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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WILLIAM TIDMARSH,

Plaintiff,

v.

NYE COUNTY SHERIFF'S DEPARTMENT,
et al.,

Defendants.

Case No. 2:15-cv-01970-APG-NJK

**ORDER GRANTING THE
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT AND
DENYING THE PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

(ECF Nos. 43, 54, 55)

11 This civil rights case arises out of the criminal prosecution of plaintiff William Tidmarsh,
12 a former Nye County patrol officer, for allegedly sexually assaulting a female citizen whom he
13 gave a ride to while he was on duty. Tidmarsh sued Nye County, former Nye County Sheriff
14 Anthony Demeo, former Nye County Assistant Sheriff Rick Marshall, investigator David
15 Boruchowitz, internal affairs investigator Mark Medina, and deputy Brian Jonas for their alleged
16 roles in the criminal and internal affairs investigations and criminal prosecution.¹ The defendants
17 move for summary judgment on each of Tidmarsh's claims on various grounds. Tidmarsh
18 opposes and moves for summary judgment. I grant the defendants' motions and deny Tidmarsh's
19 motion.

20 **I. BACKGROUND**

21 In the early morning of February 8, 2009, Tidmarsh was on duty when he gave a private
22 citizen, non-party Sarah Rollins, a ride home because she was drunk. ECF No. 44 at 10. Rollins
23 subsequently accused Tidmarsh of touching her inappropriately during the drive to her house. *Id.*

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27 ¹ Tidmarsh also sued the Nye County Sheriff's Department but that defendant was
28 dismissed because it is not a legal entity capable of being sued in its own name. ECF Nos. 9, 19,
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On February 12, defendant Medina was assigned to conduct an investigation into the allegations. *Id.* at 4, 9. Medina learned that defendant Jonas had reported to the Sheriff’s Office that he received information from a citizen regarding a possible sexual assault by an on-duty deputy. *Id.*

That same day, Medina interviewed Jonas. *Id.* Jonas stated that a person named Regina Webster, a bartender at the Kingdom Gentleman’s Nightclub, told him that she had disabled Rollins’ car to prevent her from driving while intoxicated, and Rollins went to Indulj Nightclub with some friends. *Id.* Webster told Jonas that Tidmarsh gave Rollins a ride home in his patrol car and the next day, Webster received a text message from Rollins that stated Tidmarsh had violated her during the ride home. *Id.* Medina told Jonas to contact Webster to obtain the text message. *Id.* Jonas did so but reported that Webster said she had deleted the text message and that she would not cooperate with the investigation. *Id.*

Medina then interviewed Webster. *Id.* She was uncooperative at first but (after some threats to revoke her work card and arrest her for obstruction) she gave a story similar to the one Jonas had relayed. *Id.* at 4-5; ECF No. 59. Webster described the text message in further detail, stating that Rollins had texted her: “I got a ride home from the popo. See what happens? He took advantage of me. What do I do?” ECF No. 44 at 5. Webster could not retrieve the text message but she turned over her phone for further investigation. *Id.*

Medina and another detective, Alexandra MacNeil, then interviewed Rollins and her father, Michael. *Id.* Rollins stated she was drunk on the night in question and needed a ride home when Tidmarsh appeared and agreed to give her a ride. *Id.* at 5-6. She rode in the patrol car’s back seat from Indulj to Kingdom where her car was parked. *Id.* She got her purse from her car and then got back into the patrol car’s back seat. *Id.* She stated that on the way to her house, Tidmarsh pulled to the side of the road, moved some things out of the front passenger seat, and told her to get into the front seat, which she did. *Id.* According to Rollins, Tidmarsh placed his right hand on her upper, inner thigh and that Tidmarsh got “more gropey” from there. *Id.*

