

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 19-1920

John L. Corrigan, Jr.
Plaintiff – Appellant,

v.

City of Savage, et.al.
Defendants – Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: November 25, 2019
Filed: December 2, 2019
[Unpublished]

Before COLLOTON, BENTON, AND GRASZ, Circuit
Judges.

PER CURIAM.

John Corrigan appeals the district court's¹ dismissal of his pro se action asserting claims under 42 U.S.C. § 1983 against the City of Savage and several of its police officers, Scott County and several of its employees, the trial court judge who presided over his criminal trial, and the victim of the underlying criminal charge. After careful de novo review, we conclude that the district court did not err in dismissing the case. See Kelly v. City of Omaha, 813 F.3d 1070, 1075 (8th Cir. 2016) (de novo review of grant of Rule 12(b)(6) motion); Saterdalen v. Spencer, 725 F.3d 838, 840-41 (8th Cir. 2013) (de novo review of district court's grant of judgment on the pleadings). Accordingly, we affirm. See 8th Cir. R. 47B.

¹ The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Becky R. Thorson, United States Magistrate Judge for the District of Minnesota.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John L. Corrigan, Jr. Memorandum Opinion
Plaintiff, And Order
v. Civil No. 18-2257
City of Savage, et.al. ADM/BRT
Defendants.

John L. Corrigan, Jr., Shakopee, MN, pro se.
Kathryn Iverson Landrum, Assistant Attorney
General, Minnesota Attorney General's Office, St.
Paul, MN, on behalf of Judge Christian Wilton.

Daniel P. Kurtz, Esq., League of Minnesota Cities,
St. Paul, MN, on behalf of City of Savage, Gabe
Kerkaert, Edward Culbreth, Kyle Klapperick,
Alexandria Marklowitz, and Ashley Uthe.

Anna L. Yunker, Esq., and William J. Everett,
Esq., Everett & Vander Weil, P.L.L.P., Rosemount,
MN, on behalf of Nelson Rhodus, Lynn Hanson, Luke
Hennen, and Scott County.

I. INTRODUCTION

This matter is before the undersigned United States District Judge for a ruling on Plaintiff John L. Corrigan, Jr.'s ("Corrigan") Objection [Docket No. 86] to Magistrate Judge Becky R. Thorson's January 14, 2019 Report and Recommendation [Docket No. 85] ("R&R"). In the R&R, Judge Thorson recommends granting Defendant Judge Christian Wilton's ("Judge CASE 0:18-cv-02257-ADM-BRT Document 90 Filed 04/04/19 Page 1 of 11 Wilton") Motion to Dismiss Amended Complaint [Docket No. 35]; granting Defendants City of Savage, Police Officer Gabe Kerkaert ("Officer Kerkaert"), Police Officer Edward Culbreth ("Officer Culbreth"), Police Officer Kyle

Klapperick (“Officer Klapperick”), Police Officer Alexandria Marklowitz (“Officer Marklowitz”), and Police Officer Ashley Uthe’s (“Officer Uthe”) (collectively, the “Savage City Defendants”) Motion for Judgment on the Pleadings [Docket No. 45]; granting Defendants Scott County, Assistant Scott County Attorney Nelson Rhodus (“Prosecutor Rhodus”), Scott County Sheriff Luke Hennen (“Sheriff Hennen”), and Probation Officer Lynn Hanson’s (“Probation Officer Hanson”) (collectively, the “Scott County Defendants”) Motion for Judgment on the Pleadings [Docket No. 50]; granting Defendant Amber Bernier’s (“Bernier”) Motion for Judgment on the Pleadings [Docket No. 69]; and dismissing Corrigan’s Amended Complaint [Docket No. 23].

Responses to Corrigan’s Objection have been filed by Judge Wilton [Docket No. 87], the Savage City Defendants [Docket No. 88], and the Scott County Defendants [Docket No. 89].

After a de novo review of the record, and for the reasons stated below, the Objection is overruled and the R&R is adopted.

II. BACKGROUND

The factual background of this case is set forth in the R&R and is incorporated by reference. Briefly, on August 3, 2016, Corrigan was driving on the freeway when his car nearly collided with Bernier’s. Am. Compl. ¶ 19. The parties made eye contact, and Corrigan began deliberately following Bernier’s car. Id. ¶ 20. After Corrigan had followed Bernier for 15 minutes, Bernier stopped her car and told Corrigan that she would call the police if he did not stop following her. Id. ¶¶ 20–21. Corrigan responded that the police should be called. Id. ¶ 21.

Bernier called 911 and was directed to a nearby police station. Id. ¶ 22. Corrigan followed Bernier's car into the police station parking lot, parked, and got out of his car. Id. Officer Kerkaert arrived in a squad car with lights flashing and parked behind Corrigan's vehicle. Id. ¶ 23. Corrigan placed his passport on the hood of his car and Officer Kerkaert picked up the passport. Id. Officers Culbreth and Klapperick arrived and, together with Officer Kerkaert, began asking Corrigan questions. Id. ¶ 24. Officers Marklowitz and Uthe also arrived and interviewed Bernier. Id. ¶ 26. The officers cited Corrigan for fifth degree assault and returned his passport to him. Id. ¶ 27. Prosecutor Rhodus later amended the charge to stalking under Minn. Stat. § 609.749. Id. ¶ 33.

Judge Wilton presided over Corrigan's criminal jury trial. Id. ¶¶ 36–37. The jury returned a verdict finding Corrigan to be guilty of stalking. Id. Judge Wilton ordered the Scott County probation office to prepare a Pre-Sentence Investigation Report (“PSI Report”). Id. ¶ 37. Probation Officer Hanson prepared the PSI Report, which concluded that Corrigan would not be amenable to probation and recommended a sentence of 120 days in the Scott County Jail. Id. ¶ 38. Judge Wilton imposed a 120-day sentence as recommended in the PSI Report. Corrigan appealed his conviction and sentence, and the Minnesota Court of Appeals affirmed. See *State v. Corrigan*, No. A17-1145, 2018 WL 3214271 (Minn. Ct. App. July 2, 2018). The Minnesota Supreme Court denied certiorari. Corrigan filed this 42 U.S.C. § 1983 lawsuit on August 2, 2018, alleging federal constitutional claims against all Defendants and asserting state law claims against Scott County and the Savage City Defendants. Id. ¶¶ 42–50. The R&R recommends dismissing the federal

constitutional claims with prejudice and dismissing the state law claims without prejudice.

III. DISCUSSION

A. Standard of Review

In reviewing a magistrate judge's report and recommendation on a dispositive matter, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

B. Corrigan's Objections

Corrigan raises numerous objections to the R&R. The Court addresses the objections in the sequence presented.

1. Fraud on the Court - Unlawful Arrest

Corrigan argues the officers lacked probable cause to arrest him because they did not witness the misdemeanor being committed. Obj. at 1–3. This argument fails for multiple reasons. First, as the R&R correctly determined, the officers did not arrest Corrigan. Rather, the officers conducted a stop under *Terry v. Ohio*, 392 U.S. 1 (1968) and issued a citation to Corrigan at the conclusion of the stop. Corrigan argues he was arrested because he was not free to leave, as Officer Kerkaert parked his squad car behind Corrigan's car and was holding Corrigan's passport. However, Corrigan does not allege that any officer told Corrigan he was under arrest or that he was not free to leave the scene. Nor does Corrigan allege that the officers handcuffed him or otherwise physically confined him. These circumstances do not constitute "a formal arrest or restraint on freedom of movement

of the degree associated with a formal arrest.” United States v. Williams, 760 F.3d 811, 814 (8th Cir. 2014).

Even if Corrigan had been arrested, the “prevailing view” under federal law “is that the Constitution does not require that a misdemeanor offense must have occurred in the officer’s presence to justify a warrantless arrest.” Veatch v. Bartels Lutheran Home, 627 F.3d 1254, 1259 (8th Cir. 2010). Minnesota law also does not impose a presence requirement. In Minnesota, an officer may “make an immediate pursuit and stop of a person who has committed a misdemeanor in the very recent past.” State v. Stich, 399 N.W.2d 198, 199 (Minn. Ct. App. 1987). Here, the officers arrived on the scene shortly after Corrigan had followed Bernier into the police parking lot. Although Corrigan knew that Bernier was sufficiently threatened by his conduct that she found it necessary to call the police, he refused to stop following her and was still in her presence when the police arrived. Thus, Corrigan’s misdemeanor had been very recently committed (or was still being committed) at the time he was arrested.

Corrigan also argues that the officers lacked probable cause to believe Corrigan committed a crime because “[f]ollowing someone is not a crime.” Obj. at 3. Corrigan raised the same argument to the state district court and the Minnesota Court of Appeals without success. See State v. Corrigan, No. 70-CR-16-14594, 2018 WL 3214271, at *3 (Minn. Ct. App. July 2, 2018) (holding that “the evidence supports Corrigan’s conviction based on proof beyond a reasonable doubt” and thus “necessarily also meets the much lower, probable-cause standard”).

