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

CHAD E. ST. CLAIR Plaintiff, v. JUSTIN ROKAVEC, RONALD V. HARRIS, TROOPER SEGELEON, TROOPER SPYRA, TROOPER MORRIS, CAPTAIN JEREMY BARNI, LT. ERIC V. ERHARDT, and LT. JUAN J. CURRY Defendants.	)	Civil Action No. 2:21-cv-1836 District Judge Robert J. Colville Magistrate Judge Kezia O. L. Taylor ECF No. 77

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Motion to Dismiss filed by Defendant Justin Rokavic be granted. It is further recommended that the Court decline to exercise its supplemental jurisdiction over any remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3).

II. REPORT

A. Factual Allegations

Plaintiff Chad E. St. Clair ("Plaintiff" or "St. Clair") brings this civil rights action against Defendant Pennsylvania State Police ("PSP") trooper Justin Rokavec ("Rokavec") and other PSP troopers. Plaintiff St. Clair sues Defendant Rokavec in his individual and official capacities. Amended Compl., ECF No. 71 ¶¶ 4 and 7.

Plaintiff alleges that on May 16, 2019, his stepfather and stepbrother woke Plaintiff from a nap at approximately 4:45 p.m. because there was a PSP trooper at the door demanding to speak

with Plaintiff. *Id.* ¶ 8. After Plaintiff St. Clair entered the living room, Defendant Rokavec asked where his white Ford truck was located. *Id.* ¶¶ 9-10. Plaintiff St. Clair responded that he did not own a truck and that his vehicle was the green mini cooper in the driveway. *Id.* ¶ 11. Defendant Rokavec then asked Plaintiff where he had been for the last couple of hours. *Id.* ¶ 12. Plaintiff explained that he had been helping his family with the house and then took a nap. *Id.* ¶ 13.

Plaintiff St. Clair then asked Defendant Rokavec the reason for his visit. *Id.* ¶ 14. Rokavec explained that within the last hour a burglary had been committed at the Griffith residence. *Id.* ¶ 15. Plaintiff's stepfather and stepbrother were both present during this conversation and both explained to Rokavec that the Plaintiff never left the house that day. *Id.* ¶ 16. Defendant Rokavec declined the family's offer to review home video footage to show Plaintiff had not left the house that day. *Id.* ¶¶ 17-18.

Plaintiff St. Clair alleges that the above facts were omitted from the Affidavit of Probable Cause ("APC") that was later drafted by Defendant Rokavec to secure Plaintiff's arrest warrant. *Id.* ¶ 19.

Plaintiff further alleges that on July 6, 2019, Defendant Rokavec and other PSP troopers surrounded his home. *Id.* ¶ 20. Other PSP troopers slammed Plaintiff to the floor face-first. *Id.* ¶ 21. Plaintiff was handcuffed and thrown into the back of one of the several PSP patrol cars that surrounded his home. *Id.*

Next, Plaintiff's home was searched but the search produced no firearms, stolen property, nor anything else illegal. *Id.* ¶¶ 22-23. Plaintiff was then transported to Uniontown Hospital because he was complaining of chest pains. *Id.* ¶ 24. Thereafter, Plaintiff was taken to Fayette County Prison where he was held on charges of Receiving Stolen Property, and Possession of Firearms. *Id.* ¶ 26. Plaintiff was unable to post bail and was forced to stay incarcerated while he

awaited court proceedings. *Id.* ¶ 27. Plaintiff's preliminary hearing was continued four times. *Id.* ¶ 28.

On January 16, 2020, Plaintiff was transported to "city court" for a fifth attempt at a preliminary hearing. *Id.* ¶ 29. While enroute, an unknown PSP trooper informed Plaintiff that he was the detective leading the case. *Id.* ¶ 31. Plaintiff inquired as to why Defendant Rokavec was no longer leading the investigation. *Id.* ¶ 32. The unknown trooper explained to Plaintiff St. Clair that Defendant Rokavec was fired from the PSP due to negligence, and falsifying information in the case that led to Plaintiff's arrest. *Id.* ¶ 33.

On March 3, 2020, 238 days after charges were filed, Plaintiff was released on an unsecured bond. *Id.* ¶ 34.

On July 15, 2021, the Court of Common Pleas of Fayette County granted the Commonwealth's Motion for Leave to enter a n*olle prosequi* on both counts because the Commonwealth could not sustain its burden of proof. ECF No. 71 ¶ 55; *see also* ECF No. 71 at 14.