1 They arrived at the driveway to her home and Tidmarsh turned the headlights off and
2 stopped. *Id.* According to Rollins, Tidmarsh asked if anyone was home or awake. *Id.* Tidmarsh
3 then backed out of the driveway with Rollins still in the car. *Id.* He drove on the street directly
4 behind and parallel to the street she lived on. *Id.* at 7. According to Rollins, it was during this
5 part of the drive that Tidmarsh placed his right hand inside her shirt and bra and fondled her right
6 breast. *Id.*

7 Tidmarsh drove her back to her house and stopped in the street near the entrance to the
8 driveway, where Rollins' father approached them. *Id.* Tidmarsh explained to Rollins' father that
9 he had driven Rollins home because she was drunk. *Id.* At the end of the conversation, Tidmarsh
10 gave Rollins his business card. *Id.* at 8.

11 Rollins did not tell her father what happened but she did tell her sister. *Id.* Rollins also
12 sent a text to Webster stating she had been assaulted by a police officer and did not know what to
13 do. *Id.* Rollins was not able to retrieve the text from her phone, but she turned the phone over to
14 Medina. *Id.*

15 Michael Rollins stated that he was in his garage on the night of the incident when a patrol
16 car stopped at the driveway entrance, turned off the headlights, and then backed out of the
17 driveway. *Id.* at 9. Michael saw a vehicle drive on the street behind his house and he believed it
18 to be a patrol car. *Id.* He stated the patrol car returned and parked in front of his house
19 approximately five minutes later, and his daughter got out of the car, although he could not
20 remember whether she got out of the front or back seat. *Id.*

21 Medina interviewed Sheriff's Office dispatcher Lori Harvey, who was the dispatcher on
22 the night of the incident. *Id.* Harvey stated that Tidmarsh had called her on the phone to advise he
23 was giving Rollins a ride home. *Id.* Harvey stated that after approximately twenty to thirty
24 minutes, she realized she had not heard from Tidmarsh so she called him on the radio. *Id.* He
25 answered to inform he had arrived at Rollins' home and he gave his ending mileage. *Id.* Harvey
26 stated that Tidmarsh came on the radio approximately ten minutes later and cleared the same call
27 for a second time. *Id.* At this point in the investigation, Medina "assumed the singular role of
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1 administrative internal affairs investigator,” and he turned the criminal investigation over to
2 MacNeil and another detective with the Sheriff’s Office, defendant Boruchowitz. *Id.* at 10, 14.

3 After Rollins was done speaking with Medina on February 12, she spoke to Boruchowitz
4 and told him that she had not told Medina everything that happened. *Id.* at 14-15. Rollins stated
5 that when she approached Tidmarsh to retrieve his business card, he grabbed her by the belt to
6 pull her close, put his fingers down the front of her pants, and asked if he could come back to her
7 house later that morning. *Id.* at 11, 14-15. During her interview, Rollins agreed to take a CVSA
8 (voice stress) exam that, according to the officer who administered it, registered no deception by
9 Rollins. *Id.* at 15; ECF No. 61.

10 That same day, Boruchowitz interviewed Rollins’ sister Kathleen. ECF No. 44 at 15.
11 Kathleen reported that Sarah came home and was crying on the night in question. *Id.* According
12 to Kathleen, Sarah told her that a cop had given her a ride home and had touched her
13 inappropriately. *Id.*

14 Boruchowitz contacted Webster’s cell phone service provider to retrieve the text message
15 but learned the company could not restore a deleted message. *Id.* at 13. Boruchowitz sent Rollins
16 and Webster’s phones to the Las Vegas Metropolitan Police Department’s electronics evidence
17 lab to try to recover the messages. *Id.* at 14. The investigators were not able to retrieve the
18 messages from either phone, although phone records showed Webster received a text message
19 from Rollins at 10:46 a.m. on the morning of February 8, 2016. ECF No. 62.

