

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 6, 2026

Christopher M. Wolpert
Clerk of Court

BARRY MORPHEW,

Plaintiff - Appellant,

v.

No. 24-1424

CHAFFEE COUNTY, COLORADO;
BOARD OF COUNTY
COMMISSIONERS OF CHAFFEE
COUNTY, COLORADO; CHAFFEE
COUNTY SHERIFF'S
DEPARTMENT; LINDA STANLEY,
District Attorney, in her official and
individual capacities; JOHN
SPEZZE, Chaffee County Sheriff, in
his official and individual capacities;
ALEX WALKER, Eleventh Judicial
District Attorney's Office
Investigator; JEFFREY LINDSEY,
Deputy District Attorney; MARK
HURLBERT, Deputy District
Attorney; ANDREW ROHRICH,
Chaffee County Undersheriff; JOHN
CAMPER, Colorado Bureau of
Investigation Director; SCOTT
HIMSCHOOT, Chaffee County
Sheriff's Department; JOSEPH
CAHILL, Colorado Bureau of
Investigation Agent; MEGAN DUGE,
Colorado Bureau of Investigation
Agent; CAITLIN ROGERS, Colorado
Bureau of Investigation Agent;
DEREK GRAHAM, Colorado Bureau
of Investigation Agent; KEVIN

KOBACK, Colorado Bureau of Investigation Agent; KIRBY LEWIS, Colorado Bureau of Investigation Agent; CHRIS SCHAEFER, Colorado Bureau of Investigation Deputy Director of Investigations; JOHN/JANE DOES, 1-10, and other unknown employees of the Eleventh Judicial District Attorney, and other unknown officers of the Chaffee County Sheriff's Department; WILLIAM PLACKNER, Chaffee County Sheriff's Sergeant; RANDY CARRICATO, Chaffee County Sheriff's Detective; ROBIN BURGESS, Chaffee County Sheriff's Detective,

Defendants - Appellees,

and

CLAUDETTE HYSJULIEN, Chaffee County Sheriff's Sergeant; JONATHAN GRUSING, Federal Bureau of Investigation Unit; KENNETH HARRIS, Federal Bureau of Investigation Unit,

Defendants.

**Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:23-CV-01108-DDD-JPO)**

Submitted on the briefs:*

Jane Fisher-Byrialsen of Fisher & Byrialsen, P.L.L.C., Denver, Colorado, and Hollis Whitson of Samler and Whitson, PC, Denver, Colorado, for Plaintiff-Appellant.

Philip J. Weiser, Attorney General, Jennifer H. Hunt, Senior Assistant Attorney General, Dmitry B. Vilner, Senior Assistant Attorney General, Office of the Attorney General for the State of Colorado, Denver, Colorado, for Defendants-Appellees John Camper, Megan Duge, Chris Schaefer, Caitlin Rogers, Kevin Koback, Kirby Lewis, and Derek Graham.

Nicholas C. Poppe and J. Andrew Nathan of Nathan Dumm & Mayer P.C., Denver, Colorado, for Defendants-Appellees Chaffee County, Colorado; Board of County Commissioners of Chaffee County, Colorado; Chaffee County Sheriff's Department; Chaffee County Sheriff John Spezze; Chaffee County Undersheriff Andrew Rohrich; Chaffee County Sheriff's Sergeant William Plackner; and Chaffee County Sheriff's Detective Robin Burgess.

Leslie L. Schluter of Dagner|Schluter|Werber LLC, Greenwood Village, Colorado, for Defendant-Appellee Eleventh Judicial District Attorney, Linda Stanley.

William T. O'Connell III of Thompson, Coe, Cousins & Irons LLP, Denver, Colorado, for Defendants-Appellees Alex Walker and Jeffrey Lindsey.

Jonathan N. Eddy and Eric M. Ziporin of SGR, LLC, Denver, Colorado, for Defendant-Appellee Mark Hurlbert.

Rachel L. Bradley, Andrew R. McLetchie, and Eden R. Rolland of Fowler, Schimberg, Flanagan & McLetchie, P.C., Golden, Colorado, for Defendant-Appellee Scott Himschoot.

Scott A. Neckers, Robert I. Lapidow, and Sarah A. Thomas of Overturf McGath & Hull, P.C., Denver, Colorado, for Defendant-Appellee Joseph Cahill.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Before **MATHESON, PHILLIPS**, and **ROSSMAN**, Circuit Judges.

ROSSMAN, Circuit Judge.

The State of Colorado charged Barry Morpew with first-degree murder in May 2021 after his wife, Suzanne Morpew, disappeared under suspicious circumstances about a year earlier. On the eve of trial, Mr. Morpew’s defense team discovered prosecutors had withheld exculpatory information. The State soon dismissed all charges against Mr. Morpew without prejudice. Mr. Morpew sued the state prosecutors, law enforcement officers, and municipalities involved in his arrest and abandoned prosecution. He asserted causes of action under 42 U.S.C. § 1983 and a parallel Colorado civil rights statute, alleging the defendants fabricated evidence, conspired to violate his rights, and maliciously prosecuted him. The defendants filed several motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court granted the motions in a comprehensive written order. Mr. Morpew now appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

A¹

Suzanne Morpew disappeared on Sunday, May 10, 2020. Mr. Morpew last saw his wife sleeping in the couple's bed around 5:00 a.m. that morning, as he was getting ready to leave their Chaffee County home for a scheduled landscaping job a few hours away in Broomfield, Colorado. Their two daughters, ages sixteen and twenty, were away that day on a road trip in Utah. Around 3:00 p.m., Mr. Morpew called his neighbors and asked them to check on his wife at their home because he and his daughters could not reach her. The neighbors did not find Suzanne at home or see her mountain bike, which she rode almost daily. At 5:30 p.m., Mr. Morpew told the neighbors to call the police while he drove home from Broomfield.

Law enforcement located Suzanne's mountain bike in a ravine near the Morpew home later that same evening. When Mr. Morpew arrived on the scene, he gave law enforcement an article of Suzanne's clothing for the scent dog. The dog tracked Suzanne's scent to a river. There, the trail went cold. The ensuing weeks-long search involved law enforcement and local community volunteers but proved fruitless.

¹ We draw from the district court's recitation of the relevant background because it succinctly summarizes the well-pleaded factual allegations in Mr. Morpew's 185-page complaint.

Mr. Morpew soon became the prime suspect. Investigators began to suspect he staged Suzanne's mountain bike in the ravine to make her disappearance look like an abduction. Law enforcement searched the Morpew home and the family's vehicles and seized cell phones from Mr. Morpew and his daughters. DNA samples were taken from the Morpew home, Mr. Morpew's truck, Suzanne's car, and Suzanne's mountain bike. Over the course of a year, Mr. Morpew met with investigators over sixty times. He consistently maintained his innocence.

During the investigation, law enforcement discovered Suzanne had been having an extramarital affair for about two years before she disappeared. Investigators believed Mr. Morpew killed Suzanne when he learned of the affair. They hypothesized Mr. Morpew committed the murder around 2:30 p.m. on May 9, 2020—the day before Suzanne was reported missing. Law enforcement suspected Mr. Morpew came home from work on May 9, killed Suzanne with a tranquilizer gun, disposed of her body and evidence of the crime, and then developed an alibi by traveling to the Broomfield landscaping job the next morning.

In May 2021, prosecutors in Colorado's Eleventh Judicial District submitted an affidavit to a state judge to obtain an arrest warrant for Mr.