After receiving discovery, Plaintiff compared information from the PSP's General Offense Report to the APC and found that Defendant Rokavec omitted relevant information and made several false and misleading statements in the APC. ECF No. 71 ¶ 35. The APC drafted by Defendant Rokavec and attached to Plaintiff's Fourth Amended Complaint, provides in relevant part:

> On 05/16/19, I responded to a report of a burglary at 38 Griffith Road, Nicholson Township, Fayette County. Upon my arrival, it was reported to me, by the Victim, that a number of items were stolen, including a Mossburg Rifle and a Marlin Rifle. The Victim was unsure of the seriel [sic] numbers at this time.
>
> On 06/02/19, two friends of the Victim had learned that the Victim's stolen guns were for sale by Chad STCLAIR [sic] (DEFENDANT).

> The friends were familiar with the DEFENDANT and know him personally. The friends were advised by the DEFENDANT that the guns were "hot' and that the friends would have to meet the DEFENDANT in the woods. Based upon my training and experience, when something is referred to as "hot," this generally indicates that said item is stolen or was otherwise obtained unlawfully. The friends met with the DEFENDANT in a patch of woods just off of Sugar Ridge Road, Nicholson Township, Fayette County. The friends observed the DEFENDANT go further into the woods and remove an area rug from around a Mossburg Patriot, hunting style rifle. The DEFENDANT then placed the rifle in the backseat of the friend's vehicle. The DEFENDANT then drove from the area and returned a short time later with the second firearm, a Marlin Firearms 917VR. The DEFENDANT also placed this firearm in the back of the friend's vehicle. The friends paid STCLAIR [sic] $100.00 US Currency for the rifles and both left the area.
>
> On 06/02/19, after buying the two rifles, the friends went to the residence of the Victim. The Victim verified that the two firearms in the back of the vehicle were two of the guns stolen from the residence. The friends then took the firearms to PSP Uniontown. The Firearms were taken into evidence as recovered stolen property. The friends then provided a statement of the above mentioned events.
>
> On 06/02/19, I conducted a search of the DEFENDANT's criminal history. The DEFENDANT has multiple felony grade convictions, including a conviction for Robbery, 18PACS 3701 prior to this incident. This is a violation of 18 PA 6105, Felon Not to Possess.

ECF No. 71 at 19.

In addition to the omissions in the APC concerning Plaintiff's whereabouts at the time of the burglary on May 16, 2019, Plaintiff alleges that in comparing the APC sworn to on June 27, 2019, with the General Offense Report[1] containing, among other things, the witness statements referenced in the APC, Defendant Rokavec made several false and misleading statements in the APC. *Id.* at ¶ 35. These statements include:

[1] The General Offense Report is also attached to the Fourth Amended Complaint. ECF No. 71 at 15-18, 20-23.

1) In the General Offense Report, one of the "friends" referenced above, Jason Craig Chipps ("Chipps"), stated in an interview that only he met with Plaintiff St. Clair to purchase the stolen firearms, while the APC indicates that "friends," plural, met with St. Clair. ECF No. 71 ¶¶ 36 and 37. *See also* ECF No. 71 at 19 and 20.

2) In the General Offense Report, Chipps stated in an interview that he never met Plaintiff St. Clair prior to the date of the gun purchase, while the APC indicates that the "friends" who met with St. Clair to purchase the stolen firearms were familiar with Plaintiff St. Clair and knew him personally. ECF No. 71 ¶¶ 38 and 39. *See also* ECF No. 71 at 19 and 20.

3) In the General Offense Report, Chipps stated that he met Plaintiff St. Clair at an unknown residence outside the Masontown Borough Limits. ECF No. 71 ¶ 41. Chipps, however, was unable to provide an address or accurate description of the residence even though he was interviewed that same evening. ECF No. 71 ¶ 43. *See also* ECF No. 71 at 20. Thereafter, Chipps and St. Clair drove in separate vehicles to a wooded area near Boy Scout Road and Sugar Ridge Road. ECF No. 71 at 20. The APC, however, only indicates that the "friends" met St. Clair in a patch of woods just off Sugar Ridge Road. ECF No. 71 ¶ 40. *See also* ECF No. 71 at 19.