20 On February 12, Tidmarsh was placed on administrative leave. ECF No. 45 at 9.
21 Tidmarsh asked what was going on and Boruchowitz stated he would talk with Tidmarsh if he
22 wanted. ECF No. 44 at 15-16. Tidmarsh responded he wanted to talk, and he voluntarily spoke
23 with Boruchowitz. *Id.* at 16. Tidmarsh stated that he gave Rollins a ride home and that Rollins
24 moved to get into the front seat but he told her she had to sit in the back. *Id.* at 16. Rollins told
25 him she needed her keys and that her car was at Kingdom, so they drove over there. *Id.* She
26 retrieved her purse and keys, and Tidmarsh then drove her to her home. *Id.* He stated he pulled
27 into the driveway but Rollins told him not to drop her off in front of her father, so he pulled out of
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1 the driveway. *Id.* Tidmarsh initially stated he backed up and pulled back into the driveway. ECF
2 No. 57 at 9-10. Later in the interview, he stated that he turned around and went back to park on
3 the street in front of the house. *Id.* at 30. He did not mention in this initial interview that he drove
4 on the street behind the Rollins home.

5 Tidmarsh stated that he spoke to Rollins' father and explained that Rollins was not in
6 trouble. ECF No. 44 at 16. According to Tidmarsh, as he was getting a business card to give to
7 Rollins' father, Rollins asked Tidmarsh if he could come back tomorrow. *Id.* Tidmarsh denied
8 that Rollins was ever in the front seat of the patrol car. *Id.* at 17. Tidmarsh also stated he was
9 talking on the phone to another deputy, Danneker, for "quite a bit" while transporting Rollins.
10 ECF No. 57 at 21. Phone records showed that Tidmarsh spoke to Danneker once during the
11 critical time period after Rollins retrieved her purse at Kingdom and Tidmarsh was driving her
12 home. *Compare* ECF No. 44 at 23 (Danneker's phone shows calls with Tidmarsh at 2:38, 3:10,
13 3:28, and 3:46) *with* ECF No. 60 at 9-10 (dispatch records showing Tidmarsh called in that he
14 was doing a "bar check" at Indulj at 2:33, that he was doing a courtesy transport at 2:37, called in
15 his starting mileage at 2:52, that he was clear at 3:14, and that he was clear for a second time at
16 3:22).

17 After the interview, Boruchowitz processed Tidmarsh's patrol vehicle and then arrested
18 him. ECF Nos. 47 at 26; 60 at 9. Tidmarsh bailed out within an hour of being taken to jail. ECF
19 No. 66-2 at 14.

20 A few days later, Tidmarsh went to a market along the route he drove on the night of the
21 incident. ECF No. 44 at 29. Tidmarsh identified himself as a deputy sheriff and asked to see
22 video surveillance that might show his patrol car passing the market and show whether Rollins
23 was in the front or back seat of the patrol car. *Id.* When Boruchowitz went to the same market the
24 next day to obtain any video that might assist in the investigation, the employees told him that
25 Tidmarsh had been there the day before requesting to see the same thing. *Id.*

26 Boruchowitz told Medina that Tidmarsh had visited the market. ECF No. 45 at 13. As a
27 result, Medina and defendant assistant sheriff Rick Marshall met with Tidmarsh to discuss
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1 Tidmarsh's visit to the store. *Id.* Marshall told Tidmarsh that they had information that Tidmarsh
2 went to a store to attempt to obtain videotape in connection with the investigations. *Id.* Tidmarsh
3 responded that he did not attempt to obtain a videotape. *Id.* Marshall told Tidmarsh they had
4 information that Tidmarsh had identified himself as a peace officer while at the store. *Id.*
5 Tidmarsh responded that he did not do that. *Id.* Medina then advised Tidmarsh that additional
6 internal affairs charges were being lodged against him for insubordination for violating the terms
7 of his administrative leave (which directed that he not engage in any law enforcement activity
8 while on leave) and for obstructing. *Id.* Based on written statements from the store employees
9 that Tidmarsh had identified himself as a peace officer and had requested the video, Medina
10 charged him with an additional count of insubordination and dishonesty in the performance of
11 duties. *Id.*