Corrigan’s claims for unlawful arrest are also barred by Heck v. Humphrey, which holds that “when a state prisoner seeks damages in a § 1983 suit, the

district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” 512 U.S. 477, 487 (1984). The plaintiff “must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” Id. at 486–87. As the R&R correctly concluded, Heck v. Humphrey applies here because a judgment in favor of Corrigan on his § 1983 claims for unlawful arrest would necessarily imply the invalidity of his conviction or sentence, and Corrigan has not proven that his conviction or sentence has already been reversed, expunged, invalidated, or called into question by the grant of a writ of habeas corpus. Additionally, had Corrigan’s false arrest claims not been barred by Heck v. Humphrey, the Court agrees with the R&R’s conclusion that probable cause existed for Corrigan’s citation, charge, and prosecution. See R&R at 18 n.9.

2. Fraud on the Court – Fraudulent Evidence

Corrigan next argues Bernier’s testimony at trial was “the fraudulent, conspiratorial creation of Defendant Bernier, Defendant Rhodus and/or Defendant Rhodus’ office,” because Bernier’s statements to the police did not describe Corrigan’s behavior as aggressive or threatening. Obj. at 4.

As the R&R correctly recognized, Bernier is entitled to absolute immunity from any claim that is based on her testimony. See R&R at 33 (citing Rehberg v. Paulk, 566 U.S. 356, 367, 369 (2012)).

Similarly, Prosecutor Rhodus is entitled to absolute prosecutorial immunity from suit for acts performed in initiating Corrigan's prosecution and presenting the State's case at trial. See R&R at 24 (citing Reasonover v. St. Louis Cnty., 447 F.3d 569, 580 (8th Cir. 2006)).

3. Constitutional Issue

Corrigan next argues that Minnesota's stalking statute, Minn. Stat. § 609.749, is unconstitutional. Obj. at 4–6. This claim, alleged in Count V of the Amended Complaint, amounts to an attack on Corrigan's conviction. Because a finding in Corrigan's favor on this claim would imply the invalidity of his conviction and Corrigan has not proven that his conviction has already been reversed, expunged, invalidated, or called into question by the grant of a writ of habeas corpus, the claim is barred under Heck v. Humphrey, 512 U.S. 477.

4. Heck v. Humphrey

Corrigan next argues that Heck v. Humphrey does not apply to his claims because he was arrested without a warrant. Obj. at 6. However, Heck v. Humphrey makes no distinction for the manner of arrest.

Corrigan further argues that Heck v. Humphrey does not apply to released prisoners. Obj. at 6–7. This argument contradicts Eighth Circuit law, which holds that Heck v. Humphrey bars collateral attacks on still-valid state convictions, even when a criminal defendant is no longer incarcerated. See Entzi v. Redmann, 485 F.3d 998, 1003 (8th Cir. 2007) (holding that “the [Heck v. Humphrey] principle barring collateral attacks . . . is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated”); Newmy v. Johnson, 758 F.3d 1008, 1009–12 (8th Cir. 2014). § 1983

5. Claims Against Judge Wilton.

Corrigan next argues that the R&R erred in concluding Judge Wilton is entitled to judicial immunity from Corrigan's suit for declaratory judgment. Obj. at 8. Corrigan contends that judicial immunity does not apply because Corrigan was unlawfully arrested and thus Judge Wilton was acting without jurisdiction. As discussed above, Corrigan was not unlawfully arrested. Even if he had been, judicial immunity would still apply because a judge is entitled to absolute judicial immunity unless the judge has acted in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 357 (1978). Judge Wilton was acting within his jurisdiction in making the rulings Corrigan now challenges. See Minn. Stat. 484:01, subd. 1 (stating that district courts have original jurisdiction in all civil and criminal cases).

Additionally, Corrigan's Objection fails to address the R&R's alternative ground for recommending dismissal of Corrigan's claims against Judge Wilton: that the claims must be dismissed for failure to state a claim. See R&R at 16 n.7. The Court agrees with the conclusion in the R&R that Corrigan has not plausibly pled a due process claim or an Eighth Amendment claim against Judge Wilton.

6. § 1983 Claims Against the Savage City Defendants

Corrigan next argues that the R&R erred in recommending dismissal of his claims against the Savage City Defendants. Obj. at 9. Corrigan contends that Heck v. Humphrey does not apply to his claims against the Savage City Defendants because the officers lacked probable cause to arrest him. Heck v. Humphrey again applies for the reasons discussed above.

Corrigan further argues that the officers violated the First Amendment by arresting him in retaliation for remaining silent and refusing to cooperate with the investigation. This argument fails because the claim is based on Corrigan's erroneous assumption that he was arrested.

Corrigan also contends that the officers violated his Fifth Amendment right to remain silent by subjecting him to custodial interrogation without a Miranda² warning. Again, Corrigan was not arrested and thus was not in police custody. "No Miranda warning is necessary for persons detained for a Terry stop." *United States v. McGauley*, 786 F.2d 888, 890 (8th Cir. 1986).

Corrigan also argues that he is entitled to discovery on his Monell³ claim against the City of Savage. Corrigan has failed to allege a constitutional violation by the Savage City police officers, and thus no Monell liability exists for the City of Savage. See *Whitney v. City of St. Louis*, 887 F.3d 857, 861 (8th Cir. 2018) ("[A]bsent a constitutional violation by a city employee, there can be no § 1983 or Monell liability for the City."). With no viable claim, discovery is inappropriate.

7. § 1983 Claims Against the County Defendants

a. Defendant Rhodus

Corrigan again argues that Defendant Rhodus is not entitled to prosecutorial immunity because he solicited false testimony from Defendant Bernier. Obj. at 10. This argument is rejected for the reasons stated in Paragraph III.B.2., above.

² Miranda v. Arizona, 384 U.S. 436 (1966).

³ Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978).

Corrigan also argues that absolute prosecutorial immunity does not apply because Defendant Rhodus was acting in an investigatory capacity rather than a prosecutorial capacity when he met with Defendant Bernier prior to trial. This argument is rejected because meeting with a witness to prepare for her trial testimony is a prosecutorial function that is protected by absolute immunity. Reasonover, 447 F.3d at 580.

b. Probation Officer Hanson

Corrigan next objects to the R&R's conclusion that Probation Officer Hanson is entitled to quasi-judicial immunity for preparing the PSI Report. Obj. at 11. Corrigan contends Probation Officer Hanson's actions were administrative and she was not acting in furtherance of a judicial decision. Obj. at 11. This argument contradicts Eighth Circuit precedent recognizing that "because presentence reports are so closely associated with the exercise of a judicial function, probation officers who prepare these reports are entitled to absolute immunity." Anton v. Getty, 78 F.3d 393, 396 (8th Cir. 1996). Additionally, Probation Officer Hanson was acting in furtherance of a judicial sentencing decision because Judge Wilton ordered that a PSI Report be prepared for his use in Corrigan's sentencing. Am. Compl. ¶ 37.

Corrigan also argues that Probation Officer Hanson is not entitled to immunity because her recommendation of a 120-day sentence is based on "bizarre questions" Probation Officer Hanson asked Corrigan that were not related to his crime. However, "[a]bsolute quasi-judicial immunity would afford only illusory protection if it were lost the moment an officer acted improperly." Martin v. Hendren, 127 F.3d 720, 722 (8th Cir. 1997). Probation Officer Hanson is entitled to absolute quasi-judicial immunity.

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Plaintiff John L. Corrigan, Jr.'s Objection [Docket No. 86] to Magistrate Judge Becky R. Thorson's January 14, 2019 Report and Recommendation is OVERRULED;
2. The Report and Recommendation [Docket No. 85] is ADOPTED;
3. Defendant Judge Christian Wilton's Motion to Dismiss Amended Complaint [Docket No. 35] is GRANTED;
4. Defendants City of Savage, Police Officer Gabe Kerkaert, Police Officer Edward Culbreth, Police Officer Kyle Klapperick, Police Officer Alexandria Marklowitz, and Police Officer Ashley Uthe's Motion for Judgment on the Pleadings [Docket No. 45] is GRANTED;
5. Defendants Assistant County Attorney Nelson Rhodus, Scott County Sheriff Luke Hennen, Probation Officer Lynn Hanson, and Scott County's Motion for Judgment on the Pleadings [Docket No. 50] is GRANTED;
6. Defendant Amber Bernier's Motion for Judgment on the Pleadings [Docket No. 69] is GRANTED; and

7. Corrigan's Amended Complaint [Docket No. 23] is DISMISSED in its entirety. Counts I through VI are dismissed with prejudice, and Count VII is dismissed without prejudice.

LET JUDGMENT BE ENTERED
ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE
Dated: April 4, 2019.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John L. Corrigan, Jr. Plaintiff, v. City of Savage, et.al. Defendants. Judgment In A Civil Case Civil No. 18-2257 ADM/BRT

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiff John L. Corrigan, Jr.'s Objection [Docket No. 86] to Magistrate Judge Becky R. Thorson's January 14, 2019 Report and Recommendation is OVERRULED;
2. The Report and Recommendation [Docket No. 85] is ADOPTED;
3. Defendant Judge Christian Wilton's Motion to Dismiss Amended Complaint [Docket No. 35] is GRANTED;
4. Defendants City of Savage, Police Officer Gabe Kerkaert, Police Officer Edward Culbreth, Police Officer Kyle Klapperick, Police Officer Alexandria Marklowitz, and Police Officer Ashley Uthe's Motion for Judgment on the Pleadings [Docket No. 45] is GRANTED;

5. Defendants Assistant County Attorney Nelson Rhodus, Scott County Sheriff Luke Hennen, Probation Officer Lynn Hanson, and Scott County's Motion for Judgment on the Pleadings [Docket No. 50] is GRANTED;
6. Defendant Amber Bernier's Motion for Judgment on the Pleadings [Docket No. 69] is GRANTED; and
7. Corrigan's Amended Complaint [Docket No. 23] is DISMISSED in its entirety. Counts I through VI are dismissed with prejudice, and Count VII is dismissed without prejudice.

Date: April 5, 2019

KATE M. FOGARTY, CLERK

s/ Jennifer Beck
(By) Jennifer Beck, Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John L. Corrigan, Jr. Report And
Plaintiff, Recommendation
v. Civil No. 18-2257
City of Savage, et.al. ADM/BRT
Defendants.

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Judge Wilton.

BECKY THORSON, United States Magistrate Judge

INTRODUCTION

This matter is before the Court on Defendant
Judge Christian Wilton's Motion to Dismiss Amended
Complaint (Doc. No. 35), Defendants City of Savage,
Police Officer Kerkaert, Police Officer Culbreth,
Police Officer Kyle Klapperick, Police Officer
Alexandria Marklowitz, and Police Officer Uthe's
Motion for Judgment on the Pleadings (Doc. No. 45),
Defendants Nelson Rhodus, Luke Henne, Lynn
Hanson, and Scott County's Motion for Judgment on
the Pleadings (Doc. No. 50), and the Motion for
Judgment on the Pleadings of Defendant Amber

Bernier (Doc. No. 69). The motions have been referred to this Court for a Report and Recommendation under 28 U.S.C. § 636 and D. Minn. LR 72.1. (Doc. No. 14.) On November 8, 2018, this Court held a hearing on the matter in which counsel appeared on behalf of Defendants and Plaintiff appeared *pro se*. (See Doc. No. 84.) For the reasons stated below, this Court recommends that Defendants' motions be granted and Plaintiff's *pro se* Complaint be dismissed.

BACKGROUND

The facts underlying Plaintiff Corrigan's case all relate in one way or another to an incident that occurred while driving on August 3, 2016, which resulted in Corrigan being charged and convicted of stalking, in violation of Minn. Stat. § 609.749. (See Doc. No. 11, Aff. of Kathryn Iverson Landrum ("Landrum Aff.") ¶ 3, Ex. B, *State of Minnesota v. John Louis Corrigan*, Court File No. 70-CR-16-14594 (Scott Cnty. Dist. Ct. July 2, 2018).) The facts, as described by the Minnesota Court of Appeals, are as follows:

Amber Bernier was homebound from work on an evening in August 2016 and heading eastward on Highway 169 north when she encountered John Corrigan in Shakopee. Soon the three-lane roadway would split in two, with cars in the left lane bending north (on Highway 169), cars in the right lane continuing straight (on Highway 13), and cars in the middle lane having the option to choose either route. Corrigan's car was in the far left lane, and Bernier's was immediately behind it. Bernier moved to the center lane, intending to continue straight and avoid the northward bend. Corrigan also changed lanes in front of her. Bernier then pulled into the far right lane

and passed Corrigan to her left. Neither liked the other's driving. As Bernier passed, each driver shot angry glances at the other.

Bernier continued in her lane toward the right as the highway divided. And at first Corrigan followed the middle lane toward the left, traveling on Highway 169 north after the point where the middle lane widened and then split in two. But then Bernier saw in her rearview mirror that Corrigan abruptly changed course and crossed the double white lines to continue in Bernier's direction. And he next moved into the right lane directly behind her onto Highway 13. He followed so closely that there was no room for any other car to fit between them.

Highway 13 also soon divided; drivers can continue straight, heading east, or they can bear right, heading south. Bernier moved into the right-hand lane heading south, and Corrigan followed closely behind her. After Bernier began south, she moved two lanes to her left, into the left-turn lane of the first intersection. She saw in her mirror that Corrigan, too, crossed over two lanes and entered the turn lane, cutting in front of another car to position himself behind Bernier. By this point, Bernier was frightened.

Rather than turn left, Bernier attempted to evade Corrigan by pulling out of the turn lane and back into southbound traffic, moving straight through the intersection. She saw in her mirror that Corrigan likewise changed course, following right behind her. Bernier continued through other intersections until she came to McColl Drive, where she moved into the

left-turn lane and turned east. She saw in her mirror that, again, Corrigan did the same, following her.

As Bernier traveled east on McColl, she received a call from her husband. Bernier told him that she was being followed, and her husband advised her to call the police. She pulled into the driveway of the Savage fire department and stopped. Corrigan pulled beside her and stopped. Bernier lowered her window and told Corrigan to stop following her. Corrigan stared at her but said nothing. Then Bernier yelled, "Stop following me or I'm going to call the police!" Corrigan responded, "I figured you already would have."

Bernier dialed 9-1-1 and spoke with a dispatcher, who stayed on the line and directed her to the nearby Savage police station. Bernier parked outside the front doors of the station, and Corrigan followed her and parked across the street. Police arrived.

(Id. at 2-4.)

Corrigan describes what happens next in his Amended Complaint. Police Officer Kerkaert arrived on the scene and began asking Corrigan questions. (Am. Compl. ¶ 23.) Corrigan placed his passport on the hood of his vehicle. (*Id.*) Police Officers Edward Culbreth, Alexandria Marklowitz, Ashley Uthe, and Sergeant Kyle Klapperick then arrived on scene. (Am. Compl. ¶¶ 24, 26.) Uthe and Marklowitz interviewed Bernier, while the other officers tried to speak to Corrigan. (*Id.*) Corrigan was given a citation for fifth degree assault and then left the scene. (Am. Compl. ¶ 27.) Assistant County Attorney Nelson Rhodus later amended the charge to stalking under Minn. Stat. § 609.749, subd. 2(2). (Am. Compl. ¶ 33; Doc. No. 53,

Decl. of Anna L. Yunker (“Yunker Decl.”) ¶ 3, Ex. 3 at 1.)

Judge Christian Wilton presided over Corrigan’s criminal case and following the jury-trial conviction, sentenced him to 120-days in jail. (Am. Compl. ¶¶ 36–37.) Before the sentencing, Corrigan had filed a post-trial motion requesting a new trial and vacation of the judgment, arguing that the Minnesota stalking statute was unconstitutional; that Bernier had committed perjury during her trial testimony; that Rhodus had improperly coached Bernier prior to her testimony; and that Rhodus knew Bernier’s trial testimony was false. (See Yunker Decl. ¶ 3, Ex. 4 at 1–2.) Judge Wilton denied the motions (*Id.* at 5.) Also prior to sentencing, Judge Wilton ordered Scott County Community Corrections to prepare a Pre-Sentence Investigation (“PSI”) report. (Am. Compl. ¶ 37.) The report was completed by Probation Officer Lynn Hanson (*Id.* at ¶ 38.) Hanson concluded that Corrigan would not be amenable to probation and recommended that he serve 120 days in the Scott County Jail. (*Id.*) Judge Wilton imposed the 120-day sentence as recommended. Corrigan appealed the conviction and sentence; the Minnesota Court of Appeals affirmed, and the Minnesota Supreme Court denied certiorari.

On August 2, 2018, Corrigan filed a Complaint *pro se* with this Court. (Doc. No. 1.) The Complaint was thereafter amended on September 5, 2018. (Doc. No. 23, Am. Compl.) Corrigan has sued the City of Savage, Scott County, Police Officers Kyle Klapperick, Alexandria Marklowitz, Gabe Kerkaert, Edward Culbreth, and Ashley Uthe, Scott County Sheriff Luke Hennen, Probation Officer Lynn Hanson, Assistant Scott County Attorney Nelson Rhodus, Judge Wilton, and the victim of the underlying

stalking charge, Amber Bernier. The Amended Complaint contains federal civil rights claims for relief “under 42 U.S.C. § 1983 and rais[es] supplemental state-law claims concerning the actions . . . in unlawfully arresting, maliciously prosecuting, denying due process, prosecutorial misconduct, denying access to the courts and cruel and unusual punishment.” (Am. Compl. ¶ 1.) Corrigan also alleges the “actions and conduct of the defendants are the result of a policy, practice, custom, and deliberate indifference on the part of the Defendants City of Savage and Scott County.” (*Id.*) In addition, he alleges that Defendant Bernier, although a private individual, “was acting for the state which exercised coercive power or significant encouragement, either overt or covert, where the choice to continue is deemed to be that of the state,” and that Bernier “acted jointly with Defendant Police Officers and Defendant Rhodus to deprive the Plaintiff of his constitutional rights to be free from unlawful seizure and his right to due process through a fair trial.” (*Id.*)

Corrigan requests both compensatory and punitive damages for the following asserted claims in this case:

- Against the Defendant City Police Officers and Defendant Bernier (the victim), Corrigan asserts a violation of his First, Fourth, Fifth, and Fourteenth Amendment rights relating to free speech, unlawful arrest, right to remain silent, retaliatory prosecution, and malicious prosecution (Count I).
- Against the City of Savage, Corrigan asserts a violation of his First, Fourth, Fifth, and Fourteenth Amendment rights relating to deficient “training, supervision, investigation,

or discipline" regarding the stop, detention, arrest, and charge. (Count II).

- Against Assistant Scott County Attorney Nelson Rhodus, Corrigan asserts a violation of procedural due process (Count III), and claims that the stalking statute under which he was charged is unconstitutional (Count V).
- Against Probation Officer Lynn Hanson, Corrigan asserts a violation of the Eighth Amendment by imposing a cruel and unusual punishment of 120 days in jail (Count IV).
- Against Scott County Sheriff Luke Hennen, Probation Officer Lynn Hanson, and Scott County, Corrigan asserts a violation of his First, Sixth, Eighth, and Fourteenth Amendment rights regarding "training, supervision, investigation, or discipline in the areas of... provid[ing] prisoners with 'adequate law libraries or adequate assistance from persons trained in the law'" and "[t]he proper exercise of probation officer powers, including but not limited to the investigation, analysis, and recommendation of the Pre-Sentence Investigation report" (Count VI).
- Against all of the Defendant City Police Officers, Corrigan asserts state law claims for false arrest, false imprisonment, denial of due process, intentional infliction of emotional distress, and malicious prosecution; against Defendant Rhodus, Corrigan asserts a claim for prosecutorial misconduct; against the victim Defendant Bernier, Corrigan asserts claims for misrepresentation, perjury, and intentional infliction of emotional distress; and against Defendants Hennen, Hanson, the City of Savage, and the Scott County, Corrigan asserts

a claim for intentional infliction of emotional distress (Count VII).

Against Judge Wilton, Plaintiff seeks declaratory relief (no monetary relief) for a violation of procedural due process (Count III), and for violation of the Eighth Amendment by imposing a cruel and unusual punishment of 120 days in jail (Count IV).

DISCUSSION

A. Standard of Review

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must accept as true all factual allegations in the complaint and view them in the light most favorable to the Plaintiff. *Schaller Tel. Co. v. Golden Sky Sys., Inc.*, 298 F.3d 736, 740 (8th Cir. 2002). In doing so, however, a court need not accept as true wholly conclusory allegations, *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 805 (8th Cir. 1999), or legal conclusions drawn by the pleader from the facts alleged. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). A court may consider the complaint, matters of public record, orders, materials embraced by the complaint, and exhibits attached to the complaint in deciding a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

To survive a motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a complaint need not contain “detailed factual allegations,” it must contain facts with enough specificity “to raise a right to relief above the speculative level.” *Id.* at 555. This standard “calls for

enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim]." *Id.* at 556. Whether a complaint states a claim is a question of law. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). In addition, this court notes that *pro se* complaints are held to less stringent standards than formal pleadings drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). However, even a *pro se* complaint must allege facts, and not just bare, unsupported, legal conclusions. *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985) ("Although it is to be liberally construed, a *pro se* complaint must contain specific facts supporting its conclusions.").

Judgment on the pleadings is appropriate when there are no issues of material fact and the moving party is entitled to judgment as a matter of law. *Porous Media Corp.*, 186 F.3d at 1079. In making this determination, the court must "accept as true all factual allegations set out in the complaint and . . . construe the complaint in the light most favorable to the plaintiff." *Ashley Cnty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009) (quotations omitted). When deciding a motion for judgment on the pleadings, "the court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010); see also *Fraenkel v. Messerli & Kramer, P.A.*, No. Civ. 04-1072 (JRT/FLN), 2004 WL 1765309, at *2 (D. Minn. July 29, 2004).

Defendants have submitted the register of actions in Corrigan's criminal case, a copy of state court decisions in Corrigan's state criminal action

along with other state court and appellate filings, and the Minnesota Court of Appeals opinion on Corrigan's appeal. (Doc. No. 11, Aff. of Kathryn Iverson Landrum ("Landrum Aff.") ¶¶ 2 & 3, Exs. A & B; Doc. No. 48, Aff. of Daniel P. Kurtz ("Kurtz Aff.") ¶¶ 3, 6, 7, Exs. B, D, E; Doc. No. 53, Decl. of Anna L. Yunker ("Yunker Decl.") ¶¶ 2, 3. Exs. 2-15.) Corrigan does not dispute the authenticity of these documents. The Court will consider these matters of public record in deciding Defendants' motions to dismiss and will not convert those motions into motions for summary judgment.¹

§ 1983 Claims

Corrigan brings § 1983 claims against all of the Defendants for various constitutional violations, brings a *Monell* claims against the City of Savage, Scott County, Scott County Sheriff Hennen, and Probation Officer Hanson, and brings additional state law claims against all of the Defendants except Judge Wilton. The Court will address Corrigan's § 1983 claims as they relate to Judge Wilton, the City Defendants,² the County Defendants,³ and Bernier in

¹ The City Defendants also submit a copy of a squad car video. (Kurtz Aff. ¶ 4, Ex. C.) Even though this video was referenced by Plaintiff in his Amended Complaint, this Court did not consider the video in making its decisions on the pending motions. Defendant Bernier submitted a copy of the transcript of the 911 call with the Savage Police Department related to the underlying incident. (Doc. No. 63, Decl. of Lateesa T. Ward ("Ward Decl.") ¶ 2, Ex. 1.) This Court also did not consider this transcript in making its decisions on the pending motions. Copies of Bernier's Harassment documents and trial transcripts were also not considered. (See Ward Decl. ¶¶ 3, 4, Exs. 2, 3.)

² The City Defendants include the City of Savage, and Police Officers Kerkaert, Culbreth, Klapperick, Marklowitz, and Uthe.

³ The County Defendants include Scott County, Scott County Sheriff Hennen, Probation Officer Hanson, and Assistant Scott County Attorney Rhodus

turn, and then address the remaining state-law claims. Before doing so, however, given the contentions in the Complaint that the state court proceedings violated Plaintiff's constitutional rights, Plaintiff's claims raise questions of this Court's subject-matter jurisdiction and whether his claims are barred by the Rooker-Feldman doctrine, issues that must be addressed first.

1. Jurisdiction

"Subject matter jurisdiction . . . is a threshold requirement which must be assured in every federal case." *Turner v. Armontrout*, 922 F.2d 492, 493 (8th Cir. 1991). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Application of the *Rooker-Feldman* doctrine is jurisdictional. *Lawrence v. City of St. Paul*, 740 F. Supp. 2d 1026, 1036 (D. Minn. 2010). Defendant Judge Wilton argues that this Court lacks subject-matter jurisdiction over Plaintiff's claims against him under the *Rooker-Feldman* doctrine.⁴ This Court disagrees.

Under the *Rooker-Feldman* doctrine, a federal district court lacks subject-matter jurisdiction over a lawsuit brought by plaintiffs who "ha[ve] litigated and lost in state court" and who "essentially invite[] federal courts of first instance to review and reverse unfavorable state-court judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005); *see also District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486–87 (1983) (holding that federal district courts may not exercise judgment over

⁴ Bernier notes that she agrees with the argument raised by Judge Wilton. (Doc. No. 62, Def. Amber Bernier's Mem. of Law in Supp. of Mot. to Dismiss 6, n.2.)

issues that are “inextricably intertwined” with a prior state-court judgment); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) (holding that federal district courts have no appellate jurisdiction over state courts). Although Corrigan asks for “declaratory judgment for constitutional violations (due process and cruel and unusual punishment) by Judge Wilton” (Am. Compl at 18, Relief), he is not asking this Court to reverse or otherwise set aside his state-court conviction.⁵ Therefore, Corrigan “plainly has not repaired to federal court to undo the [Minnesota] judgment [against him].” *Exxon Mobil Corp.*, 544 U.S. at 293. Thus, this Court is not deprived of subject-matter jurisdiction by the *Rooker-Feldman* doctrine.

2. § 1983 Claims against Judge Wilton

Even though this Court has jurisdiction over the claims asserted against Judge Wilton, the claims should nonetheless be dismissed because Judge Wilton is immune based on the doctrine of absolute judicial immunity. “The immunity of a judge for acts

⁵ While in his claims against Judge Wilton, Corrigan asserts Judge Wilton ruled incorrectly on the issues of probable cause, proper jury instructions, post-verdict motions, a stay motion, and sentencing (Doc. No. 23, Am. Compl. ¶ 37), and this Court would not have jurisdiction to review those rulings, Plaintiff does not seek a reversal of those decisions, but instead a declaration that his constitutional rights have been violated. (See Doc. No. 78, Pl.’s Mem. of Law in Opp’n to Def. Judge Christian Wilton’s Mem. of Law in Supp. of Mot. to Dismiss 2 (“Plaintiff is not seeking challenges to his state-court decision. Plaintiff was convicted of stalking and spent 79 days in jail of his 120-day sentence. It would do Plaintiff no good to have his conviction overturned – the damage is already done.”).) This Court is not altogether certain whether Plaintiff is expecting a declaratory judgment to have an effect on the prior state court decisions, his sentence, or his record. However, looking at the language asserted in the Amended Complaint, Plaintiff has not requested this Court to reverse or otherwise set aside his state-court conviction.

within his jurisdiction has roots extending to the earliest days of the common law.” *Imbler v. Pachtman*, 424 U.S. 409, 423 n.20 (1976). “[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mireles v. Waco*, 502 U.S. 9, 11 (1991). “The doctrine therefore applies to suits for injunctive relief as well as claims for money damages.” *Edlund v. Montgomery*, 355 F. Supp. 2d 987, 990 (D. Minn. 2005). In addition, “judicial immunity is not overcome by allegations of bad faith or malice,” *Mireles*, 502 U.S. at 11, and it “applies even when the judge is accused of acting maliciously and corruptly[.]” *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Allegations of conspiracy are also insufficient to overcome the immunity. *See Moses v. Parwatikar*, 813 F.2d 891, 892–93 (8th Cir. 1987).

Both Corrigan’s procedural due process claim (Count III) and his Eighth Amendment claim (Count IV) relate exclusively to Judge Wilton’s decisions made as a judge presiding over Plaintiff’s criminal case. Judge Wilton was acting within his jurisdiction when he made the statements and rulings that Corrigan complains about, including the imposition of the 120-day sentence. *See* Minn. Stat. § 484.01, subd. 1 (stating that state district courts have original jurisdiction in all civil and criminal cases). Any allegations of conspiracy, bad faith, malice, or fraud do not change the result. Judge Wilton is entitled to absolute judicial immunity against Corrigan’s claims.

The fact that Corrigan has sued Judge Wilton only in his official capacity and only for declaratory relief does not defeat the immunity in this instance. Traditionally, claims for prospective injunctive relief have been permitted pursuant to 42 U.S.C. § 1983 against judicial officers acting in their official capacities. *See Pulliam v. Allen*, 466 U.S. 522, 541–42

(1984). However, after *Pulliam*, Congress enacted the Federal Courts Improvement Act of 1996 (“FCIA”), Pub.L. No. 104–317, and legislatively reversed *Pulliam* in several important respects. Relevant here, the FCIA amended 42 U.S.C. § 1983 to state that “. . . in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983 (amended Oct. 19, 1996 by Pub.L. 104–317, Title III, § 309(c), 110 Stat. 3853). In addition, claims for declaratory and equitable relief “[are] not appropriate where an adequate remedy at law exists.” *Schlegel v. Holder*, No. 13-cv-3251, 2014 WL 12607718, at *4 (D. Minn. 2014). “An adequate remedy at law exists when the acts of a judicial officer can be reviewed on appeal or by extraordinary writs.” *Id.* (citing *Mullis v. U.S. Bankr. Court of the Dist. of Nev.*, 828 F.2d 1385, 1392–94 (9th Cir. 1987))⁶; *see French v. Lewis*, 163 F.3d 601 (Table), 1998 WL 702294, at *1 (8th Cir. Oct. 9, 1998) (unpublished opinion) (affirming dismissal of plaintiff’s prospective injunctive claims against a presiding judge in plaintiff’s criminal proceeding where there was no indication that no adequate

⁶ In *Mullis*, the court stated: There is no need to carve out an exception to judicial immunity to permit declaratory and injunctive relief against federal officers. Should a federal judge . . . violate a litigant’s constitutional rights in a proceeding pending in federal court, Congress has provided carefully structured procedures for taking appeals To allow an action for declaratory and injunctive relief against federal officials who would be entitled to judicial immunity from damages merely engenders unnecessary confusion and multiplicity of litigation. 828 F.2d at 1394 (emphasis removed). This Court finds this logic equally applicable to state court judges and state court appeals processes as well.

remedy at law existed). Because Corrigan had an adequate remedy at law—including the state court appeal process—to review the rulings by Judge Wilton that he now challenges, and because Corrigan does not allege that Judge Wilton violated a declaratory decree or that declaratory relief was unavailable, either the doctrine of absolute judicial immunity bars Corrigan's suit against Judge Wilton—*see, e.g., Reilly v. Weiss*, No. 97-CV-05883, 1998 WL 1110695, at *1, n.2 (D.N.J. June 15, 1998), aff'd, 189 F.3d 464 (3d Cir. 1999); see also *Moore v. Brewster*, 96 F.3d 1240, 1243–44 (9th Cir. 1996) (concluding that the judicial immunity extends to § 1983 actions for declaratory and injunctive relief), superseded by statute on other grounds; *Rivera v. Green*, 775 F.2d 1381, 1384 (9th Cir. 1985) (applying absolute judicial immunity to a justice of the peace for acts performed in his official capacity)—or the declaratory relief that Corrigan seeks is not appropriate. *See Schlegel*, 2014 WL 12607718, at *4 (stating declaratory and equitable relief not appropriate); see also *Davies v. Doi*, No. 08-00548, 2009 1561579, at *3 (D. Haw. June 2, 2009) (stating “absolute judicial immunity affords immunity from suits based on judicial acts regardless of what type of relief Plaintiff sought[,]” and even if the judge was not entitled to judicial immunity, the plaintiff “ha[d] an adequate remedy at law through his pending State appeal”). For these reasons, Counts III and IV against Judge Wilton should be dismissed.⁷

⁷ Even if Judge Wilton were not immune from Corrigan's claims, the claims should nevertheless also be dismissed for failure to state a claim. Corrigan asserts that Defendant Judge Wilton violated his due process rights. However, Corrigan does not explain in any meaningful way what was deficient about the process he received. Instead, public records demonstrate that

3. § 1983 Claims against the City Defendants

Corrigan asserts violations of his First, Fourth, Fifth, and Fourteenth Amendment rights against the City Police Officers “relating to free speech, unlawful arrest, right to 7 . remain silent, retaliatory prosecution, and malicious prosecution,” and against the City of Savage relating to deficient “training, supervision, investigation, or discipline” regarding the stop, detention, arrest, and charge. (Am. Compl. §§ 42, 43 (Counts I & II).)

a. *Heck v. Humphrey* – Fourth and Fourteenth Amendments - Unlawful Arrest and Malicious Prosecution

Corrigan asserts § 1983 claims for unlawful arrest and malicious prosecution against the

Corrigan was provided with notice and an opportunity to be heard on all issues pertaining to his criminal case. (See Doc. No. 11, Aff. of Kathryn Iverson Landrum (“Landrum Aff.”) ¶¶ 2 & 3, Exs. A & B.) Corrigan’s claim seems to be based on alleged “bias and prejudice” by Judge Wilton in his rulings. (Am. Compl. ¶ 37.) But, the Minnesota Court of Appeals already rejected Corrigan’s claims of impartiality. (Landrum Aff. ¶ 3, Ex. B at 5–6.) Because Corrigan has not plausibly pled a procedural due process claim against Judge Wilton, that claim should be dismissed.

Corrigan also asserts that Defendant Judge Wilton violated his Eighth Amendment rights against cruel and unusual punishment when he sentenced Corrigan to 120 days in jail. The Eighth Amendment, however, “does not require strict proportionality between crime and sentence but rather forbids only extreme sentences that are grossly disproportionate to the crime.” *Graham v. Florida*, 560 U.S. 48, 59–60 (2010) (quotations omitted). Courts uphold far longer sentences for low-level offenses. *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 994–96 (1991) (upholding life without parole sentence for possessing cocaine); *Rummel v. Estelle*, 445 U.S. 263, 285 (1980) (upholding life sentence for obtaining money by false pretenses). Therefore, Corrigan’s Eighth Amendment claim should be dismissed as a matter of law

individual City Police Officers in Count I of his Amended Complaint. These claims are barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck v. Humphrey*, the Supreme Court said:

[W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed,[] in the absence of some other bar to the suit.

512 U.S. 477, 487 (1994).⁸ A judgment in favor of Corrigan for false arrest or malicious prosecution would necessarily imply the invalidity of his conviction or sentence. Therefore, his conviction bars his § 1983 claims for false arrest and malicious

⁸ Corrigan argues that *Heck v. Humphrey* does not bar his claims because he had completed his sentence and he is no longer a custodial inmate. This is contrary to current law in the Eighth Circuit. *See Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) (holding that a plaintiff's § 1983 claims were barred by Heck, even though the plaintiff was no longer in custody and a writ of habeas corpus was no longer available to him); *see also Newmy v. Johnson*, 758 F.3d 1008, 1009–12 (8th Cir. 2014) (confirming its position that Heck “impose[s] a universal favorable termination requirement on all § 1983 plaintiffs attacking the validity of their conviction or sentence”).

prosecution and they must be dismissed as a matter of law.⁹

b. First Amendment – Retaliatory Prosecution¹⁰

To the extent Corrigan's First Amendment claim is based on allegedly retaliatory prosecution, that claim fails. “[A] plaintiff asserting a § 1983 claim

⁹ Moreover, “[a]n officer has probable cause to make a warrantless arrest when the facts and circumstances are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense.” *Fisher v. Wal-Mart Stores, Inc.*, 619 F.3d 811, 816 (8th Cir. 2010) (quotations omitted). Here, the facts are not in dispute, and this Court concludes there was probable cause for Corrigan’s citation, charge, and prosecution. Therefore, even if the false arrest and malicious prosecution claims were not barred by *Heck v. Humphrey*, the claims would still fail as a matter of law because the later arrest was supported by probable cause. See *id.* at 816–17 (8th Cir. 2010) (stating that in a Fourth Amendment § 1983 false arrest claim, the relevant inquiry is whether the officers had probable cause to arrest the plaintiff); *see also Devenpeck v. Alford*, 543 U.S. 146, 153–56 (2004) (finding that even if an officer invokes the wrong statute at the time of citation or arrest, probable cause still exists when the facts known to the officer provided probable cause for the violation of some law); *Malady v. Crunk*, 902 F.2d 10, 11–12 (8th Cir. 1990) (holding that a plaintiff’s conviction is a defense to a § 1983 false arrest claim). (Corrigan was not “under arrest” upon the arrival of the police in the parking lot as he suggests; instead the police conducted a valid *Terry* stop (see further discussion on the *Terry* stop below).) The same is true for the malicious prosecution claim. See *Harrington v. City of Council Bluffs, Iowa*, 678 F.3d 676, 679 (8th Cir. 2012) (“Sufficient probable cause would defeat the appellees’ § 1983 claims based on malicious prosecution.”).

¹⁰ Corrigan also lists “free speech” as part of his Count I First Amendment claim. However, Corrigan alleges no facts that would support any sort of free speech violation. To the extent Corrigan was linking his “free speech” claim with his “right to remain silent” claim, that claim should be dismissed for the reasons stated below.

for retaliatory prosecution must show a lack of probable cause for the underlying charge.” *Lawrence*, 740 F. Supp. 2d at 1043 (citing *Hartman v. Moore*, 547 U.S. 250, 265–66 (2006)). The trial court made a finding of probable cause in Corrigan’s state-court prosecution, and as previously stated by this Court, the finding of probable cause was supported by the facts alleged in Corrigan’s Amended Complaint.¹¹

c. Fifth Amendment – “right to remain silent”

In Count I, Corrigan alleges constitutional violations “relating to free speech,” and the “right to remain silent.” (Am. Compl. § 42.) To the extent Corrigan is asserting a claim under *Miranda v. Arizona*, 384 U.S. 436 (1966), the claim fails because *Miranda* warnings are only triggered by a “custodial interrogation.” Id. at 444. Here, there was no custodial interrogation, but instead was an investigative Terry stop.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that a law enforcement officer, prior to conducting a custodial interrogation, must advise the suspect of his right to be free from compulsory self-incrimination and to the assistance of counsel. Following *Miranda*, the Supreme Court held in *Terry v. Ohio*, 392 U.S. 1 (1968), that a police officer with reasonable suspicion that criminal activity is afoot may briefly detain a suspect to investigate the circumstances giving rise to that suspicion. “Typically, this means that the officer may ask the detainee a

¹¹ Corrigan admits to following Bernier for approximately fifteen minutes, admits that when she stopped to question why he was following her, he stated “that the police should be called,”—a state court record indicates that he responded “I figured you would’ve [called the police] eventually” (Kurtz Aff. ¶ 6, Ex. D at 3)—and admits that Bernier wanted him to stop following her. (Am. Compl. ¶¶ 20, 21, 28.

moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984). Therefore, Corrigan's allegation that he was not free to leave during the initial questioning by the officers does not mean he was in custody (or under arrest as Corrigan claims) for Miranda purposes. See *United States v. Pelayo-Ruelas*, 345 F.3d 589, 592 (8th Cir. 2003) (rejecting defendant's contention that a person is in custody for Miranda purposes whenever a reasonable person would not feel free to leave); (see Am. Compl. ¶ 24 ("Until the citation and passport were handed over to the Plaintiff, he was not free to leave.")). And because "[n]o Miranda warning is necessary for persons detained for a *Terry* stop," *United States v. McGauley*, 786 F.2d 888, 890 (8th Cir. 1986), Corrigan's Miranda rights were not violated here.

The Fifth Amendment also protects against coerced confessions. Corrigan alleges that he was "harassed, intimidated, threatened and insulted throughout the questioning." (Am. Compl. ¶ 25.) If Corrigan was meaning to assert a Fifth Amendment violation on this basis, his claim fails for at least two reasons. First, Corrigan alleges no confession (nor was there one) that could have been coerced. And second, Plaintiff's one-line allegation in his Amended Complaint is conclusory and he alleges no facts that would plausibly support a finding of harassment, intimidation, threats, insults, or any other sort of coercion.

For these reasons, Corrigan's Fifth Amendment claims should be dismissed.

d. *Monell* claim

Corrigan asserts a *Monell* claim against the City of Savage in Count II of his Amended Complaint.

(Am. Compl. ¶ 43.) Under *Monell v. Department of Social Services*, a government entity may be held liable under § 1983 only “when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury . . .” 436 U.S. 658, 694 (1978). As this Court has explained above, all of Corrigan’s claims against all of the City of Savage Defendants (i.e., Police Officers) must be dismissed. Therefore, the City cannot be held liable under *Monell*. See, e.g., *Whitney v. City of St. Louis, Mo.*, 887 F.3d 857, 861 (8th Cir. 2018) (“[A]bsent a constitutional violation by a city employee, there can be no § 1983 or *Monell* liability for the City.”).

Further, even if any of the claims against the City Defendants survived, to maintain a claim that “a municipality should have done more to prevent constitutional violations by its employees, a plaintiff must establish the existence of a ‘policy’ by demonstrating that the inadequacies were a product of deliberate or conscious choice by policymakers.” *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 390 (8th Cir. 2007) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389 (1989)). The city policy or custom must be the “moving force” behind the constitutional violation. *Monell*, 436 U.S. at 694. Corrigan has not pleaded facts that would give rise to an inference that the problems he complains of are widespread or persistent, or that the City has a history of deliberate indifference toward training, supervision, investigation, or discipline relating to the areas of lawful stops, detention, arrests, or charging offenses. He has also alleged no facts supporting that the City was on notice that the Defendant Police Officers or other officers had a propensity to commit

unconstitutional acts or that their training program was so inadequate that it was likely to result in constitutional violations. An “isolated incident” without notice of the misconduct cannot support a claim that the City was deliberately indifferent to unconstitutional policies, patterns, practices, and customs by its police force, nor does it support a failure to supervise or train claim. *Szabla*, 486 F.3d at 393; *see also Larkin v. St. Louis Hous. Auth. Dev. Corp.*, 355 F.3d 1114, 1117 (8th Cir. 2004) (stating evidence of notice is required for a failure-to-train claim); *Mettler v. Whittlesey*, 165 F.3d 1197, 1204 (8th Cir. 1999) (“A single incident normally does not suffice to prove the existence of a municipal custom.”); *Otey v. Marshall*, 121 F.3d 1150, 1155 (8th Cir. 1997) (stating notice is required for a failure-to-supervise claim). Therefore, Count II of Plaintiff’s Amended Complaint—the *Monell* claim against the City of Savage—fails to state a claim and should be dismissed.

4. § 1983 Claims against the County Defendants

Among the many claims asserted by Corrigan are claims against Scott County and some of its employees, including the Scott County Sheriff, the probation officer who performed Corrigan’s Pre-Sentence Investigation, and the prosecutor who brought the stalking charges against him and prosecuted the state criminal case.

a. § 1983 Claims against Assistant Scott County Attorney Nelson Rhodus

Corrigan asserts that Scott County Attorney Rhodus violated his Fifth and Fourteenth Amendment rights to due process by amending the charge against him from fifth degree assault to stalking; by meeting with Bernier prior to her testimony at trial; and by

failing to correct Bernier's allegedly false testimony at trial (Count III). Corrigan also asserts a claim against Rhodus in his official capacity based on an allegation that the Minnesota stalking statute is unconstitutional (Count V).

(i) Absolute Prosecutorial Immunity

State prosecutors are protected by absolute immunity against § 1983 claims arising from "the initiation and pursuit of criminal prosecution, including presentation of the state's case at trial." *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993). "[A]bsolute immunity defeats a suit at the outset, so long as the official's actions were within the scope of the immunity." *Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 419 n.13 (1976)). When absolute immunity bars a suit, "dismissal under Rule 12(b)(6) is appropriate." *Id.*

Corrigan's allegations that Rhodus violated his rights by amending the criminal complaint, meeting with Bernier prior to trial, and presenting false testimony at trial are all within the scope of prosecutorial conduct protected by absolute immunity. *See Imbler*, 424 U.S. at 413, 430 (holding that a prosecutor's actions "in presenting the State's case" are protected by absolute immunity); *Sample*, 836 F.3d at 916 ("[A]llegations of . . . improper motive in the performance of prosecutorial functions do not defeat the protection of absolute immunity."); *Reasonover v. St. Louis Cnty.*, 447 F.3d 569, 580 (8th Cir. 2006) (stating that even if a prosecutor "knowingly presented false, misleading, or perjured testimony, . . . he is absolutely immune from suit"); *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1266 (8th Cir. 1996) (stating that absolute immunity applies to

“other conduct that is intimately associated with the judicial process”); *Williams v. Hartje*, 827 F.2d 1203, 1209–10 (8th Cir. 1987) (finding that charging decisions are protected by prosecutorial immunity).

Corrigan argues that Rhodus is not entitled to absolute immunity because he acted in an “investigatory capacity” when he met with Bernier prior to trial. This argument fails because meeting with witnesses in preparation for their testimony at trial is not an investigatory function. See *Reasonover*, 447 F.3d at 580 (“For a lawyer to properly try a case, he must confer with witnesses, and conduct some of his own factual investigation.”); *Brodnicki*, 75 F.3d at 1267 (stating that the question is “whether the act was closely related to [the prosecutor’s] role as an advocate”). And Corrigan has pled no facts that would support Rhodus was performing investigatory functions that would fall into the category of “police work.” See *Brodnicki*, 75 F.3d at 1267. He likewise has pled no facts that would support that Rhodus’ had a retaliatory motive when making his charging decision. Accordingly, the claims asserted in Count III of Corrigan’s Amended Complaint against Rhodus must be dismissed.

(ii) *Heck v. Humphrey* – constitutionality of stalking statute

In Count V of his Amended Complaint, Corrigan makes the claim that the stalking statute he was charged under (Minn. Stat. § 609.749) is unconstitutional. (Am. Compl. ¶ 46; see also id. ¶¶ 40–41.) As stated above, under *Heck v. Humphrey*, a plaintiff’s § 1983 claims must be dismissed when “judgment in favor of the plaintiff would necessarily imply invalidity of the plaintiff’s state conviction or sentence.” *Wilson v. Lawrence Cnty., Mo.*, 154 F.3d 757, 760 (8th Cir. 1998). In such cases, no cause of

action under § 1983 exists “unless and until . . . [the] conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *Williams v. Schario*, 93 F.3d 527, 529 (8th Cir. 1996) (quotations omitted). If none of those things has occurred, a plaintiff’s § 1983 claim is barred “if he contends that the statute under which he was convicted is unconstitutional,” *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003), because finding in plaintiff’s favor would “imply invalidity of the plaintiff’s state conviction or sentence.” *Wilson*, 154 F.3d at 760; *see Green v. Grampre*, 388 F. App’x 437, 438 (5th Cir. 2010) (stating that “[t]o the extent that *Green* seeks to challenge the constitutionality of the Texas statutes under which he was convicted, his claims amount to an attack on his conviction . . . a successful outcome for *Green* would imply the invalidity of his criminal conviction and [his] claims are therefore barred under *Heck*”). Therefore, Count V should be dismissed.¹²

¹² Even if Corrigan’s statutory claim were not barred by *Heck v. Humphrey*, his claim fails as a matter of law. First, Corrigan raises an overbreadth claim under the First Amendment. (See Am. Compl. ¶ 40 (“The First Amendment “doctrine of substantial overbreadth” allows a person to challenge a stalking statute on the grounds that it may be unconstitutionally applied to legal behaviors”.) Minnesota law defines “stalking” as – engag[ing] in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim. Minn. Stat. § 609.749, subd. 1. The statute makes it a crime if a person stalks another

by “follow[ing], monitor[ing], or pursu[ing] another, whether in person or through any available technological or other means[.]” Id., subd. 2(2). As explained by the Minnesota Court of Appeals in *State v. Stockwell*, “[b]ecause the statutory provision is specific as to the forms of conduct proscribed, because it requires that the actor knows her conduct will cause fear and causes that reaction, and because it is subject to a limiting construction, we conclude that the degree of overbreadth is not sufficiently substantial to require a holding that the statute is unconstitutional on its face.” 770 N.W.2d 533, 539–40 (Minn. Ct. App. 2009). At the time of the *Stockwell* decision, an earlier version of the stalking statute was in effect. However, the provisions at issue in this case are substantially similar to those that were in effect in *Stockwell*.

Corrigan also alleges that the statute is “unconstitutional as it is applied to Plaintiff.” (Am. Compl. ¶ 41.) He claims he followed Bernier for approximately fifteen minutes in a “non-aggressive and non-threatening manner,” and “[t]his is legal behavior and not proscribed by the statute.” (Id.) The public record reflects that Corrigan’s conviction for stalking was based on his driving conduct, which is “outside the protections of the First Amendment because, even assuming that [he] intended to convey a particularized message in following and pursuing [Bernier] . . . a reasonable person would not understand the message that appellant was trying to convey when viewing the conduct.” *Stockwell*, 770 N.W.2d 533, 540. Because the conduct underlying Corrigan’s conviction was not expressive conduct but was “dangerous and intimidating because of its aggressive nature,” the as-applied challenge to the statute fails. See *id.* (Corrigan disputes that his conduct was aggressive or intimidating and continues to contest that his conduct caused “fear” in Bernier; however, after hearing all facts and testimony, a jury found that it did, and this was after an opportunity for cross-examination by Corrigan.) In addition, Corrigan asserts that the stalking statute is unconstitutionally vague in violation of his right to due process. He claims, “[t]he Fifth and Fourteenth amendments guarantee citizens due process rights, including effective notice of the behavior that is criminalized by stalking statutes.” (Am. Compl. ¶ 40.) To the extent he is arguing that the statute is vague, the Minnesota Court of Appeals has already determined that it is not. See *Stockwell*, 770 N.W.2d at 541. The court explained that “[t]he statute, when read as a whole, does

b. § 1983 Claims against Probation Officer
Lynn Hanson
(i) Absolute Immunity

Probation Officer Lynn Hanson is protected by absolute immunity. Corrigan claims that Hanson violated his Eighth and Fourteenth Amendment rights by recommending a 120-day sentence in a Pre-Sentence Investigation report that was submitted to the state court judge (Count IV).¹³ Probation officers perform judicious tasks when they prepare a presentence report, including evaluating facts, drawing legal conclusions, and making recommendations that play a significant part in the decision-making process. Many circuits have now held that "because presentence reports are so closely associated with the exercise of a judicial function, probation officers who prepare these reports are entitled to absolute immunity." *Anton v. Getty*, 78 F.3d 393, 396 (8th Cir. 1996) (citing *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994), cert. denied, 514 U.S. 1102 (1995); *Turner v. Barry*, 856 F.2d 1539, 1540-41 (D.C. Cir. 1988) (per curiam); *Demoran v. Witt*, 781 F.2d 155, 157-58 (9th Cir. 1986); *Hughes v. Chessier*, 731 F.2d 489, 1490 (11th Cir. 1984); *Spaulding v. Nielsen*, 599 F.2d 728, 729 (5th Cir. 1979)); see also *Abbott v.*

not criminalize the mere following of a person. Rather, the statute provides sufficient clarity such that an ordinary person could understand what conduct is prohibited." (Id.) This Court agrees. Therefore, Corrigan's due process argument fails. Because there is ample reason, as explained above, to dismiss Count V regarding the constitutionality of the underlying stalking statute, this Court need not address the County Defendants' additional arguments based on collateral estoppel or *res judicata*.

¹³ Corrigan also lists Hanson in his *Monell* claim (Count VI), which will be addressed below.

Oller, 497 F. App'x 683, 683–84 (8th Cir. 2013) (affirming the finding that plaintiff's claims against probation officers were barred by absolute immunity). Accordingly, following the direction of the Eighth Circuit and others, Corrigan's claims against Probation Officer Lynn Hanson should be dismissed because of absolute immunity.

c. *Monell* claim

Corrigan asserts a *Monell* claim against Scott County, Scott County Sheriff Luke Hennen,¹⁴ and Probation Officer Lynn Hanson,¹⁵ alleging that the County was deliberately indifferent to policies, patterns, practices and customs, relating to “training, supervision, investigation, or discipline” regarding the provision of “adequate law libraries or adequate assistance from persons trained in the law” to prisoners, and regarding “[t]he proper exercise of

¹⁴ Because a claim against a government official in his or her official capacity is the equivalent of a claim against the government entity itself, it is redundant to bring the claim against both Scott County and Sheriff Hennen in his official capacity. See *Banks v. Slay*, 875 F.3d 876, 878 (8th Cir. 2017) (“[A]n official-capacity suit is a suit against a government entity in all respects other than name[.]”) (quotations omitted). Because Corrigan has not alleged any specific act or omission against Hennen, the claim against Hennen in his official capacity should be dismissed as redundant; and the claim against him in his individual capacity should be dismissed for failure to state a claim.

¹⁵ As stated above, Corrigan's claims against Probation Officer Lynn Hanson regarding her PSI report should be dismissed because of absolute immunity. And because Corrigan has pled no specific act or omission that Hanson did with regard to his access- to-courts claim, and because the nature of the failure to train claim is the adequacy of the training provided to Hanson and no facts have otherwise been pled showing Hanson's involvement in the training policy or custom, the *Monell* claims asserted against Hanson should be dismissed.

probation officer powers, including but not limited to the investigation, analysis and recommendation of the [PSI] report" (Count VI). In other words, Corrigan is raising *Monell* claims about (1) his access to courts, and (2) adequate training for probation officers and their preparation of PSI reports. Taking the latter issue first, to hold Scott County liable under § 1983, Corrigan must show that an official policy or custom caused Hanson's unconstitutional conduct. *Monell*, 436 U.S. at 691. However, no constitutional violation occurred regarding the PSI report in Corrigan's underlying criminal case. As noted above (see *supra* n. 7), the 120-day sentence was not in violation of the Eighth Amendment. "Without a constitutional violation by the individual officers, there can be no § 1983 or *Monell* failure to train municipal liability." *Sanders v. City of Minneapolis, Minn.*, 474 F.3d 523, 527 (8th Cir. 2007) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986)).¹⁶

Regarding Corrigan's access-to-courts claim, he asserts that "he tried to access the court but was unable because there was no adequate law library nor an adequate system to obtain legal assistance to obtain a court order for work release." (Am. Compl. ¶

¹⁶ 16 This Court notes that the *Monell* claim fails for yet another reason as well – Corrigan has alleged no facts indicating that Scott County was on notice that any of its training programs were inadequate. See *Larkin*, 355 F.3d at 1117 (stating that to prevail on a failure-to-train claim, plaintiff must show notice that the training program was inadequate and likely to result in constitutional violations). Further, in his response brief, Corrigan seems to be attempting to add a *Monell* claim based on Rhodus's conduct in changing the charge to stalking. This claim was not alleged in his Amended Complaint and therefore need not be addressed. However, the Court notes it would fail for the same lack-of-notice reasons and because no constitutional violation occurred when making the charge.

39.) He also asserts that “a meaningful appeal and/or other motions could not be drafted from jail, [so] Plaintiff was forced to hire an attorney to assist in the appeal, work release request and/or other motions.” (Id.)

General allegations that a law library is subpar are not sufficient to state a claim. *Sabers v. Delano*, 100 F.3d 82, 84 (8th Cir. 1996). “Instead, the plaintiff must show the lack of a library . . . hindered the plaintiff’s efforts to proceed with a legal claim in a criminal appeal, postconviction matter, or civil rights action seeking to vindicate basic rights.” *Id.* To establish a cognizable access to courts claim under the Fourteenth Amendment, a plaintiff must show that the alleged denial of access caused actual injury. *Lewis v. Casey*, 518 U.S. 343, 348, 352–53 (1996) (stating that a plaintiff must show that he experienced “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim”). Actual injury occurs when a plaintiff demonstrates that a “nonfrivolous” and “arguable” claim was lost because of the denial of access to the courts. *Christopher v. Harbury*, 536 U.S. 403, 415 (2002). “The right of access to the courts is satisfied if the prisoner has the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts.” *Zink v. Lombardi*, 783 F.3d 1089, 1108 (8th Cir. 2015) (quotations omitted).

Here, Corrigan has not alleged a plausible claim that he was denied access to the courts because he has failed to show actual injury. Corrigan’s work release request was granted.¹⁷ (See Yunker Decl. ¶ 3,

¹⁷ Further, a request for work release is not one of the three categories of legal claims that can form the basis for an access-

Ex. 12.) And Corrigan was able to file a motion to vacate his conviction, for a new trial, and was able to file his appeal, among other motions. (Yunker Decl. ¶ 3, Exs. 4, 10.) Simply because Corrigan felt he needed to hire an attorney to help with his appeal, and that he accrued legal expenses in doing so, does not support an access-to-courts claim; instead, because he was represented by counsel on appeal, he cannot maintain an access-to-courts claim because the attorney provided him access.¹⁸ See *Entzi v. Redmann*, 485 F.3d 998, 1005 (8th Cir. 2007) (dismissing access-to-courts claim because inmate was represented by counsel on direct appeal of conviction); see also *Martinez v. Court of Appeal of Calif., Fourth Appellate Dist.*, 528 U.S. 152, 163 (2000) (concluding the California courts had not deprived the defendant of a constitutional right when requiring him to accept against his will a state-appointed attorney). Because Plaintiff has not pled a constitutional violation with respect to his access-to-courts claim, the *Monell* claim fails. See *Cook v. City of Bella Villa*, 582 F.3d 840, 853 (8th Cir. 2009) (“Absent a constitutional violation, there can be no municipal liability.”).

5. § 1983 Claims against Bernier (the victim)

Corrigan asserts in Count I of his Amended Complaint violations of his First, Fourth, Fifth, and Fourteenth Amendment rights relating to free speech, unlawful arrest, right to remain silent, retaliatory

to-courts claim. See *Sabers*, 100 F.3d at 84 (listing motions for postconviction relief, appeals of the conviction, and civil rights lawsuits)

¹⁸ Corrigan does “not claim[] that the appellate lawyer prejudiced his appeal[.]” (Doc. No. 74, Pl.’s Mem. of Law in Opp’n to Scott County Defendants’ Mot. 9.)

prosecution, and malicious prosecution, against Defendant Bernier—the victim of Corrigan’s underlying stalking conviction—and the City Police Officers. All claims against the City Police Officers should be dismissed for the reasons explained above.

Although it is not altogether clear, it appears that the claims Corrigan might be asserting against Defendant Bernier are for unlawful arrest, retaliatory prosecution, and malicious prosecution based on her alleged “false, misleading, and perjured testimony” at trial.¹⁹ The claims against Bernier should be dismissed because claims based on her testimony are absolutely immune.

a. Absolute Immunity

Corrigan’s claims against Bernier mostly appear to stem from her statements made during her testimony at trial. He claims that Bernier’s testimony was false, inconsistent, and the product of coercion by the prosecutor in Corrigan’s criminal case. (Am. Compl. ¶¶ 35–36.) However, parties and witnesses are immune from subsequent damages liability for their testimony in judicial proceedings. *Rehberg v. Paulk*, 566 U.S. 356, 367 (2012) (“[A] trial witness has absolute immunity with respect to any claim based on the witness’ testimony.”) (citing *Briscoe v. LaHue*, 460 U.S. 325, 330–33 (1983)). And absolute immunity from any § 1983 claim cannot be circumvented by claiming that the witness “conspired to present false testimony or by using evidence of the witness’ testimony to support any other § 1983 claim concerning the initiation or maintenance of a prosecution.” *Id.* at 369.

¹⁹ Corrigan’s claims relating to “free speech” and the “right to remain silent” have no bearing or relation to any action by Bernier; therefore, if he was trying to assert those claims against Bernier, they must be dismissed for failure to state a claim.

Therefore, the claims asserted against Bernier should be dismissed.

b. Other reasons

Even if Bernier were not immune from the claims asserted by Corrigan, the claims should still be dismissed for various other reasons. First, as explained above with respect to the claims asserted against the City Police Officers, the unlawful arrest and malicious prosecution claims are barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). Second, also as explained above, the claim for allegedly retaliatory prosecution necessarily fails because there was probable cause for the underlying charge. *See Lawrence*, 740 F. Supp. 2d at 1043.

Third, all of Corrigan's § 1983 claims asserted against Bernier, a private citizen, fail because her actions were not performed "under color of law." *See Briscoe*, 460 U.S. at 330. As the Supreme Court has explained, "§ 1983 does not create a remedy for all conduct that may result in violation of 'rights, privileges, or immunities secured by the Constitution and laws.' Its reach is limited to actions taken 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.'" [sic] *Id.* at 329. Corrigan has not plausibly pled, nor can he plead, facts showing that Bernier was a state actor at any time. This Court is not required to treat Corrigan's conclusory allegations as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Simply because Bernier made a report to police stating that she was afraid or "met with members of the attorney's office on several occasions" does not create an inference that she was a state actor or that coercion was at play. Therefore, for these additional reasons, Corrigan's claims against Bernier should be dismissed.

B. State Law Claims

In addition to the federal claims asserted above, Corrigan asserts state-law claims for false arrest, false imprisonment, denial of due process, intentional infliction of emotional distress, and malicious prosecution against all of the Defendant City Police Officers, a claim for prosecutorial misconduct against Defendant Rhodus, claims for misrepresentation, perjury, and intentional infliction of emotional distress against Defendant Bernier, and a claim for intentional infliction of emotional distress against Defendants Hennen, Hanson, the City of Savage, and the Scott County. (Am. Compl. ¶¶ 48–50 (Count VII).) Having recommended dismissal of all of Corrigan’s federal claims, this Court recommends that the state law claims be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c).

Section 1367(c) provides that a district court “may decline to exercise supplemental jurisdiction over a [state law claim arising out of the same case or controversy as a federal claim] if . . . the district court has dismissed all claims over which it has original jurisdiction[.]” Id. § 1367(c)(3). Courts look to “the stage of the litigation; the difficulty of the state claim; the amount of time and energy necessary for the claim’s resolution; and the availability of a state forum.” *Goddard, Inc. v. Henry’s Foods, Inc.*, 291 F. Supp. 2d 1021, 1051 (D. Minn. 2003) (quotations omitted). Declining supplemental jurisdiction over pendent state claims is especially appropriate when the dismissal of federal claims occurs early in the proceedings. *See Gregoire v. Class*, 236 F.3d 413, 419 (8th Cir. 2000) (“If the claim giving original jurisdiction is dismissed early in the action, before any substantial preparation has gone into the dependent claims, dismissing or remanding the [state claims] upon declining supplemental jurisdiction

seems fair enough.”) (internal quotations omitted). This Court recommends that all of Corrigan’s federal claims be dismissed. With no scheduling order yet in place, and no discovery having been exchanged, this case is still at an early stage. Accordingly, this Court recommends that the District Court should decline to exercise supplemental jurisdiction over Corrigan’s state claims pursuant to § 1337(c)(3), and those claims (Count VII) should be dismissed without prejudice.²⁰

RECOMMENDATION

Based on the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that:

1. Defendant Judge Christian Wilton’s Motion to Dismiss Amended Complaint (Doc. No. 35) be GRANTED;
2. Defendants City of Savage, Police Officer Kerkaert, Police Officer Culbreth, Police Officer Kyle Klapperick, Police Officer Alexandria Marklowitz, and Police Officer Uthe’s Motion for Judgment on the Pleadings (Doc. No. 45) be GRANTED;
3. Defendants Nelson Rhodus, Luke Henne, Lynn Hanson, and Scott County’s Motion for Judgment on the Pleadings (Doc. No. 50) be GRANTED;
4. The Motion for Judgment on the Pleadings of Defendant Amber Bernier (Doc. No. 69) be GRANTED;

²⁰ In recommending dismissal without prejudice, this Court in no way suggests that the state-law claims have merit or are not otherwise subject to various immunities, bars, or other reasons for dismissal

5. Plaintiff's Amended Complaint (Doc. No. 23), be DISMISSED in its entirety (Counts I, II, III, IV, V, and VI be dismissed with prejudice, and Count VII be dismissed without prejudice); and
6. Judgment be entered accordingly.

Date: January 14, 2019

s/ Becky R. Thorson
BECKY R. THORSON
United States Magistrate Judge