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Barnes v. City of New York

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In the
United States Court of Appeals
For the Second Circuit

August Term, 2021

No. 21-33

TOMMY BARNES,

Plaintiff-Appellant,

v.

CITY OF NEW YORK,
SERGEANT KENNETH CAESAR, SHIELD NO. 2940,
OFFICER MICHAEL MANETTA, SHIELD NO. 241,
OFFICER NICHOLAS MAUCELI, SHIELD NO. 9894,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of New York
No. 18-cv-7119
(Submitted January 21, 2022; Decided May 22, 2023)

Before: WALKER, SULLIVAN, and LEE, *Circuit Judges.*

1 Plaintiff-Appellant Tommy Barnes, proceeding *pro se*, brings this action
2 against several police officers and the City of New York asserting various claims
3 under 42 U.S.C. § 1983 and New York state law based on his allegation that police
4 officers falsely claimed that they observed him selling drugs. At the conclusion of
5 his criminal trial, Barnes was acquitted of a drug sale charge and convicted of a
6 drug possession charge. Barnes subsequently filed this civil action, and the district
7 court dismissed all of Barnes's claims.

8
9 We agree with the district court's dismissal of all of the federal claims except
10 for the dismissal of Barnes's due process claim based on the use of fabricated
11 evidence regarding the drug sale charge of which he was acquitted. Specifically,
12 the district court erred in concluding that because Barnes was arrested, detained,
13 prosecuted, and convicted for drug possession simultaneous to the drug sale
14 proceedings, this precludes, as a matter of law, his ability to plead a deprivation
15 of liberty caused by the drug sale prosecution. Because the prosecution of an
16 individual based on fabricated evidence may itself constitute a deprivation of
17 liberty, even in the absence of custody or a conviction, Barnes was not required to
18 show that his drug sale prosecution resulted in additional custody or a conviction
19 in order to sufficiently allege a claim at the pleading stage.

20
21 We therefore **AFFIRM IN PART** and **VACATE IN PART** the district court's
22 dismissal of Barnes's claims and **REMAND** for proceedings consistent with this
23 Opinion.

24
25 Judge Sullivan dissents in a separate opinion.

26
27
28 Tommy Barnes, *pro se*, Comstock,
29 NY, *for Plaintiff-Appellant*.

30
31 Scott Shorr and Jesse A. Townsend,
32 *for Georgia M. Pestana, Corporation*
33 *Counsel of the City of New York,*
34 *New York, NY, for Defendants-*
35 *Appellees.*
36

1 EUNICE C. LEE, *Circuit Judge*:

2 Plaintiff-Appellant Tommy Barnes, proceeding *pro se*, brings this action
3 against several police officers and the City of New York asserting various claims
4 under 42 U.S.C. § 1983 and New York state law based on his allegation that police
5 officers falsely claimed that they observed him selling drugs. Following his arrest
6 by the officers, which resulted in the seizure of drugs from his person, Barnes was
7 charged with separate counts of unlawfully selling and possessing drugs. At the
8 conclusion of a jury trial, Barnes was acquitted of the drug sale charge and
9 convicted of the drug possession charge. The City of New York and the defendant
10 police officers moved to dismiss Barnes's civil action on a number of different
11 grounds, and the district court granted the defendants' motion in full.

12 We agree with the district court's dismissal with respect to all of the federal
13 claims alleged by Barnes except for the dismissal of his due process claim based
14 on the use of fabricated evidence as to the drug sale charge of which he was
15 acquitted. Specifically, the district court erred in concluding that because Barnes
16 was arrested, detained, prosecuted, and convicted for drug possession
17 simultaneous to the drug sale proceedings, this precludes, as a matter of law, his
18 ability to plead a deprivation of liberty caused by the drug sale prosecution.

1 Because the prosecution of an individual based on fabricated evidence may itself
2 constitute a deprivation of liberty for purposes of the due process right to a fair
3 trial, Barnes was not required to show that his drug sale prosecution resulted in
4 additional custody or a conviction in order to sufficiently allege a claim at the
5 pleading stage. Therefore, we **AFFIRM IN PART** and **VACATE IN PART** the
6 district court's dismissal of Barnes's claims and **REMAND** for proceedings
7 consistent with this Opinion.

