

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 29, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ZACHARY FAIRLEY,	Plaintiffs,
v.	
CITY OF PASCO; BENTON COUNTY (BOARD OF COMMISSIONERS); SEAN GRANGER; JUSTIN GREENHALGH; AND JAMES RAYMOND,	Defendants.

No. 2:20-cv-05229-SMJ

**ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS**

Before the Court, without oral argument, are Defendants City of Pasco, Sean Granger, Justin Greenhalgh, and James Raymond's (together, "City Defendants") Motion to Dismiss, ECF No. 19, and Defendant Benton County's Motion to Dismiss, ECF No. 25. Plaintiff failed to respond to either motion, and so this matter is now ripe for review. *See* ECF No. 26; LCivR 7.1. Having reviewed the relevant record, the Court is fully informed and grants the motions to dismiss.

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1 **BACKGROUND**

2 Construed liberally, *pro se* Plaintiff’s First Amended Complaint asserts
3 claims under 42 U.S.C. § 1983, alleging that Defendants violated his Fourth and
4 Fourteenth Amendment Rights in the course of investigating a bomb threat made
5 by a different person. *See* ECF No. 14 at 5–7. Specifically, he alleges that in the
6 summer of 2013, Detective Greenhalgh performed a forensic search of a cellphone
7 without a warrant and that Plaintiff had a right of privacy in the cell phone’s
8 contents even though it was not his cell phone. *Id.* at 6. Further, on or about
9 December 31, 2013, Detective Sean Granger of Pasco Police Department took a
10 storage device containing the contents of the forensic search to Benton County
11 Sherriff’s Detective Larry Smith. *Id.* Detective Smith then performed a warrantless
12 search of the phone’s contents using this device. *Id.* The contents recovered on the
13 cell phone were later used to prosecute and convict Plaintiff at a criminal trial on
14 several misdemeanor charges unrelated to the bomb threat. *See id.* Plaintiff, without
15 further explanation, also alleges: (1) wrongful arrest, (2) that the proceedings
16 against him were premised on willfully “fabricated evidence and/or de facto
17 fabricated evidence” in violation of his due process rights, and (3) that Pasco Police
18 Department destroyed exculpatory evidence, which he says was “inextricably
19 linked to the illegally obtained evidence on the phone,” violating his rights to due
20 process of law. *Id.* at 7. For these alleged violations, Plaintiff seeks \$10 million in

1 damages. *Id.* at 8.

2 Plaintiff appealed the conviction. *See* ECF No. 1 at 9–36.¹ On February 18,
3 2020, the Washington State Court of Appeals found that law enforcement’s search
4 of the cell phone went beyond the scope of the court-issued warrant. *Id.* On October
5 29, 2020, the remaining charges against Plaintiff were dismissed. ECF No. 14 at 7.
6 He filed this action on November 23, 2020. ECF No. 1.

7 Defendants moved to dismiss Plaintiff’s first amended complaint pursuant to
8 Federal Rule of Civil Procedure 12(b)(2) and (6). ECF Nos. 19, 25. Defendants
9 argue that Plaintiff’s claims are barred by the statute of limitations. *Id.* On January
10 25, 2022, City Defendants filed their Reply, noting that Plaintiff had failed to file a
11 response within the deadline prescribed by the Local Rules. ECF No. 26 at 1–3
12 (citing LCivR 7.1). To date, Plaintiff has filed nothing in response to either of the
13 pending motions to dismiss.

14 **LEGAL STANDARD**

15 A complaint must contain “a short and plain statement of the claim showing
16 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Federal Rule of
17 Civil Procedure 12(b)(2), a complaint may be dismissed for lack of personal
18 jurisdiction. Fed. R. Civ. P. 12(b)(2). Under this Rule, Plaintiff bears the burden of

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¹ There is no indication in the record, and Plaintiff does not claim, that he was
incarcerated during his trial or appeal.

1 establishing the Court has jurisdiction over defendant. *Mavrix Photo, Inc. v. Brand*
2 *Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011).

