

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

ANTONIO T. GRAY,)
)

Plaintiff/Appellant,)

vs.)

26th JUDICIAL DRUG TASK FORCE;)
RICK STAPLES, Chief of Police;)
WARREN ROBERTS, Former Madison)
County Sheriff; DTF POLICE CAPT.)
T. A. COLEMAN; DTF POLICE CAPT.)
MARK CALDWELL; DTF POLICE)
INV. DANNY MULLIKIN; DTF)
POLICE INV. JAMES TRUELOVE;)
CITY OF JACKSON and COUNTY OF)
MADISON,)

Defendants/Appellees)

Madison Circuit No. C95-279

Appeal No. 02A01-9609-CV-00218

<p>FILED</p> <p>July 08, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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APPEAL FROM THE CIRCUIT COURT OF MADISON COUNTY
AT JACKSON, TENNESSEE

THE HONORABLE WHIT LAFON, JUDGE

<u>For the Plaintiff/Appellant:</u> _____	<u>For the Defendants/Appellees, 26th Judicial Drug</u>
Antonio T. Gray, Pro Se _____	<u>Task Force, Richard Staples, T. A. Coleman, Mark</u>
Henning, Tennessee	<u>Caldwell, Danny Mullikan and James Truelove:</u>

Charles W. Burson
David T. Whitefield
Nashville, Tennessee

For Defendants/Appellees, Madison
County Tennessee and Warren Roberts:

James I. Pentecost
Jackson, Tennessee

For Defendant/Appellee, City of Jackson:

John D. Burlson
Patrick W. Rogers
Jackson, Tennessee

AFFIRMED

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.

OPINION

This case arises out of the plaintiff's arrest. The charges against him were later dismissed, and he filed a lawsuit against the city police chief, city police officers, sheriff's department officers, members of the drug task force, and the city, for various violations of his civil rights. The trial court granted the defendants' motions for summary judgment, and we affirm.

On January 14, 1994, members of the 26th Judicial Drug Task Force observed Appellant Antonio Gray ("Gray") let a white female enter a house in Jackson, Tennessee. The woman was known by police to be involved in the use and sale of crack cocaine. The officers later observed Gray, the woman, and another man leave the house and drive away in a truck. The officers stopped the truck when the driver committed a traffic violation and searched the vehicle with the driver's permission. During the search, the woman surrendered a plastic bag of crack cocaine which she had hidden on her person. The officers then arrested the woman, Gray, and the other occupant of the truck. Charges of possession of crack cocaine with intent to sell were filed against the three individuals. The Madison County General Sessions Court found probable cause to support the charges against Gray and the other occupants of the truck, and the Grand jury returned indictments against them. Subsequently, in September 1994, the cause was dismissed as to Gray.

On August 24, 1995, Gray filed this lawsuit. In the complaint, Gray named as defendants the 26th Judicial Drug Task Force ("task force"), City of Jackson Police Chief Rick Staples, former Madison County Sheriff Warren Roberts, task force members T. A. Coleman, Mark Caldwell, Danny Mullikin, and James Truelove, the City of Jackson, Tennessee, and Madison County, Tennessee.

Gray's lawsuit alleged that his arrest and the prosecution of the charges against him violated his federal constitutional rights, and he asserted claims under 42 U.S.C. § 1983. He also asserted claims under state law for false arrest, false imprisonment, and malicious prosecution. He contended that supervisory officials were liable under the doctrine of respondeat superior. He asserted that he had mailed a letter to Police Chief Staples, purportedly clearing him of wrongdoing, and that his letter was ignored.

All of the defendants filed motions to dismiss or for summary judgment. Gray filed responses to each motion. The trial court heard oral argument on all of the motions. Subsequently, it entered an order granting all of the defendants' motions and dismissing Gray's complaint. From this decision, Gray now appeals.

In its order dismissing Gray's claims, the trial court noted that he was arrested on January

14, 1994 and indicted on approximately May 2, 1994, but that his lawsuit was not filed until August 24, 1995. The order did not state expressly that the dismissal was based on the statute of limitations; however, this was argued by the defendants in their pleadings on the summary judgment motions. Consequently, we first examine whether the trial court's dismissal of Gray's lawsuit was warranted under the statutes of limitations applicable to each of Gray's claims.