12 On March 26, DNA testing of Rollins' clothing from the night in question came back
13 positive for male DNA on her bra, belt buckle, and interior of her pants but the DNA was not
14 Tidmarsh's. *Id.* at 28. Medina thus re-interviewed Rollins on April 9, at which time she indicated
15 it was possible she was too drunk to remember the details of what happened on the night of the
16 incident. *Id.* at 30. Medina asked her to describe what else was in the front seat of the patrol car,
17 but she recalled only that Tidmarsh moved something out of the way for her to sit down. *Id.*
18 When Medina informed Rollins of the negative DNA test results, she stated she had washed her
19 clothing before those items were seized as evidence. *Id.* Rollins then backtracked and stated the
20 clothes had been retrieved from her dirty clothes hamper and had not been washed. *Id.*

21 Medina's April 16, 2009 internal affairs report concluded that there was no compelling
22 evidence to support administrative charges against Tidmarsh related to oppression, lewdness, or
23 battery because although Rollins strongly asserted wrongdoing, Tidmarsh was equally adamant
24 that nothing had happened and Rollins' statements had some inconsistencies. *Id.* at 34. For
25 example, Rollins did not recall a large computer and computer stand in the patrol car's front seat
26 area. *Id.* Medina also noted that Tidmarsh maintained his innocence even when Medina falsely
27 told him that there had been a positive DNA match and that Rollins' father saw Rollins emerge
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1 from the front seat. *Id.* Medina also noted that Rollins left out the allegation that Tidmarsh put
2 his fingers down her pants in the first interview with her and she changed her story about whether
3 the bra had been washed when confronted with the negative DNA results. *Id.*

4 However, Medina found several administrative charges against Tidmarsh were sustained,
5 including willful misconduct and violating the code of professional conduct based on procedural
6 irregularities associated with his driving Rollins home that night. *Id.* at 36. Medina also found
7 that administrative charges related to Tidmarsh's actions surrounding his visit to the market and
8 his later denials were sustained. *Id.* at 36-39. Following a pre-termination hearing in July 2009,
9 Tidmarsh was terminated on September 11, 2009. ECF Nos. 54-1 at 25; 54-7.

10 Meanwhile, the preliminary hearing on the criminal charges was held on August 20, 2009.
11 ECF No. 48. Several witnesses testified at the hearing, including Rollins. *Id.* The judge ruled
12 that probable cause had been established for the three charges that were then-pending (open and
13 gross lewdness, oppression under color of law, and false imprisonment) and bound Tidmarsh over
14 for trial. *Id.* at 310-13. The criminal case against Tidmarsh was dismissed on October 15, 2013.
15 ECF No. 54-1 at 32.

16 Tidmarsh filed suit in this court on October 13, 2015. He asserts in count one a claim
17 under 42 U.S.C. § 1983 for due process violations based on the defendants (1) withholding from
18 the defense prior to the preliminary hearing Medina's internal affairs report and exculpatory DNA
19 evidence, (2) providing false testimony against him (based on Boruchowitz allegedly fabricating
20 that Rollins passed the voice stress test), (3) pressuring the district attorney to prosecute Tidmarsh
21 in the absence of probable cause, and (4) failing to conduct an adequate investigation. The
22 amended complaint alleges these actions led to his wrongful conviction (even though the charges
23 were dismissed), wrongful discharge, and malicious prosecution. Tidmarsh contends these due
24 process violations were the result of Nye County policies and practices, including a policy of
25 allowing officers to not obtain exculpatory evidence, allowing officers to not disclose exculpatory
26 evidence, failing to use generally accepted law enforcement procedures concerning probable
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1 cause, allowing officers to coach witnesses and withhold or conceal information, and failing to
2 discipline poorly performing officers.

