

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted March 22, 2024*

Decided March 21, 2025

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 23-2099

ELISA KIRKPATRICK,
*Plaintiff-Appellant,**v.*COUNTY OF WILLIAMSON, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 22-cv-2084-SMY

Staci M. Yandle,
*District Judge.***ORDER**

Elisa Kirkpatrick, a former veterinarian, appeals the dismissal of her federal complaint alleging misconduct by multiple persons connected to her state prosecution

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

for animal cruelty. Because all the claims that Kirkpatrick seeks to revive on appeal named an improper party, were untimely, or did not state a plausible claim, we affirm.

I

We accept the factual allegations in the complaint as true and draw all reasonable inferences in Kirkpatrick's favor. *See Roberts v. City of Chicago*, 817 F.3d 561, 564 (7th Cir. 2016). In May 2015, six months after her Illinois veterinary license was revoked, Kirkpatrick performed abdominal surgery on a dog in the kitchen of her house. When she was away from home that evening, a state animal welfare investigator, Stacey Ballard, called her and warned that the county sheriff's office was seeking a search warrant for her property. Kirkpatrick asked Ballard to go to her house and intervene, but Ballard told her that she did not want to "get involved."

A civil process server had told Williamson County sheriff's deputies that he had been unable to reach Kirkpatrick and had noticed weeks-old mail in her mailbox and an odor around her house. A patrol sergeant and an animal control warden investigated. They entered Kirkpatrick's property and looked into the windows of her house, where they observed a mess and animals seemingly in need of medical attention. After obtaining a warrant, deputy sheriffs searched Kirkpatrick's house and discovered various animals in distress, decomposing animal carcasses, animal feces "scattered" throughout the premises, and, in a cage, the dog who had received surgery earlier that evening. Officers removed the dog (and other animals) from the house and eventually took him to a private veterinary clinic, where he was evaluated by Dr. Allen Hodapp. Dr. Hodapp determined that the dog suffered from an infection of the abdominal cavity caused by inadequate surgical preparation or poor sterilization. He advised the dog's owner that the condition was "grave" and recommended aggressive treatment. The owner declined, and the dog died approximately 24 hours later.

Kirkpatrick was arrested on June 22, 2015, and the Williamson County State's Attorney charged her with numerous violations of the Humane Care for Animals Act, 510 ILCS 70/1–18, and the Veterinary Medicine and Surgery Practice Act of 2004, 225 ILCS 115/1–28. She was released the same day and remained free until her bench trial on July 6, 2016, at which the witnesses against her included Dr. Hodapp. The circuit judge found her guilty of four counts of practicing veterinary medicine without a valid license, six counts of violating an animal owner's duties, and one count of aggravated cruelty to a companion animal—the dog Kirkpatrick had operated on. *See People v. Kirkpatrick*, 148 N.E.3d 279, 282 (Ill. App. Ct. 2020).

Kirkpatrick appealed, and in April 2020, the Illinois Appellate Court reversed the conviction for aggravated cruelty to a companion animal. *See id.* at 296. The court concluded that the State did not prove that Kirkpatrick had the requisite specific intent to harm the dog. *Id.* at 293. On September 30, 2020, the Illinois Supreme Court declined the State's petition for review of this decision. *See People v. Kirkpatrick*, 154 N.E.3d 762 (Table) (Ill. 2020).

In September 2022, Kirkpatrick sued Williamson County and multiple elected officials and employees ("County Defendants"),¹ as well as Ballard and Dr. Hodapp, in federal district court, claiming myriad violations of state and federal law. In the 135-page complaint consisting of over 1000 paragraphs, she alleged that, although there was no probable cause to search her home or to prosecute her for aggravated animal cruelty, the defendants had lied in affidavits to obtain a search warrant, used their influence to have her criminally charged without probable cause, and committed perjury at her trial. Kirkpatrick invoked multiple legal theories, such as failure to intervene, malicious prosecution, conspiracy, and obtaining a conviction based on false evidence. She also alleged that the defendants infringed upon her due process rights under the Fourteenth Amendment and asserted that the search of her home and seizure of her animals violated the Fourth Amendment. *See* 42 U.S.C. § 1983.

The County Defendants, Ballard, and Dr. Hodapp each moved to dismiss the complaint, and the district court granted all three motions for a variety of reasons: Some claims were untimely; some could not be prosecuted because of absolute witness immunity; and some failed on the merits. Kirkpatrick appeals, and we review the dismissal of the complaint de novo.² *Roberts*, 817 F.3d at 564.

At the outset we observe that, despite its length and detail, the complaint does not link the various counts to any specific conduct described in the body of the complaint; instead, each count incorporates all 1000 substantive allegations. Thus, it is

¹ These included the State's Attorney, two Assistant State's Attorneys, the County Sheriff, multiple sheriff's deputies, and an animal control warden.

