the limited extent they are disputed), but it takes the post-arrest facts in the light most favorable to Monson.

A. 1995

In October or November of 1995, a fire broke out at an apartment building on Boston Street in Detroit. (ECF No. 269-2, PageID.19225-19227.) Rather than repair the building, the landlord told all of the tenants to move out. (*Id.*) But a few tenants stayed, including Shellena Bentley, Kenneth Brown, and Linda Woods. (*Id.*; ECF No. 241-4, PageID.12901, 12965.)

Sometime after the fire, 22-year-old Lamarr Monson began selling drugs out of Apartment 7A. (ECF No. 241-8, PageID.13315.) Monson says he only "conduct[ed] business" there, otherwise preferring to stay with the mother of his daughter or with his parents. (*Id.* at PageID.13315, 13263, 13354.)

And around this time, Monson met 12-year-old Christina Brown and periodically saw her around the neighborhood. (ECF No. 241-8, PageID.13312-13313.) Monson believed Brown to be 17 or 18 years old. (*Id.* at PageID.13314.) Brown's childhood friend, Cynthia Stewart, recalls that she and Brown looked mature for their age and that they would frequently tell others that they were 18 or 19. (ECF No. 269-14, PageID. 19792.)

B. 1996

1.

Brown ran away from home in early January 1996. (ECF No. 269-13, PageID.19774.) Needing somewhere to go, she would sometimes stay in Apartment

7A because, according to Monson, "that was a convenient place for her . . . It was wintertime, it was cold; that place was warm, it had people around that she knew . . . [and at] times I would go get food for everybody." (ECF No. 241-8, PageID.13349.) While staying there, Brown occasionally sold drugs for Monson. (*Id.* at PageID.13344-13345.) But Monson says their relationship was "like brother and sister," and he denies ever having a sexual relationship with her. (*Id.* at PageID. 13320.)

2.

On January 19, 1996, Shellena Bentley was still living in the semi-abandoned apartment building. (ECF No. 269-2, PageID.19231.) After work that day, she invited her boyfriend, Robert Lewis, over. (*Id.*) The two planned to "just lay back and get high." (*Id.*) According to Bentley, Lewis visited Apartment 7A about three times to purchase drugs throughout the night. (*Id.* at PageID.19234.) Lewis' 1996 statement to the Detroit Police Department noted that he had purchased drugs from Brown around 10 or 11 p.m. and that Monson was not there. (ECF No. 269-6, PageID.19454.)

For his part, Monson says that he left the apartment shortly before midnight to spend the night with the mother of his daughter. (ECF No. 241-8, PageID. 13357; *see also* ECF No. 269-3, PageID.19399, 19414 (testimony of Monson's daughter's mother agreeing that he spent the night with her).) He says Brown was alive when he left. (ECF No. 241-8, PageID.13357.)

3.

Sometime around 4 or 5 a.m. on January 20, 1996, Bentley and Lewis ran out of both drugs and money. (ECF No. 269-2, PageID.19229.) So Lewis returned to 7A to see if he could buy drugs on credit. (*Id.* at PageID.19234.) According to Bentley, when Lewis returned, he was "dripping with blood. Blood was dripping off his fingernails . . . there was blood on his jacket, blood on his boots, blood on his pants . . . [and he said,] 'I think I killed that bitch.'" (*Id.* at PageID.19234-19239, 19270.) Bentley and Lewis fled. (*Id.* at PageID.19235.)

Around 10 a.m., Monson woke up at his daughter's mother's house. (ECF No. 241-8, PageID.13351.) He left the house around noon, briefly visited his parents' home, and then headed to the apartment building on Boston. (*Id.*; ECF No. 269-3, PageID.19418 (Monson's daughter's mother agreeing that he woke up around 10 am and left her home around noon).)

Monson arrived at the apartment building around 1:30 or 2 p.m. (ECF No. 241-8, PageID.13372; ECF No. 241-4, PageID.12913; ECF No. 237-11, PageID. 12571.) When he arrived, Lewis (who had apparently returned) and another neighbor, Linda Woods, were standing outside the building chatting. (ECF No. 241-8, PageID.13373.) Woods told Monson that she had tried to check on Brown earlier in the day and—though the door was partially open—she got no answer. (*Id.*; ECF No. 241-4, PageID.12910 (Woods' testimony); ECF No. 269-6, PageID.19450 (Lewis' statement).)