3 Under Federal Rule of Civil Procedure 12(b)(6), the Court must dismiss the
4 complaint if it “fail[s] to state a claim upon which relief can be granted.” In deciding
5 a Rule 12(b)(6) motion, the Court construes the complaint in the light most
6 favorable to the plaintiff and draws all reasonable inferences in the plaintiff’s favor.
7 *Ass’n for L.A. Deputy Sheriffs v. County of Los Angeles*, 648 F.3d 986, 991 (9th Cir.
8 2011). Thus, the Court must accept as true all factual allegations contained in the
9 complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But the Court may disregard
10 legal conclusions couched as factual allegations. *See id.*

11 To survive a Rule 12(b)(6) motion, the complaint must contain “*some* viable
12 legal theory” and provide “fair notice of what the claim is and the grounds upon
13 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 562 (2007) (internal
14 quotation marks and ellipsis omitted). Thus, the complaint must contain “sufficient
15 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
16 face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Facial
17 plausibility exists where the complaint pleads facts permitting a reasonable
18 inference that the defendant is liable to the plaintiff for the misconduct alleged. *Id.*
19 Plausibility does not require probability but demands more than a mere possibility
20 of liability. *Id.* While the complaint need not contain detailed factual allegations,

1 threadbare recitals of a cause of action’s elements, supported only by conclusory
2 statements, do not suffice. *Id.* Whether the complaint states a facially plausible
3 claim for relief is a context-specific inquiry requiring the Court to draw from its
4 judicial experience and common sense. *Id.* at 679.

5 A complaint is subject to dismissal for failure to state a claim if the
6 allegations demonstrated that the relief sought is barred by the applicable statute of
7 limitations. *Jones v. Bock*, 549 U.S. 199 (2007). Section 1983 contains no statute of
8 limitations. Federal courts therefore look to state law, specifically the state’s
9 “general or residual statute for personal injury actions.” *Owens v. Okure*, 488 U.S.
10 235, 250 (1989). Here, the applicable Washington statute is RCW 4.16.080(2),
11 which provides a three-year limitations period. *Wyant v. City of Lynnwood*, 621 F.
12 Supp. 2d 1108, 1110 (W.D. Wash. 2008) (citing *Bagley v. CMC Real Estate Corp.*,
13 923 F.2d 758, 760 (9th Cir. 1991). Federal courts must “also borrow state law for
14 the ‘closely related question[.]’ of tolling statutes of limitation.” *Id.* (quoting *Wilson*
15 *v. Garcia*, 471 U.S. 261, 269 (1985).

16 However, to determine when a civil rights claim accrues, the Court looks to
17 federal, not state, law. *Bird v. Dep’t of Human Servs.*, 935 F.3d 738, 743 (9th Cir.
18 2019) (per curiam); *see also* *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (“[T]he
19 accrual date of a § 1983 cause of action is a question of federal law that is not
20 resolved by reference to state law.”). “The general rule is that a civil rights claim

1 accrues under federal law ‘when the plaintiff knows or has reason to know of the
2 injury which is the basis of the action.’” *Bonelli v. Grand Canyon University*, 28
3 F.4th 948, 952 (9th Cir. 2022) (quoting *Lukovsky v. City & County of San*
4 *Francisco*, 535 F.3d 1044, 1048 (9th Cir. 2008).

5 **DISCUSSION**

6 Plaintiff alleges that Defendants violated his civil rights under the Fourth and
7 Fourteenth Amendments to the United States Constitution. With the exception of
8 the construed malicious prosecution claim discussed below, Plaintiff’s claims are
9 subject to a three-year statute of limitation. *See* RCW 4.16.080(2). Plaintiff filed his
10 complaint with this Court in November 2020. ECF No. 1. But Plaintiff only alleges
11 violations that occurred in 2013, and Plaintiff gives no reason for the Court to doubt
12 that he knew or had reason to know of these alleged violations shortly after they
13 occurred. At the very least, Plaintiff would have known of the alleged violations by
14 the time of his trial, which would also place Plaintiff’s claims outside the three-year
15 statute of limitation. *See* ECF No. 1 at 11 (noting that the Franklin County Superior
16 Court affirmed Plaintiff’s convictions on September 6, 2017). Moreover, Plaintiff
17 has not pleaded any facts that would toll the statute of limitations, nor did he respond
18 to the pending motions to dismiss. As such, his claims are barred by the statute of
19 limitations and his complaint must be dismissed.

