

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM BASEMORE, :
Plaintiff, : CIVIL ACTION
 :
v. :
 :
LYNNE ABRAHAM, et al., :
Defendants : NO. 05-820

MEMORANDUM AND ORDER

McLaughlin, J.

January 11, 2006

The plaintiff brings this claim against Lynne Abraham, the current District Attorney of Philadelphia, Ronald Castille, the former District Attorney of Philadelphia, Jack McMahon, a former Assistant District Attorney and the City of Philadelphia. The plaintiff has alleged that the defendants practiced or oversaw the practice of racially discriminatory jury selection during a 1988 murder trial where the plaintiff was found guilty and sentenced to death. The plaintiff also alleges that the defendants presented falsified evidence or oversaw the presentation of falsified evidence during that trial.¹

¹ The plaintiff's original complaint made reference to some improper evidence being introduced in a separate murder trial in which the plaintiff was found not guilty in 2004. It is unclear if the defendants or other members of the District Attorney's office were involved. The Court does not read the plaintiff's complaint to allege a separate allegation of wrongdoing in the 2004 trial. Instead, the Court concludes that the plaintiff's allegations regarding his 2004 trial were made to bolster his claims of wrongdoing during his 1988 trial by demonstrating a pattern of similar wrongdoing.

The plaintiff stated in his complaint that he was granted a new trial on December 19, 2001. Following his retrial, the plaintiff was again found guilty and sentenced to life in prison in 2003. The Court concludes that the plaintiff's claim with respect to improper jury selection is time barred and that even accepting the plaintiff's allegations as true, the plaintiff has not alleged that any false evidence was used against him.

In support of his allegation that the defendants practiced unconstitutional jury selection during his 1988 trial, the plaintiff relies primarily on the existence of a video made by Jack McMahon that advocated preemptively striking jurors on the basis of race. Jack McMahon was the prosecutor in the plaintiff's 1988 trial and the plaintiff alleges that Mr. McMahon preemptively struck jurors on the basis of race in his case. The plaintiff alleges that Ronald Castille allowed Mr. McMahon to make the video and failed to properly supervise his employees. The plaintiff alleges that Lynne Abraham released the video in 1997. The plaintiff argues that the City of Philadelphia operates the District Attorney's office and is liable on that basis.

The plaintiff has also alleged that the defendants presented or oversaw the presentation of false evidence at his 1988 criminal trial. Specifically, the plaintiff alleged in his original complaint that a lab report, introduced at his 1988

criminal trial, showed that the plaintiff's blood was found on the victim's pants. Prior to the conclusion of the plaintiff's 2003 retrial, it was revealed by an expert witness for the prosecution that DNA testing showed that the plaintiff's blood did not match blood found on the victim's pants. The plaintiff claimed in his original complaint that this showed false evidence was introduced at his 1988 trial.

In his response to the motion to dismiss filed by Mr. Castille, Ms. Abraham and Mr. McMahon, the plaintiff has modified this argument. The plaintiff now asserts that the 1988 lab report only stated that type "O" blood, which is the plaintiff's blood type, was found on the victim's pants. Mr. McMahon simply inferred from this report that the plaintiff's blood matched that found on the victim's pants.

Based on his allegations of unconstitutional jury selection and falsified evidence at his 1988 trial, the plaintiff claims that his rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, his rights under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 42 U.S.C. § 1986, 18 U.S.C. §§ 1961-62 and 18 U.S.C. § 1951, his rights under Article 1, §§ 1, 8, 13 and 26 of the Pennsylvania Constitution and his rights under Pennsylvania common law were violated.² The

² 18 U.S.C. § 1951 and 18 U.S.C. §§ 1961-62 are criminal statutes which deal with racketeering. The plaintiff cannot maintain a civil action under these statutes.

plaintiff seeks \$300,000,000 in damages.

The defendants have argued that the statute of limitations bars the plaintiff's claim regarding unconstitutional jury selection at his 1988 trial. Claims brought under 42 U.S.C. § 1983 and § 1985 are subject to the state statute of limitations for general personal injury actions, which is two years in Pennsylvania. Lake v. Arnold, 232 F.3d 360, 368-69 (3d Cir. 2000); 42 Pa. Cons. Stat. § 5524. Claims under 42 U.S.C. § 1986 are subject to a one-year statute of limitations. 42 U.S.C. § 1986. The plaintiff's cause of action accrued when the plaintiff knew or should have known of the unconstitutional jury selection. See Sameric Corp. of Del., Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998).