So Monson, Lewis, and Woods went to Apartment 7A to investigate. (ECF No. 241-8, PageID.13373,

13384; ECF No. 269-6, PageID.19450.) Upon their arrival, Monson immediately noticed that "everything [in the apartment] was in disarray." (ECF No. 241-8, PageID.13373.) Then he saw a badly beaten Brown "laying on the floor [of the bathroom] . . . alive, waving her hands at [him]." (*Id.* at PageID.13375.) There was blood "everywhere: walls, floor, everywhere" in the bathroom. (*Id.* at PageID.13385; *see also* ECF No. 241-12, PageID.14116-14119, 14128 (crime scene photos).) He recalled, "she was gargling blood, I told her to turn her head to the side to allow the blood to release, and I was going to get help." (ECF No. 241-8, PageID. 13375.)

Hysterical, Monson asked another neighbor, Kenneth Brown (no apparent relation to Christina Brown), to call 911. (ECF No. 241-8, PageID.13376; ECF No. 241-4, PageID.12971 (Kenneth Brown's testimony).) And Monson quickly drove to his sister's house, which was nearby, to call 911. (ECF No. 241-8, PageID.13376.) Monson returned, placed a blanket over Christina Brown, and—when he noticed she was unresponsive—started doing chest compressions. (*Id.* at PageID.13376.)

Around 2:10 p.m., Detroit Police Officers Vincent Crockett and Jerome Wilson, who are Defendants in this case, arrived on the scene. (ECF Nos. 234-8, 237-3.) Despite noting that "everyone wanted to walk out," Crockett told Monson, Woods, and Lewis to "sit on the bed" and that "everyone is going to stay here." (ECF No. 237-2, PageID.12105-12106.) In time, the trio was put in police cars and transported to the police station. (ECF No. 241-8, PageID.13394-13395; ECF Nos. 234-8, 237-3.) While Defendants are correct that Monson was not handcuffed and that there is "no evidence that

officers physically forced him into the car" (ECF No. 242, PageID.14383), Monson says he was "forced" to go "against his will" (ECF No. 237-2, PageID.12116; ECF No. 241-8, PageID.13395). And several officers testified that in 1996, it was customary for police to detain and transport homicide witnesses to the police station for questioning. (ECF No. 269-23, PageID.20296 (Braxton); ECF No. 269-10, PageID.19672 (Gallant); ECF No. 269-20, PageID.20102 (Ghougoian).)

EMTs arrived at the building shortly thereafter and transported Brown to the hospital, where she was pronounced dead. (ECF No. 272-2, PageID.20933; ECF No. 241-12, PageID.14093, 14107.)

Based on the amount of blood at the scene and Brown's wounds, the police and EMTs believed that Brown had been stabbed to death. (ECF Nos. 234-8, 237-3, 272-2, 272-3.) Indeed, the crime scene was processed as a "fatal stabbing." (ECF No. 231-2, PageID. 10992.) The Evidence Technician Report noted that there was blood on virtually every surface in the bathroom, that the bathroom window was broken from the inside, and that there was a bent, bloody kitchen knife in the sink. (*Id.* at PageID.10992.) It also noted that, on the floor of the bedroom, "wrapped in a white Wards mattress cover is the toilet tank top which is bloody." (*Id.*) The knife, toilet-tank top, and a few other items were tagged for evidence, and a technician lifted a number of prints for identification. (*Id.* at PageID.10993-10994.)

Monson, Woods, and Lewis arrived at the police station with Officers Crockett and Wilson. The witnesses were placed in separate rooms. (ECF No. 241-8, PageID.13396.) And Monson noticed that, while he waited, the other officers "just kind of repeatedly

talked as if I was the person that committed the crime." (*Id.* at PageID.13399.)

Around 3 p.m., Crockett and Wilson filled out their preliminary complaint reports. (ECF Nos. 234-8, 237-3.) Both reports indicated that Monson was a witness rather than a suspect. (ECF Nos. 234-8, 237-3.) According to Crockett's testimony during Monson's criminal trial and his deposition in this case, Robert Lewis spoke to him as he filled out his report. (ECF No. 241-13, PageID.14231, 14287; ECF No. 237-2, PageID.12120-12123.) Lewis apparently told Crockett that Monson and Brown were dating and having sex. (ECF No. 237-2, PageID.12120, 12126.) Crockett, in turn, told Investigator Barbara Simon, who is also a Defendant in this case. (ECF No. 241-13, PageID.14231, 14287; ECF No. 237-2, PageID.12120-12123.)

Around 3:30 p.m., Simon read Monson his *Miranda* rights and had him sign a "Constitutional Rights Certificate of Notification." (ECF No. 241-14, PageID. 14359.) Monson "asked to use the phone after the reading of my rights." (ECF No. 241-8, PageID.13404.) Simon apparently refused. (*See id.*)

Meanwhile, the police collected statements from the residents of the semi-abandoned apartment building (Kenneth Brown, Robert Lewis, and Linda Woods) and Brown's childhood friend, Cynthia Stewart. Monson believes that two of these statements were exculpatory and that the other two were falsified or otherwise unreliable.

