

APPENDIX

APPENDIX

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APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION

Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 18a0051p.06

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-5988

[Filed March 15, 2018]

DOUGLAS JORDAN,)
<i>Plaintiff-Appellant,</i>)
)
<i>v.</i>)
)
BLOUNT COUNTY; SCOTT CARPENTER;)
JAMES BROOKS,)
<i>Defendants-Appellees.</i>)

Appeal from the United States District Court
for the Eastern District of Tennessee at Knoxville.
No. 3:16-cv-00122—Pamela Lynn Reeves,
District Judge.

Decided and Filed: March 15, 2018

Before: KEITH, KETHLEDGE, and THAPAR,
Circuit Judges.

COUNSEL

ON BRIEF: Gena Lewis, BANKS AND JONES, Knoxville, Tennessee, for Appellant. Craig L. Garrett, Maryville, Tennessee, for Appellee Blount County and Appellee Scott Carpenter in his official capacity. Gary M. Prince, N. Craig Strand, O'NEIL PARKER & WILLIAMSON, PLLC, Knoxville, Tennessee, for Appellee Scott Carpenter in his individual capacity. Laura Miller, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellee James Brooks.

OPINION

KETHLEDGE, Circuit Judge. Douglas Jordan seeks damages under 42 U.S.C. § 1983 for prosecutorial misconduct that led to his wrongful conviction for second-degree murder. The district court dismissed his suit as untimely, holding that his claim accrued when the state court of appeals vacated his conviction, rather than when he was acquitted on remand. We respectfully disagree and reverse.

In March 1998, Jennifer Byerley was found beside the road with her throat slashed. Jordan was charged and eventually convicted for the murder, but prosecutors never told him about certain evidence—namely a knife found near where Byerley had lain—that might have implicated someone else. The Tennessee Court of Criminal Appeals affirmed on direct review, but Jordan thereafter sought post-conviction relief under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), which requires the prosecution to disclose exculpatory evidence to the defense. On that ground,

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the same court of appeals vacated Jordan's conviction in 2011 and remanded to the trial court for further proceedings. *See Jordan v. State*, 343 S.W.3d 84 (Tenn. Ct. Crim. App. 2011); Tenn. Code Ann. § 40-30-111(a). Jordan was retried and acquitted in 2015.

Less than a year later, Jordan sued a Blount County prosecutor, detective, and the County itself under § 1983, seeking damages for the *Brady* violation. The statute of limitations for that claim is one year. *See* Tenn. Code Ann. § 28-3-104(a); *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005). The question here is whether, as the district court held, Jordan's claim accrued when his conviction was vacated, or whether instead it accrued upon his later acquittal. We review the district court's decision de novo. *See Mills v. Barnard*, 869 F.3d 473, 479 (6th Cir. 2017).

As a general rule, a claim accrues "when the plaintiff can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (internal quotation marks omitted). To obtain relief, the plaintiff must be able to prove the elements of his claim. *Cf. Carey v. Piphus*, 435 U.S. 247, 257-58 (1978). To determine those elements for purposes of a claim brought under § 1983, "we look first to the common law of torts." *Heck v. Humphrey*, 512 U.S. 477, 483 (1994).

The closest common-law analogy to a *Brady* claim is one for malicious prosecution, because that claim, unlike one for false arrest, "permits damages for confinement imposed pursuant to legal process." *Id.* at 484. One element of a malicious-prosecution claim "is termination of the prior criminal proceeding in favor of the accused." *Id.* (citing W. Keeton et al., *Prosser and Keeton on Law of Torts* 874 (5th ed. 1984)). A *Brady*

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claim under § 1983 cannot accrue, therefore, until the criminal proceeding so terminates.

