United States Court of Appeals
for the Fifth Circuit

No. 20-50951
Summary Calendar

JOHN DAVIS,

Plaintiff—Appellant,

versus

CITY OF ANDREWS, TEXAS; ANTHONY DE LA CRUZ,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:18-CV-198

(Filed Jun. 15, 2021)

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

This case arises from Officer Anthony De La Cruz's arrest of John Davis for the theft of a truck and a subsequently obtained search warrant for Davis's premises. Davis and the truck owner were involved in an altercation at Davis's place of business, after which

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Davis blocked the truck from leaving. Officer De La Cruz responded to the truck owner's request for assistance. Davis argued that he could retain the truck because the owner owed him money for an unrelated matter and because he had a lien on the truck. Officer De La Cruz concluded that the unrelated matter did not entitle Davis to the truck. He also ran a registration check, which did not show a lien. When Davis refused to release the truck, Officer De La Cruz arrested him for theft. Later that day, Officer De La Cruz obtained a search warrant for Davis's premises. Eventually, the charges against Davis were dropped.

Davis sued Officer De La Cruz and the City of Andrews for violating his constitutional rights. The district court granted summary judgment for Officer De La Cruz and the City on all claims. Davis appeals the rulings that the search warrant and his arrest were supported by probable cause and therefore did not violate the Fourth Amendment. He also appeals the ruling that the City is not liable for failing to train Officer De La Cruz.[1]

Davis first argues that Officer De La Cruz recklessly or knowingly provided false information in his application for the search warrant, without which he could not establish probable cause. *See Franks v. Delaware*, 438 U.S. 154, 171 (1978). Specifically, Davis challenges Officer De La Cruz's statement that the registration check did not reveal a lien on the truck.

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[1] Davis concedes that his other claims fail. They are not at issue in this appeal.

But Davis points to nothing in the record indicating that Officer De La Cruz's statement about the registration check was false. Instead, he argues that Officer De La Cruz "could have informed the reviewing magistrate of Davis's statement that the lien was being processed, and could have checked with the county clerk" to determine whether a lien existed. But that Officer De La Cruz could have done those things does not establish that his statement about the registration check was false. Nor does his failure to do those things establish that he knowingly or recklessly disregarded the truth. *See Winfrey v. Rogers*, 901 F.3d 483, 494 (5th Cir. 2018) (explaining the knowing and reckless standard). Davis has therefore failed to show a Fourth Amendment violation with respect to the search warrant.

Davis next argues that Officer De La Cruz lacked probable cause to arrest him because the truck owner did not want to press charges. Davis cites no authority, and we are aware of none, that a complainant's desires affect the probable cause analysis. Like with the search warrant, Davis has failed to show that his arrest violated the Fourth Amendment.

Because Davis has not established a constitutional violation, his failure-to-train claims against the City necessarily fail. *See Ratliff v. Aransas Cnty.*, 948 F.3d 281, 285 (5th Cir. 2020) (setting forth elements of a failure-to-train claim against a municipality).

AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 20-50951
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JOHN DAVIS,

Plaintiff—Appellant,

versus

CITY OF ANDREWS, TEXAS; ANTHONY DE LA CRUZ,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:18-CV-198

(Filed Jun. 15, 2021)

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that appellant pay to appellee the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS MIDLAND/ODESSA DIVISION

JOHN DAVIS,	§	
Plaintiff,	§	
	§	
v.	§	**MO:18-CV-00198-DC**
CITY OF ANDREWS, TX, and ANTHONY DE LA CRUZ	§	
	§	
	§	
	§	
Defendants.	§	

FINAL JUDGMENT

(Filed Nov. 9, 2020)

On this day, the Court entered an order granting summary judgment in favor of Defendant City of Andrews, Texas as to all of Plaintiff John Davis' (Plaintiff) claims against it. Previously, the Court granted summary judgment in favor of Defendant Anthony de la Cruz as to all of Plaintiff's claims against him. Accordingly, no claims are pending in this case. The Court now enters its Final Judgment pursuant to Federal Rule of Civil Procedure 58.

The Court **ORDERS** that Defendant City of Andrews, Texas' Motion for Summary Judgment is hereby **GRANTED**. (Doc. 55).

The Court further **ORDERS** that Defendant Anthony de la Cruz's Motion for Summary Judgment is hereby **GRANTED**. (Doc. 28).

The Court further **DISMISSES WITH PREJUDICE** all of Plaintiff's claims against Defendants City of Andrews, Texas, and Anthony de la Cruz.

The Court further **ORDERS** that any pending motions shall be **DENIED** as **MOOT**.

The Court finally **ORDERS** the Clerk of the Court to **CLOSE** this case.

It is so **ORDERED**.

SIGNED this 9th day of November, 2020.

/s/ David Counts
DAVID COUNTS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS MIDLAND/ODESSA DIVISION

JOHN DAVIS,	§	
Plaintiff,	§	
	§	
v.	§	**MO:18-CV-00198-DC**
CITY OF ANDREWS, TX, and ANTHONY DE LA CRUZ	§	
	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

(Filed Nov. 8, 2020)

BEFORE THE COURT is the Motion for Summary Judgment filed by Defendant City of Andrews, Texas (City of Andrews) filed on August 3, 2020. (Doc. 55). Plaintiff John Davis (Plaintiff) did not file a response in opposition and the deadline to do so passed. After due consideration, the Court **GRANTS** the City of Andrews' Motion for Summary Judgment. (Doc. 55).