First, at 4 p.m., Kenneth Brown (the neighbor who called 911) gave a statement. (ECF No. 241-9, PageID. 13646.) His statement said that Monson was Brown's boyfriend, but it also said that Monson "was out all

night, I seen him come in from my window just before he came and knocked on my door" following the discovery of her body. (*Id.*) At his deposition years later, Kenneth Brown said he had no actual knowledge that Monson was Brown's boyfriend, and he could not recall if he or the police officer provided that information. (ECF No. 241-9, PageID.13604.) He said, "I was mainly telling them that [Monson] wasn't there. That he was gone when that was happening, you know. And the one detective talking about I can't afford to tell them that." (*Id.* at PageID.13558.) Monson believes that statement was exculpatory because it supported his story that he was not at the building on the night of the murder. (ECF No. 269, PageID.19169.)

Next, around 4:05 p.m., Lewis gave a statement to the police that largely aligned with Monson's story. (ECF No. 269-6, PageID.19450.) He said that Monson arrived at the apartment building that afternoon, that Woods told Monson that the door of 7A was open, and that the trio went into the apartment to investigate. (*Id.* at PageID.19451.) He noted that they found Brown, that Monson started "pumping her chest," and that the EMTs and police soon arrived on the scene. (*Id.*) His statement also said that Lewis had purchased drugs from Brown around 10 or 11 p.m. the night prior, and that Monson was not there. (*Id.*) Monson argues that this statement was exculpatory because it noted that he had "attempted to aid and comfort the injured Christina Brown when he discovered her severely injured." (ECF No. 269, PageID.19192.)

Around 5:45 p.m., the police took a statement from Cynthia Stewart (also known as Paris Thompson), Brown's 13-year-old friend. (ECF No. 269-12, PageID.19770; ECF No. 269-14, PageID.19813.) The

statement—which was purportedly taken by Barbara Simon—says that Monson had threatened Brown's life about one month prior to her death, that they were "boyfriend and girlfriend," and that Monson routinely carried a knife. (ECF No. 269-12, PageID.19771-19772.) But in her deposition in this case, Stewart told a different story. She said that in 1996, two or three police officers found her, "handcuffed [her,] and put [her] in the back of the [police] car." (ECF No. 269-14, PageID.19809.) After they arrived at the station, the officers told her that Brown had been murdered, showed her a clear bag of Brown's blood-stained clothes, and kept asking her "if [she] wanted to go to jail maybe or end up like that, like [her] friend." (*Id.* at PageID.19820.) Brown took that to mean that the police would be "mad" at her and that Monson might hurt her if she did not cooperate. (*Id.* at PageID. 19908.) She continued, "they told me [Brown] was with . . . Lamarr Monson selling drugs somewhere. I did not even know [Brown and Monson] were together . . . this was all told to me by the[police]. I did not know that stuff. We had not seen each other for so long. . . . I didn't really know nothing about nothing." (*Id.* at PageID.19820-19821.) She denied that the signature on the statement was hers. (*Id.* at PageID.19833.) And Stewart did not recall speaking to any female officers, suggesting that perhaps Simon did not take her statement. (*Id.* at PageID.19899.) (At Monson's criminal trial, Crockett identified himself as one of the officers who interrogated Stewart. (ECF No. 241-13, PageID. 14297-14298; ECF No. 241-5, PageID.13154.))

Finally, around 7:45 p.m., non-party Sergeant Gallant took Woods' statement. (ECF No. 269-9, PageID. 19473.) Woods said that she saw Monson's car pull up

to the building around 7:30 a.m., and that the car "pulled out fast" about forty-five minutes later. (*Id.*) Woods' statement also said that Monson and Brown were dating, but it otherwise largely conformed to Monson's account of his arrival at the apartment that afternoon. (*Id.* at PageID.19473-19474.) At his deposition, Sgt. Gallant recalled that he thought Woods was lying and on drugs as he took her statement. (ECF No. 269-10, PageID.19664.)