8 **BACKGROUND**

9 On January 21, 2014, Tommy Barnes was arrested by Defendants-Appellees
10 Sergeant Kenneth Caesar, Officer Michael Manetta, and Officer Nicholas Mauceli
11 (the "Defendant Officers") of the City of New York Police Department for
12 allegedly selling drugs. Officer Manetta executed a Criminal Court complaint that
13 same day, attesting that Officer Mauceli witnessed Barnes exchange money with
14 another individual and recovered from Barnes's person a container "inside of
15 which were twenty six (26) bags containing crack cocaine." Dist. Ct. Dkt. 63-3.
16 Barnes was detained following his arrest.

17 Barnes stood trial for both criminal sale of a controlled substance and
18 criminal possession of a controlled substance. The Defendant Officers testified at

1 trial, including as to the alleged drug exchange. In June 2016, a jury acquitted
2 Barnes of the drug sale charge but found him guilty of drug possession, and he
3 was sentenced principally to fifteen years' imprisonment. *See People v. Barnes*, 173
4 A.D.3d 565 (1st Dep't 2019).

5 Barnes, proceeding *pro se*, filed this civil suit in federal district court on
6 August 7, 2018, against the Defendant Officers and the City of New York (together,
7 "Defendants"),¹ alleging that the Defendant Officers falsely claimed that they
8 observed Barnes selling a controlled substance and that they conveyed these false
9 statements to the New York County District Attorney's Office, resulting in
10 Barnes's prosecution. Barnes asserted 42 U.S.C. § 1983 claims of fabricated
11 evidence, malicious prosecution, false arrest, excessive use of force, unlawful
12 search and seizure, failure to intervene, abuse of process, and violations of his
13 rights to a fair trial and due process; a 42 U.S.C. § 1985 conspiracy claim; and New
14 York state law claims. Defendants moved for judgment on the pleadings under
15 Federal Rule of Civil Procedure 12(c). Barnes opposed the motion and also asked
16 the district court to construe his § 1983 suit as a habeas petition.

¹ Because Barnes does not address on appeal the dismissal of his claims against the City of New York, we consider these claims abandoned. *See LoSacco v. City of Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995).

1 The district court granted Defendants’ motion. *Barnes v. City of New York*,
2 No. 18-CV-7119, 2020 WL 6947424 (S.D.N.Y. Nov. 25, 2020) (Nathan, J.). The
3 district court dismissed as time-barred Barnes’s claims for false arrest, excessive
4 force, unlawful search and seizure, failure to intervene, and conspiracy. *Id.* at *2–
5 3. The district court also dismissed Barnes’s abuse of process claim, reasoning that
6 Barnes did not allege that state officials had a collateral objective other than his
7 conviction. *Id.* at *6. The district court similarly dismissed Barnes’s malicious
8 prosecution claim, concluding that he failed to show a deprivation of liberty based
9 on the drug sale charge because he was detained and imprisoned for drug
10 possession at the same time. *Id.* at *5–6. Finally, as to Barnes’s fabricated-evidence
11 claim, the district court concluded that Barnes failed to plausibly allege that the
12 officers knowingly made false statements and that the officers’ statements, even if
13 knowingly fabricated, had caused a deprivation of liberty—again because Barnes
14 “would have been held in the same place for the same amount of time” on account
15 of his charge and conviction of drug possession. *Id.* at *4–5. Having dismissed
16 Barnes’s federal claims, the district court declined to exercise supplemental
17 jurisdiction over Barnes’s claims arising under New York law. *Id.* at *10. The

1 district court did not address Barnes's request to construe his complaint as a
2 petition for habeas relief. This appeal followed.

3 We review *de novo* the district court's grant of judgment on the pleadings,
4 accepting all factual allegations as true and drawing all reasonable inferences in
5 Barnes's favor. *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301, 305 (2d
6 Cir. 2021). Barnes's *pro se* submissions are reviewed with "special solicitude" and
7 "must be construed liberally and interpreted to raise the strongest arguments that
8 they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474–75 (2d Cir.
9 2006) (internal quotation marks, emphasis, and citations omitted).