I. BACKGROUND

This case stems from Plaintiff's arrest, executed by a peace officer, Anthony de la Cruz (Officer de la Cruz), employed by the City of Andrews Police Department. (Doc. 1). On January 22, 2016, Plaintiff was involved in an altercation with a third-party (the

"complaining party" or "complainant"). *Id.* According to Officer de la Cruz, the complaining party drove to Plaintiff's place of business to discuss a trailer the complaining party was renting from Plaintiff and that was stolen while in the complaining party's custody. (Doc. 28 at 2). Plaintiff demanded the complaining party reimburse him for the stolen trailer. *Id.* After much discussion, the parties were unable to reach a compromise. *Id.* When the complaining party turned to leave in his vehicle, Plaintiff blocked the vehicle. *Id.* The complaining party requested the assistance of an officer to retrieve the vehicle. *Id.* Thus, Officer de la Cruz was dispatched to Plaintiff's place of business. *Id.*

Upon Officer de la Cruz's arrival at the scene, the parties explained to Officer de la Cruz their respective versions of the facts. *Id.* According to Officer de la Cruz, Plaintiff informed him that he was retaining the complainant's vehicle until paid for the stolen trailer. *Id.* at 3. Plaintiff also told Officer de la Cruz that he had a lien on the vehicle for work he performed. *Id.* Plaintiff conducted a registration check, which indicated there was no lien on the vehicle in Plaintiff's or his business's name *Id.* Officer de la Cruz also contends that the complainant argued that no work was performed on the vehicle. *Id.* Considering the circumstances, Officer de la Cruz attempted to defuse the situation by advising Plaintiff he could not hold the vehicle simply because the complainant did not pay for the stolen trailer. *Id.* Because Plaintiff refused to release the complainant's vehicle, Officer de la Cruz determined that probable cause existed that the offense of theft was

being committed in his presence and arrested Plaintiff. *Id.* Plaintiff was taken to jail and released on bond the same day—January 22, 2016. *Id.*

On April 19, 2017, the criminal case against Plaintiff was dismissed without prejudice because the complaining party requested dismissal. *Id.* Plaintiff subsequently filed suit in this Court on April 18, 2018. (Doc. 1). Plaintiff raised three claims against Officer de la Cruz and the City of Andrews: (1) wrongful arrest; (2) malicious prosecution; and (3) a *Brady* violation. *Id.* Further, Plaintiff raised a failure to train claim against the City of Andrews. *Id.*

On February 15, 2019, Officer de la Cruz filed a motion for summary judgment based on qualified immunity and the statute of limitations, arguing that he is entitled to qualified immunity as to all claims and that the wrongful arrest claim is time-barred. (Doc. 28). The Court granted Officer de la Cruz's motion for summary judgment on September 2, 2019. (Doc. 39). The Court found Plaintiff's wrongful arrest claim was time-barred, and that Officer de la Cruz was entitled to qualified immunity as to Plaintiff's malicious prosecution and *Brady* violation claims against Officer de la Cruz in his individual capacity. *Id.* at 15. Accordingly, the only remaining claims are those against the City of Andrews.

On August 3, 2020, the City of Andrews filed the instant Motion for Summary Judgment. (Doc. 55). The City of Andrews claims it is entitled to summary judgment on Plaintiff's § 1983 claims because the evidence

shows no genuine issue of material fact as to Plaintiff's claims. *Id.* at 4. Likewise, the City of Andrews argues Plaintiff cannot show a genuine issue of material fact regarding Plaintiff's failure to train claim. *Id.* Plaintiff did not respond to the City of Andrews' Motion for Summary Judgment.

II. LEGAL STANDARD

Summary judgment is proper if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must examine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52. In making this determination, the Court must consider the record as a whole by reviewing all pleadings, depositions, affidavits, and admissions on file, and drawing all justifiable inferences in favor of the party opposing the motion. *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). The Court may not weigh the evidence or evaluate the credibility of witnesses. *Id.*

The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party demonstrates an absence of evidence

supporting the nonmoving party's case, then the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party cannot rest on the mere allegations of the pleadings to sustain this burden. Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248. "After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *Caboni*, 278 F.3d at 451. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. The admissibility of summary judgment evidence is subject to the same rules of admissibility applicable to a trial. *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1024 (5th Cir. 1995) (citing *Munoz v. Int'l All. of Theatrical Stage Emps. & Moving Picture Mach. Operators of the US & Can.*, 563 F.2d 205, 297 n.1 (5th Cir. 1977)). Federal courts sitting in diversity apply state substantive law and federal procedural law. *Shady Grove Orthopedic Ass'n, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 437 (2010) (citing *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996)).

III. Discussion

As noted before in this Order, Plaintiff raises several causes of action against both parties. (Doc. 1 at 5–6). It seems the claims against the City of Andrews are based on the actions of Officer de la Cruz. *Id.* The City

of Andrews argues Plaintiff's § 1983 claims against it are barred by *Monell*, Plaintiff's claim for failure to train fails as a matter of law, and Plaintiff's request for injunctive relief must fail as a matter of law. (*See generally* Doc. 55).