Also around 7:45 p.m., Monson signed his First Statement to the police. (ECF No. 241-14.) But before he did so, Simon interrogated him for "hours," apparently insisting that he and Brown had had a sexual relationship. (ECF No. 241-8, PageID.13406.) Monson consistently denied it. (*Id.* at PageID.13439-13441.) In any case, according to Monson, his First Statement contained a mix of truthful and fictitious statements. (*Id.* at PageID.13410-13442.) For example, he says the First Statement truthfully conveyed most of his statements to Simon regarding the past 24 hours, including his denial of being at the building at 7:30 a.m. and his denial of any involvement in Brown's murder. (*Id.*) But it omitted the fact that Monson had spent the night with the mother of his daughter. (*Id.*) And it included allegedly fabricated statements that Brown was his girlfriend and that he and Brown had had sex in the days preceding her death. (*Id.* at PageID.13417-13437; 13439-13442.) Monson claims that he did not realize he was endorsing the information in the First Statement when he signed it, arguing that he only did so because Simon "instructed [him] to sign [his] signature." (*Id.* at PageID.13425.) At her deposition, Simon said she took the First Statement in question-

and-answer format and that she "wrote down what he told [her]." (ECF No. 237-10, PageID.12472, 12476.)

Only after signing the First Statement was Monson permitted to use the phone. (*Id.* at PageID.13442.)

At some point during the day, Monson also signed a consent form permitting the police to search his car. (ECF No. 269-10, PageID.19574-19575.) No blood was found in the car. (*Id.* at PageID.19577.)

Around 11 p.m., Monson was fingerprinted and taken to lock-up. (ECF No. 237-16, PageID.12702; ECF No. 241-8, PageID.13443.) He did not sleep that night. (ECF No. 241-8, PageID.13443, 13446.)

* * *

To summarize the events of the day, in the early morning hours of January 20, 1996, Robert Lewis came to his girlfriend, Shellena Bentley, covered in blood and admitted that he killed Christina Brown in the semi-abandoned apartment building. Then around 1:30 or 2 p.m., Monson went to the building, met up with Lewis and another neighbor (Linda Woods), and the three discovered a severely injured Brown. Monson and yet another neighbor (Kenneth Brown) both called 911. The police arrived and conveyed Monson, Woods, Lewis, and Brown to the police station for questioning. The police took statements from each of the witnesses, but Monson says some of the statements—including his own—were at least partially fabricated. Another was exculpatory but suppressed. And, toward the end of the day, Monson signed his First Statement to police, which "admitted" to having a sexual relationship with Brown, though it denied any connection to her murder. Monson was held overnight.

4.

Around 5 or 5:30 the next morning, on January 21, 1996, Monson was taken to see Joan Ghougoian, then the Chief Inspector of the Detroit Police Department. (ECF No. 241-8, PageID.13443, 13446.) (Ghougoian is a Defendant in this case.) Once in her office, Monson says Ghougoian told him that she "didn't believe that I did it. . . . She told me that they had a stack of evidence against me, and she placed her hand on a stack of files on her desk." (*Id.* at PageID.13446.) But then Ghougoian extended an olive branch: "she . . . told me that she wanted to help me, but they're going to charge me with first degree murder; but if I were to do another statement, or sign [an] information summary, as she put it, that she could have me home by that time tomorrow." (*Id.*) And then, "she continued to attempt to convince me to do a statement or sign another statement. She gave me references as to possibly the need for a self-defense scenario, and she would ramble a story about self-defense." (*Id.* at PageID.13447.) One such scenario was as follows: "she gave me a scenario of me coming home drunk or high, and getting into an argument with [Brown] to the point where she tried to stab me, and I took the knife from her, and we had a—a scuffle or whatever." (*Id.* at PageID.13448.) Then she said: "Now do you want to get charged, or do you want to go home[?] So I said, I want to go home. And she said, So you're going to sign? And I say, Yeah, I agreed to, and that's when she contacted the other officer to come in." (*Id.* at PageID.13447-13448.)

For her part, Ghougoian denies ever falsely promising any suspects that they could go home if they signed statements. (ECF No. 269-20, PageID.20011.)

And in her deposition, she agreed that, in 1996, "it was unlawful for a police officer to promise a suspect they could go home if they gave a statement implicating themselves in the commission of a crime where the police officer had neither the intention nor the authority to make good on that promise." (*Id.* at PageID.20097.)

After about three hours with Ghougoian, at around 8:25 a.m., Defendant Sergeant Charles Braxton entered the room and took Monson's Second Statement, which "admitted" to stabbing Brown in self-defense. (ECF No. 241-2.) Specifically, it says that Monson "had been out drinking all night" and came home in the early morning. (ECF No. 241-2, PageID.12801.) And it says that Monson removed some condoms from his pocket and went to the bathroom to remove a condom from his penis when Brown "charged" him with a butcher knife in a jealous rage. (*Id.*) The two struggled over the knife, and "as [Monson] was pushing her back the knife was bent in her hand and it struck her in the neck." (*Id.*) It says he left the apartment for a few hours only to return in the afternoon to call 911. (*Id.*)

