

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted March 28, 2025*

Decided April 3, 2025

BeforeFRANK H. EASTERBROOK, *Circuit Judge*KENNETH F. RIPPLE, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*

No. 24-2664

XIHAI WANG,
*Plaintiff-Appellant,**v.*CITY OF INDIANAPOLIS, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:23-cv-01543-TAB-RLY

Tim A. Baker,
*Magistrate Judge.***ORDER**

After state criminal charges against him were dropped, Xihai Wang sued the City of Indianapolis and several officers for violations of his constitutional rights and various state laws based on the officers' conduct during his arrest and prosecution. The district court dismissed some of his claims for lack of jurisdiction, others as time-barred, and

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the rest for failure to state a claim. For the reasons that follow, we affirm in part, vacate in part, and remand for further proceedings.

I.

We accept Wang's well-pleaded facts as true and draw reasonable inferences in his favor. *Cielak v. Nicolet Union High Sch. Dist.*, 112 F.4th 472, 475 (7th Cir. 2024). To provide context to his complaints, we also take judicial notice, as the district court did, of the documents from Wang's state court case. *See Fosnight v. Jones*, 41 F.4th 916, 922 (7th Cir. 2022) ("We've long held that district courts can take judicial notice of public court documents and proceedings when considering a Rule 12(b)(6) motion.").

In December 2020, Wang was arrested after his two roommates reported him to the police for allegedly attacking them in their shared Indianapolis house. When three officers (Officers Cody Gaddis, Daniel Reed, and Steven Baumer) arrived at the house, they separated Wang from his roommates. Officer Gaddis then spoke with the roommates about what happened. In a probable-cause affidavit, the officers characterized the roommates as stating that Wang had smashed a toilet seat and, during an ensuing argument, attacked them. The officers arrested Wang for battery and criminal mischief. Before leaving, the officers ordered the roommates to get rid of Wang's personal belongings. Wang contends that Officer Gaddis coerced false statements from the roommates about what happened, and that the three officers then embellished the probable-cause affidavit with further lies of their own. Wang was detained for one week before he was released on bond.

The state court held a hearing to determine the conditions of his release on bond. At the hearing, the officers submitted an affidavit containing the same allegedly false statements that they used to arrest Wang. The state judge concluded that his arrest was supported by probable cause and on December 26, 2020, issued a no-contact order—based on a finding of dangerousness—that prevented Wang from going near his roommates, possessing a firearm, or leaving the state. As a separate condition of Wang's release, the jail required that he wear an ankle monitor while out on bond.

On January 6, 2022, while the criminal proceedings were still ongoing, Wang learned that the officers lied about what his roommates said on the night of his arrest. On that day, he received the video from one officer's body camera during the arrest. Wang alleges that the video shows that the officer coordinated with the roommates to create a false story about what happened, that the officer lied in the probable-cause

affidavit about what the roommates told him, and that the officer ordered the roommates to destroy the belongings Wang kept in the house.

Several months later, Wang entered into a pretrial diversion agreement. The agreement required him to acknowledge that probable cause existed for his arrest and charges. For reasons not reflected in the record, the prosecution dismissed the criminal case against him on December 1, 2022. Attempting to comply with the Indiana Tort Claims Act (which requires notice of a lawsuit against a municipality and its employees within 180 days of the alleged injury), Wang filed notice of his tort claim with the City a month later. *See* IND. CODE § 34-13-3-8 (2023). The City denied his claim as untimely.