Morphew. Suzanne’s body had not yet been found.² The 129-page arrest affidavit outlined the prosecution’s theory of the case and—according to Mr. Morphew—included misleading statements and omitted exculpatory facts. A state court judge issued the warrant, and law enforcement arrested Mr. Morphew for first-degree murder.

Mr. Morphew spent the next four months in the Chaffee County Detention Center. He was released on pretrial conditions in September 2021. In January 2022, after much litigation, the prosecution disclosed “thousands of pages of exculpatory material to the defense.” RI.157. In April 2022, the State of Colorado voluntarily dismissed the criminal charges against Mr. Morphew without prejudice.³

B

In May 2023, Mr. Morphew sued in the United States District Court for the District of Colorado claiming he was arrested and prosecuted for first-degree murder without probable cause. He named the following twenty-five individuals and entities involved in his state prosecution as defendants:

² Suzanne’s remains were discovered in September 2023.

³ In June 2025, while this appeal was pending, a Colorado grand jury re-indicted Mr. Morphew on first-degree murder charges. The renewed criminal prosecution does not bear on our disposition of this appeal.

The Municipal Defendants

- Chaffee County
- Board of County Commissioners of Chaffee County
- Chaffee County Sheriff's Department (CCSD)

The Prosecutor Defendants

- Linda Stanley (District Attorney for the Eleventh Judicial District)
- Jeff Lindsey (Deputy District Attorney for the Eleventh Judicial District)
- Mark Hurlbert (Deputy District Attorney for the Eleventh Judicial District)

The CCSD Defendants

- Alex Walker (Criminal Investigator at the Eleventh Judicial District and, beginning in June 2021, CCSD Investigations Commander)
- John Spezze (Chaffee County Sheriff)
- Andrew Rohrich (Chaffee County Undersheriff)
- Robin Burgess (CCSD Deputy)
- Randy Carricato (CCSD Deputy)
- Scott Himschoot (CCSD Deputy)
- Claudette Hysjulien (CCSD Sergeant)
- William Plackner (CCSD Sergeant)

The CBI Defendants

- John Camper (Director of the Colorado Bureau of Investigation (CBI))
- Joseph Cahill (CBI Agent)
- Megan Duge (CBI Agent)
- Caitlin Rogers (CBI Agent)
- Derek Graham (CBI Agent)
- Kevin Koback (CBI Agent)
- Kirby Lewis (Head of CBI Major Crimes Division)
- Chris Schaefer (CBI Deputy Director of Investigations)
- Jason Hebrard (CBI Agent)

The FBI Defendants

- Kenneth Harris (FBI Agent)

- Jonathan Grusing (FBI Agent)⁴

Mr. Morpew asserted claims under § 1983, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and Colorado Revised Statute § 13-21-131 (the state analog to § 1983). As relevant to this appeal, Mr. Morpew’s complaint advanced causes of action for malicious prosecution under the Fourth and Fourteenth Amendments⁵; fabrication of evidence under the Fourth and Fourteenth Amendments⁶; violation of *Franks v. Delaware*, 438 U.S. 154 (1978) under the Fourth and

⁴ Mr. Morpew’s complaint also named as defendants “John/Jane Does 1-10, and other unknown employees of the Eleventh Judicial District Attorney, and other unknown officers of the Chaffee County Sheriff’s Department.” RI.25. The district court dismissed any claims against the Doe defendants, and Mr. Morpew does not challenge that ruling on appeal. *See Krastev v. INS*, 292 F.3d 1268, 1280 (10th Cir. 2002) (“Issues not raised on appeal are deemed to be waived.”).

⁵ Mr. Morpew brought this claim only against the CCSD Defendants; Prosecutor Defendants; FBI Defendants; and CBI Agents Joseph Cahill, Megan Duge, Caitlin Rogers, Derek Graham, Kevin Koback, and Kirby Lewis.

⁶ Mr. Morpew brought this claim only against the Prosecutor Defendants; FBI Defendants; Eleventh Judicial District Criminal Investigator Alex Walker; CBI Agents Joseph Cahill and Derek Graham; and Chaffee County Undersheriff Andrew Rohrich.

Fourteenth Amendments⁷; unlawful retention of property⁸; conspiracy; failure to intervene; reckless investigation under the Fourteenth Amendment⁹; and municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).¹⁰ The complaint sought \$15 million in special, compensatory, and punitive damages; injunctive relief; and an order directing the defendants to release his property. Mr. Morpew attached the 129-page arrest affidavit to his complaint and repeatedly referenced it throughout his allegations.

Pretrial proceedings ensued. Several defendants were voluntarily dismissed.¹¹ The remaining defendants filed motions to dismiss for failure

⁷ Mr. Morpew brought this claim only against Eleventh Judicial District Criminal Investigator Alex Walker; District Attorney Linda Stanley; Deputy District Attorney Jeff Lindsey; CBI Agents Joseph Cahill and Derek Graham; the FBI Defendants; Chaffee County Sheriff John Spezze; and Chaffee County Undersheriff Andrew Rohrich.

⁸ Mr. Morpew brought this claim against Chaffee County Sheriff John Spezze; District Attorney Linda Stanley; Deputy District Attorney Mark Hurlbert; and the CCSD.

⁹ Mr. Morpew brought this claim only against the CCSD; CCSD Defendants; FBI Defendants; Prosecutor Defendants; and CBI Agents Joseph Cahill, Megan Duge, Caitlin Rogers, Derek Graham, and Kevin Koback.

¹⁰ Mr. Morpew brought this claim only against the Municipal Defendants; District Attorney Linda Stanley; and Chaffee County Sherriff John Spezze.

¹¹ The district court granted Mr. Morpew's unopposed motion to dismiss CCSD Deputy Randy Carricato, Deputy Robin Burgess, and Sergeant William Plackner without prejudice. *Morpew v. Chaffee Cnty.*, No. 1:23-cv-01108-

to state a claim under Rule 12(b)(6). Mr. Morpew separately opposed each motion. The district court consolidated the motions for decision and, after a hearing, granted them in a single written order.

C

We now describe the district court’s dismissal order in some detail. The district court began by acknowledging its obligation, under Rule 12(b)(6), to “accept all the well-pleaded allegations of the complaint as true and . . . construe them in the light most favorable to the plaintiff.” RIV.842 (quoting *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th Cir. 2007)). In the district court’s view, Mr. Morpew’s allegations “if true, show an investigation and prosecution that was, in a number of senses, *wrongful*.” RIV.843. But the question at the motion to dismiss stage, the district court explained, was not “whether the decision to arrest [Mr. Morpew] was wise or whether the government would have been able to prove its case to a jury beyond a reasonable doubt.” RIV.845. The dispositive question was whether

DDD-JPO (D. Colo. Oct. 25, 2023), Dkt. No. 103. Later, Mr. Morpew stipulated to the dismissal of all claims against FBI Agents Jonathan Grusing and Kenneth Harris with prejudice. *Morpew v. Chaffee Cnty.*, No. 1:23-cv-01108-DDD-JPO (D. Colo. Mar. 27, 2024), Dkt. Nos. 125–26. Mr. Morpew’s appeal therefore does not implicate his *Bivens* claims against the federal defendants, and we do not discuss those claims in further detail. Mr. Morpew also stipulated to the dismissal of all claims against CCSD Sergeant Claudette Hysjulien. *Morpew v. Chaffee Cnty.*, No. 1:23-cv-01108-DDD-JPO (D. Colo. Mar. 29 & Apr. 17, 2024), Dkt. Nos. 128, 148.