Monson and Braxton dispute how the Second Statement came to be. Monson says: "I was sitting there 'sleep, half 'sleep, laying on the desk, somebody is typing, telling me to sign. Only thing on my mind is what I've been told, that I'd be going home at this time tomorrow. I'm being caught up in all this mix of stuff that I don't want to be involved in for something that I didn't do[.]" (ECF No. 241-8, PageID.13460-13461.) And he says that Braxton was "reading off of another piece of paper as he was typing in some occasions . . . [And Ghougoian] would come in and out of the room that they would confer with—even though I couldn't

hear what they were saying, I know it was applying to the second statement." (*Id.* at PageId.13461.) And Monson noted the similarity between the statement Braxton typed and the self-defense scenario Ghougoian had described earlier. (ECF No. 241-8, PageID.13465 ("Q: Somebody made this up, correct? A. Yes. Part of it was the scenario that was given to me in the beginning when I talked with Ms. Ghougoian. That's why I know where—where it's from.").)

But Braxton remembers things differently. Take, for example, this exchange from his deposition: "Q: But now after 22 years, you're able to remember that [Ghougoian] was only in the room for a minute, she never looked over your shoulder, she never proofed what you were typing; that's your testimony, correct? A: Yes." (ECF No. 269-23, PageID.20439.) And Braxton testified that he took Monson's statement in a question-and-answer format. (*Id.* at PageID.20432.)

After signing the Second Statement, Monson did not get to go home. Instead, he was returned to lock-up. (ECF No. 241-8, PageID.13474.)

At some point on the same day, the Medical Examiner's report came in. (ECF No. 241-12, PageID. 14093.) Although the ME found numerous stab wounds consistent with the police department's theory, he also noted that she had suffered a severe skull fracture and ultimately concluded that Brown's death was caused by "craniocerebral injuries which were the result of a beating." (*Id.* at PageID.14093-14105, 14113-14115.) This report was made available to police "the same day." (ECF No. 241-12, PageID.14065.)

And at some point the same day, Barbara Simon became the officer-in-charge of the investigation into

Brown's death. (ECF No. 237-10, PageID.12349.) As she later recalled, this required her to "put the case together. You do the lab work. . . . [Y]ou're supposed to go to the Wayne County Morgue. You have to sit in on the autopsy. I don't think I did that, though, that particular time. You prepare everything. You take it to the prosecutor. You talk to the prosecutor. You give them their package. You leave the file with them, and they will, you know, see what that person is charged with, murder 1, murder 2." (*Id.* at PageID.12349-12350.)

In accordance with her duties as the officer-in-charge, Simon sent an Investigator's Report to the prosecutor that very day. (ECF No. 237-19, PageID. 12726.) She recommended that the prosecutor charge Monson with first-degree murder. (*Id.*) The report notes that Brown was Monson's girlfriend and that an autopsy revealed that the "cause of death was a result of multiple stab wounds." (*Id.*) The report also included the following details: (1) that Stewart (Brown's friend) would testify that Monson had previously threatened Brown's life; (2) that Woods (the neighbor who entered the apartment with Monson and Lewis) saw Monson arrive at the building and depart 45 minutes later on the morning of the murder; (3) that Kenneth Brown (the neighbor who called 911) would testify that Monson and Brown were dating; and (4) that Braxton (the officer who took Monson's Second Statement) would testify that Monson admitted to stabbing Brown. (*Id.* at PageID.12726-12727.) The report omitted Kenneth Brown's statement that Monson was not home the morning of the murder, and it omitted Robert Lewis entirely. (ECF No. 269, PageID.19192.) At the bottom, the report said: "Statement/Confession:

See Def. Monson Statement," indicating that one or both of his statements were submitted to the prosecutor. (*Id.*)

Based on the Report, the prosecutor charged Monson with first-degree premeditated homicide that day. (*Id.* at PageID.12726.) Monson was arraigned the following day, January 22, 1996. (ECF No. 241-8, PageID.13474.)

* * *

To summarize the events of February 21, 1996, the day after Brown's murder: early that morning, Ghougoian interrogated Monson and promised him that he could go home if he signed a Second Statement. He agreed to the deal, and Braxton typed up the self-defense story that Ghougoian had contrived, where Monson "admitted" to stabbing Brown in self-defense during a lovers' quarrel. Monson signed it. Meanwhile, the Medical Examiner's report concluded that Brown died of craniocerebral injuries, not from being stabbed. Nonetheless, Simon submitted an Investigator's Report to the prosecutor indicating that Monson was Brown's boyfriend, that he admitted to stabbing her, and that she had died from the stab wounds. The report (according to Monson) also included fabricated information and omitted exculpatory information from various witnesses at the scene. Based on Simon's report, the prosecutor charged Monson with first-degree murder.