4) According to the General Offense Report, Alexis Dana Fitzherbert ("Fitzherbert"), the other "friend" referenced in the APC, stated in an interview that she contacted Plaintiff via Facebook Messenger to set up the purchase of the firearms after she learned of the theft from the victim, Norma Faye Griffith ("Griffith"). ECF No. 71 ¶ 47. *See also* ECF No. 71 at 21-22. But the General Offense Report also reflects that Chipps indicated in a witness statement that he called St. Clair to purchase the guns. ECF No. 71 ¶ 48. *See also* ECF No. 71 at 23.

5) In the General Offense Report, Fitzherbert stated that Chipps alone met St. Clair, completed the sale, and then Chipps returned to the Griffith residence where Fitzherbert and Griffith were waiting for Chipps. ECF No. 71 ¶ 49. *See also* ECF No. 71 at 22. The APC and the statement from Griffith indicate that after buying the two firearms, the "friends" took the firearms back to the Griffith residence. ECF No. 71 ¶¶ 49 and 50. *See also* ECF No. 71 at 19.

Finally, Plaintiff alleges that in the APC, Defendant Rokavec omitted that Chipps and Fitzherbert both have extensive criminal histories, including theft, drug trafficking, burglary and other drug offenses. ECF No. 71 at ¶ 51.

B. Legal Standards

In deciding a motion to dismiss under Rule 12(b)(6), the court must determine whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is

plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly Corp.*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 570). Although the court must accept as true the allegations in the complaint, the court is not "'compelled to accept unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation.'" *Castleberry v. STI Grp.*, 863 F.3d 259, 263 (3d Cir. 2017) (quoting *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (*en banc*)). In other words, a "presumption of truth attaches only to those allegations for which there is sufficient 'factual matter' to render them 'plausible on [their] face.'" *Schuchardt v. President of the U.S.*, 839 F.3d 336, 347 (3d Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). "Conclusory assertions of fact and legal conclusions are not entitled to the same presumption." *Id.*

Importantly, in addition to the complaint, courts may consider matters of public record and other matters of which a court may take judicial notice, court orders, and exhibits attached to the complaint when adjudicating a motion to dismiss under Rule 12(b)(6). *Oshiver v. Levin, Fishbein, Sedran & Berman,* 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citing 5A Wright and Miller, *Federal Practice and Procedure: Civil 2d,* § 1357; *Chester County Intermediate Unit v. Pennsylvania Blue Shield,* 896 F.2d 808, 812 (3d Cir. 1990)). A court may also consider indisputably authentic documents. *Spruill v. Gillis,* 372 F.3d 218, 223 (3d Cir. 2004); *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.,* 998 F.2d 1192, 1196 (3d Cir. 1993); *Golden v. Cook,* 293 F. Supp.2d 546, 551 (W.D. Pa. 2003) ("[C]ourts are permitted to consider matters of which they may take judicial notice, including records and reports of administrative bodies, and publicly available records and

transcripts from judicial proceedings 'in related or underlying cases which have a direct relation to the matters at issue.'") (citations omitted).

In addition, a court must employ less stringent standards when considering *pro se* pleadings than when judging the work product of an attorney. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). When presented with a *pro se* complaint, the court should construe the complaint liberally and draw fair inferences from what is not alleged as well as from what is alleged. *Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003). In a § 1983 action, the court must "'apply the applicable law, irrespective of whether the pro se litigant has mentioned it by name.'" *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002) (quoting *Holley v. Dep't of Veteran Affairs*, 165 F.3d 244, 247-48 (3d Cir. 1999)). *See also Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996) ("Since this is a § 1983 action, the [*pro se*] plaintiffs are entitled to relief if their complaint sufficiently alleges deprivation of any right secured by the Constitution.") (citing *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993)). Notwithstanding this liberality, *pro se* litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim. *See*, *e.g.*, *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002); *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996).

Finally, the Court recognizes that in a civil rights action, when dismissing a case for failure to state a claim, a court must give the plaintiff an opportunity to amend a deficient complaint, regardless of whether the plaintiff requests to do so, unless amendment would be inequitable or futile. *See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

C. Analysis

Section 1983 of the Civil Rights Act provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of

> Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. To state a claim for relief under this provision, a plaintiff must demonstrate that the conduct in the complaint was committed by a person or entity acting under color of state law and that such conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution or the laws of the United States. *Piecknick v. Commonwealth of Pennsylvania*, 36 F.3d 1250, 1255-56 (3d Cir. 1994). Section 1983 does not create rights; it simply provides a remedy for violations of those rights created by the United States Constitution or federal law. *Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3d Cir. 1996).