Wang filed this lawsuit against the City and the officers on August 28, 2023, seeking damages and the expungement of his criminal record. All parties consented to having a magistrate judge handle the case. *See* 28 U.S.C. 636(c). The case has been protracted: Wang has filed three versions of his complaint and advanced over fifteen theories of recovery. The first complaint contained the bulk of his theories:

- **Detention-related theories:** Wang alleged that the officers fabricated probable cause to justify his arrest and pre-bond detention by coercing false statements from his roommates. This, he contended, violated his Fourth and Fourteenth Amendment rights, *see* 42 U.S.C. § 1983; Indiana laws against false arrest, false imprisonment, malicious prosecution; and the Indiana Constitution. He also alleged that the officers and the City caused him to be subjected to unsanitary conditions and strip searched during his pre-bond detention, in violation of his Eighth Amendment rights and Indiana law.
- **Pretrial-release theories:** Wang alleged that the officers lied in the probable cause affidavit about what his roommates said during his arrest and that the officers used that affidavit to obtain the no-contact order. The no-contact order, he alleged, abridged his rights guaranteed by the Second, Fourth, and Fourteenth Amendments, and the Commerce Clause. He also contended that wearing an ankle monitor violated his Fourth and Fourteenth Amendment rights.
- **Monell theories:** Wang alleged that the City's police department had a practice or custom of arresting and charging people without probable cause, as well as failing to supervise and discipline its officers. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

- **Remaining theories:** Wang contended that the officers' and City's conduct throughout his criminal proceedings constituted intentional infliction of emotional distress in violation of Indiana law. He further contended that, based on his other allegations, all the defendants conspired to violate his constitutional rights or failed to prevent that conspiracy. *See* 42 U.S.C. §§ 1985, 1986.

The defendants moved to dismiss, asserting that the district court lacked jurisdiction over some claims because of the *Rooker-Feldman* doctrine; that others were time barred because they were not brought within two years of Wang's alleged injuries, as required by the Indiana statute of limitations; and that the allegations could not support any remaining claims. Wang responded that he was not a state-court loser seeking to overturn a judgment; that his claims did not accrue until January 6, 2022, when he saw the body camera video; and that he properly stated claims for malicious prosecution and *Monell* liability.

The district court dismissed Wang's complaint for three reasons. First, the court ruled that under the *Rooker-Feldman* doctrine it lacked jurisdiction over the pretrial-release claims because his asserted injuries were inextricably intertwined with an order issued by a state court. Second, the court concluded that even if it had jurisdiction, all but two of Wang's claims were barred by the statute of limitations: his claims against the officers because he did not file his complaint until more than two years after his arrest and release on bond, and his claims against the City because he failed to file notice of his claims within 180 days of his arrest or release as required by the Indiana Tort Claims Act.¹ Third, the court concluded that Wang's allegations could not support any claims on the merits. Wang could not proceed on a claim of malicious prosecution because he signed a diversion agreement in his state case acknowledging that his arrest was supported by probable cause. (Alternatively, the court determined that Indiana law granted immunity to the defendants.) As for Wang's failure-to-supervise claim under *Monell*, the court also concluded that the complaint's conclusory statements such as "employees regularly engage in the misdeeds set forth in this entire complaint" were

¹ The district court dismissed Wang's claims as time-barred under Federal Rule of Civil Procedure 12(b)(6). But the statute of limitations is an affirmative defense, not a pleadings defect, and so that issue should be adjudicated instead under Rule 12(c). *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012). Because both rules apply the same standard, there is no error in that respect, but courts should be careful to distinguish between the two. *Id.* at 637–38.

insufficient to plead a particular policy or practice. The court granted Wang leave to file an amended complaint repleading his failure-to-supervise *Monell* claim but denied him leave—on the basis of futility—to replead any other claims.

Wang filed an amended complaint. He repleaded both of his *Monell* claims, his emotional distress claim, and added a new allegation that on the night of his arrest the officers had violated state law and his Fourth and Fourteenth Amendment rights by ordering his roommates to get rid of his belongings. At the same time, he also moved for reconsideration. His motion and amended complaint resulted in a flurry of responsive motions contesting, among other things, the time when his claims accrued. Wang argued that he was unaware that his constitutional rights were violated until he saw the video showing that the officers lied about what his roommates said. In his view, either his claims accrued on January 6, 2022, when he saw the video, or the statute of limitations should be equitably tolled or estopped until that point.