Mr. Morphey plausibly alleged that arresting and prosecuting him in May 2021 for Suzanne's murder "was unlawful." RIV.845–46.

The district court reviewed the complaint and arrest affidavit, itemized the exculpatory facts that Mr. Morphey claimed were wrongfully omitted, and "ignor[ed] the allegedly false information" that Mr. Morphey said was improperly included. RIV.846. The district court emphasized the "hundreds" of undisputed inculpatory facts in the arrest affidavit. RIV.847. "Accounting for the exculpatory omissions and leaving out the allegedly fabricated or misleading evidence," the district court summarized what the arrest affidavit would tell an objective observer:

- Mr. Morphey was controlling and both physically and emotionally abusive according to his wife. He was suspicious that she was cheating, at least emotionally, and they fought frequently. She didn't feel safe at home with him and tried to break up with him a few days before she disappeared.
- Mr. Morphey's behavior on the Sunday of Suzanne's disappearance was unusual. He had a job planned in Broomfield and was supposed to pick up an employee at 5:30 p.m. to drive to Broomfield and stay overnight in a hotel that he had booked over a week in advance. But he instead left his house at 5:30 a.m. and drove to Broomfield alone. This was Mother's Day, and according to Mr. Morphey's father-in-law, it was strange that he would work the Sunday of Mother's Day, as he rarely worked on Sundays. He was observed throwing trash away in a McDonald's parking lot in Broomfield around 10:00 a.m. and when questioned couldn't remember what it was, stating it was "probably old clothes" or an old pair of boots. He tried to call and text his wife several times throughout this day.
- Mr. Morphey was the last person to see Suzanne alive. By his own admission, he was alone with her from the afternoon of May 9 until

the morning of May 10, when she disappeared, and he would have had time to murder her and dispose of the evidence. Suzanne's computer and phone exhibited activity late into the evening of May 9, however, indicating she may still have been alive at that time.

- Mr. Morpew's memory regarding the events leading up to Suzanne's disappearance is fuzzy, and he gave conflicting statements about those events, including about whether they went on a hike together the day before her disappearance. He had scratches on his arm after she disappeared.
- Mr. Morpew suggested that saying "I don't recall" is code for not wanting to tell the truth, but himself stated that he didn't recall a number of key events leading to his wife's disappearance.
- Mr. Morpew has previously bought and used tranquilizer chemicals in darts that he filled himself. He had a tranquilizer gun, but it was not operable and hadn't been used recently. He gave conflicting statements about whether he had used the tranquilizer darts in Colorado. An expert was surprised that a civilian would have those tranquilizer chemicals.
- Mr. Morpew started liquidating assets and seeing another woman shortly after Suzanne disappeared, long before her body was found.
- Suzanne's mountain bike was found in a ravine near their home, and dogs detected her scent in that area. Unknown male DNA was found on the bike, on the carpet by their bed and on a stair in their house, and in her car. The DNA from her car potentially matched that from unsolved sexual assault investigations.
- Cadaver dogs did not alert to Mr. Morpew's truck, and GPS data indicated that his Bobcat skid steer had not been moved since before Suzanne's disappearance.
- Mr. Morpew is a skilled hunter and a landscaper and may have had the tools and expertise to kill his wife, bury her body, and destroy the evidence.

RIV.849–50. After examining "the full picture" alleged in the complaint, the district court could not conclude the "uncertainties raised by the omitted and misrepresented evidence erased any substantial probability that [Mr.

Morphew] was involved” in the charged offenses. *See* RIV.848, 850–51 (explaining the arrest affidavit marshalled sufficient evidence that Mr. Morphew had a “motive, means, and opportunity to kill his wife; that his alibi was fabricated (as it was uncorroborated and supported only by his own self-serving statements); and that his credibility was dubious (given his conflicting statements to investigators”).

The district court determined Mr. Morphew’s complaint “suffer[ed] from one or more legal deficiencies.” RIV.843. The “[c]hief” deficiency identified was Mr. Morphew’s failure to plausibly allege a lack of probable cause for his arrest and prosecution. RIV.843. The district court therefore dismissed Mr. Morphew’s § 1983 claims for malicious prosecution, fabrication of evidence,¹² *Franks* violations, conspiracy, failure to intervene, and *Monell* liability under Rule 12(b)(6) “on the basis of the existence of probable cause.” RIV.852. It also dismissed Mr. Morphew’s reckless investigation claim but for a different reason. Noting “the absence of any binding Supreme Court or Tenth Circuit precedent on point,” the district court was “persuaded by the majority of other courts that have held there is no such cause of action.” RIV.844 n.6.

¹² The district court did not distinguish between Mr. Morphew’s Fourth and Fourteenth Amendment fabrication of evidence claims. We will address these claims separately.

The district court identified other pleading deficiencies, too. Regarding Mr. Morpew’s claims for malicious prosecution, fabrication of evidence, and *Franks* violations against the non-prosecutorial defendants, the district court determined Mr. Morpew’s “allegations are insufficiently specific as to the role each [defendant] played in causing his arrest” and “failed to directly link these defendants to his alleged injury[.]” RIV.852. The district court similarly concluded Mr. Morpew’s conspiracy, unlawful retention of property,¹³ and *Monell* claims were supported only by conclusory allegations.

The district court also endorsed certain immunity defenses. All defendants were granted qualified immunity with respect to Mr. Morpew’s failure-to-intervene claim. Mr. Walker—the criminal investigator at the Eleventh Judicial District—was shielded by qualified immunity for Mr. Morpew’s claims for fabrication of evidence and *Franks* violations. And prosecutorial immunity applied to every claim against the state prosecutors.

Having dismissed all federal claims, the district court declined to exercise pendent jurisdiction over the remaining state claims. It then

¹³ Mr. Morpew does not appeal the district court’s dismissal of his claim for unlawful retention of property.

entered final judgment dismissing Mr. Morpew's lawsuit without prejudice. *See* Fed. R. Civ. P. 58(a). This timely appeal followed.

II

Mr. Morpew challenges the dismissal of his complaint for failure to state a claim under Rule 12(b)(6). “In reviewing an order granting a motion to dismiss, our role is like the district court’s: we accept the well-pleaded facts alleged as true and view them in the light most favorable to the plaintiff[.]” *Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1275 (10th Cir. 2023). “A plaintiff who fails to plead a plausible claim is subject to dismissal.” *Cuervo v. Sorenson*, 112 F.4th 1307, 1312 (10th Cir. 2024); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “To satisfy the plausibility standard, the complaint must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1144 (10th Cir. 2023) (internal quotation marks omitted).

“The nature and specificity of the allegations required to state a plausible claim will vary based on context.” *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). But we do not “accept [t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements[.]” *Clinton*, 63 F.4th at 1275 (alterations in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009));

see also Brooks v. Mentor Worldwide LLC, 985 F.3d 1272, 1281 (10th Cir. 2021) (“An allegation is conclusory where it states an inference without stating underlying facts or is devoid of any factual enhancement.”). Nor do we accept “allegations plainly contradicted by properly considered documents or exhibits[.]” *Clinton*, 63 F.4th at 1275. Thus, “[i]n considering whether the complaint’s allegations are sufficient, [we] . . . eliminate[] conclusory allegations, mere ‘labels and conclusions,’ and any ‘formulaic recitation of the elements of a cause of action.” *Bledsoe v. Carreno*, 53 F.4th 589, 606 (10th Cir. 2022) (quoting *Iqbal*, 556 U.S. at 678).