5.

On January 25, 1996, Simon received the results of the latent print examination. (ECF No. 269-24, PageID.20460.) The lab matched Monson's prints with

a print found on the bathroom mirror. (*Id.*) But his prints did not match either set of useable prints recovered from the bloody toilet-tank top. (*Id.*) One set matched Brown, but the lab noted that "there is still an unidentified usable print and palmprint left." (*Id.*)

6.

About a week later, on February 2, 1996, Monson had his preliminary exam (*i.e.*, his probable-cause hearing). Dr. Jeff Harkey, the pathologist who performed Brown's autopsy, testified. (ECF No. 237-11, PageID.12531.) He said the cause of death was "extensive injuries to [Brown's] brain and skull." (*Id.* at PageID.13531-13546.) He noted that, while an ordinary glass window could not have caused the fatal blow, a "toilet tank top is a heavy enough object." (*Id.*) Braxton and Simon also testified, and Monson's First and Second Statements were read aloud and entered into the record. (*Id.* at PageID.12580, 12591-12595, 12599, 12609, 12610-12614.)

The judge found probable cause to believe Monson committed first-degree murder. (*Id.* at PageID.12628-12631.) After relaying much of the information contained in the First and Second Statements, the court concluded that "the person inflicting these injuries was Defendant Lamarr Monson and both of his statements—although there was an attempt to exculpatory[—]there's clearly no indication of anyone else. The Court believes that there is probable cause to believe that the crime of First Degree Murder has been established. There is probable cause to believe that the Defendant committed the offense." (*Id.* at PageID.12631.)

Monson was bound over for trial. (*Id.*)

7.

Meanwhile, more evidence came in. On February 7, 1996, Simon received tapes of the calls Monson and Kenneth Brown made to 911. (ECF No. 237-18, PageID.12712; ECF No. 269-35, PageID.20595.)

And on February 14, the forensic analysis of the knife was completed. (ECF No. 269-28, PageID.20573.) The report indicated that a "print [was] raised and a[]photograph [was] taken of the raised print. Evidence turned over to the Property Section. Photograph and negative turned over to latent print section." (*Id.*) The report noted that Simon was the "case officer[.]" (*Id.*)

Monson claims that this—and other—exculpatory evidence was never disclosed to him. (*See* ECF No. 269, PageID.19196, 19207.) Monson says the 911 tapes were exculpatory because, without them, the prosecutor was able to make this argument in closing at his trial: "[T]he defendant makes himself the person that's so concerned, he goes and he calls 9-1-1 . . . I went back to the apartment building, and then I got a blanket and I put it over [Brown] . . . But, no, this is a blatant fabrication. You have heard no witness come in here and say that they saw that, or any evidence consistent with that." (ECF No. 241-5, PageID.13158-13159.) And Monson says the report on the knife "has never been produced[,]" and presumably the print on the knife would have matched Lewis. (*See* ECF No. 269, PageID.19195.)

8.

On May 17, 1996, Monson challenged the voluntariness of the Second Statement at a *Walker* hearing. (ECF No. 241-3.) Both Braxton and Monson testified.

(*Id.*) Braxton testified that he took the statement in question-and-answer format, and he denied making Monson any promises. (ECF No. 241-3, PageID.12812, 12816.)

At the *Walker* hearing, Monson agreed that the First Statement he made to Simon was "true and voluntarily given." (*Id.* at PageID.12826.) (At his deposition, Monson clarified: "My answer of yes to that question [at the hearing] was pertaining to the fact that I had no involvement in the murder of Christina Brown." (ECF No. 241-8, PageID.13326.)) But when Monson was asked if anyone had promised him anything in exchange for signing the Second Statement, he said yes. (*Id.*) He continued, Ghougoian "told me if I went with another statement, not a statement, but if I went with another—she called it an information summary, I signed this, and that I would be at home by this time tomorrow, and then that I would probably get out on personal bond, but as right now I was arrested, I was held under Murder I." (*Id.* at PageID.12832.) And when asked if he supplied the information in the Second Statement to Braxton, he said: "It was already theorized to me, the words. Like he asked questions . . . its like he asked some questions, but it was like I was laying down half asleep; a little bit . . . all I heard was typing." (*Id.*) And he said, "I was given an opportunity to read [the Statement], but I didn't. I just went by thinking I could trust what was going on, and just sign." (*Id.* at PageID.12838.)

The judge denied the motion to suppress, noting: "this is a matter of credibility, so far as my decision is concerned, and I think that the testimony of Sergeant Braxton outweighed the testimony of the defendant; the officer I would consider to be credible." (*Id.* at

PageID.12846.) She continued: "If you have a person who has been killed in an unnatural manner . . . and the defendant said he had something to do with it . . . that would certainly be sufficient for the People to file a charge . . . some sort of homicide." (*Id.* at PageID.12847.)

