

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

Argued July 12, 2023

Decided July 31, 2023

**Before**

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-3299

KELLI JACK-KELLY,  
*Plaintiff-Appellant,*

*v.*

CITY OF ANDERSON, INDIANA, et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Southern District of Indiana,  
Indianapolis Division.

No. 1:20-cv-02998-DLP-JRS

Doris L. Pryor,  
*Magistrate Judge.*

**ORDER**

Kelli Jack-Kelly was charged with 12 felonies in Indiana state court, and after the charges were dismissed, she sued the City of Anderson and the detective who had investigated her alleging claims for malicious prosecution based on fabricated evidence. The district court dismissed the suit as untimely because Jack-Kelly waited over two years after the favorable termination of the criminal charges to sue. On appeal Jack-Kelly argues that her claims did not accrue—or alternatively, that the limitations period was equitably tolled—until she learned that the detective was responsible for fabricating the

evidence. Because Jack-Kelly raises these arguments for the first time on appeal, we affirm.

### I. Background

This case was resolved on a motion to dismiss, so we take the following factual account from Jack-Kelly's amended complaint, accepting the allegations as true for present purposes. *Towne v. Donnelly*, 44 F.4th 666, 668 (7th Cir. 2022). Jack-Kelly is an independent investigative journalist and has a long history investigating the Anderson Police Department and Detective Mitchell Carroll. In 2006 Jack-Kelly contacted Detective Carroll to address a tip that he was concealing criminal activity. During that conversation, Detective Carroll threatened to damage Jack-Kelly's career. In 2012 Detective Carroll "produced a police report in which he indicated" that Chet Babb, the brother-in-law of Jack-Kelly's husband, had said that Jack-Kelly committed financial crimes involving fraud and deception against her mother-in-law. In 2014 Detective Carroll executed a probable-cause affidavit repeating these allegations, and an arrest warrant was issued for Jack-Kelly. At this stage of proceedings, we must assume, as Jack-Kelly alleges, that reports of any financial misdeeds were false. But she was arrested at her home and charged with 12 felony counts. *See State v. Jack-Kelly*, No. 48C05-1404-FD-628 (Madison Cir. Ct., Ind.); *State v. Jack-Kelly*, No. 18A-CR-00647 (Ind. Ct. App.). She was detained for three nights before posting bail. The charges were later dismissed.

In April 2016 Jack-Kelly sued Babb (among others) in state court for his role in her arrest and prosecution. On April 17, 2019, Jack-Kelly deposed Babb; he denied providing false information and identified Detective Carroll as the source of the allegations about Jack-Kelly's supposed wrongdoing.

Jack-Kelly filed this federal action on November 16, 2020, against various state and local entities alleging malicious prosecution based on false information. In an amended complaint, Jack-Kelly alleged that Detective Carroll violated her rights by fabricating evidence and causing numerous harms, including damage to her reputation, the ordeal of a criminal prosecution, and her arrest and detention. She also brought state-law claims against Detective Carroll, the City of Anderson, and the Anderson Police Department.

The defendants moved to dismiss the amended complaint, arguing in part that the claims were untimely. They asserted that the two-year statute of limitations began to run when the criminal proceedings terminated in Jack-Kelly's favor. According to the

defendants, the criminal case was dismissed on February 23, 2018, making this suit—filed on November 16, 2020—about nine months late. The defendants also argued against any possible suggestion that the limitations period should be equitably tolled because Jack-Kelly did not learn of Detective Carroll’s behavior until April 17, 2019, through Babb’s deposition.

In response Jack-Kelly agreed “in general” that a claim like hers accrues when the criminal proceedings terminate in a plaintiff’s favor. But, she maintained, her criminal case did not terminate until sometime after November 19, 2018, though she could not identify an exact date. She submitted unverified exhibits purporting to show that the Indiana Court of Appeals had granted a motion to reinstate the charges on November 14, 2018, and that the circuit court had reinstated them on November 19, 2018. Jack-Kelly did not address the defendants’ preemptive argument about equitable tolling and stated only that she had “diligently pursued her case ... once she learned that [Detective Carroll] was the source of the fabricated evidence.” The defendants responded to Jack-Kelly’s argument about the accrual date by submitting the certified record from the Indiana Court of Appeals showing that the State’s appeal was dismissed on July 12, 2018, and that there was no action in the case after that.