Gray asserts claims under 42 U.S.C. § 1983 for deprivation of his constitutional rights. Section 1983 does not set forth a statute of limitations. In such instances, courts generally will adopt a state statute of limitations which is not inconsistent with federal law or policy. *Wilson v. Garcia*, 471 U.S. 261, 266-267, 105 S. Ct. 1381, 1385, 85 L. Ed. 2d 254 (1985); *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). Tennessee's one-year statute of limitations has been deemed applicable to Section 1983 actions. *See* Tenn. Code Ann. § 28-3-104(a)(1), (a)(3) (1996); *Holmes v. Donovan*, 984 F.2d 732, 738 & 738 n.11 (6th Cir. 1993); *Berndt v. Tennessee*, 796 F.2d 879, 883 (6th Cir. 1986). Therefore, a plaintiff such as Gray must bring his lawsuit under Section 1983 within one year after accrual of the claim. Similarly, under the Tennessee Governmental Tort Liability Act, actions against governmental entities must be brought within one year of the date the cause of action accrued. Tenn. Code Ann. § 29-20-305(b) (1996). Therefore, state law claims for false arrest, false imprisonment and malicious prosecution must also be brought within one year after the accrual of such claims.

A cause of action accrues when the injury on which the action is based is known or should have been discovered by a reasonable person. *Sevier*, 742 F.2d at 273. In *McCune v. City of Grand Rapids*, 842 F.2d 903, 906 (6th Cir. 1988), the Sixth Circuit held that claims for false arrest accrue when the arrest is made and the imprisonment occurs.

In this case, Gray's claims for false arrest and false imprisonment accrued on January 14, 1994, the date of his arrest. Likewise, his claim under 42 U.S.C. § 1983 for violation of his constitutional rights, arising out of his arrest, accrued on the date of his arrest. *McCune*, 842 F.2d at 906. Gray filed his complaint on August 24, 1995, well over one year after these claims accrued. Therefore, Gray's state law claims for false arrest and false imprisonment, as well as the Section 1983 claims that arose out of his arrest, are time-barred.

Unlike the claims for false arrest, false imprisonment, and the claims under Section 1983, Gray's claim for malicious prosecution did not accrue at the time of his arrest. The elements of a

claim for malicious prosecution are:

- (1) A prior suit or judicial proceeding was instituted without probable cause, (2) defendant brought such prior action with malice, and (3) the prior action was finally terminated in plaintiff's favor.

Roberts v. Federal Express Corp., 842 S.W.2d 246, 247-248 (Tenn. 1992); *see also Dunn v. Tennessee*, 697 F.2d 121, 125 n.4 (6th Cir. 1982), *cert. denied*, *Wyllie v. Dunn*, 460 U.S. 1086, 103 S.Ct. 1778, 76 L. Ed. 2d 349 (1983). Thus, an action for malicious prosecution cannot be maintained until the termination of the original action in the plaintiff's favor, and the cause of action does not accrue until that point. *Dunn*, 697 F.2d at 127. Consequently, Gray's claim for malicious prosecution did not accrue until the underlying cause of action against Gray was dismissed in September, 1994. Gray filed this lawsuit on August 24, 1995; thus, his claim for malicious prosecution is not barred by the one-year statute of limitations. Similarly, any claims under 42 U.S.C. § 1983 for constitutional violations arising out of the alleged malicious prosecution are not time-barred.

As noted above, lack of probable cause for the institution of the underlying judicial proceeding is an essential element of a claim for malicious prosecution. *Roberts*, 842 S.W.2d at 247-48; *Dunn*, 697 F.2d at 125 n.4. Probable cause exists where “ ‘facts and circumstances [are] sufficient to lead an ordinarily prudent person to believe the accused was guilty of the crime charged.’ ” *Roberts*, 842 S.W.2d at 248 (quoting *Logan v. Kuhn's Big K Corp.*, 676 S.W.2d 948, 951 (Tenn. 1984)). Thus, the question is not whether the accused was actually guilty, but rather whether reasonable grounds existed for the defendant to believe he was. *Mullins v. Wells*, 450 S.W.2d 599, 603 (Tenn. App. 1969). The plaintiff bears the burden of proof to show, by a preponderance of the evidence, a lack of probable cause. *Smith v. Hartford Mut. Ins. Co.*, 751 S.W.2d 140, 143-44 (Tenn. App. 1987); *Kerney v. Aetna Cas. & Sur. Co.*, 648 S.W.2d 247, 251-52 (Tenn. App. 1982).