1. Unreasonable Search and Seizure, False Arrest/False Imprisonment

In his moving brief, Defendant Rokavec argues that Plaintiff's claims for unreasonable search and seizure, false arrest and false imprisonment are time-barred because the statute of limitations began to run when he was detained and searched on July 6, 2019, and Plaintiff did not file his complaint until January 3, 2022. ECF No. 78 at 18-19. Plaintiff responds that all claims did not accrue until the criminal proceedings against him were *nolle prossed* on July 15, 2021 and are therefore timely. ECF No. 83 at 7.

Generally, a limitations defense may not be raised by motion, but must be raised in the answer. *See* Fed. R. Civ. P. 8(c) & 12(b); *Robinson v. Johnson*, 313 F.3d 128, 135 (3d Cir. 2002). "While the language of Fed. R. Civ. P. 8(c) indicates that a statute of limitations defense cannot be used in the context of a Rule 12(b)(6) motion to dismiss, an exception is made where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading." *Oshiver*, 38 F.3d at 1384 n.1. (citing *Trevino v. Union*

Pac. R.R. Co., 916 F.2d 1230 (7th Cir. 1990); 5A Wright and Miller, *Federal Practice and Procedure; Civil 2d*, § 1357). Here, the allegations of Plaintiff's Fourth Amended Complaint pertaining to the claims of unreasonable search and seizure, false arrest, and false imprisonment are premised upon events that occurred on July 6, 2019, when he was detained, arrested, and his residence was searched. Fourth Amend. Compl., ECF No. 71 ¶¶ 20-22, 26.

Congress has not established a time limitation for a § 1983 cause of action. *Wilson v. Garcia*, 471 U.S. 261, 266 (1985), *superseded by statute as recognized in, Kasteleba v. Judge*, 325 F. App'x 153, 156 (3d Cir. 2009). The United States Supreme Court has indicated, however, that courts are to consider § 1983 actions as tort actions and borrow the statute of limitations for state tort causes of action. *Wilson*, 471 U.S. at 278. In Pennsylvania, the statute of limitations for tort actions is two years. 42 Pa. Con. Stat. Ann. § 5524. Therefore, for § 1983 actions brought in Pennsylvania federal courts, the appropriate limitations period is two years. *See Smith v. City of Pittsburgh*, 764 F.2d 188, 194 (3d Cir. 1985).

Federal law, however, governs when a § 1983 cause of action accrues, that is, when the statute of limitations begins to run. *See Wallace v. Kato*, 549 U.S. 384, 388 (2007). Under federal law, "'the limitations period begins to run from the time when the plaintiff knows or has reason to know of the injury which is the basis of the section 1983 action.'" *Montgomery v. DeSimone*, 159 F.3d 120, 126 (3d Cir. 1998) (quoting *Genty v. Resol. Tr. Corp.*, 937 F.2d 899, 919 (3d Cir. 1991)). "The cause of action accrues even though the full extent of the injury is not then known or predictable." *Wallace*, 549 U.S. at 391 (citations omitted).

Here, affording Plaintiff St. Clair the most liberal construction of his *pro se* Fourth Amended Complaint, Plaintiff's claims for unreasonable search and seizure, false arrest and false imprisonment are time barred because they accrued on July 6, 2019, when he was detained,

arrested, and his residence was searched. Plaintiff filed his Complaint on December 10, 2021,[2] 6 months after the statute of limitations expired on these claims.

Therefore, it is recommended that any claims for unreasonable search and seizure, false arrest, and false imprisonment be dismissed with prejudice as time barred. Any attempt to amend the Fourth Amended Complaint as to these claims would be futile as a matter of law.

2. Malicious Prosecution

To state a malicious prosecution claim under 42 U.S.C. § 1983, a plaintiff must allege facts showing that:

> (1) the defendants initiated a criminal proceeding;
> (2) the criminal proceeding ended in plaintiff's favor;
> (3) the proceeding was initiated without probable cause;
> (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and
> (5) the plaintiff suffered a deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding.