9.

Monson spent a year in jail awaiting trial. (*See* ECF Nos. 241-4, 241-13.)

During that time, Shellena Bentley, Robert Lewis' now-former girlfriend, called the police at least twice to tell them that they had the wrong person in jail for Brown's murder. (ECF No. 269-2, PageID.19271–19273, 19294.) The police never took Bentley's statement.

C. 1997

1.

In early 1997, about a year after Brown's murder and just before Monson's trial, the Detroit Free Press ran three articles on Chief Inspector Ghougoian. (ECF No. 269-23, PageID.20324.) For example, on February 27, 1997, a front-page story indicated that Ghougoian was being sued by a homicide investigator who claimed that Ghougoian pressured her to lie under oath about an illegally-obtained confession. (*Id.* at PageID.20329.) The article said "Ghougoian got . . . two men to confess after promising they could go home after giving their statements. Ghougoian then ordered [the officer] to take statements from the suspects and testify that Ghougoian had never spoken to them. When [the

officer] resisted, Ghougoian told her it was homicide protocol to keep her out of it." (*Id.*)

2.

Monson's three-day criminal trial began on March 3, 1997. (*See* ECF Nos. 241-4, 241-13, 241-5.)

At the start of the trial, the prosecutor sought to introduce Monson's fingerprint that was found on the bathroom mirror. (ECF No. 241-4, PageID.12858.) She said, "I had asked Barbara Simon if there had been any prints because I knew prints had been taken, and her representation was that there were no usable prints. That was true as to one form, but on another form, there is usable prints." (*Id.*) After the prosecutor said she had shared the fingerprint evidence with Monson's defense counsel that morning, the Court admitted it. (*Id.* at PageID.12861.) The report noting the "unidentified, usable print" on the toilet-tank top was read into evidence the following day. (ECF No. 241-13, PageID.14333-14334.)

At trial, Stewart (Brown's friend) and Woods (the neighbor who discovered Brown with Monson and Lewis) testified. (ECF No. 241-4, PageID.12853.)

Stewart, then 14 years old, testified largely in line with her statement to police the prior year. (ECF No. 241-4, PageID.12879-12896.) When Stewart was later asked at her deposition if she testified truthfully during Monson's trial, she said she just parroted what the police told her to say. (ECF No. 269-14, PageID. 19848, 19851 ("Q: Did anybody tell you what to say on the stand?" A: They did. Q: Who? A: . . . The cops. Q: Okay. Describe to me why you say that they made you say something on the stand?. . . . A: Because if I did not

want to go to jail or end up like [Brown], I need to say that I seen things that I didn't . . . It was them that told me all of these things. She never said nothing to me.").)

Woods—whose 1996 statement to police indicated that she saw Monson arrive at the building at 7:30 a.m. on the day of the murder and leave in a hurry about 45 minutes later—changed her account. (ECF No. 241-4, PageID.12896–12936.) After equivocating about whether she saw or heard Monson's car, she said she both saw and heard it. (*Id.* at PageID.12909, 12927, 12932.) But on cross-examination, she admitted that it would have been impossible to see the building's parking lot from her apartment. (*Id.* at PageID.12946.) And she admitted she had been nervous and on drugs when she gave her statement to police. (*Id.* at PageID.12947.)

Kenneth Brown (the neighbor who called 911), a medical examiner, an evidence technician, a DNA expert, Simon, Crockett, and Braxton also testified. (ECF No. 241-4, PageID.12853; ECF No. 241-13, PageID.14142.)

At the end of the second day of trial, Monson's defense counsel made an oral motion for a directed verdict, arguing that the only real evidence tying Monson to Brown's death was the Second Statement. (ECF No. 241-13, PageID.14335-14345.) The Court denied the motion the following day. (ECF No. 241-5, PageID.13071.)

Monson was convicted on March 7, 1997. (ECF No. 187, PageID.8942.)

3.

In August 1997, a Detroit Police Department Review Board investigation found, among other things, that Joan Ghougoian "promised two murder subjects that they would be allowed to go home in exchange for their statements" and that she "directed [an officer] to give false testimony in court concerning the statements taken from [the suspects]." (ECF No. 269-21, PageID.20150-20156.) In her deposition in this case, Ghougoian disagreed with most of the report's findings. (ECF No. 269-20, PageID.20034-20041.)

In time, Ghougoian retired from the force, and the review board case against her was dismissed. (ECF No. 269-20, PageID.20048.)