² The defendants argue on appeal that Kirkpatrick's federal claims are barred by the *Roquer-Feldman* doctrine, but this doctrine does not apply because Kirkpatrick is not seeking relief that requires us to review and reject the underlying state criminal judgment. *See Gilbank v. Wood Cnty. Dep't of Hum. Servs.*, 111 F.4th 754, 794 (7th Cir. 2024) (Kirsch, J., concurring in part). Thus, our jurisdiction is proper.

not always clear what actions Kirkpatrick believes are relevant to which count. We err on the side of reading the claims expansively while remaining mindful that a pleading must give proper notice to the defendants. *See generally* FED. R. CIV. P. 8(a). After doing so, we agree with the district court that the complaint does not state a claim for relief, although our reasoning somewhat differs. *See Dibble v. Quinn*, 793 F.3d 803, 807 (7th Cir. 2015) (appellate court can affirm a dismissal under Rule 12(b)(6) on any ground preserved in the record).

II

A. Claims Against Dr. Hodapp

First, as to Dr. Hodapp, any § 1983 claim against him cannot survive because Kirkpatrick did not plead any allegations plausibly suggesting that Dr. Hodapp deprived her of federally guaranteed rights under color of state law. He is a private citizen, and nothing in the complaint suggests a relationship with the county that effectively renders him a public actor. *See Spiegel v. McClintic*, 916 F.3d 611, 616 (7th Cir. 2019). The bare assertion that Dr. Hodapp conferred with the County Defendants is insufficient to satisfy the requirement of state action. Therefore, we affirm the dismissal of Kirkpatrick's federal due process (Count I), malicious prosecution (Count II), conspiracy (Count IV), fabricated evidence (Count V), failure to intervene (Count VI), abuse of process (Count VIII), and warrantless search (Count IX) claims against Dr. Hodapp.

B. Timeliness of Claims

Turning to the claims against the public officials, Kirkpatrick challenges the dismissal of her § 1983 claims against Ballard and the County Defendants on timeliness grounds. A § 1983 claim borrows the statute of limitations for personal-injury claims in the forum state; in Illinois that period is two years. *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *see* 735 ILCS 5/13-202. But federal law determines when the claim accrues. *Wallace*, 549 U.S. at 388–89. Here, Kirkpatrick contends that the two-year period began running only after the criminal proceedings terminated in her favor—*i.e.*, when the Illinois Supreme Court declined to review the reversal of her animal-cruelty conviction in September 2020. *See McDonough v. Smith*, 588 U.S. 109, 116 (2019); *Savory v. Cannon*,

947 F.3d 409, 414–15 (7th Cir. 2020) (en banc). As we shall see, Kirkpatrick is correct as to some claims, but not as to others.

1. Untimely Claims

Turning first to Kirkpatrick’s claims alleging the unlawfulness of the search, the arrest, and the seizure of her property, these claims accrued at the time of the allegedly unlawful conduct—that is, in May 2015. *See Manuel v. City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018) (unlawful detention); *Dominguez v. Hendley*, 545 F.3d 585, 589 (7th Cir. 2008) (unlawful search). But Kirkpatrick did not sue until September 2022. Thus, the district court rightly dismissed Kirkpatrick’s failure to intervene claim (Count VI) against Ballard and the County Defendants. Furthermore, the court was correct to dismiss the claims alleging warrantless search (Count IX), *Monell* liability (Count VII), and abuse of process (Count VIII) against the County Defendants. And, to the extent that the due process (Count I) and conspiracy (Count IV) claims against the County Defendants relate to the search and arrest, such claims were untimely as well.

2. Timely Claims

As for the remaining § 1983 claims against the County Defendants that challenged her prosecution for aggravated cruelty on various grounds, they did not accrue until the Illinois Supreme Court declined the State’s petition for review in September 2020. *See Heck v. Humphrey*, 512 U.S. 477, 489–90 (1994). As such, they are timely. These include her federal claims for malicious prosecution and fabricated evidence, as well as her due process and conspiracy claims, to the extent they relate to the fairness of the trial. *Cf. McDonough*, 588 U.S. at 116–20 (accrual rule applies to fabricated-evidence claim). But this does not end the analysis.

C. Failure to State Claim

Although these claims were timely, their dismissal was proper because the claims were insufficiently pleaded.³ To state a claim, the complaint must be plausible on

³ Contrary to the County Defendants’ arguments, these claims are not foreclosed by the *Heck* doctrine, which bars § 1983 claims if victory for the plaintiff would necessarily imply the invalidity of intact criminal convictions. Here, Kirkpatrick’s federal claims for malicious prosecution and fabricated evidence are based on allegations that the County Defendants lacked probable cause to prosecute her for the

its face and contain sufficient factual allegations “to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). For clarity’s sake, we will discuss the claims seriatim.