3 In count two, Tidmarsh asserts a § 1983 claim based on an alleged denial of equal
4 protection under the Fourteenth Amendment, claiming the defendants treated him differently than
5 other similarly situated sexual assault suspects. In count three, Tidmarsh alleges the defendants
6 conspired to violate his civil rights, maliciously prosecute him, falsely arrest and imprison him,
7 and intentionally inflict emotional distress. Finally, in count four, Tidmarsh asserts an intentional
8 infliction of emotional distress claim.

9 **II. ANALYSIS**

10 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits
11 demonstrate “there is no genuine dispute as to any material fact and the movant is entitled to
12 judgment as a matter of law.” Fed. R. Civ. P. 56(a), (c). A fact is material if it “might affect the
13 outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
14 (1986). An issue is genuine if “the evidence is such that a reasonable jury could return a verdict
15 for the nonmoving party.” *Id.*

16 The party seeking summary judgment bears the initial burden of informing the court of the
17 basis for its motion and identifying those portions of the record that demonstrate the absence of a
18 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden
19 then shifts to the non-moving party to set forth specific facts demonstrating there is a genuine
20 issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir.
21 2000). I view the evidence and reasonable inferences in the light most favorable to the non-
22 moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

23 **A. Statute of Limitations**

24 The defendants argue that all of Tidmarsh’s claims except his malicious prosecution claim
25 are time-barred. Tidmarsh responds that all of his claims are timely because the charges against
26 him were dismissed on October 15, 2013 and he filed his complaint within two years of that date.

27 ////

1 1. Section 1983 Claims

2 Tidmarsh’s malicious prosecution claim is timely because it did not accrue until the
3 charges were dismissed on October 15, 2013. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994);
4 *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998). Tidmarsh brought this
5 lawsuit less than two years later. He therefore sued within the applicable two-year limitation
6 period. *See Rosales-Martinez v. Palmer*, 753 F.3d 890, 895 (9th Cir. 2014) (explaining that
7 Nevada’s two-year limitation period for personal injury claims applies to federal claims under
8 § 1983).

9 However, Tidmarsh’s other § 1983 claims are untimely. Tidmarsh contends the
10 defendants violated *Brady v. Maryland* by failing to turn over the internal affairs report (which
11 contained exculpatory information about Rollins changing her story about her clothes being
12 washed and being unable to describe the contents of the patrol car’s front seat area) prior to the
13 preliminary hearing. Tidmarsh contends that by failing to turn over that report, the defendants
14 were able to present materially false testimony at the preliminary hearing, including Rollins
15 claiming she washed her clothes and Boruchowitz claiming that MacNeil told him the clothes had
16 been washed prior to being seized. However, Tidmarsh was aware in July 2009 both that
17 Medina’s report existed and had not been turned over prior to the preliminary hearing and that
18 there was some dispute about the reliability of Rollins’ CVSA test results. *See* ECF No. 54-7 at 4
19 (discussion about CVSA being “compromised”); ECF No. 70-1 at 2 (discussion at the July 2009
20 pre-termination hearing about Medina’s findings in Tidmarsh’s favor). Thus, this claim is
21 untimely because it was not filed within two years of when he knew or had to reason to know of
22 the injury forming the basis of this claim. *See Rosales-Martinez*, 753 F.3d at, 895.²

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24 ² Even if timely, the claim has multiple defects. First, this could be considered a *Brady*-
25 type claim under *Tatum v. Moody* for pre-trial detentions “of (1) unusual length, (2) caused by the
26 investigating officers’ failure to disclose highly significant exculpatory evidence to prosecutors,
27 and (3) due to conduct that is culpable in that the officers understood the risks to the plaintiff’s
28 rights from withholding the information or were completely indifferent to those risks.” 768 F.3d
806, 819-20 (9th Cir. 2014). However, Tidmarsh was not held in lengthy pre-trial detention.
Rather, he bailed out within an hour. Additionally, the exculpatory evidence he complains about
was not uncovered by the time of his arrest. And he has not shown the officers understood or

1 As to the equal protection claim, Tidmarsh knew of the injuries forming the basis of this
2 claim no later than 2009 when the investigation was completed and the charges submitted to the
3 district attorney's office. Tidmarsh does not identify anything that was done after that point by
4 these defendants in terms of treating him differently than similarly situated individuals accused of
5 crimes.³ This claim is therefore time-barred.