DiBella v. Borough of Beachwood, 407 F.3d 599, 601 (3d Cir. 2005) (citing *Estate of Smith v. Marasco*, 318 F.3d 497, 521 (3d Cir. 2003)) (footnote omitted). Only the third and fourth elements are at issue here.[3]

In support of his Motion to Dismiss Plaintiff's malicious prosecution claim, Defendant Rokavec argues Plaintiff is unable to allege facts to show that the criminal charges against him were instituted without probable cause, and with malice or for a purpose other than bringing the

[2] Pursuant to the prison mailbox rule, Plaintiff's initial complaint is deemed filed on the day he delivered the complaint to prison officials for mailing. *See Houston v. Lack*, 108 S. Ct. 2379 (1988) (deeming a *pro se* prisoner's notice of appeal filed "at the time petitioner delivered it to the prison authorities for forwarding to the court"). Here, Plaintiff's original Complaint attached to his Motion to Proceed *Informa Pauperis*, is dated December 10, 2021. ECF No 1-2 at 3.

[3] Defendant Rokavec has conceded that Plaintiff has met the first two elements of a malicious prosecution claim. ECF No. 78 at 9-10. The Court also notes that neither party addresses the fifth element of a § 1983 malicious prosecution claim—a deprivation of liberty consistent with the concept of seizure withing the meaning of the Fourth Amendment. Plaintiff's allegation that he was incarcerated for 238 days after the filing of criminal charges satisfies this element. *See* ECF No. 71 ¶ 34.

Plaintiff to justice. ECF No. 78 at 11-13. Plaintiff St. Clair responds that information was omitted from the APC and that false and misleading information was included. ECF No. 83 at 7. A liberal reading of Plaintiff's Fourth Amended Complaint suggests that if the Affidavit had included all discrepancies noted by Plaintiff St. Clair, the arrest warrant application would have lacked probable cause. ECF No. 71 ¶ 62.

"[P]robable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe than an offense has been committed by the person to be arrested." *Orsatti v. N.J. State Police*, 71 F.3d 480, 483 (3d Cir. 1995) (citing *U.S. v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990) (other citations omitted)). "Probable cause to arrest requires more than mere suspicion; however, it does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt." *Id.* at 482-83 (citing *U.S. v. Glasser*, 750 F.2d 1197, 1205 (3d Cir. 1984)). Instead, there must be "a 'fair probability' that the person committed the crime at issue." *Wilson v. Russo*, 212 F.3d 781, 789 (3d Cir. 2000) (citing *Sherwood v. Mulvihill*, 113 F.3d 396, 401 (3d Cir. 1997)).

Here, Defendant Rokavec drafted an APC related to the charges of Receiving Stolen Property, 18 Pa. Con. Stat. Ann. § 3925, and Persons Not to Possess Firearms, 18 Pa. Cons. Stat. Ann. § 6105. The offense of Receiving Stolen Property is defined, in part, as: "A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." 18 Pa. Cons. Stat. Ann. § 3925. The offense of Persons Not to Possess Firearms is defined, in part, as: "A person who has been convicted of an offense enumerated in subsection (b) [Section 3701 (relating to robbery)], within

or without this Commonwealth, regardless of the length of sentence . . . shall not possess, use, control, sell, transfer . . . a firearm in this Commonwealth." 18 Pa. Cons. Stat. Ann. § 6105.

In drafting the APC, Defendant Rokavic relied on the witness statements of Chipps and Fitzherbert, and the victim statement of Griffith. *See* ECF No. 71 at 20-23. That is, eyewitnesses indicated that Plaintiff St. Clair was in possession of the stolen firearms, that St. Clair admitted that the firearms were "hot," that St. Clair sold the firearms, and the firearms were later identified by the victim of the theft, Griffith, as the firearms that were stolen from her residence. Defendant Rokavec also conducted a search of Plaintiff St. Clair's criminal history and discovered that he had multiple felony grade convictions, including a conviction for Robbery, 18 Pa. Cons. Stat. Ann. § 3701. The rule in the Third Circuit is that eyewitness/victim statements are "typically sufficient to establish probable cause in the absence of '[i]ndependent exculpatory evidence or substantial evidence of [a] witness's own unreliability that outweigh[s]' the probable cause that otherwise exists." *Dempsey v. Bucknell University*, 834 F.3d 457, 477-78 (3d Cir. 2016) (quoting *Wilson,* 212 F.3d at 790). The *Dempsey* Court continued that "some 'unreliability or exculpatory evidence' will not 'fatally undermine[]' probable cause otherwise established." *Dempsey*, 834 F.3d at 478 (quoting *Wilson,* 212 F.3d at 790). Consequently, the arrest warrant appears, on its face, to be supported by probable cause.