With respect to Kirkpatrick’s federal malicious prosecution claim (which appears to be grounded in the Fourth Amendment), the Supreme Court has described such a claim as “a claim for unreasonable seizure pursuant to legal process.” *Thompson v. Clark*, 596 U.S. 36, 42 (2022). Here, however, Kirkpatrick was released as soon as she was booked; she was never detained before trial. Under *Thompson*, without an ongoing seizure, a federal malicious prosecution claim challenging the fairness of the prosecution cannot stand. *See id.* at 43 n.2; *Mitchell v. Doherty*, 37 F.4th 1277, 1284 n.3 (7th Cir. 2022).

As for the claim for fabricated evidence, obtaining a criminal conviction based on deliberately falsified evidence violates a defendant’s right to due process. *See Avery v. City of Milwaukee*, 847 F.3d 433, 439 (7th Cir. 2017). But to state a claim, Kirkpatrick needed to allege that the prosecutors knowingly used false evidence (allegedly obtained from Dr. Hodapp or the deputies) against her at trial, leading to her now-vacated conviction. *See Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020); *Kirkman v. Thompson*, 958 F.3d 663, 666 (7th Cir. 2020) (“[P]erjured testimony unknowingly presented does not violate due process.”). Kirkpatrick, however, does not plausibly allege that the evidence against her was false, let alone that the prosecutors knew it was. The State failed to meet its legal burden on the aggravated-cruelty charge, but that does not necessarily suggest that its evidence was fabricated.

And even if the evidence were false, to the extent that her claims are aimed at the state prosecutors, prosecutorial immunity extends to the use of false or perjured evidence at trial. *See Bianchi v. McQueen*, 818 F.3d 309, 318 (7th Cir. 2016). Likewise, if Kirkpatrick is directing her claim against the officers who allegedly testified falsely (this count names “all individually named defendants” except Ballard), witness immunity extends to the content of their statements at trial. *See Stinson v. Gauger*, 868 F.3d 516, 528 (7th Cir. 2017) (en banc).

The deficiencies discussed above are fatal to Kirkpatrick’s claims for malicious prosecution (Count II) and fabricated evidence (Count V) against the County

dog’s death and obtained a conviction based on fabricated evidence, respectively. That conviction ended in a favorable termination for Kirkpatrick, so *Heck* does not apply.

Defendants, as well as the due process (Count I) and conspiracy (Count IV) claims as they relate to her trial.

This also necessitates dismissal of the indemnification claim (Count XIV), which is the only state-law claim against the County Defendants that Kirkpatrick pursues on appeal. (The failure to develop arguments about the other state-law claims is a waiver. *See Shipley v. Chicago Bd. of Election Comm'rs*, 947 F.3d 1056, 1062–63 (7th Cir. 2020).) Kirkpatrick contends that the county's indemnification obligation applies to her § 1983 claims, not just the state-law claims, and so indemnification should not have been grouped into the dismissal of the state-law claims. *See* 745 ILCS 10/2-302, 9-102. But no § 1983 claims remain against the County Defendants, either, so the point is moot.

Finally, Kirkpatrick challenges the dismissal of her state malicious prosecution claim (Count II) against Dr. Hodapp, arguing that he is not entitled to witness immunity for his actions long before her trial—allegedly fabricating evidence that led to her arrest and prosecution. Even if she is correct that witness immunity does not apply to Dr. Hodapp's role in diagnosing the ill-fated dog the deputies brought him, Kirkpatrick did not state a claim for malicious prosecution under Illinois law because Dr. Hodapp did not commence or continue her criminal proceedings. *See Moran v. Calumet City*, 54 F.4th 483, 499 (7th Cir. 2022). She alleged only that Dr. Hodapp provided information to the police, which does not qualify as the commencement of a criminal proceeding. *See Randall v. Lemke*, 726 N.E.2d 183, 185 (Ill. App. Ct. 2000).

To summarize our rulings:

- As to Dr. Hodapp, any § 1983 claim against him fails because he is not a state actor, and the state malicious prosecution claim fails because he did not commence or continue Kirkpatrick's criminal prosecution.
- The failure-to-intervene claim against Ballard is untimely.
- All § 1983 claims against the County Defendants based on the May 2015 search, arrest, and seizure of property are untimely.
- With respect to the other § 1983 claims against the County Defendants, Kirkpatrick failed to state a claim based on malicious prosecution or fabricated evidence.
- Except for the indemnification claim, Kirkpatrick waives any argument on appeal about the dismissal of her state-law claims against the County

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Defendants. And the indemnification claim was properly dismissed because there is no potential liability by a county employee for the county to indemnify.

AFFIRMED