“[I]n assessing whether a plaintiff has stated a claim for relief, a court must restrict its review to only the ‘allegations within the four corners of the complaint,’ and cannot consider other pleadings or external allegations.” *Brown v. City of Tulsa*, 124 F.4th 1251, 1263 (10th Cir. 2025) (quoting *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1286 n.1 (10th Cir. 2019)). That is, the sufficiency of a complaint must generally “rest on its contents alone.” *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). But there are exceptions to this rule. These “[e]xceptions . . . are limited to: (1) documents attached to the complaint as exhibits, (2) documents referenced in the complaint that are central to the plaintiff’s claims, provided their authenticity is undisputed, and (3) matters subject to judicial notice.” *Brown*, 124 F.4th at 1264. Here, Mr. Morphey attached the arrest affidavit

to his complaint and referenced it throughout his allegations. No party challenged the authenticity of the affidavit or the district court's authority to consider it. We likewise consider the affidavit in reviewing the dismissal order and assessing the sufficiency of Mr. Morphey's complaint.

III

Mr. Morphey advances several arguments to support reversal, but there is a dispositive pleading problem that compels affirmance on most of his claims. The complaint fails to plausibly allege Mr. Morphey was arrested and prosecuted without probable cause. Mr. Morphey does not meaningfully disagree that, as a matter of law, plausibly pleading the absence of probable cause is essential to his causes of action for malicious prosecution, *Franks* violations, conspiracy, failure to intervene, and *Monell* liability.¹⁴ He instead insists the arrest affidavit—once “corrected” to account for his allegations about fabricated evidence, false statements, and exculpatory omissions—was not, in fact, supported by probable cause, which means his complaint should withstand dismissal under Rule 12(b)(6). Op. Br. at 17–

¹⁴ Any contrary argument is waived. See *Nelson v. City of Albuquerque*, 921 F.3d 925, 931 (10th Cir. 2019) (appellant waived argument “by failing to adequately develop it”).

18 (bolding omitted). As to his fabrication of evidence claim, Mr. Morpew argues the presence of probable cause “is not fatal to” this claim. Op. Br. at 12.

We are not persuaded. We first show each of Mr. Morpew’s § 1983 claims—save his Fourteenth Amendment claims for fabrication of evidence and reckless investigation—depend on plausible allegations that he was arrested and prosecuted for Suzanne’s murder without probable cause. Then, applying the relevant standards of review, we explain why the district court correctly concluded Mr. Morpew’s complaint fails to plausibly allege the defendants lacked probable cause. We separately address Mr. Morpew’s Fourteenth Amendment fabrication of evidence claim, which does not turn on pleading a lack of probable cause. Still, that claim must be dismissed on a related, albeit distinct, ground: Mr. Morpew has not plausibly alleged a causal connection between the fabricated evidence and his arrest and prosecution. Mr. Morpew’s Fourteenth Amendment reckless investigation claim also requires sufficient allegations of causation that are absent here.

A

Mr. Morpew’s claims for malicious prosecution, Fourth Amendment fabrication of evidence, *Franks* violations, reckless investigation, conspiracy, failure to intervene, and *Monell* liability all depend on sufficient allegations that he was arrested and prosecuted without probable cause. As

the defendants persuasively put it, these claims are viable only if Mr. Morphey plausibly pleads the “alleged misconduct was material to a violation of [his] rights, such that there would have been no probable cause to arrest him without that misconduct.” Resp. Br. at 22. This is not to say lack of probable cause is an *element* of each claim. Rather, it is essential to those claims under Mr. Morphey’s theory of the case as alleged in his complaint. We consider each claim in turn.

*Malicious prosecution (Fourth Amendment).*¹⁵ Mr. Morphey claims the defendants maliciously prosecuted him when they “fabricated evidence and manufactured inculpatory evidence,” “manipulated witness testimony,” “suppressed exculpatory evidence,” “omitted exculpatory evidence and lied in the [a]rrest [a]ffidavit,” and “falsified charges in order to arrest and

¹⁵ “We have repeatedly recognized in this circuit that, at least prior to trial, the relevant constitutional underpinning for a claim of malicious prosecution under § 1983 must be the ‘Fourth Amendment’s right to be free from unreasonable seizures.’” *Becker v. Kroll*, 494 F.3d 904, 914 (10th Cir. 2007) (quoting *Taylor v. Meacham*, 82 F.3d 1556, 1561 (10th Cir. 1996)). Mr. Morphey brings his malicious prosecution claim under “the Fourth Amendment and the procedural and substantive due process components of the Fourteenth Amendment.” RI.167. Although a plaintiff may have a Fourteenth Amendment procedural due process claim “analogous to a tort claim for malicious prosecution” if he “has been imprisoned pursuant to legal but wrongful process,” *Mondragon v. Thompson*, 519 F.3d 1078, 1082 (10th Cir. 2008), this is so only when an adequate state remedy does not exist, *Myers v. Koopman*, 738 F.3d 1190, 1194 n.3 (10th Cir. 2013). We have determined that Colorado law provides an adequate remedy in this context. *Id.* at 1193. Mr. Morphey’s malicious prosecution claim thus fails to the extent it is premised on the Fourteenth Amendment.

prosecute [him] without probable cause[.]” RI.166–67; *see also* RI.167 (alleging the defendants “accused [Mr.] Morpew of criminal activity and exerted influence to initiate, continue, and perpetuate judicial proceedings against him without any probable cause for doing so[.]”). “To state a § 1983 claim for malicious prosecution, a plaintiff must show, among other things, that the original action terminated in favor of the plaintiff, and that no probable cause supported the original arrest, continued confinement, or prosecution.” *Fenn v. City of Truth or Consequences*, 983 F.3d 1143, 1149–50 (10th Cir. 2020). The absence of probable cause is an element of a claim for malicious prosecution. *See Pierce v. Gilchrist*, 359 F.3d 1279, 1294 (10th Cir. 2004) (“The third element in the tort of malicious prosecution is that there was no probable cause to support the original arrest, continued confinement, or prosecution.”).

Fabrication of evidence (Fourth Amendment). Mr. Morpew alleges the defendants “fabricated evidence and solicited false testimony,” and then “obtained [his] prosecution and incarceration using that false evidence[.]” RI.170. “Evidence fabrication could, of course, violate [Mr. Morpew]’s Fourth Amendment rights.” *Warnick v. Cooley*, 895 F.3d 746, 752 (10th Cir. 2018). The Fourth Amendment prohibits pretrial detention of a defendant when there is no “probable cause to believe he committed a crime.” *Manuel v. City of Joliet*, 580 U.S. 357, 368–69 (2017). So, “[w]hen the police’s

fabrication of evidence results in a person being charged with a crime, that person's Fourth Amendment claims will be defeated if there was independent probable cause for the deprivation of liberty." *Barnes v. City of New York*, 68 F.4th 123, 132 (2d Cir. 2023) (emphasis omitted); *see also Spencer v. Peters*, 857 F.3d 789, 802 (9th Cir. 2017) ("Probable cause definitively resolves a Fourth Amendment claim for including false information in a warrant affidavit[.]"). Applying this principle here, Mr. Morphey's Fourth Amendment fabrication of evidence claim fails unless he plausibly alleges, without the fabricated evidence, the defendants lacked probable cause to arrest and prosecute him.