Plaintiff St. Clair alleges, however, that Defendant Rokavec "omitted relevant information, and made several false/misleading statements on the APC." ECF No. 71 ¶ 35. To this end, Plaintiff St. Clair must allege facts to show that Defendant Rokavec recklessly disregarded the truth in his warrant application, and that a warrant application based on what Rokavec should have told the magisterial district judge would have lacked probable cause. *See Wilson v. Russo*, 212 F.3d 781, 786 (3d Cir. 2000). In *Wilson*, the United States Court of Appeals for the Third Circuit held that

"omissions are made with reckless disregard for the truth when an officer recklessly omits facts that any reasonable person would know that a judge would want to know[.]" *Id.* at 783. The Third Circuit further held that "assertions are made with reckless disregard for the truth when an officer has obvious reasons to doubt the truth of what he or she is asserting." *Id.* Importantly, even if Rokavec acted in reckless disregard for the truth with regard to some of the omissions and assertions in the APC to the magisterial district judge, probable cause will not be defeated if none of the misstatements or omissions are material. *See id.* With this guidance, the Court now turns to Plaintiff's alleged omissions and misstatements in the Affidavit of Probable Cause.

a. Omissions

In the Fourth Amended Complaint, Plaintiff St. Clair alleges that Rokavec omitted the facts of May 16, 2019, the day of the burglary of the Griffith residence, when Plaintiff's stepfather and stepbrother represented to Defendant Rokavec that Plaintiff never left the house that day. *See* ECF No. 71 ¶¶ 8-19. These omissions were not made with reckless disregard because no reasonable person would have known that this information would be important for a judge to know on the charges of Receiving Stolen Property and Persons not to Possess Firearms. Plaintiff St. Clair was not charged with the burglary of the Griffith residence on May 16, 2019. He was charged for the sale of the stolen firearms that occurred on July 6, 2019, and for the possession of those firearms having been convicted of a felony. A police officer would not be expected to include these extraneous facts in an affidavit of probable cause at issue.

Plaintiff also alleges that Defendant Rokavec omitted the fact that Chipps and Fitzherbert both have extensive criminal histories. Plaintiff does not allege, however, that the fact of their criminal backgrounds was within Rokavec's ken. *See Wilson,* 212 F.3d at 788. Instead, he

suggests that Defendant Rokavec was negligent in his investigation.[4] ECF No. 71 ¶¶ 33, 62. An officer cannot omit a fact in reckless disregard for the truth when he did not know the fact. *See Wilson,* 212 F.3d at 788. Therefore, Rokavec could not be found to omit this information with reckless disregard.

b. Assertions

"Unlike omissions, assertions can be made with reckless disregard for the truth even if they involve minor details—recklessness is measured not by the relevance of the information, but the demonstration of willingness to affirmatively distort the truth." *Wilson,* 212 F.3d at 788. The Third Circuit has equated reckless disregard for the truth with a "'high degree of awareness of [the statements'] probable falsity.'" *Id.* (quoting *Lippay v. Christos*, 996 F.2d 1490, 1501 (3d Cir. 1993)) (other citations omitted). Put another way, the Third Circuit stated that "when 'viewing all of the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.'" *Id.* (quoting *United States v. Clapp*, 46 F.3d 795, 801 n.6 (8th Cir. 1995)).

Applying these principles to Plaintiff St. Clair's alleged misstatements by Rokavec in the APC, Rokavec had an obvious reason to doubt the information he reported. That is, Plaintiff St. Clair alleges that the General Offense Report contained the interview notes from Chipps, Fitzherbert, and Griffith. ECF No. 71 ¶¶ 35-51. These notes would have alerted Rokavec to the false and misleading statements in his APC concerning the number of persons who met with St.

[4] Whether officers conducted an investigation negligently does not violate the constitutionally protected rights of the person under investigation. *Orsatti v. New Jersey State Police*, 71 F.3d 480, 486 (3d Cir. 1995) ("[T]he issue is not whether the information on which police officers base their request for an arrest warrant resulted from a professionally executed investigation; rather, the issue is whether that information would warrant a reasonable person to believe that an offense has been . . . committed by the person to be arrested.").