The latest the plaintiff could have reasonably known that the jury in his 1988 trial was selected in violation of the constitution was on December 19, 2001, when he claims he was granted a retrial because of constitutionally inadequate jury selection during his 1988 trial. The plaintiff did not file this complaint until February 22, 2005, well after the applicable limitations period had run under §§ 1983, 1985 or 1986.

The plaintiff claims that he was unable to file this civil suit until after the completion of his retrial in April of

2003.³ In effect, the plaintiff is arguing that the statute of limitations should have been tolled during the criminal proceedings following the December 19, 2001 decision granting a retrial. It is true that a § 1983 claim is not cognizable where its success would necessarily imply that a potential conviction based on a pending criminal charge would be invalid. Smith v. Holtz, 87 F.3d 108, 110 (3d Cir. 1996) (citing Heck v. Humphrey, 512 U.S. 477 (1994)). However, the plaintiff's claims of wrongdoing during his 1988 trial would not have had any effect on his 2003 retrial. See, e.g., Jordan v. Crandley, No. 99-915, 1999 U.S. Dist. LEXIS 13918 at *9 (E.D. Pa. Sept. 7, 1999) (holding that a claim for false arrest does not necessarily imply the invalidity of a conviction resulting from the arrest). Thus, the limitations period was not tolled during the plaintiff's 2003 retrial and the plaintiff's claim of unconstitutional jury selection is time barred.

³ The plaintiff also cited two cases dealing with the statute of limitations in his response to the motion to dismiss filed by the City of Philadelphia, Turtzo v. Boyer, 88 A.2d 884 (Pa. 1952) and Blackburn v. Pa. Turnpike Comm'n, 213 A.2d 159 (Pa. Super. Ct. 1965). The plaintiff cited these cases to argue that his false evidence claim was not time barred, a point which is conceded by three of the four defendants. Both Turtzo and Blackburn dealt with allegations by plaintiffs that fraud or unintentional deception prevented them from filing their claims within the limitations period. Even assuming that the defendants, through fraud or unintentional deception, prevented the plaintiff from discovering the nature of his improper jury selection claim prior to December 19, 2001, the plaintiff had or should have had full knowledge of the nature of his claim by that date.

The plaintiff's false evidence claim is not time barred, as he alleges that he was not aware that his blood did not match the blood found on the victim's pants until his 2003 retrial. However, even accepting the plaintiff's allegations as true, he has not alleged that any false evidence was used during his 1988 trial. Based on the plaintiff's response to the motion to dismiss filed by Mr. Castille, Ms. Abraham and Mr. McMahon, all that the plaintiff has alleged is that a lab report introduced in 1988 showed that type "O" blood was found on the victim's pants. Since the plaintiff has type "O" blood an inference was made that this was the plaintiff's blood. In 2003, DNA testing showed that the blood found on the victim's pants did not match the plaintiff's, but it is not alleged that the 2003 DNA test showed that the blood found on the victim's pants was not type "O". Thus, the plaintiff has not alleged that the 1988 report was incorrect and therefore he has not stated a false evidence claim.

Because the Court will dismiss all of the plaintiff's federal claims and because the parties are not diverse, the Court will not exercise jurisdiction over any remaining state law claims.⁴

⁴ In reaching this conclusion, the Court did not need to consider any arguments made by the plaintiff or the defendants beyond those that dealt with the statute of limitations or the nature of the plaintiff's false evidence claim. The Court has reviewed Carter v. City of Philadelphia, 181 F.3d 339 (3d Cir.

An appropriate Order follows.

1999) and other cases referenced by the plaintiff, but those cases are not relevant to the specific issues addressed by the Court in this Memorandum and Order.

The claims based on federal law in both the plaintiff's original and amended and supplemented complaint are dismissed with prejudice. The Court declines to exercise jurisdiction over the remaining state law claims and those claims are dismissed without prejudice.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.