Franks violations (*Fourth Amendment*).¹⁶ Mr. Morphey claims the defendants "knowingly and intentionally, or with reckless disregard for the truth, caus[ed] false statements to be included in the [a]rrest [a]ffidavit and caus[ed] exculpatory facts to be omitted; and, had they not done [so], probable cause would have been vitiated or diluted." RI.172. "In *Franks*, the

¹⁶ Mr. Morphey's complaint frames his *Franks* claim under the Fourth Amendment but also includes a conclusory invocation of the Fourteenth Amendment. Nowhere in his complaint does Mr. Morphey delineate or develop a distinct substantive due process theory. A "complaint cannot rely on labels and conclusory allegations[.]" *McNellis v. Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1131 (10th Cir. 2024) (quoting *Greer v. Moon*, 83 F.4th 1283, 1292 (10th Cir. 2023)). Thus, to the extent Mr. Morphey bases his *Franks* claim on the Fourteenth Amendment, his allegations fail "to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

Supreme Court held that affiants seeking arrest warrants violate the constitution when they knowingly, or with reckless disregard for the truth, include false statements in a supporting affidavit or omit information which, if included, would prevent the warrant from lawfully issuing.” *Kapinski v. City of Albuquerque*, 964 F.3d 900, 905 (10th Cir. 2020); see *Franks*, 438 U.S. at 155–56 (holding “the Fourth Amendment requires that a hearing be held” when the defendant shows “that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the warrant affidavit” and the statement “is necessary to the finding of probable cause”). A constitutional violation “occurs if (1) an officer’s affidavit supporting [an arrest] warrant application contains a reckless misstatement or omission that (2) is material because, but for it, the warrant could not have lawfully issued.” *United States v. Herrera*, 782 F.3d 571, 573 (10th Cir. 2015). To allege a *Franks* violation, Mr. Morpew must plausibly claim the defendants’ false statements and exculpatory omissions were material. That is, he must plausibly allege the arrest affidavit, once stripped of the defendants’ misstatements and supplied with the omitted exculpatory facts, did not support probable cause.

Conspiracy. Mr. Morpew alleges the defendants “conspired among and between themselves and took overt acts in furtherance of a conspiracy to deprive [him] of his due process rights and his right to be free from

seizure, incarceration, deprivation of property and restrictions on liberty[.]” RI.174. He further asserts they conspired to “fabricate evidence against him, to manipulate witness testimony, to suppress, [to] conceal and omit exculpatory evidence, to falsify charges, . . . to conceal the knowing and reckless misconduct[,] and to protect one another from liability[.]” RI.174. “[T]o recover under a § 1983 conspiracy theory, a plaintiff must plead and prove not only a conspiracy, but also an actual deprivation of rights; pleading and proof of one without the other will be insufficient.” *Dixon v. City of Lawton*, 898 F.2d 1443, 1449 (10th Cir. 1990); *see also Snell v. Tunnell*, 920 F.2d 673, 701–02 (10th Cir. 1990) (“[A] deprivation of a constitutional right is essential to proceed under a § 1983 conspiracy claim[.]”). Mr. Morpew’s conspiracy claim is derivative in that its viability depends on the underlying constitutional violation. *See, e.g., Hinkle v. Beckham Cnty. Bd. of Cnty. Comm’rs*, 962 F.3d 1204, 1231 (10th Cir. 2020) (holding district court properly dismissed conspiracy claim premised on false arrest allegations because plaintiff failed to show a false arrest). To the extent the underlying constitutional violations here depend on the defendants lacking probable cause, Mr. Morpew’s conspiracy claim rises or falls based on the sufficiency of those allegations.

Failure to intervene. Mr. Morpew alleges that “[d]uring the constitutional violations described [in his complaint], all [d]efendants stood

by without intervening to prevent the violation of [his] constitutional rights[.]” RI.178. To state a claim for failure to intervene, a plaintiff must allege (1) “a government officer violated his constitutional rights”; (2) “a different government actor (the defendant) observed or had reasons to know about that constitutional violation”; and (3) “the defendant had a realistic opportunity to intervene, but failed to do so.” *Bledsoe*, 53 F.4th at 616. A claim for failure to intervene depends on a predicate constitutional violation. *See Jones v. Norton*, 809 F.3d 564, 576 (10th Cir. 2015) (“[I]n order for there to be a failure to intervene, it logically follows that there must exist an underlying constitutional violation[.]” (second alteration in original) (quoting *Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005))). Again, to the extent the underlying constitutional violations here require Mr. Morpew to plausibly allege the defendants arrested and prosecuted him without probable cause, the plausibility of those allegations governs whether his failure to intervene claim withstands Rule 12(b)(6) scrutiny.

Monell. Mr. Morpew claims the defendants “failed to ensure through custom, policy, practice, training, and supervision that officers . . . would . . . not fabricate inculpatory evidence; ensure that suspects would not be maliciously prosecuted; [and] ensure that applications for arrest warrants would not contain false and misleading information and/or omit exculpatory information[.]” RI.182–83. Mr. Morpew similarly accuses the

defendants of maintaining a policy or custom of “regularly fail[ing] to disclose exculpatory evidence to prosecutors, fabricat[ing] false evidence . . . , [and] pursu[ing] wrongful prosecutions through profoundly flawed investigations[.]” RI.184. “To state a claim against a municipal entity, a plaintiff must allege facts showing (1) an official policy or custom, (2) causation, and (3) deliberate indifference.” *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1145 (10th Cir. 2023). Once again, there can be no municipal liability—and thus no *Monell* claim—without an underlying constitutional violation. *See Collins v. City of Harker Heights*, 503 U.S. 115, 120 (1992) (a claim for municipal liability cannot survive unless the “plaintiff’s harm was caused by a constitutional violation”); *Monell*, 436 U.S. at 691 (“Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.”); *see also, e.g., Hinkle*, 962 F.3d at 1226 (concluding plaintiff’s *Monell* claim based on municipality’s alleged “policy sanctioning unlawful warrantless arrests” failed because plaintiff “was arrested with probable cause”).

B

Reviewing *de novo*, we agree with the district court that the complaint does not plausibly allege the absence of probable cause.

Probable cause “is not a high bar.” *Kaley v. United States*, 571 U.S. 320, 338 (2014). We have understood probable cause as “something more than a bare suspicion but less than a preponderance of the evidence at hand.” *United States v. Johnson*, 43 F.4th 1100, 1107 (10th Cir. 2022) (internal quotation marks omitted). It requires “a substantial probability that a crime has been committed and that a specific individual committed the crime.” *Wolford v. Lasater*, 78 F.3d 484, 489 (10th Cir. 1996). To survive dismissal, Mr. Morphew must “allege[] . . . specific facts showing there was a lack of probable cause for his arrest and prosecution on the charges of first degree murder.” *Erikson v. Pawnee Cnty. Bd. of Cnty. Comm’rs*, 263 F.3d 1151, 1154 (10th Cir. 2001) (explaining conclusory allegations are “insufficient to survive defendants’ motions to dismiss”); see *Brown v. City of Albion*, 136 F.4th 331, 342 (6th Cir. 2025) (to allege the absence of probable cause, plaintiff was required to “plead allegations plausibly suggesting that the [d]efendants did not have sufficient evidence . . . to raise a substantial chance of criminal activity.”).