As a preliminary matter, the Court notes Plaintiff did not file a response to the City of Andrews' Motion for Summary Judgment. This only means the Court may take the facts established by the City of Andrews as undisputed. Nonetheless, the Court must determine whether summary judgment is warranted. *See Morgan v. Fed. Exp. Corp.*, 114 F. Supp. 3d 434, 437 (S.D. Tex. 2015) (citations omitted) ("It is well established in the Fifth Circuit that '[a] federal court may not grant a "default" summary judgment where no response has been filed.' Nevertheless, if no response to the motion for summary judgment has been filed, the court may find as undisputed the statement of facts in the motion for summary judgment.").

A. Vicarious Liability

In *Monell v. Dep't of Social Servs. of N.Y.*, the Supreme Court concluded that cities cannot be held liable to the same extent as other employers:

> Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in

> other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.

436 U.S. 658, 691 (1978) (emphasis in original). In this case, the Court agrees with the City of Andrews that Plaintiff's claims for wrongful arrest, malicious prosecution, and a *Brady* violation against the City of Andrews fail as they are premised on the theory of *respondeat superior*. (Doc. 1 at 5–6 ¶¶ 26–31). Moreover, nowhere in the Complaint does Plaintiff allege that any of the alleged unlawful actions of Officer de la Cruz were taken pursuant to an official or unofficial city policy or custom, nor can such be inferred from this single alleged incident of unlawful conduct. (*See generally* Doc. 1). At most, Plaintiff merely alleges Officer de la Cruz acted with the consent of the City of Andrews, which is insufficient to state a claim against the City of Andrews. *See generally Monell*, 436 U.S. at 658. Accordingly, the City of Andrews is entitled to summary judgment as to Plaintiff's § 1983 claims against it.

B. Failure to Train

Next, Plaintiff claims the City of Andrews "failed to create and implement a training program for officers related to their investigation of professional or 'white collar' crimes in deliberate indifference to the rights of Plaintiff and other persons with whom the City of Andrews' police officers come into contact." (Doc. 1 at 4). Further, Plaintiff claims the City of Andrews "failed to create and implement a training program regarding arrests, liens, search and seizure, or evidence to be

produced under *Brady v. Maryland* or related case law pertaining to evidence favorable to the accused in deliberate indifference to the rights of Plaintiff and other persons. . . ." *Id.* at 4–5.

The City of Andrews argues summary judgment is warranted because Plaintiff cannot present evidence that the City of Andrews Police Department's training policies were inadequate and there is no evidence of any actual violation of Plaintiff's constitutional rights. (Doc. 55 at 12–13).

A failure-to-train claim is subject to the same standard as the standard for municipal liability. *See Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). "The failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury." *Brown v. Bryan Cnty., Okla.*, 219 F.3d 450, 457 (5th Cir. 2000) (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). "In resolving the issue of a city's liability, the focus must be on [the] adequacy of the training program in relation to the tasks the particular officers must perform." *City of Canton*, 489 U.S. at 390. A plaintiff must show that (1) the municipality's training policy or procedure was inadequate; (2) the inadequate training policy was a "moving force" in causing the violation of the plaintiff's rights; and (3) the municipality was deliberately indifferent in adopting its training policy. *See*, *e.g.*, *Sanders–Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010); *see also Valle v. City of Houston*, 613 F.3d 536, 544 (5th Cir. 2010).

Here, Plaintiff did not file a response, and the Complaint, on its own, is not sufficient to establish the City of Andrews' training policy was inadequate, that it was the moving force causing the alleged violation of Plaintiff's rights, or that the City of Andrews was deliberately indifferent in adopting its training policies or procedures. Moreover, the City of Andrews provided the affidavit of Ronny McCarver (Chief McCarver), a certified Texas Peace Officer and Chief of Police of the Andrews Police Department. *See* McCarver Aff. 1. Chief McCarver declared Officer de la Cruz underwent training at the police academy, was trained in all aspects of work as a Texas police officer, including specific training on the Code of Criminal Procedure, Penal Code, ethics, and state and federal law." *Id.* Moreover, Chief McCarver states the Andrews Police Department requires that all officers meet the state-mandated training standards. *Id.* Officers are required to complete more in-service training than what the Texas Commission on Law Enforcement mandates. *Id.* Finally, Chief McCarver asserts that Officer de la Cruz's training records establish Officer de la Cruz showed proficiency in his knowledge of the laws of the State of Texas. *Id.* Accordingly, the Court finds there is evidence establishing that policies and procedures are in place to ensure officers with the Andrews Police Department are aware of the law they must enforce and the procedures they must follow. Moreover, there is no evidence in the summary judgment record evincing that any policy or procedure of the City of Andrews is inadequate, caused a violation of Plaintiff's rights, or that the City of Andrews was deliberately indifferent in

adopting its training policies and procedures. Rather, the record shows the Andrews Police Department complies with all mandated training in the State of Texas.

Consequently, the Court rules that to the extent Plaintiff raised a failure to train claim against the City of Andrews, the City of Andrews is entitled to summary judgment on that claim.

C. Injunctive Relief

Plaintiff's Complaint briefly states that he is seeking "injunctive relief . . . to redress [the] constitutional violation." (Doc. 1 at 1). However, Plaintiff does not explain the basis for such request. *See generally id.* Assuming Plaintiff requests a permanent injunction, he must establish: "(1) that [he] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *OCA Greater Hous. v. Tex.*, No. 1:15-CV-679-RP, 2016 WL 4597636, at *3 (W.D. Tex. Sept. 2, 2016) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010)). Here, Plaintiff did not file a response. Thus, he has failed to establish any of the four factors. Moreover, Plaintiff cannot rely on the Complaint alone to establish a claim at summary judgment. *See* Fed. R. Civ. P. 56(e) (noting the nonmoving party cannot rest on the mere allegations of the pleadings to sustain their

summary judgment burden). Accordingly, Plaintiff's request for injunctive relief is denied.

