

959 (11th Cir. 2009). When the defendant raises the statute of limitations as an affirmative defense in a motion to dismiss, dismissal under Rule 12(b)(6) "is appropriate only if it is apparent from the face of the complaint that the claim is time-barred." *Tello v. Dean Witter Reynolds, Inc.*, 410 F.3d 1275, 1288 (11th Cir. 2005) (internal quotation marks omitted).

FACTUAL ALLEGATIONS

Plaintiffs allege that Defendants, pursuant to a search warrant, entered Plaintiffs' home on November 20, 2009, detained Plaintiffs' in the living room during the search, and seized some of Plaintiffs' property. Compl. ¶ 4, ECF No. 1. Plaintiffs allege that a second search occurred on November 30, 2009. They also assert that Defendants unlawfully entered their home after "several months" to leave a copy of the search warrant related to that second search. *Id.* Plaintiffs filed the present action, pursuant to § 1983, on November 19, 2013. Plaintiffs seek damages arising from the November 20, 2009 search and seizure, the November 30, 2009 search and seizure, and the third entry into their home.

DISCUSSION

"All constitutional claims brought under § 1983 are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *Crowe v. Donald*, 528 F.3d 1290, 1292 (11th Cir.

2008) (internal quotation marks omitted); accord *DeYoung v. Owens*, 646 F.3d 1319, 1324 (11th Cir. 2011). The applicable statute of limitations is two years. O.C.G.A. § 9-3-33; *Lovett v. Ray*, 327 F.3d 1181, 1182-83 (11th Cir. 2003) (per curiam) (applying Georgia's two-year statute of limitations for personal injury actions and finding plaintiff's § 1983 claim untimely). The statute begins to run when "the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Porter v. Ray*, 461 F.3d 1315, 1323 (11th Cir. 2006) (quoting *Lovett*, 327 F.3d at 1182); see also *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987) (explaining that § 1983 claims "do not accrue until the plaintiff knows or has reason to know that he has been injured" and "is aware or should have been aware who has inflicted the injury").

It is clear on the face of the Complaint that Plaintiffs had actual knowledge of Defendants' first search and seizure on November 20, 2009. Therefore, Plaintiffs were required to file their claims based on that search by November 20, 2011. Because Plaintiffs did not file this action until November 19, 2013, almost two years after the two-year statute of limitations expired, these claims are clearly time-barred.

The present Complaint does not specifically allege the precise date that Plaintiffs became aware of the November 30,

2009 search or the third alleged entry into their home. But Plaintiffs do allege that they found the copy of the second search warrant "several months" after the searches on November 20 and 30, 2009 and believed someone must have entered their home a third time to leave that copy in their dining room near the time they found it. The Court finds that a reasonable construction of Plaintiffs' Complaint establishes that Plaintiffs would have been well aware of the second and third searches prior to November 19, 2011, which would have been twenty-four months after the initial search and two years before they filed this present action.¹

Accordingly, the present action, which was filed on November 19, 2013, more than two years after Plaintiffs were aware of the subsequent searches, was too late.

CONCLUSION

For the reasons explained above, Defendants' motions to dismiss (ECF Nos. 13 & 14) are granted.

IT IS SO ORDERED, this 25th day of April, 2014.

S/Clay D. Land

CLAY D. LAND
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Plaintiffs failed to respond to Defendants' Motions to Dismiss and have made no argument that the statute of limitations should be tolled.