We discern no error in the district court’s conclusion that Mr. Morphew’s allegations do not plausibly state a lack of probable cause. The district court discussed at length the compelling nature of the information the defendants omitted from the arrest affidavit. Notably, the dismissal order is replete with observations about alleged misconduct by the defendants and the mishandling

of the state criminal investigation. Still, as the district court correctly observed, “the *legal* . . . standard for an arrest does not require the same level of certainty as that for a conviction.” RIV.848. Here, the district court emphasized the many inculpatory facts in the arrest affidavit that Mr. Morpew did not dispute. RIV.847.

- [Mr. Morpew’s daughter]’s admission that her parents argued a lot and that she feared they would separate or divorce.
- Suzanne’s sister, Melinda Baumunk, described Mr. Morpew as one who lives a double life, is a liar, is an adulterer, and is a bully; one who has to have control, is cunning, fools people a lot, and treats his wife and daughters as trophies.
- Suzanne texted the following to her sister two days before she disappeared: “Its hard dealing with the harsh abrasiveness and having to show respect. He’s also been abusive, emotionally and physically. There’s so much . . . I went thru a period of acceptance and I feel more angry now. Anger at what I’ve allowed.”
- Suzanne kept a list of grievances about her husband on the notes application on her phone, which included “Phys abuse,” “Stalking Sheila and me in house without telling,” “Chase me around resort and threatened,” “Took phone,” “Not safe alone with you. Can’t be trusted,” “Oppressive,” and “Accused me of bf.”
- Suzanne texted Mr. Morpew a few days before she disappeared: “I’m done. I could care less what you’re up to and have been for years. We just need to figure this out civilly.”
- Mr. Morpew declined to submit to a polygraph examination regarding his memory of the events leading up to Suzanne’s disappearance and his alibi.
- Investigators observed scratches on Mr. Morpew’s upper left arm three days after Suzanne disappeared.
- Mr. Morpew thought it was “very suspicious” that Suzanne would not tell him about some of her communications, even if he did not know she was involved in a sexual relationship with another man.

- Mr. Morpew’s conflicting statements about whether he went on a hike to Fooses Lake with Suzanne the day before her disappearance.
- Mr. Morpew’s conflicting statements about whether he used his tranquilizer or darts in Colorado, including his admissions that “I’ve shot two deer with my tranq gun, ‘cause I used to raise deer, and I collect horns” and that “I’ve shot deer from that little breezeway from between the garage and the laundry room.”
- Mr. Morpew’s admission that he used BAM, Telazol, and Xylazine as tranquilizers and that he brought these chemicals, which he knew to be controlled substances, from Indiana.
- Retired Colorado Parks & Wildlife Field Veterinarian Lisa Wolfe’s surprise that a civilian would have these animal tranquilizers.
- Mr. Morpew’s admission that he kept the tranquilizer chemicals in vials and injected them into darts himself.
- Suzanne’s “spy pen” recorded Mr. Morpew listening to several episodes of “Forensic Files”—including three episodes about murders—during a drive to Pueblo less than two months before she disappeared.
- Mr. Morpew was originally scheduled to pick up an employee to drive to Broomfield for a landscaping job around 5:30 p.m. on the day Suzanne disappeared but instead left at 5:00 a.m., twelve hours earlier than planned.
- Mr. Morpew was seen “carrying unknown items in his hands and placing items into two separate trash cans located on the edge of the McDonald’s lot between 10:19 AM and 10:41 AM” on May 10, 2020, roughly six hours after Suzanne was last seen alive.
- Mr. Morpew was the last person to see Suzanne alive.
- Mr. Morpew could not recall the items that were in the trash bags, stating that they were “probably old clothes” or boots.
- Mr. Morpew suggested saying “I don’t recall” was code for not wanting to tell the truth, but he didn’t recall a number of critical facts surrounding Suzanne’s disappearance.
- Mr. Morpew began to liquidate the family’s assets within a month of Suzanne’s disappearance.

- Mr. Morpew was an avid hunter and a professional landscaper and may have possessed the tools and expertise necessary to kill Suzanne, bury her body, and dispose of the evidence.
- Mr. Morpew became intimately involved in a relationship with another woman in the months immediately following Suzanne's disappearance (before her body had been discovered).
- Suzanne's father felt it was odd that neither of his granddaughters nor Mr. Morpew were home on Mother's Day, when Suzanne disappeared, and that it was unusual for Mr. Morpew to work on Mother's Day Sunday when he seldom worked on Sundays.

RIV.836–39 (record citations omitted). Considered against these uncontested facts, Mr. Morpew's allegations, taken as true and viewed in the light most favorable to him, do not plausibly allege a lack of probable cause for his arrest and prosecution.

Mr. Morpew resists this conclusion, making several unavailing arguments. He insists the district court failed to adhere to the applicable standards at the Rule 12(b)(6) stage when reviewing his complaint. In Mr. Morpew's view, the district court improperly "decided witness credibility[.]" "placed too heavy a burden on [him] at the pleading stage[.]" "fail[ed] to give [him] the benefit of all plausible inferences" from his well-pleaded allegations, and "fail[ed] to credit allegations that contradicted" probable cause. Op. Br. at 13–14, 17. As discussed, the district court's thorough accounting belies Mr. Morpew's assertions on appeal.

Mr. Morpew also briefly challenges "the court's broad sweep of all claims into the probable-cause basket." Op. Br. at 12. He does not develop

this argument. In any event, we cannot agree with his assertion. Probable cause can serve as “common ground” and “the easiest and most economical way” to address multiple claims at various stages of litigation. *See, e.g., Bledsoe*, 53 F.4th at 606, 614–15 (at motion to dismiss stage, holding allegations “d[id] not establish the existence of arguable probable cause [needed for malicious prosecution claim] when considered with the suppressed exculpatory evidence and without the fabricated evidence of [the plaintiff]’s guilt”); *Brown*, 136 F.4th at 338, 342 (at motion to dismiss stage, holding all of plaintiff’s claims “require[d] her to allege an absence of probable cause”); *see also Kerns v. Bader*, 663 F.3d 1173, 1180, 1187 (10th Cir. 2011) (at summary judgment stage, resolving the plaintiff’s claims for false arrest, false imprisonment, and malicious prosecution on the absence of probable cause even though the claims required proof of “a variety of different elements”).

Relatedly, Mr. Morphew argues probable cause presents “a jury issue in this case.” Op. Br. at 15 (bolding omitted). To be sure, and as the district court acknowledged, probable cause may be “a ‘proper issue for the jury if there is room for a difference of opinion.’” RIV.847 (quoting *Bruner v. Baker*, 506 F.3d 1021, 1028 (10th Cir. 2007)); *see Brown*, 136 F.4th at 343 (recognizing that whether probable cause exists may be a jury question when “the defendants’ theory of probable cause involves material factual

disputes,” but stating “dismissal is appropriate” if “the plaintiff’s allegations fail to plausibly suggest the absence of probable cause”). Here, based on its review of the complaint and the affidavit, the district court determined there was “no room for debate that the relatively low bar of probable cause was met.” RIV.850; *see also* RIV.848 (reasoning “[t]he evidence, even as presented by [Mr. Morphew]’s complaint, still supports only one conclusion: that there was . . . probable cause”). We discern no error in the district court’s reasoning or conclusion.¹⁷