10 For the reasons explained below, we **AFFIRM** in part and **VACATE** in part
11 the district court's dismissal of Barnes's claims.

12 DISCUSSION

13 On appeal, Barnes challenges the district court's dismissal of his arrest-
14 related, abuse of process, malicious prosecution, and fabricated-evidence claims.
15 He also asserts that the district court erroneously failed to construe his § 1983 suit
16 as also seeking habeas relief. We address these arguments in turn.

17 Arrest-Related and Abuse of Process Claims

1 The district court properly dismissed Barnes’s false arrest, excessive force,
2 unlawful search and seizure, failure to intervene, and § 1985 conspiracy claims as
3 time-barred. Although state law determines the statute of limitations, federal law
4 governs the accrual of claims, and claims brought under §§ 1983 and 1985 typically
5 accrue “when the plaintiff knows or has reason to know of the injury which is the
6 basis of his action.” *Pearl v. City of Long Beach*, 296 F.3d 76, 80–81 (2d Cir. 2002)
7 (internal quotation marks omitted); see *Cornwell v. Robinson*, 23 F.3d 694, 703 (2d
8 Cir. 1994) (applying same accrual and tolling rules under both §§ 1983 and 1985).
9 In New York, such actions are subject to a three-year statute of limitations. *Hogan*
10 *v. Fischer*, 738 F.3d 509, 517 (2d Cir. 2013); *Cornwell*, 23 F.3d at 703; see N.Y. C.P.L.R.
11 § 214 (McKinney 2021).

12 Barnes’s arrest-related claims began to accrue when he was arrested,
13 charged, and detained in January 2014. See *Pearl*, 296 F.3d at 85 (plaintiff was
14 aware of cause of action at time of arrest). Barnes filed his complaint in August
15 2018, over a year after the limitation period expired in January 2017. The district
16 court thus properly dismissed these claims as time-barred.

17 The district court also properly dismissed Barnes’s abuse of process claim,
18 which was based on the filing of an allegedly false criminal complaint, because

1 Barnes did not allege that the arresting officers had a collateral purpose beyond
2 his prosecution. *Morales v. City of New York*, 752 F.3d 234, 238 (2d Cir. 2014) (per
3 curiam) (“In order to state a [§ 1983] claim for abuse of process, a plaintiff must
4 establish that the defendants had an improper *purpose* in instigating the action . . .
5 [and] that they aimed to achieve a collateral purpose beyond or in addition to his
6 criminal prosecution.” (alterations in original) (quoting *Savino v. City of New York*,
7 331 F.3d 63, 77 (2d Cir. 2003))).

8 **Malicious Prosecution Claim**

9 Barnes’s malicious prosecution claim as to the drug sale charge was
10 properly dismissed. However, we affirm the dismissal on a different ground than
11 that relied upon by the district court, which held that Barnes failed to show a
12 deprivation of liberty caused by the drug sale charge, given his contemporaneous
13 detention and conviction on the drug possession charge. Malicious prosecution
14 claims sound in the Fourth Amendment, which proscribes the “wrongful initiation
15 of charges without probable cause.” *Thompson v. Clark*, 142 S. Ct. 1332, 1337 (2022).
16 “[A] Fourth Amendment claim under § 1983 for malicious prosecution requires
17 the plaintiff to show a favorable termination of the underlying criminal case
18 against him.” *Id.* at 1338. Here, although Barnes was acquitted of the drug sale

1 charge, he was convicted of the drug possession charge. He thus cannot allege a
2 favorable termination of his criminal proceedings for purposes of his malicious
3 prosecution claim. *See DiBlasio v. City of New York*, 102 F.3d 654, 658–59 (2d Cir.
4 1996) (affirming dismissal of malicious prosecution cause of action where
5 defendant was acquitted of criminal sale of a controlled substance but convicted
6 of criminal possession of a controlled substance). We accordingly affirm the
7 dismissal of Barnes’s malicious prosecution claim because he cannot show that his
8 “criminal prosecution ended without a conviction.” *Thompson*, 142 S. Ct. at 1341.