A magistrate judge presiding with the parties’ consent, 28 U.S.C. § 636(c), granted the motion and dismissed the case based on the statute of limitations. Because the certified state-court records were publicly available and presumed reliable, the judge took judicial notice of them. She explained that the court records showed that the case terminated when the Indiana Court of Appeals dismissed the appeal with prejudice on July 11, 2018. (The defendants have used July 12, the date the decision was docketed.) And there was nothing to support Jack-Kelly’s allegation of court action in November 2018: Official sources contain no record of a motion to reinstate charges, nor any order reinstating them. Finally, Jack-Kelly failed to develop an argument about equitable tolling, so the judge deemed that argument waived. Because the claims accrued in July 2018 when the criminal proceedings ended, Jack-Kelly’s suit was untimely by several months.

## II. Discussion

On appeal Jack-Kelly argues that (1) her claim is timely because the statute of limitations did not begin to run or was tolled until she discovered information about Detective Carroll’s fabrication on April 17, 2019; and (2) the district court improperly resolved a factual dispute about when the criminal case ended. The two-year limitations

period for her claim under 42 U.S.C. § 1983 is borrowed from Indiana law. *Logan v. Wilkins*, 644 F.3d 577, 581 (7th Cir. 2011); see IND. CODE § 34-11-2-4; see also *Wallace v. Kato*, 549 U.S. 384, 387 (2007). Federal law determines the date of accrual. *Logan*, 644 F.3d at 581; see also *Wallace*, 549 U.S. at 388.

Jack-Kelly's argument about a later accrual date is new on appeal. That's a waiver, as the defendants argue. Failure to present an argument in the district court waives that argument on appeal. *Wheeler v. Hronopoulos*, 891 F.3d 1072, 1073 (7th Cir. 2018). In her response to the motion to dismiss, Jack-Kelly never identified April 17, 2019, as the date when the statute of limitations began to run. Rather, she focused her argument on the supposed revival of the criminal case in November 2018.

Jack-Kelly responds that she is merely embracing certain cases that the defendants and the magistrate judge cited for the proposition that her claims accrued when she knew about the violation of her rights. She relies on *Sidney Hillman Health Center v. Abbott Laboratories, Inc.*, 782 F.3d 922, 927 (7th Cir. 2015), to argue that she may challenge the legal theory on which the district court based its decision. In *Sidney Hillman Health Center*, a cursory argument identifying unresolved factual questions about timeliness preserved arguments on appeal about that issue. *Id.* But here, Jack-Kelly explicitly agreed that her claims for malicious prosecution accrued when the criminal proceedings terminated in her favor and then argued only about the date of termination. Jack-Kelly's legal theory on appeal is distinct from what she presented to the district court, so waiver applies. See *Wheeler*, 891 F.3d at 1073.

Jack-Kelly also argues that accrual of her claim was delayed, or the statute of limitations was equitably tolled, under the Indiana doctrines of continuing wrong and fraudulent concealment. See *Wallace*, 549 U.S. at 394 ("We have generally referred to state law for tolling rules ..."). She waived these arguments too, by failing to raise either of them in response to the motion to dismiss. Jack-Kelly repeats her claim that she may challenge the legal theory on which the magistrate judge based her decision, but the judge specifically did *not* address equitable tolling, deeming the argument undeveloped.

Finally, Jack-Kelly alternatively argues that the magistrate judge improperly weighed the evidence when she took judicial notice of the certified Indiana court records that the defendants submitted. But the judge did not weigh evidence; she took judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b). Jack-Kelly's own

exhibits were uncertified and irreconcilable with the public records of two courts. There was no competent evidence for the court to “weigh” in Jack-Kelly’s favor.

AFFIRMED