The district court denied his motion for reconsideration of the original complaint and dismissed the amended complaint. The court ruled that he had failed to identify any manifest errors of law or fact that would justify reconsideration, that he impermissibly repleaded his dismissed claims, and that his property-related claims were barred by *Rooker-Feldman* and the statute of limitations under the Indiana Tort Claims Act. The court did not rule on the failure-to-supervise *Monell* claim, instead requiring him to replead it without including other claims in the complaint.

Wang filed a second amended complaint repleading both of his *Monell* claims. In relevant part, he added allegations that the chief of police had policymaking authority over supervision and discipline and that complaints of police misconduct—for several years—have been made against the police department on a weekly basis. He also alleged as a basis for *Monell* liability that he had been subjected to excessive force when handcuffed during his arrest, despite his being compliant and nonviolent. The district court dismissed this complaint as well, concluding that it largely contained conclusory and unsupported statements, and failed to allege facts suggesting a widespread custom or practice. The court then entered judgment for the defendants.

II.

Wang appeals each of the orders dismissing his claims.² As a threshold matter, however, the defendants argue that we lack appellate jurisdiction to review anything but the final dismissal order because he filed his notice of appeal more than 30 days after the entry of the first two orders. *See* FED. R. APP. P. 4(a). But the defendants are mistaken. The first two orders dismissed only part of Wang's complaint, rendering them interlocutory orders that may be challenged on appeal as part of the final judgment. *See, e.g., Sargeant v. Barfield*, 87 F.4th 358, 362 (7th Cir. 2023).

A. *Rooker-Feldman* Doctrine

Wang first challenges the district court's ruling that *Rooker-Feldman* barred his claims stemming from the no-contact order. We agree with him that *Rooker-Feldman* doctrine does not bar a federal suit that seeks damages relating to a state court order that did not impose monetary penalties. *Gilbank v. Wood County Dep't of Human Servs.*, 111 F.4th 754, 792 (7th Cir. 2024) (en banc) (holding on damage claims set forth in Part I of opinion by Kirsch, J., joined in relevant part by Easterbrook, J.), *cert. denied*, --- S.Ct. ---, 2025 WL 581600 (Feb. 24, 2025). Such a suit is not barred even if the plaintiff's claims deny "a legal conclusion that a state court has reached." *Id.* at 797 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005)). Rather, *Rooker-Feldman* applies only when "a plaintiff seeks relief from a federal court that would reverse a state court judgment." *Id.* at 794. We note that *Gilbank* had not yet been decided at the time of the court's jurisdictional ruling, but appellate courts generally must "apply changes in the law," and the defendants offer no reason for us not to apply *Gilbank* on appeal. *See Ortiz-Santiago v. Barr*, 924 F.3d 956, 964 (7th Cir. 2019). Moreover, contrary to the district court's inquiry here, *Gilbank* disapproved of any assessment of whether federal claims are "inextricably intertwined" with a state court judgment. *See Gilbank*, 111 F.4th at 761, 767 n.5. Accordingly, *Rooker-Feldman* bars Wang's claims

² Wang contends that he pleaded an excessive force claim against the officers. But the district court did not understand him to bring such a claim, and we see no suggestion that he argued otherwise in any of his responses to the three separate motions to dismiss. Relatedly, he does not dispute on appeal the district court's conclusion that his privacy and conditions-of-confinement claims under state law and the Eighth Amendment were time barred. Those arguments are accordingly waived. *See, e.g., Bradley v. Vill. of Univ. Park*, 59 F.4th 887, 897 (7th Cir. 2023).

relating to the no-contact order to the extent that he asks the federal courts to expunge his criminal record, but it does not bar his claims for damages.