9 **Fabricated-Evidence Claim**

10 The district court erred, however, by concluding that Barnes did not
11 sufficiently plead his fabricated-evidence claim because he failed to allege a
12 deprivation of liberty caused by the drug sale charge. While it is true that claims
13 based on a deprivation of liberty under the Fourth Amendment may require
14 custody or conviction, a Fourteenth Amendment claim based on fabricated
15 evidence does not. Because Barnes’s fabricated-evidence claim sounds in the Due
16 Process Clause, it is not defeated by the fact that Barnes also was in custody for,
17 convicted of, and sentenced on the drug possession charge. The fabricated-
18 evidence claim seeks redress for Barnes’s *prosecution* on the drug sale charge of

1 which he was acquitted and which he plausibly alleges was tainted by fabricated
2 evidence. As discussed below, we hold that Barnes sufficiently pleaded the
3 elements of this claim.

4 “To succeed on a fabricated-evidence claim, a plaintiff must establish that
5 ‘an (1) investigating official (2) fabricate[d] information (3) that is likely to
6 influence a jury’s verdict, (4) forward[ed] that information to prosecutors, and (5)
7 the plaintiff suffe[red] a deprivation of life, liberty, or property as a result.’” *Ashley*
8 *v. City of New York*, 992 F.3d 128, 139 (2d Cir. 2021) (alterations in original) (quoting
9 *Garnett v. Undercover Officer C0039*, 838 F.3d 265, 279 (2d Cir. 2016)).

10 A § 1983 plaintiff “may sue for denial of the right to a fair trial based on a
11 police officer’s fabrication of information . . . when the information fabricated is
12 the officer’s own account of his or her observations of alleged criminal activity,
13 which he or she then conveys to a prosecutor.” *Garnett*, 838 F.3d at 274. That is
14 what Barnes alleged here.

15 As an initial matter, Barnes met his pleading obligation to present more than
16 conclusory allegations that the officers fabricated the drug sale account. He
17 alleged that he was talking to a friend when the Defendant Officers arrested him;
18 that the Defendant Officers knowingly lied to the prosecutor in relaying that they

1 witnessed Barnes sell drugs; that a prosecution was commenced based on
2 fabricated evidence; that fabricated evidence was adduced at trial; and that Barnes
3 was ultimately acquitted of the drug sale charge. These are more than “bare
4 assertions . . . amount[ing] to nothing more than a formulaic recitation of the
5 elements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) (internal quotation marks
6 omitted). At this stage, these allegations are sufficient to satisfy the first four
7 elements of a fabricated-evidence claim. *See Ashley*, 992 F.3d at 139. Further,
8 before discovery, it is unclear what other facts Barnes could be expected to allege
9 in order to show that Defendants’ conduct was knowing, as opposed to mistaken.
10 *See Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 185 (2d Cir. 2012) (“The
11 choice between two plausible inferences that may be drawn from factual
12 allegations is not a choice to be made by the court on a Rule 12(b)(6) motion.”).
13 For these reasons, the district court erred in concluding that Barnes did not
14 plausibly allege that the Defendant Officers knowingly made false statements.

15 Likewise, as we explain below, Barnes’s allegations regarding the use of
16 fabricated evidence are sufficient as to the fifth element, which requires a
17 deprivation of liberty. *See Garnett*, 838 F.3d at 277. The district court, applying the
18 same reasoning it used to analyze the malicious prosecution claim, concluded that

1 Barnes failed to allege a deprivation of liberty as to the drug sale charge because
2 he was held in custody for and convicted of the drug possession charge during the
3 same period. Thus, the district court reasoned, because Barnes served no
4 additional time in custody, he could not show a deprivation of liberty that was
5 caused by the allegedly fabricated evidence related to the drug sale. This was
6 error.

7 First, it bears emphasizing that fabricated-evidence and malicious
8 prosecution claims address different rights. While fabricated-evidence claims
9 allege violations of the right to due process under the Fifth and Fourteenth
10 Amendments, malicious prosecution claims essentially allege violations of the
11 Fourth Amendment right to be free from unreasonable seizure. As a result, the
12 claims have different standards. *See Smalls v. Collins*, 10 F.4th 117, 132–33 (2d Cir.
13 2021).

14 Moreover, to insist that a deprivation of liberty requires custody or a
15 conviction overlooks the fact that Barnes’s prosecution on the drug sale charge is
16 itself a deprivation of liberty. For fabricated-evidence claims based on due
17 process, we have previously recognized that a plaintiff’s “prosecution” can be a
18 “deprivation of liberty.” *Ashley*, 992 F.3d at 139 (describing “judicial proceedings”

1 as “liberty-depriving” in the context of a fabricated-evidence claim). The use of
2 fabricated evidence in initiating a prosecution or at trial may amount to a
3 deprivation of liberty even in the absence of a conviction based on the fabricated
4 evidence and even when, as here, a plaintiff simultaneously was charged,
5 detained, tried, and convicted for a separate offense.

6 Barnes’s prosecution for drug sale on the basis of allegedly fabricated
7 evidence deprived him of liberty in violation of his right to due process. This is
8 true even without reference to the time Barnes spent in pre-trial detention for both
9 the drug sale charge and the drug possession charge. Barnes’s *prosecution* for the
10 drug sale charge was a violation of due process because liberty may be deprived
11 by consequences beyond custody. As we have said, “being framed and falsely
12 charged damages an individual’s reputation, requires that individual to mount a
13 defense, and places him in the power of a court of law.” *Garnett*, 838 F.3d at 279
14 (alteration and internal quotation marks omitted). These non-custodial “collateral
15 consequences,” *id.*, are not the same for every offense in a multi-count prosecution.
16 The reputational damages, defenses that must be mounted, and contours of the
17 court’s power over a defendant can all differ when the defendant is prosecuted for
18 a drug sale charge in addition to or instead of being prosecuted for a drug

1 possession charge.² Barnes was prosecuted for two different charges and suffered
2 different deprivations of liberty as a result. One of these prosecutions was
3 allegedly based on fabricated evidence, in violation of due process.

4 In fact, we have held that there may be a violation of due process based on
5 fabricated evidence even without the use of fabricated evidence at trial because
6 the “fair trial right protects against deprivation of liberty that results when a police
7 officer fabricates and forwards evidence to a prosecutor that would be likely to
8 influence a jury’s decision, *were that evidence presented to the jury.*” *Frost v. N.Y.C.*
9 *Police Dep’t*, 980 F.3d 231, 250 (2d Cir. 2020), *cert. denied sub nom. City of New York*
10 *v. Frost*, 142 S. Ct. 1666 (2022). In *Frost*, an allegation that fabricated evidence
11 influenced the decision to initiate prosecution was enough to state a due process
12 claim, even though the allegedly fabricated evidence was not introduced at trial.
13 *Id.* at 248–50. This is because the forwarding of the evidence may have resulted in
14 the “liberty-depriving” occurrence of Frost’s prosecution. *Ashley*, 992 F.3d at 139;

² Regarding reputational damage, an accusation of being a drug dealer would certainly seem to be more damaging than being accused of being a possessor, and perhaps merely a user, of drugs. Similarly, a person charged only with possession based on the recovery of drugs from his person, as Barnes may have been in the absence of the allegedly fabricated evidence of police witnessing a sale, would have had a wider range of defenses that he could mount, including that the drugs in his possession were for personal use, and would not have had to raise a defense challenging the credibility of the police.

1 see *Frost*, 980 F.3d at 251 (explaining same). Here, not only did Barnes allege that
2 fabricated evidence resulted in his prosecution, but, unlike in *Frost*, the allegedly
3 fabricated evidence was presented to the jury during Barnes’s trial for the drug
4 sale charge. This was more than sufficient to allege a deprivation of liberty.

5 In rejecting our conclusion that Barnes has alleged a deprivation of liberty
6 sufficient for his fabricated-evidence claim to proceed, the dissent, despite
7 acknowledging the broad due process foundation of a fabricated-evidence claim,
8 ultimately recognizes only custody as a deprivation of liberty. Thus, for the
9 dissent, the bottom line is that because “Barnes ‘would have been held in the same
10 place for the same amount of time,’” even without the fabricated-evidence charge,
11 *post* at 5, his claim must fail given that he alleges no “additional” liberty
12 deprivation traceable to the fabricated evidence, *post* at 7, “that he would not have
13 already suffered based on the possession charge alone,” *post* at 1. Contrary to the
14 dissent’s suggestion, that is not the law of this Circuit.

15 Whether the deprivation is custodial or noncustodial, “we have long held
16 ‘that Section 1983 liability attaches for knowingly falsifying evidence even where
17 there *simultaneously* exists a lawful basis for the deprivation of liberty’ that the
18 plaintiff suffered.” *Smalls*, 10 F.4th at 132 (alteration omitted) (emphasis added)

1 (quoting *Victory v. Pataki*, 814 F.3d 47, 64 (2d Cir. 2016)) (citing *Ricciuti v. N.Y.C.*
2 *Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997)). Applied to Barnes’s fair trial claim,
3 this means that even if the simultaneous drug possession charge of which Barnes
4 was convicted provided a lawful basis for some of the deprivations Barnes
5 suffered, it would not sever the causal link between the fabricated evidence and
6 those same deprivations, as well as others, that Barnes suffered as a result of the
7 drug sale prosecution.

8 In *Ricciuti*, this court recognized that a defendant’s fabricated-evidence
9 claim sufficiently alleged a deprivation of liberty even though the defendant was
10 simultaneously prosecuted for additional counts that resulted in his custody. *See*
11 124 F.3d at 129–30. While the plaintiffs in *Ricciuti* were charged with felony assault
12 and misdemeanor aggravated harassment, it was the less serious offense—the
13 aggravated harassment—that was allegedly based on fabricated evidence.³

³ The plaintiffs in *Ricciuti* were initially charged with second-degree assault, a class D felony punishable by imprisonment for up to seven years. *Ricciuti*, 124 F.3d at 126; N.Y. Penal Law §§ 120.05, 70.00. The additional charge, based on fabricated evidence, was second-degree aggravated harassment—a class A misdemeanor punishable by imprisonment for one year at most. *Ricciuti*, 124 F.3d at 126–27; N.Y. Penal Law §§ 240.30, 70.15. The additional charge based on fabricated evidence thus carried a much *smaller* penalty than the charge not based on fabricated evidence. Even when the assault charge was later reduced to the third degree, it became a class A misdemeanor—the *same* as the additional harassment charge based on fabricated evidence. *Ricciuti*, 124 F.3d at 127; N.Y. Penal Law § 120.00.

1 Although the fabricated evidence in *Ricciuti* caused the assault to be classified as
2 bias related, neither this classification nor the charge itself created additional
3 custodial consequences. In fact, it was the felony assault charge *alone* that rendered
4 the plaintiffs “ineligible for release on desk appearance tickets” and thus caused
5 them “to remain in jail for more than 30 hours.” *Id.* at 126; *see* N.Y. Crim. Proc.
6 Law § 140.20(3) (McKinney 1988) (requiring appearance tickets or pre-arraignment
7 bail for non-felony offenses). Despite the fact that the misdemeanor charge based
8 on fabricated evidence resulted in no additional incarceration, we held that the
9 claim could go forward.

10 This court’s holding in *Ricciuti* could not have been any clearer: “When a
11 police officer creates false information likely to influence a jury’s decision and
12 forwards that information to prosecutors, he violates the accused’s constitutional
13 right to a fair trial, and the harm occasioned by such an unconscionable action is
14 redressable in an action for damages.” 124 F.3d at 130. The instant case fits *Ricciuti*
15 to a tee.

16 Moreover, our recognition that prosecution itself is a deprivation of liberty
17 does not dispense with the causation requirement, as argued by the dissent, but it
18 does make the causation in this case obvious. The allegedly false statement made

1 to the prosecutor—that an officer saw Barnes selling drugs—was indisputably a
2 cause of Barnes’s prosecution for drug sale. Barnes’s prosecution for drug sale
3 deprived him of liberty independently of whatever consequences flowed from the
4 drug possession charge.⁴

5 By arguing that the fact of Barnes’s drug possession charge defeats
6 causation for his fabricated-evidence claim based on the drug sale charge, the
7 dissent repackages the probable cause defense under the label of proximate cause
8 and attempts to insert that defense into the due process analysis. The purported
9 analogy is simple. When the police’s fabrication of evidence results in a person
10 being charged with a crime, that person’s *Fourth Amendment claims* will be defeated
11 if there was independent *probable cause* for the deprivation of liberty. *Frost*, 980
12 F.3d at 242. Under the dissent’s framework, when the police’s fabrication of
13 evidence results in a person being charged with a crime, that person’s *Fifth*

⁴ The causation here is far more obvious than in *Ashley*, a case the dissent emphasizes to make the unremarkable point that causation sometimes cannot be shown. Ashley was initially prosecuted on a complaint that contained allegedly false evidence. *Ashley*, 992 F.3d at 133–34. The first complaint was superseded by a second, which contained different allegedly false evidence but charged Ashley with the same offenses. *Id.* at 134. Ashley based his fabricated-evidence claim solely on the first complaint and lost at trial, where his motion for judgment as a matter of law was denied. *Id.* at 135. Reviewing the denial, this Court held simply “that the evidence at trial did not establish causation as a matter of law.” *Id.* at 139

1 *Amendment claims* will be defeated if there was an independent *proximate cause* for
2 the deprivation of liberty. However, “probable cause, which is a Fourth
3 Amendment concept, should not be used to immunize a police officer who violates
4 an arrestee’s non-Fourth Amendment constitutional rights.” *Garnett*, 838 F.3d at
5 278 (citing *Ricciuti*, 124 F.3d at 129–30). While a malicious prosecution claim will
6 be defeated by a showing of probable cause (that is, by a showing of an
7 independently reasonable basis for the deprivation of liberty), a fabricated-
8 evidence claim will not. *Id.* We have repeatedly rejected the effort to import
9 probable cause into the due process analysis.

10 In *Frost*, we rejected this misapplication of the causation requirement for two
11 reasons. First, “even if a privileged arrest accounted for at least some portion of
12 the deprivation of a § 1983 plaintiff’s liberty, the plaintiff may still suffer a
13 deprivation of liberty as a result of an officer’s fabrication.” *Frost*, 980 F.3d at 248
14 (alterations, citation, and internal quotation marks omitted). Second, a
15 prosecutor’s decision as to whether to pursue charges may depend on their overall
16 assessment of the case’s strength, “which in turn may be critically influenced by

1 fabricated evidence,” even where other corroborating evidence also exists. *Id.*
2 (internal quotation marks omitted).⁵

3 We encountered the dissent’s view of the causation requirement also in
4 *Garnett*, where the defendant officer argued that we should “interpret[] the ‘as a
5 result’ language of the fifth element [of a fabricated-evidence claim] to mean that
6 the falsified information must be the *only* reason the plaintiff suffered a
7 deprivation of his liberty, such that a privileged arrest is sufficient to negate this
8 element of an arrestee’s Section 1983 claim.” 838 F.3d at 277. We noted that this
9 maneuver “places more weight on the ‘as a result’ language than it can bear,” and
10 we rejected it. *Id.*

⁵ The dissent asserts that in *Frost* “the evidence indicated that, but for the fabricated identification by the non-suspect witness, Frost may not have been prosecuted at all.” *Post* at 10. In fact, Frost neither adduced such evidence nor made such an argument. Following a six-month lull in a murder investigation, detectives allegedly coerced a witness (Vega) into identifying Frost as the shooter. *Frost*, 980 F.3d at 240. Three days later, however, “in an apparent coincidence,” detectives encountered and interviewed *another* witness (McLaurin) who *also* identified Frost as the killer. *Id.* at 239. This second identification, independent from the fabricated evidence, meant that Frost would have been prosecuted even without the fabricated evidence. Indeed, the detective defendants made exactly that argument, and the court found it “irrelevant that ‘there was sufficient evidence to prosecute Frost without Vega’s [coerced] identification.’” *Id.* at 248. The dissent’s assertion is thus flatly wrong and fails to distinguish *Frost* from the case at hand.