Finally, Mr. Morphew argues the district court failed to abide by party presentation because it “picked through the [arrest] [a]ffidavit and came up with [its] own list of purported probable cause [facts].” Op. Br. at 26. The party presentation principle “puts the burden on ‘the parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present.’” *Markley v. U.S. Bank Nat’l Ass’n*, 142 F.4th 732, 742 (10th Cir. 2025) (alteration in original) (quoting *State v. U.S. EPA*, 989 F.3d 874, 885 (10th Cir. 2021)). The district court did not violate this rule. The defendants raised the issue of whether Mr. Morphew sufficiently alleged lack of probable cause. The

¹⁷ Mr. Morphew objects to the district court’s reliance on *Bruner* because probable cause in that case was “decided only after discovery was complete.” Op. Br. at 16–17. True, *Bruner* resolved the probable cause issue on summary judgment. 506 F.3d 1021, 1025, 1027 (10th Cir. 2007). But the procedural stage is not always a dispositive distinction, and Mr. Morphew has offered no reason to think it might be under the circumstances before us.

governing legal standard obligated the district court to determine whether the modified affidavit provided probable cause. *See United States v. Perez*, 127 F.4th 146, 166 (10th Cir. 2025) (“When an issue . . . is properly before the court, the court . . . retains the independent power to identify and apply the proper construction of governing law.”).

We therefore agree with the district court that the “chief” deficiency in Mr. Morpew’s complaint is the failure to plausibly allege the absence of probable cause for his arrest and prosecution. On that basis, we affirm the dismissal of Mr. Morpew’s claims for malicious prosecution, Fourth Amendment fabrication of evidence, *Franks* violations, conspiracy, failure to intervene, and *Monell* liability.

C

We now turn to Mr. Morpew’s Fourteenth Amendment claims for fabrication of evidence and reckless investigation. These claims were also properly dismissed.¹⁸

1

¹⁸ Although the district court dismissed these claims on different grounds, “[w]e may ‘affirm a district court decision on any grounds for which there is a record sufficient to permit conclusions of law, even grounds not relied upon by the district court.’” *Dummar v. Lummis*, 543 F.3d 614, 618 (10th Cir. 2008) (citation omitted); *see also, e.g., GF Gaming Corp. v. City of Black Hawk*, 405 F.3d 876, 882 (10th Cir. 2005) (“For somewhat different reasons than those relied on by the district court, this court also concludes that the complaint fails to state a claim on which relief can be granted.”).

To state a Fourteenth Amendment claim based on fabrication of evidence, a plaintiff must plausibly allege “(1) the defendant knowingly fabricated evidence, (2) the fabricated evidence was used against the plaintiff, (3) the use of the fabricated evidence deprived the plaintiff of liberty, and (4) if the alleged unlawfulness would render a conviction or sentence invalid, the defendant’s conviction or sentence has been invalidated or called into doubt.” *Truman v. Orem City*, 1 F.4th 1227, 1236 (10th Cir. 2021) (footnotes omitted). To satisfy the third element, a plaintiff must “assert a causal connection between the fabrication of evidence and the deprivation of liberty.” *Id.*; *see also Warnick*, 895 F.3d at 753 (“We are ‘aware of no authority for the proposition that the mere preparation of false evidence, as opposed to its use in a fashion that deprives someone of a fair trial or otherwise harms him, violates the Constitution.’” (alteration omitted) (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 281 (1993) (Scalia, J., concurring))); *see generally Martinez v. Carson*, 697 F.3d 1252, 1255 (10th Cir. 2012) (recognizing, in the § 1983 context, “Defendants are liable for the harm proximately caused by their conduct.”). A Fourteenth Amendment fabrication of evidence claim thus requires a plaintiff to plausibly plead the presence of proximate cause, not the absence of probable

cause.¹⁹ For Mr. Morpew’s Fourth Amendment claims, we do not consider the alleged fabricated evidence to decide whether he alleged a lack of

¹⁹ Indeed, underlying *Truman* is a critical distinction between a fabrication of evidence claim brought under the Fourth Amendment and one brought under the Fourteenth Amendment. As discussed, the Fourth Amendment prohibits an individual’s pretrial detention absent “probable cause to believe he committed a crime.” *Manuel*, 580 U.S. at 368–69. The alleged harm in a Fourth Amendment fabrication of evidence claim is “the plaintiff’s wrongful detention without probable cause.” *Harris v. Town of S. Pines*, 110 F.4th 633, 646 (4th Cir. 2024). But a Fourteenth Amendment fabrication of evidence claim implicates “the entire panoply of rights afforded to criminal defendants,” and “the alleged harm . . . is the wrongful initiation of prosecution.” *Id.* (citation omitted); *see also Halsey v. Pfeiffer*, 750 F.3d 273, 291 (3d Cir. 2014) (explaining the “Fourth Amendment forbids a detention without probable cause,” while “[t]he guarantee of due process of law, by contrast, is not so limited as it protects defendants during an entire criminal proceeding through and after trial”); *Zambrano v. City of Joliet*, 141 F.4th 828, 830 (7th Cir. 2025) (explaining the difference between a fabricated evidence claim brought under the Fourth Amendment and one brought under the Fourteenth Amendment). Put another way, it is generally understood that the existence of probable cause does not necessarily defeat a Fourteenth Amendment fabrication of evidence claim. *See Dean v. Phatak*, 162 F.4th 555, 565, 567–68 (5th Cir. 2025) (recognizing a “freestanding” due process right against deliberate fabrication of evidence); *Tanner v. Walters*, 98 F.4th 726, 733 (6th Cir. 2024) (concluding a “stand-alone fabrication-of-evidence claim can survive without regard to probable cause”); *Harris*, 110 F.4th at 646 (noting existence of independent probable cause “is no defense to a due process claim”); *Barnes*, 68 F.4th at 132 (rejecting “effort[s] to import probable cause into the due process analysis”); *Spencer*, 857 F.3d at 802 (holding existence of independent probable cause “does not resolve [a] Fourteenth Amendment claim for deliberate fabrication of evidence”); *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1328 (11th Cir. 2015) (recognizing separate Fourteenth Amendment due process claim for fabrication of evidence where plaintiff alleged “a causal connection between the alleged cover up” and his “unjust incarceration”); *Limone v. Condon*, 372 F.3d 39, 44–45 (1st Cir. 2004) (stating deliberate fabrication of evidence “necessarily violate[s] due process”); *but see Riddle v. Riepe*, 866 F.3d 943, 948 (8th Cir. 2017) (“[T]he

probable cause. But for his Fourteenth Amendment claim, we do consider the alleged fabricated evidence and decide whether, but for that evidence, defendants would not have arrested and charged him.

To satisfy the causation requirement in this case, Mr. Morpew had to plausibly allege the fabricated evidence caused his prosecution. We cannot say he has done so. Most of Mr. Morpew's allegations on this front are legal assertions. For example, the complaint asserts, "As a proximate result of Defendants' unlawful conduct, Barry Morpew was arrested, held in custody until he was able to bond out, and lived under bond conditions for over eleven months[.]" RI.171; *see also* RI.170 ("Defendants' misconduct resulted directly in the unjust criminal detention and prosecution of Barry Morpew[.]"). Conclusory allegations like these "are not entitled to the assumption of truth[.]" *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012); *see also Iqbal*, 556 U.S. at 678 (stating a complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" (alteration in original) (quoting *Twombly*, 550 U.S. at 557)).