B. Statute of Limitations

Wang next challenges the district court's alternative holding that his pretrial-release claims against Officers Gaddis, Baumer, and Reed are time-barred.³ If we construe his arguments liberally, Wang asserts that each officer should have been equitably estopped from asserting a statute of limitations defense because the officers' alleged lies prevented him from knowing that his injuries were attributable to the officers until he obtained the body camera video. Equitable estoppel tolls the statute of limitations when a defendant "takes active steps to prevent the plaintiff from suing in time," *Rosado v. Gonzalez*, 832 F.3d 714, 716 (7th Cir. 2016) (quoting *Shropshear v. Corp. Couns. of Chi.*, 275 F.3d 593, 595 (7th Cir. 2001)), and the plaintiff actually and reasonably relies upon the defendant's conduct, *Uebelacker v. Rock Energy Coop.*, 54 F.4th 1008, 1011 (7th Cir. 2022). "Hiding evidence" is a common justification for applying equitable estoppel. *Rosado*, 832 F.3d at 717 n.2. And in this context, the officers' alleged concealment of evidence showing that the arrest resulted from their own wrongdoing—rather than that of the roommates—would prevent Wang from discovering he had a constitutional claim against the officers. *See Askew v. City of Chicago*, 440 F.3d 894, 895–96 (7th Cir. 2006) (no constitutional violation when police reasonably rely on false information from witnesses).

Wang's allegations justify equitable estoppel against Officers Gaddis, Baumer, and Reed. We understand him to allege that, until he obtained the body camera video, he believed that only his roommates had lied about what happened. At this stage, we accept that belief as reasonable—he had no reason to think the officers would lie—and so would not know he had a constitutional or tort claim against the officers. *See Askew*, 440 F.3d at 895–96. In essence, Wang argues that he did not know he had a claim against Officer Gaddis until receiving the body camera footage because Officer Gaddis, allegedly, lied in the probable cause affidavit about what was said during his conversation with Wang's roommates. *See Rosado*, 832 F.3d at 716–17 & 717 n.2 (suggesting without deciding that withholding video evidence showing that an officer

³ Even if we assume that Wang's allegations against the City (that its official policy, practice, or custom permitted and promoted the officers' actions) justify equitable estoppel for his pretrial-release claims, they nevertheless fail on the merits. *See Section C, infra*.

lied about what he observed during an arrest would equitably estop a statute of limitations defense); *Est. of Amaro v. City of Oakland*, 653 F.3d 808, 813–14 (9th Cir. 2011). Those alleged lies made Wang believe that his roommates were responsible for his injuries. The argument is similar for Officers Reed and Baumer: Wang contends that both officers knew that Officer Gaddis had lied but nonetheless conspired to prevent Wang from learning about the lies—thereby preventing Wang from discovering that he had a claim against either Officer Reed or Officer Baumer. *See Rosado*, 832 F.3d at 716–17 & 717 n.2 (suggesting that participating in withholding evidence justifies equitable estoppel); *Est. of Amaro*, 653 F.3d at 813–14.

Because Officers Gaddis, Reed, and Baumer should have been equitably estopped from invoking a statute of limitations defense, the statute of limitations started to run when Wang discovered the officers’ alleged lies: January 6, 2022. He thus had two years from that date to bring his § 1983 and § 1985 claims. IND. CODE § 34-11-2-4 (2024); *Wilson v. Giesen*, 956 F.2d 738, 741 & n.4 (7th Cir. 1994). He had one year to bring his § 1986 claims. 42 U.S.C. § 1986. Because Wang sued on August 28, 2023, he was not timely with regard to his § 1986 claims. He was, however, timely with regard to his § 1983 and § 1985 claims, and the district court erred by dismissing them for being untimely.

Wang’s state claims (apart from malicious prosecution) against each defendant—the City and Officers Gaddis, Reed, and Baumer—were correctly dismissed as untimely. The Indiana Tort Claims Act requires a plaintiff to give notice of all claims against a municipality and its employees within 180 days of an injury, *see* IND. CODE § 34-13-3-8 (2023), but Wang waited nearly two years after receiving the video to do so. He responds that Indiana’s continuing wrong doctrine should further toll the statute of limitations for those claims because he is still suffering the negative effects of being criminally charged, but that doctrine does not apply “if a plaintiff knows of facts that should lead to the discovery of a cause of action, even if his or her relationship with the tortfeasor continues beyond that point.” *Waldrip v. Waldrip*, 976 N.E.2d 102, 110–11 (Ind. Ct. App. 2012).