Clair to purchase the firearms; whether the person(s) who met with St. Clair knew him personally; and whether the individuals met first at a residence before meeting in the wooded area. *Id.*

c. Materiality

Because Plaintiff has alleged assertions made with reckless disregard for the truth, the Court now considers whether the assertions were "material, or necessary, to the finding of probable cause." *See Sherwood v. Mulvihill*, 113 F.3d 396, 399 (3d Cir. 1997). "To determine the materiality of the misstatements and omissions, [the Court] excise[s] the offending inaccuracies . . . .and then determine[s] whether the "corrected" warrant affidavit would establish probable cause." *Wilson*, 212 F.3d at 789 (citing *Sherwood*, 113 F.3d at 399).

Here, the false and misleading statements alleged by Plaintiff St. Clair do not destroy the probable cause otherwise established by the facts of the APC. Whether one or two friends of Griffith met with Plaintiff St. Clair for the sale of the stolen firearms, and whether Chipps knew or did not know Plaintiff personally, the APC establishes that the firearms were stolen, that Plaintiff St. Clair admitted they were stolen, and that St. Clair sold them. ECF No. 71 at 19. It further establishes that Defendant Rokavec conducted a criminal background check to determine that St. Clair had "multiple felony grade convictions" and therefore was not to possess firearms. *Id.* The same is true as to whether Chipps and St. Clair met at a residence before meeting in the woods off Sugar Ridge Road. *Id.* Consequently, the alleged false and misleading statements by Rokavec in the APC were not "material, or necessary, to the finding of probable cause." *See Sherwood*, 113 F.3d at 399. Therefore, Plaintiff has failed to allege facts to plausibly suggest that the proceedings against him were initiated without probable cause. Consequently, the Court need not reach the issue of whether Plaintiff has alleged facts to suggest that Defendant Rokavec acted maliciously or for a purpose other than bringing Plaintiff St. Clair to justice.

Therefore, Defendant Rokavec's Motion to Dismiss Plaintiff's malicious prosecution claim should be granted. On the facts alleged in the Fourth Amended Complaint, any attempt to amend would be futile.

3. Abuse of Process

An action for abuse of process is quite different than an action for malicious prosecution. The United States District Court for the Middle District of Pennsylvania has considered the following:

> The gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it. . . . [Malicious prosecution] has to do with the wrongful initiation of such process, while abuse of civil process [or criminal process] is concerned with a perversion of a process after it is issued.

Bristow v. Clevenger, 80 F. Supp.2d 421, 430 (M.D. Pa. 2000) (quoting *McGee v. Feege*, 535 A.2d 1020, 1023 (Pa. 1987) (internal quotations and citations omitted)). Consequently, Plaintiff will prevail on a § 1983 claim for abuse of process where "'prosecution is initiated legitimately and thereafter is used for a purpose other than that intended by the law.'" *Bristow*, 80 F. Supp.2d at 431 (quoting *Rose v. Bartle*, 871 F.2d 331, 350 (3d Cir. 1989) (other citations omitted)). Again, the *Bristow* court explained as follows:

> Courts have held that "[w]hen process is used to effect an extortionate demand, or to cause the surrender of a legal right, or is used in any other way not so intended by proper use of the process, a cause of action for abuse of process can be maintained." . . . "Examples of actions that are recoverable under the abuse of process tort are extortion by means of attachment, execution or garnishment, and blackmail by means of arrest or criminal prosecution." . . . "To establish a claim for abuse of process, there must be some proof of a 'definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of process.'"

Bristow, 80 F. Supp.2d at 431 (internal citations omitted).

Plaintiff argues the following in support of his abuse of process claim:

> Defendant Rokavec was a new member of the PSP when he acted with a reckless disregard for the truth and made false statement[s] in the APC used to secure a warrant for Plaintiff[']s arrest. Defendant Rokavec's negative conduct was simply to make a name for himself in the PSP. (personal growth)[sic] Ultimately[,] Defendant Rokavec's conduct back fired and his employment was terminated.

ECF No. 83 at 6.

Plaintiff St. Clair's abuse of process claim must fail. Plaintiff alleges that process was initiated in the absence of probable cause. He is not alleging that process was initiated properly, and then used for an improper purpose. Plaintiff alleges no facts to suggest any ill will towards Plaintiff St. Clair. Instead, Plaintiff's allegations focus on what he believes was a negligent investigation by Defendant Rokavec that resulted in his termination from the PSP. *See* ECF No. 71 ¶ 33.