6 Tidmarsh cites no authority for his position that because his malicious prosecution claim
7 is timely, all of his claims are timely. The law is to the contrary. The limitation period under
8 § 1983 begins to run "when the plaintiff has a complete and present cause of action," meaning
9 "the plaintiff can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007)
10 (quotations omitted). Tidmarsh had a complete cause of action for alleged *Brady* and equal
11 protection violations based on acts or omissions that occurred in 2009 once he learned about those
12 acts or omissions. The fact that consequences of those actions continued until the charges against
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14 were completely indifferent to the risk that failure to disclose the information might pose. The
15 exculpatory evidence undermined Rollins' credibility but it did not establish Tidmarsh's
16 innocence.

16 Alternatively, Tidmarsh could be pursuing a substantive due process claim under
17 *Devereaux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001) (en banc). *Devereaux* recognized a
18 "constitutional due process right not to be subject to criminal charges on the basis of false
19 evidence that was deliberately fabricated by the government." *Id.* at 1074-75. To state a
20 *Devereaux* claim, Tidmarsh must present evidence showing either: "(1) Defendants continued
21 their investigation of [Tidmarsh] despite the fact that they knew or should have known that he
22 was innocent; or (2) Defendants used investigative techniques that were so coercive and abusive
23 that they knew or should have known that those techniques would yield false information." *Id.* at
24 1076. Although Tidmarsh alleges that the DNA results were withheld, the parties discussed the
25 DNA results at the preliminary hearing. ECF No. 63 at 117-19. Viewing the evidence in the light
26 most favorable to Tidmarsh, he has shown only that Medina discovered evidence that undermined
27 Rollins' credibility and did not turn that information over to prosecutors or the defense prior to
28 the preliminary hearing. The fact that the complaining witness had credibility issues does not
mean the defendants knew or should have known Tidmarsh was innocent. Aspects of Rollins
story were corroborated by other witnesses and Tidmarsh had his own credibility problems,
including his initial failure to recount that he drove behind the Rollins home (where the alleged
fondling occurred) and his denials that he identified himself as a peace officer and sought to
obtain video surveillance from the market.

³ Even if this claim were somehow timely, Tidmarsh presents no evidence that he was
treated differently than other suspects. Indeed, he presents no evidence of how others accused of
crimes were treated, much less how that differs from how he was treated.

1 Tidmarsh were dropped in 2013 does not extend the limitation period. *RK Ventures, Inc. v. City of*
2 *Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002) (The defendant’s “decision to institute formal
3 abatement hearings . . . was the ‘operative decision’ for the purposes of triggering the § 1983
4 statute of limitations. The actual beginning of the abatement hearing on November 14 was
5 simply the effect of that decision and was not a separately unconstitutional act.”). Thus, the
6 defendants are entitled to summary judgment on Taylor’s *Brady* and equal protection claims as
7 time-barred.

8 2. State Law Claims

9 Tidmarsh asserts state law claims for conspiracy and intentional infliction of emotional
10 distress.⁴ The limitation period for intentional infliction of emotional distress is two years. Nev.
11 Rev. Stat. § 11.190(4)(e). The underlying alleged misconduct occurred in 2009, so this claim is
12 time-barred. Tidmarsh does not present evidence that these defendants did anything after 2009
13 that would support an intentional infliction of emotional distress claim.