1 Finally, we rejected an attempt to import probable cause into the due
2 process analysis also in *Ricciuti*. We did so “decisively” and in terms the *Garnett*
3 court saw fit to quote at length. *Id.* at 275. The occasion presents itself once again:

4 This argument—an ill-conceived attempt to erect a legal barricade to
5 shield police officials from liability—is built on the most fragile of
6 foundations; it is based on an incorrect analysis of the law and at the
7 same time betrays a grave misunderstanding of those responsibilities
8 which the police must have toward the citizenry in an open and free
9 society. No arrest, no matter how lawful or objectively reasonable,
10 gives an arresting officer or his fellow officers license to deliberately
11 manufacture false evidence against an arrestee. To hold that police
12 officers, having lawfully arrested a suspect, are then free to fabricate
13 false confessions at will, would make a mockery of the notion that
14 Americans enjoy the protection of due process of the law and
15 fundamental justice. Like a prosecutor’s knowing use of false
16 evidence to obtain a tainted conviction, a police officer’s fabrication
17 and forwarding to prosecutors of known false evidence works an
18 unacceptable corruption of the truth-seeking function of the trial
19 process.

20 *Ricciuti*, 124 F.3d at 130 (internal quotation marks omitted).

21 In sum, Barnes’s claim of fabricated evidence seeks redress for an unfair
22 prosecution and trial in violation of his right to due process, and he has sufficiently
23 pleaded the elements of this claim. This claim is distinct from Barnes’s Fourth
24 Amendment-based claims, which, as discussed above, were properly dismissed.

1 Nevertheless, in order to sustain a fabricated-evidence claim, Barnes must
2 also show that his acquittal on the drug sale charge qualified as a “favorable
3 termination,” even though he was also convicted of drug possession. *See*
4 *McDonough v. Smith*, 139 S. Ct. 2149, 2156–57 (2019) (noting a fabricated-evidence
5 claim’s “favorable termination” requirement). Because the district court
6 dismissed the fabricated-evidence claim on other grounds, it did not specifically
7 address this requirement, and it should do so in the first instance, particularly in
8 light of our recent opinion in *Smalls*, which was released subsequent to the district
9 court’s decision. We note that *Smalls* instructs, for purposes of a fabricated-
10 evidence claim’s favorable termination requirement, that “all that is required is
11 that the underlying criminal proceeding be terminated in such a manner that the
12 lawsuit does not impugn an *ongoing* prosecution or *outstanding* conviction.” 10
13 F.4th at 139.

14 We accordingly vacate the district court’s dismissal of Barnes’s fabricated-
15 evidence claim and remand for consideration consistent with this Opinion.
16 Further, because we vacate the dismissal of this federal claim, we also vacate the
17 dismissal of Barnes’s state law claims to allow the district court to reconsider
18 whether to exercise supplemental jurisdiction over these claims. *See Rivera v.*

1 *Rochester Genesee Reg'l Transp. Auth.*, 743 F.3d 11, 27 (2d Cir. 2014) (vacating
2 dismissal of state law claims where this court partially vacated the dismissal of
3 federal law claims).

4 Lastly, in his opposition to Defendants' motion below, Barnes requested that
5 the district court construe his § 1983 suit as also seeking habeas relief. The district
6 court did not explicitly address this request. We know of no basis "for the view
7 that a petitioner may not seek relief under both a habeas statute and § 1983 in a
8 single pleading." *Thompson v. Choinski*, 525 F.3d 205, 210 (2d Cir. 2008). On
9 remand, the district court should also consider whether Barnes's request to
10 construe his complaint as seeking habeas relief should be construed as a motion to
11 amend and, if so, whether amendment to raise habeas claims should be granted.

12 CONCLUSION

13 For the reasons set forth above, we **AFFIRM IN PART** and **VACATE IN**
14 **PART** the district court's dismissal of Barnes's claims and **REMAND** for further
15 proceedings consistent with this Opinion.