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1 And even if the Court were to construe Plaintiff’s Amended Complaint to
2 include a claim for malicious prosecution under the Fourth Amendment, a claim
3 which does not “accrue until criminal proceedings have terminated in the plaintiff’s
4 favor,” dismissal would be warranted. *Heck v. Humphrey*, 512 U.S. 477, 489
5 (1994). To state a claim for malicious prosecution, Plaintiff must show “(1) that the
6 prosecution claimed to have been malicious was instituted or continued by the
7 defendant; (2) that there was want of probable cause for the institution or
8 continuation of the prosecution; (3) that the proceedings were instituted or
9 continued through malice; (4) that the proceedings terminated on the merits in favor
10 of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or
11 damage as a result of the prosecution.” *Moody v. McCullough*, 2021 WL 1376645,
12 at *7–8 (W.D. Wash. Apr. 12, 2021) (citing *Bender v. City of Seattle*, 99 Wash.2d
13 582, 593 (1983)). In addition to having to make a sufficient showing on those
14 elements, which are taken from Washington state law, a Washington plaintiff
15 bringing a Section 1983 claim of malicious prosecution must also sufficiently allege
16 that Defendants prosecuted him for the “purpose of denying him equal protection
17 or another specific constitutional right.” *Awabdy v. City of Adelanto*, 368 F.3d 1062,
18 1066 (9th Cir. 2004).

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1 Ordinarily, the Court presumes that the prosecutor, who is not named as a
2 defendant here, exercises independent judgment in filing charges, and this precludes
3 liability for those who participated in the investigation or filed a report that resulted
4 in the initiation of proceedings. *Smiddy v. Varney*, 665 F.2d 261, 266–68 (9th Cir.
5 1981). “However, the presumption of prosecutorial independence does not bar a §
6 1983 claim against state or local officials who improperly exerted pressure on the
7 prosecutor, knowingly provided misinformation to him, concealed exculpatory
8 evidence, or otherwise engaged in wrongful or bad faith conduct that was actively
9 instrumental in causing the initiation of legal proceedings.” *Awabdy*, 368 F.3d 1062,
10 1067 (9th Cir. 2004). Thus, where the presumption of prosecutorial independence
11 is rebutted, suit may be brought against other persons who wrongfully caused the
12 charges to be filed. *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126–27
13 (9th Cir. 2002). Here, however, Plaintiff has failed to allege more than conclusory
14 allegations that Defendant fabricated and destroyed evidence. *See* ECF No. 14 at 6–
15 7.

16 Finally, regarding Plaintiff’s allegations against Benton County and the City
17 of Pasco, the Court finds that Plaintiff has failed to sufficiently establish a theory of
18 municipal liability under Section 1983. Briefly, “municipalities, including counties
19 and their sheriff’s departments, can only be liable under § 1983 if an
20 unconstitutional action ‘implements or executes a policy statement, ordinance,

1 regulation, or decision officially adopted and promulgated by that body’s officers.’”
2 *Rivera v. Cty. of Los Angeles*, 745 F.3d 384, 389 (9th Cir. 2014) (quoting *Monell v.*
3 *Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978)). Plaintiff identifies no such
4 municipal policy, let alone a municipal policy that caused his claimed injury.

5 Given these apparent deficiencies in Plaintiff’s First Amended Complaint,
6 the Court need not address whether Plaintiff has adequately pleaded the remaining
7 elements necessary to establish a malicious prosecution claim or any other claim
8 under Section 1983. Plaintiff’s First Amended Complaint will be dismissed for
9 failure to state a claim on which relief can be granted.

10 Accordingly, **IT IS HEREBY ORDERED:**

- 11 **1.** City Defendants’ Motion to Dismiss, **ECF No. 19**, and Defendant
12 Benton County’s Motion to Dismiss, **ECF No. 25**, are **GRANTED**.
- 13 **2.** Plaintiffs’ First Amended Complaint, **ECF No. 14**, is **DISMISSED**
14 **WITH PREJUDICE**.
- 15 **3.** All pending motions are **DENIED AS MOOT**.
- 16 **4.** All hearings and other deadlines are **STRICKEN**.

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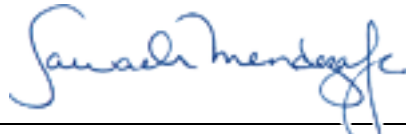
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1 **5.** The Clerk’s Office is directed to **ENTER JUDGMENT** in favor of
2 Defendants and **CLOSE** the file.

3 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
4 provide copies to all counsel and *pro se* Plaintiff.

5 **DATED** this 29th day of April 2022.

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8 SALVADOR MENDOZA, JR.
9 United States District Judge