14 Finally, the limitation period for Taylor’s civil conspiracy claim is four years. *Siragusa v.*
15 *Brown*, 971 P.2d 801, 806 (Nev. 1998) (“Civil conspiracy is governed by the catch-all provision
16 of NRS 11.220, which provides that an action ‘must be commenced within 4 years after the cause
17 of action shall have accrued.’”). This limitation period “runs from the date of the injury rather
18 than the date the conspiracy is discovered.” *Id.* Consequently, this claim is time-barred because it
19 is based on the defendants’ conduct in 2009, except for that portion of the claim which alleges the
20 defendants conspired to maliciously prosecute him.

21 B. Malicious Prosecution

22 Tidmarsh’s only timely claims are for malicious prosecution and related municipal
23 liability and conspiracy claims. To “prevail on a § 1983 claim of malicious prosecution, a
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25 ⁴ Although the amended complaint does not specifically assert a state law false arrest
26 claim, any such claim would be time-barred. The limitation period for a false arrest claim is two
27 years. Nev. Rev. Stat. § 11.190(4)(c). Tidmarsh was arrested, bailed out of jail, and had his
28 preliminary hearing in 2009. Therefore, this claim is time-barred. To the extent Tidmarsh is
asserting wrongful termination, that is also time-barred because he was fired in 2009. *See id.*
§ 11.190(4)(e) (two year limitation period for personal injuries due to a wrongful act).

1 plaintiff ‘must show that the defendants prosecuted [him] with malice and without probable
2 cause, and that they did so for the purpose of denying [him] equal protection or another specific
3 constitutional right.’” *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) (quoting
4 *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995)). A plaintiff may bring a
5 malicious prosecution claim against prosecutors and “other persons who have wrongfully caused
6 the charges to be filed.” *Id.* A judge’s decision “to hold a defendant to answer after a preliminary
7 hearing constitutes *prima facie*—but not conclusive—evidence of probable cause.” *Id.* at 1067
8 (emphasis omitted). A plaintiff can rebut that *prima facie* evidence “by showing that the criminal
9 prosecution was induced by fraud, corruption, perjury, fabricated evidence, or other wrongful
10 conduct undertaken in bad faith.” *Id.*

11 Similarly, “the decision to file a criminal complaint is presumed to result from an
12 independent determination on the part of the prosecutor, and thus, precludes liability for those
13 who participated in the investigation or filed a report that resulted in the initiation of
14 proceedings.” *Id.* But the plaintiff can assert a claim against an official “who improperly exerted
15 pressure on the prosecutor, knowingly provided misinformation to him, concealed exculpatory
16 evidence, or otherwise engaged in wrongful or bad faith conduct that was actively instrumental in
17 causing the initiation of legal proceedings.” *Id.*

18 Tidmarsh’s malicious prosecution claim fails on numerous grounds. First, Tidmarsh has
19 made no argument and presented no evidence raising an issue of fact that any of the defendants
20 urged he be prosecuted for the purpose of denying him equal protection or some other specific
21 constitutional right.

22 Second, probable cause existed. “Probable cause exists when the facts and circumstances
23 within the officer’s knowledge are sufficient to cause a reasonably prudent person to believe that
24 a crime has been committed.” *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1053 (9th Cir. 2009).
25 The “relevant inquiry is what the agents knew, collectively, at the time they arrested” the
26 plaintiff. *United States v. Collins*, 427 F.3d 688, 691 (9th Cir. 2005). To establish probable cause,
27 an officer “may not solely rely on the claim of a citizen witness that he was a victim of a crime,
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1 but must independently investigate the basis of the witness' knowledge or interview other
2 witnesses." *Peng v. Mei Chin Penghu*, 335 F.3d 970, 978 (9th Cir. 2003) (quotation omitted). "A
3 sufficient basis of knowledge is established if the victim provides facts sufficiently detailed to
4 cause a reasonable person to believe a crime had been committed and the named suspect was the
5 perpetrator." *Id.* (quotation omitted).