The issue of whether probable cause existed is normally a question of fact for a jury to decide. *Roberts*, 842 S.W.2d at 249. However, where reasonable minds could not differ on the

existence of probable cause, summary judgment is appropriate. *Morat v. State Farm Mut. Auto. Ins. Co.*, No. 02A01-9412-CV-00270, Slip Op. at 6-7 (Tenn. App. Jan.13, 1997).

Moreover, a Section 1983 action for malicious prosecution may be maintained only if it “had the effect of causing a violation of a constitutional guarantee.” *Braley v. City of Pontiac*, 906 F.2d 220, 227 (6th Cir. 1990). The misuse of a legal proceeding must be “so egregious” as to amount to “a deprivation of constitutional dimension.” *Richardson v. City of South Euclid*, 904 F.2d 1050, 1053 (6th Cir. 1990), *cert. denied*, 498 U.S. 1032, 111 S. Ct. 691, 112 L. Ed. 2d 681 (1991). “The Constitution does not guarantee that only the guilty will be arrested.” *Baker v. McCollan*, 443 U.S. 137, 145, 99 S. Ct. 2689, 2695, 61 L. Ed. 2d 433 (1979). “Freedom from criminal prosecution is not an interest that is accorded constitutional protection.” *Richardson*, 904 F.2d at 1054. Where appropriate procedures are followed, there is no protectable interest to be free from the burden of defending against an unsuccessful prosecution. *Id.* Regardless of the arrestee’s ultimate innocence, an arrest pursuant to probable cause “gives rise to no claim under the United States Constitution.” *Baker*, 443 U.S. at 144, 99 S.Ct. at 2694. Therefore, for Gray’s state law claim for malicious prosecution, as well as his Section 1983 claim arising out of the alleged malicious prosecution, the central issue is whether probable cause existed for his arrest and the charges against him.

In this case, it is undisputed that task force officers observed a white female going into the house after being met at the door by Gray. Gray subsequently left the house in a truck with the woman and another individual. The driver committed a traffic violation and was stopped by the officers. The officers searched the vehicle for drugs, and the female occupant surrendered a bag of cocaine that she had hidden on her person. The officers arrested all three occupants of the truck and initiated charges of possession of cocaine with intent to sell against all of them. The Madison County General Sessions Court found probable cause for the charges against Gray, and the grand jury subsequently returned an indictment against Gray. Based on these facts, the trial court in the case at bar found that probable cause existed for the charges against Gray.

The events leading to the arrest would lead an ordinarily prudent person to believe that Gray was involved in the possession of an illegal substance with intent to sell. The General Session Court found probable cause existed, and the grand jury indicted Gray. There is no evidence in the record indicating that either the General Sessions Court determination or the grand jury indictment were procured by fraud, perjury, or other corrupt means. *See Memphis Gayoso Gas Co. v. Williamson*,

56 Tenn. 314, 322-24, 340 (1872), *overruled on other grounds by Roberts v. Federal Express Corp.*, 842 S.W.2d 246, 249 (Tenn. 1992). Under these circumstances, reasonable minds cannot differ that there was probable cause for Gray's arrest and for the crime charged. Since Gray cannot establish lack of probable cause by a preponderance of the evidence, his state law claim for malicious prosecution must fail. For the same reason, he cannot establish a claim under 42 U.S.C. § 1983 arising out of the alleged malicious prosecution.

In sum, Gray's claims for false arrest, false imprisonment, and for Section 1983 violations arising out of his arrest and false imprisonment accrued on the date of his arrest and are barred by the one-year statute of limitations. Gray's claims for malicious prosecution and for Section 1983 violations arising out of the purported malicious prosecution accrued when the charges against him were dismissed, and thus are not time-barred. However, to assert a claim for malicious prosecution or for a Section 1983 claim arising out of malicious prosecution, Gray must prove lack of probable cause for his arrest. Given the circumstances leading to Gray's arrest, the General Sessions Court determination of probable cause, and the grand jury indictment, reasonable minds cannot differ on whether probable cause existed for Gray's arrest and the charges filed. Since Gray cannot establish lack of probable cause, his claims for malicious prosecution and for Section 1983 violations arising out of the alleged malicious prosecution must be dismissed. Therefore, the trial court properly dismissed Gray's claims against all of the defendants. This holding pretermits any other issues raised on appeal.

The decision of the trial court is affirmed. Costs are assessed against the Appellant, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P. J., W.S.

ALAN E. HIGHERS, J.