Thus, the more specific question here is whether Jordan’s “criminal proceeding” terminated in 2011, when the state court of appeals vacated his conviction and remanded for further proceedings in the trial court. Our decision in *King v. Harwood*, 852 F.3d 568 (6th Cir. 2017), makes clear that the answer is no. There, like here, the state court of appeals set aside King’s conviction on post-conviction review and remanded her case to the trial court. The trial court later dismissed the charges against her. King thereafter brought a § 1983 claim that (as here) we analogized to a malicious-prosecution claim for purposes of accrual. *Id.* at 579. That claim did not accrue “[w]hen the Kentucky Court of Appeals granted King relief,” we held, because the court’s decision “did not result immediately in a termination of the criminal proceeding in favor of the accused[.]” *Id.* (internal quotation marks and ellipses omitted). Instead King’s claim accrued only when her criminal proceeding in fact ended, which occurred “when King’s indictment was dismissed[.]” *Id.* Here, Jordan’s criminal proceeding likewise continued after the vacatur of his conviction, and ended only upon his acquittal in March 2015. Hence his claim did not accrue until then. He filed suit less than a year later, which means his suit was timely.

The defendants argue that, per our decision in *D’Ambrosio v. Marino*, 747 F.3d 378, 384 (6th Cir. 2014), Jordan’s § 1983 claim accrued as soon as his conviction was vacated. But that reading elides the difference between the vacatur in that case and in this

one. There, a federal district court vacated D'Ambrosio's conviction by means of an unconditional writ of habeas corpus, which by its terms barred the state from retrying him. *Id.* at 382, 385. Thus, the vacatur itself terminated the state criminal proceeding, and D'Ambrosio's claim accrued once that vacatur "became final[.]" *Id.* at 385. For that reason our comments about the import of any "anticipated future conviction[.]" *id.* (emphasis omitted)—which were themselves taken from a Supreme Court case involving a materially different claim for purposes of accrual, namely one for false imprisonment, *see Wallace*, 549 U.S. at 393—were merely dicta. Jordan's claim therefore accrued at the same point D'Ambrosio's did: when his criminal proceeding ended.

The district court's judgment is reversed, and the case remanded for further proceedings consistent with this opinion.

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-5988

[Filed March 15, 2018]

DOUGLAS JORDAN,)
Plaintiff - Appellant)
)
v.)
)
BLOUNT COUNTY; SCOTT)
CARPENTER; JAMES BROOKS,)
Defendants - Appellees.)

Before: KEITH, KETHLEDGE,
and THAPAR, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for
the Eastern District of Tennessee at Knoxville.

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

IN CONSIDERATION THEREOF, it is ORDERED
that the judgment of the district court is REVERSED
and the case REMANDED for further proceedings
consistent with the opinion of this court.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt

Deborah S. Hunt, Clerk

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

**No. 3:16-CV-00122
REEVES/SHIRLEY**

[Filed July 28, 2017]

DOUGLAS JORDAN,)
Plaintiff,)
)
v.)
)
BLOUNT COUNTY, JAMES BROOKS,)
and SCOTT CARPENTER,)
Defendants.)

MEMORANDUM OPINION

Plaintiff Douglas Jordan sues defendants pursuant to 42 U.S.C. § 1983 for violation of his Due Process rights under the Fourteenth Amendment and for common law negligence stemming from alleged destruction of exculpatory evidence in a criminal case brought against him by the Blount County District Attorney's Office in 2002. Because Jordan did not file his complaint within the applicable statute of limitations, this action will be dismissed as to all defendants.

I. Background

Jordan was convicted of second degree murder in October of 2002. Following denial of his direct appeal, Jordan filed a petition for post-conviction relief. In the post-conviction proceedings, Jordan discovered that Blount County police investigators found a knife during their investigation that was never provided to his criminal defense attorney. Jordan also discovered police investigation documents – one detailing how the knife was discovered, and a memo dated March 13, 1998, regarding interviews with potential other suspects in the case that were never disclosed. On January 25, 2011, the Tennessee Court of Criminal Appeals determined that Jordan was entitled to a new trial due to the non-disclosure of the knife and investigative documents. *Jordan v. State*, 343 S.W.3d 84, 97-100 (Tenn.Ct.App. 2011). The trial court granted Jordan bond, and he was released from prison in April 2011, pending retrial. Jordan was retried and acquitted on March 28, 2015. He filed his original complaint in this action on March 14, 2016.