D. Declaratory Judgment

Plaintiff also requested a "declaratory judgment that Defendants' actions and policies described [in the Complaint] violated the Fourth and Fourteenth Amendments to the United States Constitution." (Doc. 1 at 6). For the reasons stated in this Order, the City of Andrews is entitled to summary judgment on Plaintiff's claim for declaratory judgment.

IV. Conclusion

For the foregoing reasons the Court **GRANTS** the City of Andrews' Motion for Summary Judgment as to all claims asserted against it by Plaintiff. (Doc. 55).

It is so **ORDERED**.

SIGNED this 8th day of November, 2020.

/s/ David Counts
DAVID COUNTS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS MIDLAND/ODESSA DIVISION

JOHN DAVIS,	§	
Plaintiff,	§	
	§	
v.	§	**MO:18-CV-00198-DC**
CITY OF ANDREWS, TX, and ANTHONY DE LA CRUZ	§	
	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(Filed Sep. 2, 2019)

BEFORE THE COURT is Defendant Anthony De La Cruz's Motion for Summary Judgment filed on February 15, 2019. (Doc. 28). Plaintiff John Davis filed a timely Response on February 25, 2019, and Defendant[1] filed a timely Reply on March 4, 2019. (Docs. 29, 30). After due consideration of the parties' pleadings, the record, and the applicable law, the Court **GRANTS** Defendant's Motion for Summary Judgment. (Doc. 28).

[1] There are two defendants in this action. However, the instant Motion only pertains to Defendant De La Cruz. Accordingly, hereinafter, the word "Defendant" refers to Defendant De La Cruz alone.

I. BACKGROUND

This case stems from Plaintiff's arrest, executed by Defendant, a peace officer employed by the City of Andrews Police Department. (Doc. 1). On January 22, 2016, Plaintiff was involved in an altercation with a third-party (the "complaining party" or "complainant"). *Id.* According to Defendant, the complaining party drove to Plaintiff's place of business to discuss a trailer that the complaining party was renting from Plaintiff and that was stolen while in the complaining party's custody. (Doc. 28 at 2). Plaintiff demanded that the complaining party reimburse him for the stolen trailer. *Id.* After much discussion, the parties were unable to reach a compromise. *Id.* When the complaining party turned to leave in his vehicle, Plaintiff blocked the vehicle. *Id.* The complaining party requested the assistance of an officer to retrieve the vehicle. *Id.* Thus, Defendant was dispatched to Plaintiff's place of business. *Id.*

Upon Defendant's arrival at the scene, the parties explained to Defendant their version of the facts. *Id.* According to Defendant, Plaintiff informed Defendant that he was retaining the complainant's vehicle until paid for the stolen trailer. *Id.* at 3. Plaintiff also told Defendant that he had a lien on the vehicle for work he performed. *Id.* Plaintiff conducted a registration check, which indicated there was no lien on the vehicle in Plaintiff or his business's name *Id.* Defendant also contends that the complainant argued that no work was performed on the vehicle. *Id.* Considering these circumstances and other facts further explained in the

parties' pleadings, Defendant attempted to defuse the situation by advising Plaintiff he could not hold the vehicle simply because the complainant did not pay for the stolen trailer. *Id.* Because Plaintiff refused to release the complainant's vehicle, Defendant determined that probable cause existed that the offense of theft was being committed in his presence and arrested Plaintiff. *Id.* Plaintiff was taken to jail and released on bond out on that same day—January 22, 2016. *Id.*

On April 19, 2017, the criminal case against Plaintiff was dismissed without prejudice because the complaining party requested dismissal. *Id.* Plaintiff subsequently filed suit in this Court on April 18, 2018. (Doc. 1). Plaintiff raised three claims against Defendant: (1) wrongful arrest;[2] (2) malicious prosecution; and (3) *Brady* violation. *Id.*

On February 15, 2019, Defendant filed a Motion for Summary Judgment Based on Qualified Immunity and Limitations, arguing that he is entitled to qualified immunity as to all claims and that the wrongful arrest claim is time-barred. (Doc. 28). Plaintiff filed a timely Response on February 25, 2019, and Defendant replied on March 4, 2019. (Docs. 29, 30).

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[2] The parties use the terms "wrongful arrest," "false arrest," and "unlawful arrest" interchangeably. (Docs. 28–30). In this Order, the Court will refer to the wrongful/false/unlawful arrest as "wrongful arrest."

II. LEGAL STANDARDS[3]

Summary judgment is proper if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must examine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. In making this determination, the Court must consider the record as a whole by reviewing all pleadings, depositions, affidavits, and admissions on file, and drawing all justifiable inferences in favor of the party opposing the motion. *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). The

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[3] Plaintiff argues that because the parties have not yet completed discovery, the applicable standard is that for a motion to dismiss. (Doc. 29 at 3). However, Plaintiff not only had notice that the Court *could* properly treat Defendant's Motion as one for summary judgment, but he also applied the summary judgment standard in his Response. (Doc. 29). For example, Plaintiff states: "the question for this Court is whether any genuine dispute of material facts exists. . . ." *Id.* at 29. Moreover, both parties attached exhibits, including matters outside the pleading for the Court's consideration. (Docs. 28, 29, 30). Consequently, the Court will analyze the parties' arguments under the summary judgment standard as requested by Defendant. *See*, *e.g.*, *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1284 (5th Cir. 1990) (affirming the district court's decision to treat a motion to dismiss as a motion for summary judgment and consider matters outside the pleadings under similar circumstances).