D. Post-Conviction

Over the following years, Monson appealed his conviction and sought various forms of post-conviction relief. (ECF No. 241-8, PageID.13489-13490.) And Shellena Bentley told the DPD that Monson was innocent and Lewis was guilty in 2005 and again in 2012. (ECF No. 269-2, PageID.19241, 19243, 19279.)

The Michigan Innocence Project became involved in Monson's case in 2012, about 16 years after Brown's death. (ECF No. 187, PageID.8935.) With its help and Bentley's assistance, the Wayne County Prosecutor's Office agreed to compare the unmatched print on the toilet-tank top to Robert Lewis'. (ECF No. 232-4, PageID. 11188.) It matched. (*Id.*) And more prints were discovered on the toilet-tank top. So the DPD sent it out for reexamination, noting that "[t]he victim was killed by blunt force trauma, and there was a bloody toilet tank lid at the scene, with prints on it. Two print lifts were

taken from the lid and analyzed, and one of them matched to an alternative suspect, Robert Lewis. But it is apparent from visual inspection of the tank lid that other prints are on it, including at least one that is bloody. Elimination is required." (ECF No. 269-30, PageID.20583.) These newly discovered prints also matched Lewis. (ECF No. 269-32.)

Armed with this evidence, the Clinic filed a motion for a new trial, which was granted in 2017. (ECF No. 166-9.) Later that year, the prosecutor's office dismissed the criminal case against Monson. (ECF No. 85-8, PageID.3104.)

Monson was released from prison in February 2017 after serving more than 20 years. (ECF No. 241-8, PageID.13275.)

E. Post-Release

Less than a year later, Monson brought suit against the City of Detroit, the DPD, the Chief of Police, Barbara Simon, Joan Ghougoian, Charles Braxton, Vincent

Crockett, and Jerome Wilson, alleging that many of his constitutional rights had been violated in 1996 and 1997 and that he had been maliciously prosecuted under Michigan law. (ECF Nos. 1, 187.) In an opinion on Defendants' motion to dismiss, the Court dismissed the City, DPD, and the Chief of Police, but many of Monson's claims against the other Defendants survived. *(See* ECF No. 43.)

After extensive discovery, both parties filed summary judgment motions. (ECF Nos. 237, 241.) As explained, the Court heard argument on the parties'

cross-motions for summary judgment on October 28, 2022.

II. Order

For the reasons set forth in the oral ruling on the record, Monson's partial motion for summary judgment (ECF No. 237) is GRANTED insofar as the jury will be advised that Monson was arrested without probable cause. However, a limiting instruction will also be given that this finding is not relevant to any of the remaining claims and is being shared merely to give the jury the full factual background of Monson's prosecution.

And for the reasons set forth in the oral ruling on the record, Defendants' motion for summary judgment (ECF No. 241) is DENIED IN PART and GRANTED IN PART.

Defendants' motion on Monson's malicious-prosecution claims against Crockett, Simon, Ghougoian, and Braxton is DENIED, with certain limitations noted on the record. The motion is GRANTED as to Wilson.

Defendants' motion on Monson's *Brady* claim against Simon is also DENIED, with certain limitations noted on the record.

Defendants' motion on Monson's coerced-confession claim against Ghougoian is DENIED, but the motion against Braxton is GRANTED.

Defendants' motion on Monson's fabrication-of-evidence claims against Simon, Ghougoian, and Braxton is DENIED, except insofar as this claim relates to Stewart's statement or trial testimony. (However, as explained on the record, if Monson can provide a

citation to the record showing that Stewart's 1996 statement to police was introduced at trial, the Court may reconsider this portion of the ruling.)

However, Defendants' motion on Monson's coerced-testimony claim against Crockett and Wilson is GRANTED because there is no evidence that these officers were involved in coercing Stewart's trial testimony. (However, as explained on the record, if Monson can provide a citation to the record showing that Stewart's 1996 statement to police was introduced at trial, the Court may reconsider this portion of the ruling.)

And the Court DECLINES supplemental jurisdiction over Monson's state-law malicious-prosecution claim.

In sum, with the limits noted above and on the record, the following claims remain against each Defendant: (1) a federal malicious-prosecution claim against Crockett; (2) a federal malicious-prosecution claim, a claim for violations of *Brady v. Maryland*, and a fabrication-of-evidence claim against Simon; (3) a federal malicious-prosecution claim, a coerced-confession claim, and a fabrication-of-evidence claim against Ghougoian; and (4) a federal malicious-prosecution claim and a fabrication-of-evidence claim against Braxton. As no claims against Wilson survive, he will be DISMISSED.

SO ORDERED.

/s/ Laurie J. Michelson
United States District Judge

Dated: November 9, 2022