Fourteenth Amendment's guarantee of due process is violated by 'the manufacture of . . . false evidence' in order 'to falsely formulate a pretense of probable cause.'" (alterations in original) (quoting *Livers v. Schenck*, 700 F.3d 340, 354 (8th Cir. 2012))).

Beyond that, Mr. Morpew alleges the “[d]efendants fabricated evidence and solicited false testimony implicating [him] in the crime that they knew was false[,]” “obtained [his] prosecution and incarceration using that false evidence[,]” and “failed to correct fabricated evidence that they knew to be false when it was used against [him] to effectuate his arrest, detention, and prosecution.” RI.170; *see also* RI.147 (alleging the defendants “conspired . . . to manufacture probable cause that [Mr. Morpew] had committed murder and . . . conspired to fabricate evidence”). These factual allegations might be consistent with liability, but without more, are not enough to state a claim “plausible on its face.” *Twombly*, 550 U.S. at 570. Importantly, Mr. Morpew does not claim the defendants would have declined to charge and prosecute him for Suzanne’s murder without the fabricated evidence. He fails to allege the fabricated evidence even influenced the defendants’ decision to prosecute him. Particularly when viewed together with the abundance of uncontested inculpatory facts in the arrest affidavit, Mr. Morpew does not plausibly plead the requisite “causal connection between the fabrication of evidence and the deprivation of liberty.” *Truman*, 1 F.4th at 1236.

We thus affirm the dismissal of Mr. Morpew’s Fourteenth Amendment claim for fabrication of evidence. His conspiracy, failure to intervene, and *Monell* claims—to the extent they are premised on this

alleged due process violation—likewise must be dismissed under Rule 12(b)(6).

2

Mr. Morpew frames his purported reckless investigation claim as a violation of his substantive due process rights under the Fourteenth Amendment.²⁰ We have recognized an “unreasonable *post-arrest* investigation” can violate substantive due process. *Romero v. Fay*, 45 F.3d 1472, 1478 (10th Cir. 1995) (emphasis added); *but see Barham v. Town of Greybull*, 483 F. App’x 506, 509 (10th Cir. 2012) (suggesting it is unclear whether “individuals have a constitutional right to a reasonable post-arrest investigation.”). But Mr. Morpew’s allegations target the defendants’ efforts to manufacture probable cause before his arrest; he does not allege a deficient or “unreasonable” post-arrest investigation. As the district court correctly

²⁰ It is not totally clear Mr. Morpew even brings a Fourteenth Amendment reckless investigation claim. In his opening brief, Mr. Morpew suggests his reckless investigation claim “may well be part and parcel of the *Franks* violation.” Op. Br. at 46. He also seems to suggest his reckless investigation claim is a recasting of his malicious prosecution claim. He argues “the concept of ‘reckless investigation’ is embedded into a malicious prosecution claim” and “is also embedded in the notion of probable cause.” Op. Br. at 45–46. To the extent the reckless investigation claim is premised on the same theory as Mr. Morpew’s *Franks* or malicious prosecution claims under the Fourth Amendment, we have already explained that he must plausibly allege the absence of probable cause to withstand the defendants’ motions to dismiss.

noted, our circuit has not recognized a § 1983 reckless investigation claim based on pre-arrest misconduct. And in an unprecedented decision, we have observed “serious reason to doubt the existence of” such a cause of action. *See Parker v. City of Tulsa*, 745 F. App’x 79, 81 n.1 (10th Cir. 2018) (noting “the Eighth Circuit stands alone in recognizing [this claim]” and “[s]everal district courts have also ruled there is no such substantive due process claim.”).

Assuming (without deciding) such a cause of action exists, Mr. Morpew has not plausibly stated it. “Our cases recognize a § 1983 claim for a violation of Fourteenth Amendment substantive due process rights in the narrowest of circumstances.” *Becker v. Kroll*, 494 F.3d 904, 922 (10th Cir. 2007). As relevant here, a plaintiff must “show that the government actor intentionally or recklessly *caused injury* to the plaintiff[.]” *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 528 (10th Cir. 1998) (emphasis added) (quoting *Uhlrig v. Harder*, 64 F.3d 567, 574 (10th Cir. 1995)).

Mr. Morpew claims the defendants “conducted a reckless investigation” by “disregard[ing], conceal[ing], and withh[o]ld[ing] evidence indicating that [he] was innocent and evidence pointing to other leads or suspects[.]” RI.180. He further alleges the defendants “knowingly . . . and with reckless disregard for [his] innocence and constitutional rights” fabricated evidence, coerced false and misleading statements, made false

statements, and suppressed exculpatory evidence. RI.180. According to the complaint, the defendants’ “fraudulent, outrageous, and egregious acts robbed [Mr. Morphew] of fundamental fairness in the investigation, prosecution, and pretrial proceedings to a degree that shocks the conscience[.]” RI.180–81. Mr. Morphew’s complaint has not plausibly alleged facts from which we can infer the defendants’ purported reckless investigation caused him injury. Mr. Morphew asserts the defendants’ alleged misconduct “violat[ed] [his] clearly-established constitutional right to substantive due process of law as guaranteed by the Fourteenth Amendment and caus[ed] him the injuries and damages set forth” in his complaint. RI.180–81; *see also* RI.181 (asserting “[a]s a proximate result of Defendants’ unlawful conduct, Mr. Morphew was arrested, held in custody until he was able to bond out, and lived under bond conditions for over eleven months[.]”). Such “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” do not meet the plausibility standard. *Iqbal*, 556 U.S. at 678.

In sum, even assuming we would recognize a substantive due process claim for reckless investigation, Mr. Morphew’s complaint fails to plausibly allege one. His derivative claims for conspiracy, failure to intervene, and *Monell* liability fail to the extent they are premised on this alleged constitutional violation.

We discern no error in the district court’s dismissal of Mr. Morphey’s § 1983 claims. Given this conclusion, we need not revisit the district court’s decision to decline pendent jurisdiction over his state law claims.²¹ See *United States v. Botefuhr*, 309 F.3d 1263, 1273 (10th Cir. 2002) (“[A] district court should normally dismiss supplemental state law claims after all federal claims have been dismissed, particularly when the federal claims are dismissed before trial.”).

IV

We **AFFIRM** the district court’s judgment dismissing Mr. Morphey’s complaint.²²

²¹ Given our disposition, we need not consider the district court’s alternative bases for dismissal or address Mr. Morphey’s associated arguments. See, e.g., *United States v. Esparza-Mendoza*, 386 F.3d 953, 957 (10th Cir. 2004) (declining to address issues that were unnecessary to affirmance). To that end, we note we are not compelled to address qualified or absolute immunity before reaching the merits because these defenses are not jurisdictional. See *Nevada v. Hicks*, 533 U.S. 353, 373 (2001) (“There is no authority whatever for the proposition that absolute- and qualified-immunity defenses pertain to the court’s jurisdiction[.]”); *Crothers v. Carr*, No. 23-8014, 2025 WL 1122681, at *4 n.6 (10th Cir. Apr. 16, 2025) (unpublished) (“[I]t is at least permissible to address the merits of a plaintiff’s claim instead of dismissing it based on an immunity defense.”).

²² We deny as moot Mr. Morphey’s motion to strike because we can take judicial notice of the June 2025 state indictment. See *Bruce v. City & Cnty. of Denver*, 57 F.4th 738, 741 n.3 (10th Cir. 2023) (“[A] federal court may take judicial notice of another court’s publicly filed records if they have a direct relation to matters at issue.”). We also deny as moot his motion to vacate oral argument.