Court may not weigh the evidence or evaluate the credibility of witnesses. *Id.*

The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party demonstrates an absence of evidence supporting the nonmoving party's case, then the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party cannot rest on the mere allegations of the pleadings to sustain this burden. Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 248. "After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *Caboni*, 278 F.3d at 451. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. The admissibility of summary judgment evidence is subject to the same rules of admissibility applicable to a trial. *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1024 (5th Cir. 1995) (citing *Munoz v. Int'l All. of Theatrical Stage Emps. & Moving Picture Mach. Operators of the US & Can.*, 563 F.2d 205, 297 n.1 (5th Cir. 1977)). Federal courts sitting in diversity apply state substantive law and federal procedural law. *Shady Grove Orthopedic Ass'n, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 437 (2010) (citing *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996)).

Defendant carried his summary judgment burden by asserting his qualified immunity defense. *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 419 (5th Cir. 2008) ("In the summary judgment context, a government official need only plead qualified immunity, which then shifts the burden to the plaintiff."). Thus, the burden is on Plaintiff to produce evidence showing that Defendant violated his constitutional rights and that the violation was objectively unreasonable under clearly established law at the time of the violation. *See McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002).

III. Discussion

Defendant moves for summary judgment on all of Plaintiff's causes of action: (1) wrongful arrest, (2) malicious prosecution, and (3) *Brady* violation. (Doc. 28). Defendant argues the statute of limitations bars Plaintiff's wrongful arrest cause of action and that he is protected by qualified immunity as to all three claims. *See generally id.* For the reasons detailed below, the Court finds Plaintiff's wrongful arrest claim is time-barred and that Defendant is entitled to qualified immunity as to the remaining two claims.

A. Statute of Limitations—Wrongful Arrest

Plaintiff argues that Defendant violated his Fourth Amendment rights by subjecting him to a wrongful arrest. (Doc. 1 at 5). Defendant moves for summary judgment on this claim, alleging that it is

subject to a two-year statute of limitations and that the limitations period began to run when Plaintiff was detained pursuant to a legal process, such as bonding from custody. (Doc. 28 at 16). Because Plaintiff was arrested and bonded on January 22, 2016, Defendant contends the statute of limitations expired on January 22, 2018. *Id.* at 17. Thus, Defendant alleges, Plaintiff's claim for wrongful arrest, filed on April 18, 2018, is time-barred. *Id.*

In *Wallace v. Keto*, a case both parties cite, the Supreme Court explains that although "Section 1983 provides a federal cause of action, [] in several respects . . . federal law looks to the law of the State in which the cause of action arose," such as when the statute of limitations is in question. 549 U.S. 384, 388 (2007). The statute of limitations applicable to a 1983 claim, "is that which the State provides for personal-injury torts." *Id.* In Texas, the statute of limitations for personal-injury torts is two years. *See Ashley v. Hawkins*, 293 S.W.3d 175, 177 (Tex. 2009). Additionally, the *Wallace* Court held that the statute of limitations on a § 1983 claim for false arrest, where the arrest is followed by criminal proceedings, starts "at the time the claimant becomes detained pursuant to legal process." *Wallace*, 549 U.S. at 397. Under Fifth Circuit precedent, "a bond hearing constitutes a legal process." *Reed v. Edwards*, 487 F. App'x 904, 906 (5th Cir. 2012) (citing *Wallace*, 549 U.S. at 388).

The Court agrees with Defendant that Plaintiff's cause of action for wrongful arrest accrued when Plaintiff was arrested and "bonded out of custody" on

January 22, 2016. *See Reed*, 487 F. App'x at 906. Because a two-year statute of limitations applies pursuant to Texas law, the claim is time-barred if not filed on or before January 22, 2018. Plaintiff filed this lawsuit, including the wrongful arrest claim, on April 18, 2018, thus the Court finds that the wrongful arrest claim is time-barred.

Plaintiff concedes that "Plaintiff's cause of action for false arrest 'accrued' on January 22, 2016, when he was bonded out and released from custody." (Doc. 29 at 15). Nonetheless, Plaintiff urges the Court to find that the statute of limitations began to run "as early as March 17, 2017, and as late as April 19, 2017, when the criminal charges against Plaintiff were dismissed. *Id.* at 16. Plaintiff appears to rely on *Heck v. Humphrey*, 512 U.S. 477 (1994).

In *Heck*, the Supreme Court held that the prisoner's suit for false imprisonment could not accrue until the State dropped the charges against him. *Id.* The "rule for deferred accrual" was applied because there was an outstanding conviction that delayed "what would otherwise be the accrual date of a tort action until the setting aside *of an extant conviction* which success in that tort action would impugn." *Wallace*, 549 U.S. at 393 (emphasis in original) (explaining the holding in *Heck*). Subsequently, in *Wallace*, the Supreme Court clarified that the "*Heck* rule for deferred accrual" applies only when there exists an "outstanding criminal judgment." *Id.* Refusing to extend the holding in *Heck*, the *Wallace* Court found that:

> the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, *begins to run at the time the claimant becomes detained pursuant to legal process.*

Id. at 397 (emphasis added). As described above, Plaintiff was detained pursuant to legal process, released, and the charges against him were dropped before the case proceeded to trial. Thus, there is no outstanding criminal judgment, rendering *Heck* inapplicable and Plaintiff's argument unpersuasive.[4]

In summary, the Court finds Plaintiff's wrongful arrest claim is time-barred. Therefore, summary judgment is granted in Defendant's favor as to said claim. Finally, because the claim is time-barred, the Court need not delve into Defendant's qualified immunity argument as it relates to the wrongful arrest claim.