C. Merits

Wang next challenges the district court’s dismissal of his malicious prosecution claims under federal and state law. He contends that they should not have been dismissed because the defendants are not entitled to immunity. But he has waived any challenge to the dismissal of those claims because he fails to contest the court’s alternative rationale for dismissing them. The court concluded that those claims fail

because Wang conceded in his pretrial diversion agreement that probable cause existed for his arrest and the charges brought against him. Wang does not contest on appeal the court's consideration or characterization of the agreement and so has waived any dispute. *See Bradley*, 59 F.4th at 897. As a result, we affirm the district court's dismissal of those claims. *See Hart v. Mannina*, 798 F.3d 578, 587 (7th Cir. 2015) (probable cause is an absolute defense to a malicious prosecution claim); *Ingram v. Diamond Equipment, Inc.*, 118 N.E.3d 1, 7 (Ind. Ct. App. 2018) (probable cause is an essential element of a malicious prosecution claim).

Several of Wang's other claims also turn on whether probable cause existed for his detention, and so, although they were timely, we uphold their dismissal on the merits. Any claim under the Fourth Amendment⁴—whether styled as false arrest, false imprisonment, or malicious prosecution—requires that a plaintiff's arrest or detention not be supported by probable cause. *Hart*, 798 F.3d at 587. Because Wang has waived any argument that the officers lacked or fabricated probable cause to arrest and detain him, he may not proceed on his related Fourth Amendment claims under §§ 1983 and 1985. *See Gill v. City of Milwaukee*, 850 F.3d 335, 342 (7th Cir. 2017).

Wang next argues that the district court erred in determining that he had not adequately pleaded the existence of a practice or custom for both of his *Monell* claims. But there is no municipal liability under *Monell* without an underlying constitutional violation. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). So because Wang failed to state a Fourth Amendment claim against the officers, as we have established, he also failed to state a claim against the City under *Monell* relating to his arrest and detention. As for his other *Monell* claim alleging a failure to supervise and discipline, that claim fails as well because he did not adequately allege a policy, practice, or custom of violating constitutional rights. To the extent he sought to rely on excessive force or fabricating probable-cause affidavits as a basis for that claim, he identifies no express policy. As for custom or practice, he identifies only a single instance of an alleged falsification in probable-cause affidavits, and this is insufficient to show a widespread custom or practice. *Gill*, 850 F.3d at 344. Nor may he rely on excessive force as a basis for a *Monell* claim because he has not alleged that the force used in his arrest was

⁴ The only theory under the federal constitution that Wang could proceed upon for these claims was that his Fourth Amendment rights were violated. Although Wang invoked the Fourteenth Amendment, that amendment is not implicated unless the criminal proceedings end with a conviction. *Manuel v. City of Joliet*, 580 U.S. 357, 367, 369 n.8 (2017).

excessive. *See Stainback v. Dixon*, 569 F.3d 767, 773 (7th Cir. 2009). Rather than allege that the cuffs were too tight, he simply alleges that the cuffs were not necessary because he was unarmed and cooperative. *See id.* Unable to plausibly allege excessive force against the officers, he cannot sustain a *Monell* claim against the City on that basis. *See City of Los Angeles*, 475 U.S. at 799.

In conclusion, we affirm the dismissal of Wang's detention-related claims brought under federal and state law, his state law claims relating to his pretrial release, and both *Monell* claims. We vacate and remand for further proceedings on Wang's federal claims relating to his pretrial release. Nothing in our discussion of the claims that we remand should be taken as expressing a view on their substantive merits. We chart our course today based on the principle that "[w]e are 'a court of review, not first view.'" *United States v. Dingwall*, 6 F.4th 744, 762 (7th Cir. 2021) (Kirsch, J., concurring) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 781 n.7 (2005)).

The judgment of the district court is AFFIRMED in part and VACATED in part, and we REMAND for proceedings consistent with this order.