Therefore, Defendant Rokavec's Motion to Dismiss Plaintiff's claim for abuse of process should be granted. Any attempt to amend would be futile as a matter of law.

4. Qualified Immunity

Defendant Rokavec also argues that he is protected by qualified immunity for claims against him in his individual capacity. ECF No. 78 at 14-16. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity operates to ensure that, before they are subjected to suit, government officials are put on notice that their conduct is unlawful. *Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

In determining whether qualified immunity applies, the courts conduct a two-pronged inquiry. *Pearson*, 555 U.S. at 232; *Spady v. Bethlehem Area Sch. Dist.*, 800 F.3d 633, 637 (3d Cir.

2015). First, the court must determine "whether the facts that the plaintiff has alleged . . . or shown . . . make out a violation of a constitutional right." *Pearson,* 555 U.S. at 232 (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). "If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity." *Bennett v. Murphy*, 274 F.3d 133, 136 (3d Cir. 2002). If, however, the plaintiff can establish a constitutional violation, then the court must proceed to the second prong and determine "'whether the right at issue was "clearly established" at the time of defendant's alleged misconduct.'" *Spady,* 800 F.3d at 637 (quoting *Pearson*, 555 U.S. at 232). "The relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202. "This is an objective inquiry, to be decided by the court as a matter of law." *Doe v. Groody*, 361 F.3d 232, 238 (3d Cir. 2004). In conducting this analysis, courts have the discretion to decide which of the two prongs should be addressed first based on the circumstances of a particular case. *Pearson*, 555 U.S. at 236.

Here, the Court need only consider the first prong, as the Plaintiff has failed to make out a constitutionally cognizable claim. Therefore, Defendant Rokavec is protected by qualified immunity. *See Bennett,* 274 F.3d at 136 ("If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity."). Therefore, the Motion to Dismiss filed by Defendant Rokavec should be granted on the basis of qualified immunity.

5. Claims against Rokavec in his Official Capacity

When a state official is sued in his official capacity, the real party in interest is the government office of which he is an agent. *See Hafer v. Melo*, 502 U.S. 21 (1991). Here, Defendant Rokavec was employed by the PSP, a state agency. *See Atkin v. Johnson,* 432 F. App'x

47, 48 (3d Cir. 2011); *see also* 71 P.S. §§ 61, 732-102. Under the Eleventh Amendment, states and state agencies are immune from suit in federal court. *See, e.g., Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). While a state may lose its immunity by Congressional abrogation or by waiver, Congress did not abrogate states' sovereign immunity when it enacted 42 U.S.C. § 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989). Moreover, the Pennsylvania legislature has expressly declined to waive its sovereign immunity by statute. *See Lavia v. Pa. Dep't of Corrs.*, 224 F.3d 190, 195 (3d Cir. 2000); *see also* 42 Pa. Cons. Stat. Ann. § 8521(b). In addition, state officials are "persons" for purposes of § 1983 only when sued in their individual capacities. *See Hafer,* 502 U.S. at 26 (1991).

Therefore, Plaintiff St. Clair's claims against Defendant Rokavec in his official capacity should be dismissed as barred by the Eleventh Amendment. Any attempt to amend would be futile as a matter of law.

6. State law claims

To the extent Plaintiff Rokavec has raised any state law claims, it is recommended that the Court decline to exercise its supplemental jurisdiction if the Court decides to adopt the recommendation to grant Defendant's Motion to Dismiss. *See* 28 U.S.C. § 1367(c)(3); *Borough of West Mifflin v. Lancaster*, 45 F.3d 780 (3d Cir. 1995) ("[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.").

III. CONCLUSION

For the reasons discussed above, it is respectfully recommended that the Motion to Dismiss filed by Defendant Justin Rokavic be granted. It is further recommended that the Court decline to

exercise its supplemental jurisdiction over any remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3).

In accordance with the Federal Magistrate Judge's Act, 28 U.S.C. §636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of this Report and Recommendation to file written objections thereto. Any party opposing such objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: June 17, 2024

BY THE COURT

*/s/ Kezia O. L. Taylor*_____
KEZIA O. L. TAYLOR
United States Magistrate Judge

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