B. Qualified Immunity—Malicious Prosecution & *Brady* Violation

Defendant asserts that he is entitled to qualified immunity as to the malicious prosecution and *Brady* violation claims. (Doc. 28).

"To overcome the qualified immunity defense, [Plaintiff] must plead that [Defendant] violated a

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[4] Plaintiff's argument as to the statute of limitations issue is largely conclusory. Not only does Plaintiff urge the Court's departure from binding precedent, but he does so without adequate explanation. (*See generally* Doc. 28 at 16–17).

clearly established statutory or constitutional right of which a reasonable person would have known." *Bosarge v. Miss. Bureau of Narcotics*, 796 F.3d 435, 441 (5th Cir. 2015) (citing *Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009)). "Even if a defendant's conduct actually violates a plaintiff's constitutional rights, the defendant is entitled to qualified immunity if the conduct was objectively reasonable under the circumstances presented in the case." *Nerio*, 2017 WL 2773716, at *4 (citing *Zarnow v. City of Wichita Falls*, 500 F.3d 401, 408 (5th Cir. 2007)). Plaintiff bears the burden of overcoming Defendant's defense of qualified immunity. *Id.* (citing *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002)). Whether qualified immunity is applicable requires the analysis of a two-step process. *Pearson, 555* U.S. at 232. "First, a court must decide whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right." *Id.* (internal citations omitted) (citing *Saucier v. Katz*, 533 U.S. 194 (2001)). "Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." *Id.*

1. *Violation of Constitutional Rights in Connection with a Malicious Prosecution*

Plaintiff's "malicious prosecution" cause of action is not entirely clear. (Doc. 1 at 5). Plaintiff argues that Defendant violated his "Fourteenth Amendment rights . . . by subjecting him to [a] malicious prosecution,

without cause, in the felony . . . by knowingly and fraudulently concealing evidence favorable to the accused, to the detriment of Plaintiff's person, his business, and his reputation." *Id.* In his Response to the instant Motion, Plaintiff slightly elucidates his argument by alleging that Defendant did not "inform the reviewing magistrate that the complainant did not want [Plaintiff] arrested" and that the warrant application contained "the materially false allegation that no lien existed on the vehicle." (Doc. 29 at 10). Plaintiff alleges that the fact that Defendant conducted a "registration check" on the vehicle was not sufficient to then state in the warrant application that no lien existed. *Id.*

Defendant assumes that Plaintiff's malicious prosecution claim is independent and argues that it cannot stand on its own. (Doc. 28 at 13). However, after reviewing the Complaint, Plaintiff's Response, and Plaintiff's statement that "his claim for malicious prosecution [is encompassed] in Paragraph 29" of the Complaint, the Court opines Plaintiff's malicious prosecution claim is premised on alleged pretrial deprivations—falsifying facts in the warrant application and omitting information in the offense report, as generated by Defendant. (Docs. 1 at 5; 29 at 9–10). Thus, as a preliminary matter, the Court notes that Plaintiff is not pleading a "free-standing" malicious prosecution claim as alleged by Defendant. (Doc. 1 at 5). Instead, Plaintiff argues Defendant violated Plaintiff's "Fourteenth Amendment" due process rights in connection with a malicious prosecution. *Id.* Thus, while Defendant is correct

that "federal law does not recognize an independent constitutional claim of malicious prosecution," a standalone claim is not pleaded here.

Additionally, "although the Fourteenth Amendment is relevant because it applies the Fourth Amendment to the states, [Plaintiff s] claims . . . should be analyzed under the Fourth Amendment and not under the Fourteenth Amendment's Due Process Clause." *Bosarge*, 796 F.3d at 441 (citing *Cuadra v. Hous. Indep. Sch. Dist.*, 626 F.3d 808, 814 (5th Cir. 2010)). In particular, Plaintiff's allegation that Defendant provided false information for use in support of the search warrant would be a violation of the Fourth Amendment. *See*, *e.g.*, *Nerio v. Evans*, No. A-17-CA-037-LY, 2017 WL 2773716, at *3 (W.D. Tex. June 26, 2017) ("[A] governmental official violates the Fourth Amendment when he deliberately or recklessly provides false, material information for use in an affidavit in support of a search [or arrest] warrant." (quoting *Hart v. O'Brien*, 127 F.3d 424, 449 (5th Cir. 1997)) (second alteration in original))). And Plaintiff's claim that Defendant, "despite knowing that [complainant] did not want to press criminal charges . . . chose to arrest [Plaintiff] and not provide information about the [complaint's] unwillingness to press charges" in essence alleges the arrest was not supported by probable cause and omission of material information from the report, which, if established, are also Fourth Amendment violations. *Id.* at *2 (explaining the Fourth Amendment affords citizens the right "to be free from arrest unless the arrest is supported by either a properly issued arrest warrant or

probable cause"). Thus, the Court will analyze the alleged violations under the Fourth Amendment.

a. *Alleged Inclusion of False Information in the Affidavit*

As previously noted, Plaintiff argues Defendant violated his constitutional rights by including false information in the Affidavit for Search Warrant (Affidavit). (Doc. 29 at 10–11). The Court finds Plaintiff's argument is misguided.

> In the context of § 1983 claims asserting Fourth Amendment violations, a governmental official is: liable for swearing to false information in an affidavit in support of a search warrant, provided that: (1) the affiant knew the information was false or [acted with] reckless disregard for the truth; and (2) the warrant would not establish probable cause without the false information.

Nerio, 2017 WL 2773716, at *3 (quoting *Hart v. O'Brien*, 127 F.3d 424, 442 (5th Cir. 1997)). Plaintiff alleges that the Affidavit states that "no lien existed on the vehicle" and that such statement was false. (Doc. 29 at 10). However, the Affidavit actually states: "[Plaintiff] later said that he has a lien on the vehicle. . . . A registration check on the vehicle was done and found that there [was] no lien on the vehicle by [Plaintiff's business] or [Plaintiff]." (Doc. 29-1 at 45). The fact that a lien existed on the vehicle does not contradict Defendant's assertion that the registration check showed that no lien existed on the vehicle. (Doc.

29). Nor does it establish that Defendant *knowingly* swore to false information. Thus, Plaintiff fails to show that Defendant knowingly made "false" allegations in the Affidavit with regard to the result of the registration check. Plaintiff also fails to prove that Defendant acted with "reckless disregard"[5] in including the result of the registration check in the Affidavit. *See generally id.* Thus, Plaintiff cannot meet his burden of establishing a Fourth Amendment violation based on these facts.

b. *Defendant's Decision to Arrest Plaintiff & Omit Information*

Plaintiff's second allegation—that Defendant, "despite knowing that [the complainant] did not want to press criminal charges . . . chose to arrest Plaintiff and not provide [such] information"—also fails.

The fact that the complaining party does not want to press charges does not suggest that there is no probable cause for an arrest. *See Rakun v. Kendall County,*

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[5] The Court notes that Defendant could also be liable if he acted with reckless disregard for the truth. *Nerio*, 2017 WL 2773716, at *3. However, Plaintiff, in a conclusory manner, pleads reckless disregard in his Complaint (Doc. 1 at 5) but does not "present evidence [in response to the instant Motion] that [Defendant] in fact entertained serious doubts as to the truth of the relevant statements" as is required to prove "reckless disregard." *Id.* (citing *Hart*, 127 F.3d at 442). Rather, Plaintiff only questions the effectiveness of the registration check. (Doc. 29 at 11). Plaintiff cannot rest on the mere allegations of the pleadings to sustain his burden. Fed. R. Civ. P. 56(e). Consequently, Plaintiff fails to show that Defendant acted with reckless disregard for the truth.

Tex., No. CIV.A. SA-06-CV-1044, 2007 WL 2815571, at *20 (W.D. Tex. Sept. 24, 2007); *see also Bishop v. Best Buy, Co. Inc.*, No. 08 CIV. 8427 LBS, 2011 WL 4011449, at *2 (S.D.N.Y. Sept. 8, 2011) ("[A] statement by a complainant that he or she does not intend to press charges does not dissipate probable cause, because the decision to prosecute rests with the [g]overnment, not with the complainant."). Moreover, "information is filed in the name of the state, not a complainant, and the prosecutor, not the victim, determines whether someone will be charged." *Rakun*, 2007 WL 2815571, at *20. Consequently, Plaintiff cannot rely on the fact that the complainant did not want to press charges and that Defendant omitted such information to show that Defendant violated his Fourth Amendment rights as such information is irrelevant to a probable cause determination. *Cf. Spencer v. Rau*, 542 F. Supp. 2d 583, 594 (W.D. Tex. 2007) (finding that plaintiff's malicious prosecution claim fails even though the district court assumed that plaintiff's allegations—that the officers gave false information to the prosecutor that led the prosecutor to believe there was probable cause—were assumed to be true).

Based on the above discussion, the Court concludes that Plaintiff fails to raise a genuine issue as to any material fact. Further, Plaintiff has not met his burden of establishing a constitutional violation that would deprive Defendant of the qualified immunity defense. Particularly, the Court rejected each basis for Plaintiff's malicious prosecution claim, and, without more, the malicious prosecution claim does not state a

constitutional violation. *See Spencer*, 542 F. Supp. 2d at 594 ("[A]n arrest without probable cause would not present a substantive due process violation standing alone."). Consequently, Defendant is entitled to qualified immunity as to the malicious prosecution claim.

2. Brady *Claim*

Finally, Plaintiff argues that Defendant violated his Fourteenth Amendment rights by "failing to provide to the prosecution certain evidence of statements made by the complaining party that [was] favorable to the accused, in violation of the duty imposed by the United States Supreme Court in *Brady v. Maryland*, 363 U.S. 83 (1963)." (Doc. 1 at 5).

Defendant alleges he is protected by qualified immunity because Plaintiff cannot "assert a viable constitutional violation based on *Brady* as to information [Defendant] may have had regarding [the complaining party's] aversion to the criminal consequences of Plaintiff's actions." (Doc. 28 at 14). First, Defendant argues that the complaining party's unwillingness to press charges against Plaintiff is irrelevant to and not material, exculpatory evidence in the underlying criminal prosecution of Plaintiff for theft. *Id.* Secondly, Defendant contends that there was no constitutional violation because the information was not suppressed. *Id.* Instead, Plaintiff was aware of the complainant's desires before the criminal case was dismissed. *Id.* at 14–15. Finally, Defendant argues that the evidence

allegedly suppressed did not prejudice Plaintiff, and thus there was no *Brady* violation. *Id.* at 15.

It is undisputed that Defendant was aware that the complaining party did not want to press charges against Plaintiff in the criminal prosecution for theft. (Docs. 29 at 11; 28 at 14–15). Plaintiff discovered such information during a deposition in a civil proceeding filed by Plaintiff against the complaining party. (Docs. 28 at 14; 29 at 12).

"Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred. The first step in any such claim is to identify the specific constitutional right allegedly infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (citations omitted) (internal quotations omitted). "[A] public official's concealment of material exculpatory evidence [is] a constitutional violation" under *Brady*. *See Truvia v. Connick*, 577 F. App'x 317, 325 (5th Cir. 2014) (citing *Brown v. Miller*, 519 F.3d 231, 238 (5th Cir. 2008)). A *Brady* complaint has three factors: "(1) the [public official] must suppress or withhold evidence, (2) which is favorable, and (3) material to the defense." *United States v. Lanford*, 838 F.2d 1351, 1355 (5th Cir. 1988).

The Court finds that Plaintiff does not show that Defendant violated a clearly established right under *Brady*. (*See generally* Doc. 29). Rather, Plaintiff argues that "[o]utside the context of a criminal trial, there is no way to vindicate the Plaintiff from the consequences of a flawed arrest and prosecution absent a malicious

prosecution claim."[6] *Id.* at 14. Moreover, Plaintiff adds that "[t]o claim that all is well that ends well because Plaintiff eventually received a dismissal is to conflate the trial rights of a criminal defendant with the due process rights of a citizen of the United States not to be subject to prosecution based upon a knowingly and intentional incomplete submission of evidence to the prosecutorial authorities." *Id.* However, Plaintiff's argument is devoid of supporting authority or further explanation.

As noted above, § 1983 is not a source of substantive rights. It is an avenue for vindicating already established federal rights. The Fifth Circuit stated that the "duty to disclose exculpatory information exists to ensure that the accused receives a fair trial." *Craig v. Dall. Area Rapid Transit Auth.*, 504 F. App'x 328, 333 (5th Cir. 2012); *see also United States v. McKinney*, 758 F.2d 1036, 1049 (5th Cir. 1985) ("Brady does not establish a broad discovery rule; rather, it defines the [g]overnment's minimum duty under the due process clause to ensure a fair trial."). Under the circumstances of this case, Plaintiff's right to a fair trial was not implicated because, as repeatedly asserted by Plaintiff, the charges were dismissed. Thus, no cause of action exists under § 1983.

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[6] The Court has considered, and rejected, Plaintiff's argument that he was maliciously prosecuted when Defendant omitted the alleged exculpatory evidence. *See supra* Part III.B.1.b. Thus, this section focuses solely on Plaintiff's *Brady* violation claim.

Other Circuits have similarly emphasized that failure to disclose exculpatory evidence does not deprive a defendant of his right to a fair trial where the charges were dismissed or there was no conviction. *See*, *e.g.*, *Morgan v. Gertz*, 166 F.3d 1307, 1310 (10th Cir. 1999) (citations omitted) ("[In cases where all criminal charges were dismissed prior to trial] courts have held universally that the right to a fair trial is not implicated and, therefore, no cause of action exists under § 1983."); *Flores v. Satz*, 137 F.3d 1275, 1278 (11th Cir. 1998) ("Plaintiff, however, was never convicted and, therefore, did not suffer the effects of an unfair trial. As such, the facts of this case do not implicate the protections of *Brady.*"); *Taylor v. Waters*, 81 F.3d 429, 436 n.5 (4th Cir. 1996) (explaining that because the defendant "was not subjected to trial," the officer's failure to disclose exculpatory information did not deprive him "of any right guaranteed under the Due Process Clause of the Fourteenth Amendment"); *McCune v. City of Grand Rapids*, 842 F.2d 903, 907 (6th Cir. 1988) ("Because the underlying criminal proceeding terminated in appellant's favor, he has not been injured by the act of wrongful suppression of exculpatory evidence.").

The Court finds that Plaintiff fails to show that Defendant violated a clearly established constitutional right under *Brady.* Accordingly, Defendant is entitled to qualified immunity as to the *Brady* claim.[7]

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[7] Because the Court finds Plaintiff failed to establish a *Brady* violation, the Court need not address Defendant's alternative arguments in determining whether he is entitled to qualified immunity.

Finally, because Plaintiff cannot make out a constitutional violation, the Court need not analyze the second prong of the qualified immunity defense as it relates to the malicious prosecution and *Brady* violation claims.

IV. CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant's Motion for Summary Judgment. (Doc. 28). Specifically, the Court finds that Plaintiff's wrongful arrest claim is time-barred, and that Defendant is entitled to qualified immunity as to Plaintiff's malicious prosecution and *Brady* violation claims against Defendant in his individual capacity.

The Court **ORDERS** that Plaintiff's claims against Defendant De La Cruz are dismissed.

It is so **ORDERED**.

SIGNED this 2nd day of September, 2019.

/s/ David Counts
DAVID COUNTS
UNITED STATES
DISTRICT JUDGE