II. Standard of Review

Defendant James Brooks moves to dismiss the claims against him under Federal Rule of Civil Procedure 12(b)(6). A motion to dismiss under Rule 12(b)(6) requires the court to construe the complaint in the light most favorable to the plaintiff, accept all the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Meador v. Cabinet for Human Resources*, 902 F.2d 474, 475 (6th Cir. 1990). The court may not grant such a motion to dismiss based upon a disbelief of a

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complaint's factual allegations. *Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990); *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995) (noting that courts should not weigh evidence or evaluate the credibility of witnesses). The court must liberally construe the complaint in favor of the party opposing the motion. *Id.* However, the complaint must articulate more than a bare assertion of legal conclusions. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434 (6th Cir. 1988). “[The] complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory.” *Id.*

Defendants Scott Carpenter and Blount County move to dismiss the claims against them under Federal Rule of Civil Procedure 56. Summary judgment under Rule 56 of the Federal Rules of Civil Procedure is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of establishing that no genuine issues of material fact exist. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 330 n. 2 (1986); *Moore v. Philip Morris Co., Inc.*, 8 F.3d 335, 339 (6th Cir. 1993). All facts and inferences to be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Matsushita elec. Indus. Co. Ltd v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Burchett v. Keifer*, 301 F.3d 937, 942 (6th Cir. 2002).

Once the moving party presents evidence sufficient to support a motion under Rule 56, the nonmoving party is not entitled to a trial merely on the basis of allegations. *Celotex*, 477 U.S. at 317. To establish a

genuine issue as to the existence of a particular element, the nonmoving party must point to evidence in the record upon which a reasonable finder of fact could find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The genuine issue must also be material; that is, it must involve facts that might affect the outcome of the suit under the governing law. *Id.*

III. Analysis

The issue before the court is whether the statute of limitations began to run on January 25, 2011, when the Tennessee Court of Appeals granted Jordan post-conviction, or when he was acquitted at the second trial on March 28, 2015. Defendants assert that Jordan's lawsuit is barred by the statute of limitations under Sixth Circuit precedent. Jordan argues that other circuits have treated a *Brady*¹ claim as a claim for malicious prosecution, which does not accrue until the prosecution is terminated in the plaintiff's favor, citing decisions from the Seventh, Fourth and Ninth Circuits. Therefore, he argues his March 14, 2016, complaint was timely filed within one year from the date of his acquittal on March 28, 2015. Jordan's argument is unpersuasive in light of clear Sixth Circuit precedent.

The one-year statute of limitations set forth in Tenn. Code Ann. § 28-3-104(a)(3) applies to civil rights claims arising in Tennessee. *Jackson v. Richards Med.*

¹ *Brady v. Maryland*, 373 U.S. 83 (1963) (Suppression by prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution).

Co., 961 F.2d 575, 578 (6th Cir. 1992). Although the statute of limitations for § 1983 actions is based on state law, federal law determines when a cause of action accrues and thus, when the statute of limitations period begins. *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *Eidson v. Tenn. Dep't of Children's Servs.*, 510 F.3d 631, 635 (6th Cir. 2007). Typically, a plaintiff's cause of action accrues when the plaintiff discovers that the exculpatory evidence was not disclosed to him. *D'Ambrosio v. Marino*, 747 F.3d 378, 384 (6th Cir. 2014). However, under *Heck v. Humphrey*, 512 U.S. 477 (1994), a plaintiff may not file a civil action, including a *Brady* claim, if success in the civil action would imply the invalidity of a criminal conviction arising out of the same transaction. *Id.* at 484. Therefore, under *Heck*, a cause of action under § 1983 that would imply the invalidity of a conviction does not accrue until the conviction is reversed or expunged, and the statute of limitations does not begin to run until such an event occurs. *D'Ambrosio*, 747 F.3d at 384. Relying on the principles of *Heck* and *Wallace*, the Sixth Circuit held that in a wrongful conviction case based on a *Brady* violation, the statute of limitations does not accrue or begin to run until the underlying conviction is reversed or expunged. *D'Ambrosio* at 388.