6 Here, Boruchowitz did not rely solely on Rollins' account before making the decision to
7 arrest. He independently investigated the incident by interviewing Rollins, her sister, and
8 Tidmarsh. MacNeil interviewed Rollins, her father, her sister, and Danneker. Rollins' father
9 corroborated an important aspect of Rollins' story that the patrol car entered the driveway but
10 then backed out and went down the street behind the Rollins' property. Tidmarsh, meanwhile,
11 initially stated that he went down Rollins' street and either backed up and turned around. He thus
12 did not reveal that he had driven on the street behind the Rollins' house, which is where the
13 alleged fondling took place.

14 Rollins' sister corroborated Rollins' account because Rollins immediately reported the
15 incident to her. Webster also corroborated Rollins' story that she sent Webster a text message
16 about Tidmarsh inappropriately touching her that same day. Additionally, Rollins passed a voice
17 stress analysis test showing no deception on her part. Although this test result was later called
18 into question, probable cause is determined at the time of arrest.

19 Rollins had credibility issues, including the fact that she was drunk on the night in
20 question. But Tidmarsh's dispute about who Boruchowitz should have believed and how he
21 interpreted the evidence does not raise an issue of fact that Boruchowitz lacked probable cause to
22 arrest Tidmarsh for various crimes. *See, e.g., Nev. Rev. Stat. §§ 197.200* (oppression under color
23 of office); 201.210 (open/gross lewdness), 200.460 (false imprisonment). Boruchowitz was at
24 worst reasonably mistaken about whether probable cause supported the arrest, and thus would be
25 entitled to qualified immunity. *See Rodis v. City, Cty. of San Francisco*, 558 F.3d 964, 971 (9th
26 Cir. 2009).

1 Finally, there is no evidence that the decision to prosecute was anything but an
2 independent decision of the prosecutor. *See* ECF No. 95-3 at 19-20 (district attorney Brian Kunzi
3 stating whether a case gets charged or proceeds to trial was solely in his discretion and members
4 of the sheriff’s office would not be involved in that decision-making process). Although
5 Tidmarsh alleged in his amended complaint that the defendants pressured the prosecutor to
6 continue to pursue the charges, he presents no evidence of that. Nor does he present any evidence
7 that if the prosecutors had seen Medina’s internal affairs findings, they would have decided not to
8 pursue the charges.

9 Accordingly, I grant the defendants’ motion for summary judgment on Tidmarsh’s
10 malicious prosecution claim. Because Tidmarsh does not have a viable § 1983 claim, I also grant
11 the defendants’ summary judgment motion on his claim against Nye County under *Monell v.*
12 *Department of Social Services of the City of New York*, 436 U.S. 658 (1978). *See Yousefian v.*
13 *City of Glendale*, 779 F.3d 1010, 1016 (9th Cir. 2015) (stating “municipalities cannot be held
14 liable when the individual police officer has inflicted no constitutional injury”). Finally, for the
15 same reasons, I grant the defendants’ motion for summary judgment on Tidmarsh’s claim that the
16 defendants conspired to maliciously prosecute him.⁵

17 **III. CONCLUSION**

18 IT IS THEREFORE ORDERED that plaintiff William Tidmarsh’s motion for summary
19 judgment **(ECF No. 43) is DENIED.**

20 IT IS FURTHER ORDERED that defendants Nye County, Anthony Demeo, Rick
21 Marshall, Mark Medina, and Brian Jonas’s motion for summary judgment **(ECF No. 54) and**
22 defendant David Boruchowitz’s joinder thereto **(ECF No. 55) are GRANTED.**

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27 ⁵ Further, Tidmarsh presents no evidence the defendants agreed to maliciously prosecute
28 him.

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IT IS FURTHER ORDERED that the clerk of court shall enter judgment in favor of the defendants and against the plaintiff.

DATED this 20th day of June, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE