

No. 21-5893

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LYNN RICHARD NORTON,

Plaintiff-Appellant,

v.

DAVID BARKER, Hamblen County, TN Sheriff's
Department Officer, et al.,

Defendants-Appellees.

FILED
Feb 16, 2022
DEBORAH S. HUNT, ClerkO R D E R

Before: GILMAN, Circuit Judge.

Lynn Richard Norton, proceeding pro se, appeals a district-court order dismissing his civil rights action filed under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The district court denied Norton leave to proceed in forma pauperis on appeal and certified that an appeal could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3). Norton now requests permission from this court to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

On May 10, 2021, Norton mailed from jail a complaint against Hamblen County, Tennessee Sheriff's Department Officers David Barker, Chris Giles, and Gene Watson; James Ward, his co-defendant in a federal criminal case; former United States Attorney J. Douglas Overbey; and Assistant United States Attorneys Emily M. Swecker and Mac D. Heavener III. Norton alleged that, on May 11, 2019, Barker and Giles "stalked" his residence and followed him when he left in a truck owned and driven by Ward. When the officers tried to stop the truck, Ward attempted to elude them, but he eventually stopped after a high-speed chase. Barker, Giles, and Watson ordered Norton, at gun point, to exit the truck. When Norton could not do so because neither the door nor window would open, Giles broke the window with an object that also struck

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Norton in the head, chest, arms, and hands. Giles pulled Norton out of the truck through the broken window, threw him on the ground, and handcuffed him. During a search of Norton's person for weapons, Giles and Watson removed Norton's wallet, searched it, and seized his suboxone strips, for which he had a prescription.

Norton was charged with state offenses for drugs and contraband that were seized from Ward's truck, and he was detained in jail until his release on bond. He alleged that Ward claimed responsibility for the drugs and contraband seized from Ward's truck. Norton asserted that Overbey, Swecker, Heavener, and their fellow Assistant United States Attorney Robert Reeves conspired to charge him, along with Ward, with federal offenses based on the drugs and contraband seized from Ward's truck. He asserted that the federal charges were based on illegally seized evidence, a warrantless search, and Ward's false statement. Norton further asserted that, at his jury trial, evidence was "illegally and unconstitutionally [presented] through Ward's [perjured] testimony" and that the jury found Norton not guilty.¹

Norton asserted claims for unlawful arrest, assault, stalking, malicious prosecution, and false imprisonment. He sought monetary and injunctive relief.

On initial screening, a magistrate judge recommended dismissal of the complaint under 28 U.S.C. § 1915(e) for failure to state a claim for relief. The magistrate judge reasoned that Norton's claims for unlawful arrest, assault, stalking, and false imprisonment against Barker, Giles, and Watson were time-barred. The magistrate judge determined that Norton's claims against these officers accrued on May 11, 2019, when he was watched, followed, arrested, detained, and searched; that a one-year statute of limitations applies to civil rights actions brought in Tennessee; that his May 10, 2021, complaint was untimely because it was filed more than one

¹ In the federal criminal case, a jury acquitted Norton of aiding and abetting the possession of methamphetamine but found him guilty of conspiracy to distribute fifty grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1); distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1); and being a felon in possession of a firearm. See *United States v. Norton*, No. 2:19-cr-145 (E.D. Tenn. Mar. 19, 2021). Sentencing is currently scheduled for April 4, 2022. Norton filed an appeal from the jury verdict, which this court dismissed as premature because Norton has not been sentenced and no final judgment has been entered. *United States v. Norton*, No. 21-5400 (6th Cir. Apr. 28, 2021).

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year after the accrual of his causes of action; and that there was no basis on which to equitably toll the statute of limitations.

The magistrate judge reasoned that Norton's malicious-prosecution claim against Overbey, Swecker, and Heavener was barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). The magistrate judge determined that Norton's claims against these defendants challenged his prosecution and conviction for federal offenses; that Norton did not show that his federal criminal convictions had been terminated in his favor; and that his then-pending appeal to this court did not amount to a favorable termination of his federal criminal convictions. The magistrate judge reasoned that Norton's claim that Ward committed perjury when testifying at Norton's trial on the federal charges was conclusory, vague, and unsupported. The magistrate judge also noted that Norton lacked "a private cause of action for perjury."

Over Norton's objections, the district court adopted the magistrate judge's report and recommendation and dismissed Norton's claims against Barker, Giles, Watson, and Ward with prejudice and his claims against the remaining defendants without prejudice.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that "lacks an arguable basis either in law or in fact," would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

An appeal in this case would not be taken in good faith. *See Neitzke*, 490 U.S. at 325. As for Norton's § 1983 claims against the police officers, the state personal-injury statute of limitations applies. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). The appropriate statute of limitations for personal-injury actions arising in Tennessee is one year. Tenn. Code Ann. § 28-3-104(a)(1); *see Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (discussing former version of Tennessee statute). The statute of limitations starts to run either "when the plaintiff has a complete and present cause of action" or "when the plaintiff discovered (or should have discovered) the cause of action." *Dibrell v. City of Knoxville, Tenn.*, 984 F.3d

No. 21-5893

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1156, 1162 (6th Cir. 2021) (quoting *Rotkiske v. Klemm*, 140 S. Ct. 355, 360 (2019)). Under either scenario, Norton's cause of action accrued on May 11, 2019, nearly two years before his complaint was filed.

As for Norton's claim against the federal prosecutors, he may not seek relief in a *Bivens* action that would necessarily imply the invalidity of his convictions unless his convictions have been reversed, expunged, declared invalid, or questioned in a federal habeas corpus proceeding. *See Heck*, 512 U.S. at 486-87; *see also Robinson v. Jones*, 142 F.3d 905, 906-07 (6th Cir. 1998) (applying *Heck* to a *Bivens* action). Norton's complaint sought relief for an alleged malicious federal prosecution, but he did not allege that his convictions had been invalidated.

As for Norton's claim against Ward, his assertions that Ward committed perjury during his federal criminal trial were entirely conclusory, vague, and unsupported. Legal conclusions, unsupported by specific factual allegations, are insufficient to state a claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Accordingly, the motion to proceed in forma pauperis is **DENIED**. Unless Norton pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 21-5893

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

Jun 14, 2022

DEBORAH S. HUNT, Clerk

LYNN RICHARD NORTON,

Plaintiff-Appellant,

v.

DAVID BARKER, Hamblen County TN Sheriff's
Department Officer, et al.,

Defendants-Appellees.


ORDER

Before: McKEAGUE, WHITE, and READLER, Circuit Judges.

Lynn Richard Norton, proceeding pro se, moves the court to reconsider its February 16, 2022, order denying his motion to proceed in forma pauperis on appeal from the dismissal of his civil-rights action filed under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Norton requests appointment of counsel.

Norton's motion does not show that the court "overlooked or misapprehended" any "point of law or fact" when it issued its order. *See* Fed. R. App. P. 40(a)(2). The motion for reconsideration and request for appointment of counsel are **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

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Filed: August 15, 2022

Mr. Lynn Richard Norton
F.C.I. Beaumont - Low
P.O. Box 26020
Beaumont, TX 77720

Re: Case No. 21-5893, *Lynn Norton v. David Barker, et al*
Originating Case No. : 2:21-cv-00084

Dear Mr. Norton,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Julie Connor
Case Manager
Direct Dial No. 513-564-7033

cc: Ms. LeAnna Wilson

Enclosure

No mandate to issue

Case No. 21-5893

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

ORDER

LYNN RICHARD NORTON

Plaintiff - Appellant

v.

DAVID BARKER, Hamblen County, TN Sheriff's Department Officer; CHRIS GILES, Hamblen County, TN Sheriff's Department Officer; JAMES WARD; EMILY MICHELLE SWECKER, Assistant United States Attorney; J. DOUGLAS OVERBEY, former United States Attorney; MAC DEVON HEAVENER, III, Assistant United States Attorney; GENE WATSON, Hamblen County, TN Sheriff's Department Officer

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by July 14, 2022.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Deborah S. Hunt, Clerk



Issued: August 15, 2022

UNITED STATES OF AMERICA, Plaintiff, vs. LYNN RICHARD NORTON, Defendant.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE,
GREENEVILLE DIVISION
2021 U.S. Dist. LEXIS 35512
2:19-CR-145
February 18, 2021, Filed

Editorial Information: Subsequent History

Adopted by, Motion denied by United States v. Norton, 2021 U.S. Dist. LEXIS 35505, 2021 WL 744403 (E.D. Tenn., Feb. 25, 2021)Appeal denied by, Objection overruled by United States v. Norton, 2021 U.S. Dist. LEXIS 47316, 2021 WL 966357 (E.D. Tenn., Mar. 15, 2021)Appeal dismissed by United States v. Norton, 2021 U.S. App. LEXIS 12728 (6th Cir. Tenn., Apr. 28, 2021)

Editorial Information: Prior History

United States v. Norton, 2020 U.S. App. LEXIS 10154 (6th Cir. Tenn., Mar. 31, 2020)

Counsel {2021 U.S. Dist. LEXIS 1}For Lynn Richard Norton, Defendant:

Jessica Chambers McAfee, LEAD ATTORNEY, McAfee & McAfee, PLLC, Greeneville, TN.

For USA, Plaintiff: Emily Michelle Swecker, LEAD ATTORNEY,

U S Department of Justice (USAO Greene), Office of U S Attorney, Greeneville, TN.

Judges: Cynthia Richardson Wyrick, United States Magistrate Judge.

Opinion

Opinion by: Cynthia Richardson Wyrick

Opinion

REPORT AND RECOMMENDATION

Defendant Norton filed a Motion to Suppress and supporting Memorandum on September 10, 2020. [Docs. 255-56]. In his Motion, Defendant specifically alleges his constitutional rights were violated when he was subjected to an unlawful vehicle stop and was "violently" seized from the vehicle following the stop [Doc. 255, p.1]. Defendant further submits that the vehicle in which he was stopped was unlawfully searched, and the fruits of the unlawful search resulted in his arrest. The United States filed a Response opposing Defendant's Motion on November 19, 2020 [Doc. 301]. An evidentiary hearing on Defendant's Motion was held on February 10, 2021 after being reset due to increasing COVID-19 cases in this District. This matter is before the Court pursuant to 28 U.S.C. § 636(b) and the standing orders of the District Court for a Report and Recommendation.{2021 U.S. Dist. LEXIS 2}

I. FACTUAL FINDINGS

On May 11, 2019, law enforcement officers with the Hamblen County Drug Task Force were

stationed at a storage unit complex on St. Clair Road in Whitesburg, Tennessee to surveille Defendant Norton's residence located at 7205 St. Clair Road. The home was known to local law enforcement as a place where illicit drug sales were occurring and in fact, officers had conducted a controlled buy from Defendant in the month prior to the date in question. Hamblen County Deputy Sheriff David Barker, a K9 officer, and former Deputy Sheriff Chris Giles were conducting the surveillance in Deputy Barker's unmarked truck.

Deputy Barker testified that officers had only been conducting surveillance for a short time on the date in question when they observed a light blue Chevrolet pickup truck leave the residence. Deputy Barker and then Deputy Giles¹ decided to follow the vehicle. According to Deputy Barker's testimony, officers hoped to stop the vehicle in furtherance of their drug investigation should a legal basis for a stop present itself. Shortly after officers began following the truck, Deputy Barker and Deputy Giles testified that they observed the blue pickup's driver side tires{2021 U.S. Dist. LEXIS 3} cross the double yellow line at least twice. According to Deputy Barker, in reliance on that violation, he activated his blue lights. Initially, the two individuals seen in the vehicle looked back at the police vehicle and slowed; however, instead of stopping, the blue truck accelerated away from officers. Thereafter, officers pursued the pickup truck as it travelled toward Russellville, Tennessee. During the pursuit, officers observed the pickup truck run two stop signs, one at Depot Street and East Andrew Johnson Highway and another at Warrensburg Road and Silver City Road. Officers could not make out the identities of the truck's occupants because the windows were tinted, and they maintained a safe distance between their vehicle and the pickup truck.

The pickup truck ultimately stopped at the end of Smyth Trail in rural Hamblen County when the driver encountered a log blocking the road near Williams Cemetery. At the point where the vehicle stopped, the road had become gravel and would have been entering a grassy area had the log not blocked its path. The pursuit had spanned roughly 5 miles at this point, and as the pickup truck came to a stop, officers observed the driver of the{2021 U.S. Dist. LEXIS 4} vehicle climb out of the driver's side window. Deputy Barker ordered the driver to remain on the ground and proceeded to place the driver in handcuffs. Deputy Barker testified that the driver, ultimately identified as James Ward, was immediately placed under arrest because he had fled from officers.

At the same time, Deputy Giles was attempting to have Defendant, who was in the passenger's seat, exit the vehicle. Deputy Giles ordered Defendant out of the vehicle multiple times, but Defendant refused to comply, ultimately telling the officer that something was wrong with the door and it would not open. Deputy Giles initially had his gun drawn but placed it back in his holster and approached the vehicle with a baton. Deputy Giles broke the passenger's window with his baton in order to extract Defendant from the vehicle. Given the circumstances, Defendant was then handcuffed and detained for the safety of responding officers. Defendant told Deputy Giles that he was experiencing rib pain following his removal through the window, so officers called an ambulance. When the ambulance arrived, Defendant declined assistance.

After Mr. Ward was arrested and Defendant was detained, Deputy Barker{2021 U.S. Dist. LEXIS 5} returned to the pickup to turn off its engine which continued to run as officers detained the driver and passenger. Deputy Barker reached through the driver side door to power off the vehicle. As he turned off the truck, he noticed two small baggies-one clear and one pink-in the driver's side floorboard. Based on his experience in narcotics, Deputy Barker advised that the bags appeared to be consistent with drug paraphernalia. While admitting the bags alone would not be a basis for a drug arrest, Deputy Barker testified that he could not determine whether the bags were empty or contained residue while turning off the vehicle. Deputy Barker undertook a search of the vehicle based upon observing the baggies. In addition to the two bags, Deputy Barker recovered a green Crown Royal bag in the gap between driver and passenger seats. Inside the bag, Deputy Barker

found a glove, a digital scale, and a bag containing a white powdery substance consistent with methamphetamine. The passenger side of the vehicle was also searched and a bag containing a green leafy substance consistent with marijuana was discovered in the glove compartment.

Deputy Barker, having finished the vehicle search, read{2021 U.S. Dist. LEXIS 6} Mr. Ward and Defendant their Miranda rights and asked whether each man understood those rights with both confirming that they did. Defendant and Mr. Ward waived their right to remain silent and denied that the drugs found in the vehicle belonged to them when Deputy Barker asked about them. Given that both Defendant and Mr. Ward had the drugs and paraphernalia found in the truck within arm's reach and neither claimed ownership of them, officers charged both men with constructive possession. It was at this point that Defendant was placed under arrest.

After arresting Defendant, officers conducted a pat-down search of Defendant and discovered suboxone strips in his wallet. While Defendant told Deputy Giles that he had a prescription for the substance, no evidence of a prescription had been provided as of the date of the hearing. Defendant and Mr. Ward were subsequently transported from the scene. According to Deputy Barker, approximately ten minutes elapsed between the time the time he turned on his blue lights and the time Defendant and Mr. Ward were initially detained.

II. LEGAL ANALYSIS

As a preliminary matter, the Court must consider whether officers had a valid basis for initiating{2021 U.S. Dist. LEXIS 7} a stop of the pickup truck. "An officer may stop and detain a motorist so long as the officer has probable cause to believe that the motorist has violated a traffic law." *United States v. Bell*, 555 F.3d 535, 539 (6th Cir. 2009). Here, officers relied on the pickup truck crossing a double yellow line at least twice as their basis for signaling for the pickup to stop. Tennessee law requires drivers to operate vehicles on the right half of the roadway unless a listed exception applies. Tenn. Code Ann. § 55-8-115.2 Both Deputy Barker and Deputy Giles testified that they observed both driver's side tires of the pickup truck cross the double yellow line prior to Deputy Barker's activating his blue lights. Because crossing the double yellow line violates the general rule requiring drivers to stay on the right side of the road, the officers were justified in initiating the traffic stop.³

Because the stop was justified pursuant to state law, the Court next considers whether officers were permitted to detain Defendant once the vehicle was stopped. The Sixth Circuit has stated that "if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop{2021 U.S. Dist. LEXIS 8} may be made to investigate that suspicion." *United States v. Jackson*, 700 F. App'x 411, 415 (6th Cir. 2017) (quoting *United States v. Hensley*, 469 U.S. 221, 229, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985)) (internal citations omitted). Courts look at the totality of the circumstances known to officers when determining whether a temporary detention was justified. *United States v. Ellis*, 497 F.3d 606, 613 (6th Cir. 2007) (citing *United States v. Arvizu*, 534 U.S. 266, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)). The detaining officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *United States v. Ellis*, 497 F.3d 606, 613 (6th Cir. 2007) (quoting *United States v. Martin*, 289 F.3d 392, 398 (6th Cir.2002)) (internal citations omitted).

Here, Defendant alleges that he was improperly seized solely as a result of Mr. Ward's actions. Defendant argues that he did not operate the pickup truck and there is no evidence to show that he supported the driver's decision to evade officers. Courts have found that officers may temporarily detain all occupants of a fleeing vehicle for the safety of officers. See *Maryland v. Wilson*, 519 U.S. 408, 413-15, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997) (holding that an officer making a traffic stop

may order passengers out of the vehicle for the safety of officers); *Kowolonek v. Moore*, 463 F. App'x 531, 536 (6th Cir. 2012) (noting that "a subject's attempt to flee or demonstrated flight risk may render handcuffing and detention in a cruiser objectively reasonable" during a temporary detention). In this case, Defendant refused to comply⁴ when Deputy Giles{2021 U.S. Dist. LEXIS 9} directed him to leave the vehicle. Deputy Giles then approached the passenger side door, attempted to open the door without any luck, and ultimately decided to extract Defendant through the vehicle door window. Deputy Giles smashed the window with a police baton and pulled Defendant through the window. Defendant was then placed in handcuffs in the interest of safety, given his noncompliance with commands to exit the vehicle and to prevent him from fleeing the scene. The Court does not find placing Defendant in handcuffs in these circumstances to amount to an unlawful detention given his presence in the vehicle that evaded police.

Defendant also contends that Deputy Giles used excessive force when he extracted Defendant from the pickup truck through the window. To determine whether the force used was excessive, courts undertake "a careful balancing of the individual interest in being free from unreasonable seizures and the governmental interest in protecting the safety of its peace officers and the public." *Dorsey v. Barber*, 517 F.3d 389, 401 (6th Cir. 2008) (internal citations omitted). The Government directs the Court to an unpublished case from the Sixth Circuit in which a driver was pulled through a vehicle window after leading officers{2021 U.S. Dist. LEXIS 10} on a high-speed chase and not exiting the vehicle when directed by those officers. See *Blosser v. Gilbert*, 422 F. App'x 453, 459 (6th Cir. 2011) (finding the action of pulling a suspect through a vehicle window in these circumstances was not per se unreasonable).

In balancing Defendant's interest versus officer safety in the instant action, the Court cannot overlook the fact that officers were led on a five-mile pursuit which only ended because the pickup truck's path was blocked. When the vehicle came to a stop, the driver attempted to flee by climbing out of the driver's side window. Responding officers knew the pickup truck in question had left a location where drugs were frequently sold. Officers witnessed the pickup truck break multiple traffic laws. Once the truck was stopped, Defendant refused to comply with police commands to exit the vehicle. When Deputy Giles tried to open his door, the door was locked. While the Court acknowledges that Defendant was a passenger and not the driver of the vehicle, there was no way for officers to know at that moment in time to what extent Defendant was involved in the decision to flee officers nor what danger he might pose to their safety. These facts, when taken together, justify Deputy Giles' actions{2021 U.S. Dist. LEXIS 11} in extracting Defendant through the pickup truck's window.

After Defendant was extracted and detained, Deputy Barker returned to search the vehicle. Only a very brief time period passed from the moment that Defendant was extracted, and Deputy Barker began his search until methamphetamine was found in the pickup truck. The Court also notes that by this time, Defendant had been identified and was known to officers to be dangerous as they had completed a controlled by of drugs and a gun from him in the month prior to the incident at issue. Of note, the controlled by occurred at the address where the pickup truck had been located immediately prior to officers following it. The Court finds that the length of Defendant's detention was not unreasonable given the totality of the circumstances in order to allow officers to investigate what had led the driver of the pickup truck to flee from them and to ensure officer safety from both the driver and Defendant. See *U.S. v. Sharpe*, 470 U.S. 675, 687 (1986), 105 S. Ct. 1568, 84 L. Ed. 2d 605 (holding that a 20-minute detention where an officer diligently pursued his investigation, especially in light of the rapidly developing situation, was not unreasonable because it was designed to swiftly confirm or dispel suspicions).{2021 U.S. Dist. LEXIS 12}

Defendant also claims that this warrantless search of the pickup truck violated his rights. The Supreme Court has explained that "Fourth Amendment rights are personal rights which, like some

other constitutional rights, may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133-34, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978) (internal citations omitted). As such, the Court must consider whether as a mere passenger in the pickup truck, Defendant had a privacy interest in the vehicle's content which would provide him with the requisite standing to challenge the search. Precedent tells us he did not. The Sixth Circuit has "routinely held that passengers who have no expectation of privacy or possessory interest in a stopped vehicle do not have standing to challenge the validity of a subsequent search of that vehicle on Fourth Amendment grounds." *United States v. Bah*, 794 F.3d 617, 626 (6th Cir. 2015). (citing *United States v. Decker*, 19 F.3d 287, 288-89 (6th Cir. 1994) (a conspirator had no expectation of privacy in a vehicle belonging to another member of the conspiracy); *United States v. Ellis*, 497 F.3d 606, 612 (6th Cir. 2007) (explaining that while a passenger may challenge a stop and a subsequent detention, they may not challenge the search of a vehicle in which they lack an expectation of privacy)).

Here, Defendant does not assert that he owns the pickup truck at issue or has a possessory interest in it. Absent such a showing, Defendant cannot demonstrate{2021 U.S. Dist. LEXIS 13} that he had a reasonable expectation of privacy in the vehicle; therefore, he lacks standing to challenge the search at issue. As a result, the Court finds that the drugs found by officers when the pickup truck was searched provided the necessary probable cause to permit Defendant's warrantless arrest for constructive possession.

III. CONCLUSION

The Court finds that stop, detention, and arrest of Defendant were lawful. Based on these findings, the undersigned **RECOMMENDS** that Defendant's Motion to Suppress [Doc. 255] be **DENIED**.⁵

Respectfully Submitted,

/s/ Cynthia Richardson Wyrick

United States Magistrate Judge{2021 U.S. Dist. LEXIS 14}

Footnotes

1

While Deputy Giles is no longer employed as a police officer, he shall still be referred to as Deputy Giles throughout this Report and Recommendation given that he was acting in his capacity as a deputy when the events at issue took place.

2

This provision is unquestionably a traffic law as it falls within a chapter covering the rules of the road. Tenn. Code Ann. § 55-8-102.

3

Even if the Court were to find that there was not a proper basis to originally initiate a stop, the driver's failure to stop at two stop signs during the ensuing pursuit offered another basis for the stop. § 55-8-149; see also *United States v. Jackson*, 682 F.3d 448, 453 (6th Cir. 2012) (upholding a district court order admitting evidence from a traffic stop for a minor turn signal violation even where another basis—a BOLO alert matching the suspect's vehicle—may or may not have provided sufficient basis to initiate a traffic stop).

4

While Deputy Giles acknowledges that Defendant shouted that the door wouldn't open after Deputy

Giles had already instructed him to exit several times, Deputy Giles also testified that after he had broken out the window and unlocked the passenger side door that the door did open which would lead a reasonable officer to conclude that Defendant intentionally refused to comply with the command to exit the vehicle.

5

Any objections to this report and recommendation must be served and filed by February 23, 2021 with responses due February 25, 2021. Fed. R. Crim. P. 59(b)(2). Failure to file objections within the time specified waives the right to review by the District Court. Fed. R. Crim. P. 59(b)(2); see *United States v. Branch*, 537 F.3d 582 (6th Cir. 2008); see also *Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985) (providing that failure to file objections in compliance with the time period waives the right to appeal the District Court's order). The District Court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive, or general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

LYNN RICHARD NORTON, Plaintiff, vs. DAVID BARKER, et al., Defendants.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE,
GREENEVILLE DIVISION
2021 U.S. Dist. LEXIS 171174
2:21-CV-00084-DCLC-CRW
September 9, 2021, Filed

Editorial Information: Subsequent History

Appeal dismissed by Norton v. Barker, 2021 U.S. App. LEXIS 33973 (6th Cir., Oct. 5, 2021)

Editorial Information: Prior History

Norton v. Barker, 2021 U.S. Dist. LEXIS 171726 (E.D. Tenn., June 4, 2021)

Counsel {2021 U.S. Dist. LEXIS 1} Lynn Richard Norton, Plaintiff, Pro se,
JONESBOROUGH, TN.

Judges: Clifton L. Corker, United States District Judge.

Opinion

Opinion by: Clifton L. Corker

Opinion

ORDER

This matter is before the Court to consider the Report and Recommendation of the United States Magistrate Judge [Doc. 6]. In the Report and Recommendation, the magistrate judge recommends that Plaintiff's Complaint against the police officers and Defendant Ward be dismissed with prejudice and dismissed without prejudice as to the remaining defendants for failure to state a claim on which relief may be granted, under 28 U.S.C. § 1915(e)-[*Id.*, pg. 11]. Plaintiff filed Objections [Docs. 10, 11] to the Report and Recommendation on June 16, 2021, and July 8, 2021, which the Court will now consider.

As detailed in the magistrate judge's report and recommendation (R&R), Plaintiff filed the instant complaint against Hamblen County Sheriff's Department Officers David Barker, Chris Giles, and Gene Watson; former United States Attorney (U.S. Attorney) J. Douglas Overbey; Assistant United States Attorneys (AUSA) Emily M. Swecker and Mac D. Heavener, III; and James Ward, Plaintiff's co-defendant in a related criminal matter [Doc. 1, pgs. 1-2]. The basis for Plaintiff's complaint relates to {2021 U.S. Dist. LEXIS 2} his May 11, 2019, arrest for constructive possession of drugs and contraband [*Id.*, pgs. 1-7]. According to Plaintiff, Officers Barker and Giles stalked him at his home, observed him leaving his home as a passenger in Ward's truck, and subsequently engaged in a high-speed chase of the vehicle he was in [*Id.*, pgs. 3-4]. Plaintiff asserts that the high-speed chase put him in shock and imminent danger [*Id.*]. He explains that, when Ward eventually stopped the truck, he was unable to comply with the officers' commands to exit the truck, which led Giles to knock out the window of the passenger-side door and injure his head, face, chest, hands, and arms [*Id.*]. Plaintiff contends that, after breaking the window, Giles violently pulled him through the window and slammed him to the ground to handcuff him [*Id.*]. Plaintiff states that officers then illegally

searched his wallet and found 11 suboxone strips, for which Plaintiff claims he had a prescription [*Id.*].

Plaintiff states that at his later state criminal proceeding for the charges related to his May 11, 2019, arrest, he was "proven innocent," even though he admits that those charges were not dismissed [*Id.*, pgs. 4-5]. He also alleges that{2021 U.S. Dist. LEXIS 3} U.S. Attorney Overbey and AUSAs Swecker and Heavener conspired to file false charges against him in federal court [*Id.*, pgs. 5-6]. At Plaintiff's federal trial, the prosecution allegedly offered Ward's perjured testimony and allowed the jury to consider evidence that belonged to Ward [*Id.*]. The jury subsequently found the Plaintiff guilty in that case of conspiracy to distribute 50 grams or more of methamphetamine, distribution of methamphetamine, and being a felon in possession of a firearm [*Id.*].

On May 12, 2021, Plaintiff filed a Complaint [*Id.*, pgs. 1-8] with this Court under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), against Officers Barker, Giles, and Watson; former U.S. Attorney Overbey; AUSAs Swecker and Heavener; and Ward alleging violations of his Fourth and Fourteenth Amendment rights [*Id.*].

After examining Plaintiff's Complaint, the magistrate judge found that Plaintiff's allegations do not state a claim on which relief may be granted [Doc. 6]. First, the magistrate judge determined that the claims against the officers were time-barred because he did not file his complaint until nearly two years after his causes of action accrued [*Id.*, pgs. 8-9]. Second, as to U.S. Attorney Overbey and AUSAs Swecker and Heavener, the magistrate judge{2021 U.S. Dist. LEXIS 4} concluded that Plaintiff's claims challenge the validity of his criminal proceedings and that such claims are barred by the doctrine in *Heck v. Humphrey*, 512 U.S. 477, 486, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), which requires dismissal of a § 1983 complaint if a judgment in favor of the plaintiff would imply the invalidity of a conviction or sentence [*Id.*, pg. 10]. Lastly, the magistrate judge found that Plaintiff's allegations against Ward were vague and conclusory [*Id.*].

Plaintiff objects to the magistrate judge's findings that his claims against the officers are time-barred, his claims against the remaining defendants are barred under *Heck*, and his claims against Ward are conclusory allegations [Docs. 10, 11]. Plaintiff's objections, however, do not address the legal findings of the magistrate judge. Rather, Plaintiff alleges additional facts as to how Defendants violated his federal and constitutional rights by arresting him and prosecuting him in his criminal trial [See doc. 10, pgs. 1-18]. Indeed, Plaintiff merely provides greater detail about the events of May 11, 2019, and his subsequent criminal proceeding [Doc. 10, pgs. 1-18]. Additionally, Plaintiff has filed *pro se* Motions to Appoint Counsel, for a Certificate of Appealability, and for Injunctive Relief{2021 U.S. Dist. LEXIS 5} [Docs. 2, 13, 14].

When assessing the sufficiency of a complaint, the Court is limited to considering "the complaint, the documents attached to the complaint, and documents referenced in the complaint." *Peterson v. Hopson*, No. 2:17-CV-02891, 2018 WL 4431409, at *1 (W.D. Tenn. Sept. 14, 2018) (citing *Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016)). Therefore, the Court declines to consider new facts raised in Plaintiff's Objections. See, e.g., *Peterson*, 2018 WL 4431409, at *1 (declining to consider new facts raised in the plaintiff's objection to the magistrate judge's report and recommendation).

After thorough consideration of the Report and Recommendation [Doc. 6], Plaintiff's Objections [Doc. 10, 11], and the record as a whole, the Court finds that the Report and Recommendation properly analyzes the issues presented. For the reasons set out in the Report and Recommendation, which are incorporated by reference herein, it is hereby **ORDERED** that the Report and Recommendation [Doc. 6] is **ADOPTED** and this action is **DISMISSED**, with Plaintiff's claims against Officers Barker, Giles, and Watson and Defendant Ward **DISMISSED WITH PREJUDICE**, and Plaintiff's claims

against the remaining defendants **DISMISSED WITHOUT PREJUDICE**. Accordingly, Plaintiff's remaining *pro se* Motions to Appoint Counsel [Doc. 2] and for Injunctive Relief [Doc. 14] are **DISMISSED AS MOOT**{2021 U.S. Dist. LEXIS 6}.

In addition to the above, Plaintiff has moved for a certificate of appealability [Doc. 13]. That motion is **DENIED** because the Court **CERTIFIES** any appeal from this action would not be taken in good faith and would be frivolous. Therefore, Plaintiff's application for leave to proceed *in forma pauperis* on appeal is **DENIED**. Fed. R. App. P. 24(a)(2). Accordingly, a certificate of appealability **SHALL NOT ISSUE**. *Slack v. McDaniel*, 529 U.S. 473, 484-85, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

SO ORDERED:

/s/ Clifton L. Corker

United States District Judge

Footnotes

1

Plaintiff filed a "supplement" set of objections to the magistrate judge's R&R because, according to him, he did not receive confirmation that the Court received his original set of objections [Doc. 11, pgs. 1-2]. Plaintiff's "supplement" largely reiterates his original set of objections and, thus, the Court will discuss only his original objections.