Contrary to Jordan's position, *Heck* does not require that the criminal proceedings terminate in his favor before the statute of limitations begins to run on a § 1983 claim based on *Brady*. The Sixth Circuit has rejected Jordan's position holding that the statute of limitations begins to run when the underlying conviction is reversed or vacated, even if the plaintiff is subject to retrial. *D'Ambrosio*, 747 F.3d at 385. The Sixth Circuit explained that what might happen in a

subsequent prosecution is immaterial, the claim accrues as soon as the only obstacle to the litigation, the underlying conviction, has been reversed or vacated. *Id.*

Jordan further argues that his conviction had to be vacated consistent with the meaning of the habeas statutes, as a conditional grant of federal habeas relief does not itself invalidate a conviction without further action by the trial court. *See Gentry v. Deuth*, 45 F.3d 687, 692 (6th Cir. 2006). Here, the Tennessee Court of Appeals “reversed” Jordan’s original conviction. *See Jordan*, 343 S.W.3d at 101. His conviction was “vacated and set aside” as a matter of law when he was granted post-conviction relief. *See* Tenn. Code Ann. § 40-30-111(a) (“If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable . . . the court shall vacate and set aside the judgment . . .”). Here, the post-conviction proceedings were final and a § 1983 suit could not reach a result in conflict with the state criminal proceedings based on the underlying *Brady* violations.

Thus, the court finds under *Wallace* and *Heck*, that Jordan’s cause of action accrued on January 25, 2011, when the Tennessee Court of Appeals reversed his conviction based on *Brady*, and thus resolved the danger of a conflicting ruling between Jordan’s criminal proceedings and a § 1983 civil suit on the same underlying *Brady* allegations. The one-year statute of limitations ran on January 25, 2012, and Jordan’s complaint filed on March 14, 2016 is time-barred.

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Accordingly, defendants' motions to dismiss or for summary judgment [R. 54, 58, 71] are **GRANTED**, and this action is **DISMISSED in its entirety, with prejudice.**

/s/ Pamela L. Reeves

UNITED STATES DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

**No. 3:16-cv-00122
REEVES/SHIRLEY**

[Filed July 28, 2017]

DOUGLAS JORDAN,)
Plaintiff,)
)
v.)
)
BLOUNT COUNTY, JAMES BROOKS,)
and SCOTT CARPENTER,)
Defendants.)
)

JUDGMENT

In accordance with the Memorandum Opinion filed contemporaneously herewith, it is **ORDERED** that the Defendants' motions to dismiss and for summary judgment are **GRANTED**, and Plaintiff's claims against Defendants are **DISMISSED, with prejudice.**

The Clerk is **DIRECTED** to remove the trial scheduled for April 17, 2018, from the court's docket.

Enter:

/s/ Pamela L. Reeves

UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 17-5988

[Filed April 13, 2018]

DOUGLAS JORDAN,)
Plaintiff-Appellant,)
)
v.)
)
BLOUNT COUNTY; SCOTT)
CARPENTER; JAMES BROOKS,)
Defendants-Appellees.)

O R D E R

BEFORE: KEITH, KETHLEDGE, and THAPAR,
Circuit Judges.

The court received two petitions for rehearing en banc. The original panel has reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petitions are denied.

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ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt

Deborah S. Hunt, Clerk