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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

COURTNEY ORLANDO CRUTCHER and AUTUMN GRAY,	)	
Plaintiffs,	)	
vs.	)	**Civil Action No. CV-10-S-01175-NE**
LIMESTONE COUNTY SHERIFF'S DEPARTMENT, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs, Courtney Orlando Crutcher[1] and Autumn Gray, filed this action, proceeding *pro se*, on May 5, 2010. They assert federal subject matter jurisdiction under 28 U.S.C. § 1343 for constitutional claims pursued under 42 U.S.C. § 1983.[2]

[1] It is unclear from the record whether this is the correct spelling of plaintiff Crutcher's first and middle names. Plaintiffs filed a Case Action Summary from the underlying criminal case along with their complaint in which he is named "Crutcher, Cordney Olando." Doc. no. 1, at 5 (*note well*: some of the pages of the complaint are hand numbered as exhibits; however, without individually numbered pages, citations to the record would be confusing and, accordingly, the court will refer to the page numbers assigned by the Case Management/Electronic Case Filing system, rather than any indication of page number within the individual documents themselves). This same version of plaintiff's name, Cordney Olando Crutcher, appears on plaintiffs' Responses to Defendants' Motions to Dismiss. Doc. no. 37, at 1; doc. no. 38, at 1. However, the name "Courtney Orlando Crutcher" was handwritten on the General Complaint Form that initiated this case. Doc. no. 1, at 1. This same iteration was handwritten on plaintiffs' motion to amend their complaint and was in the caption of the Limestone County Circuit Court suppression hearing transcript plaintiffs filed. Doc. no. 5; doc. no. 34. The court will call plaintiff Courtney Orlando Crutcher, where necessary, with apologies if this is incorrect.

[2] Doc. no. 1, at 1-2.

Among other relief, plaintiffs seek monetary damages for violation of their "4th & 5th Amendant [*sic*] Rights to Protection against illegal searches or seizures."[3]

The action is presently before the court on motions to dismiss filed by all defendants: *i.e.*, (1) the Limestone County Sheriff's Department and Limestone County Sheriff Mike Blakely and Deputy Sheriff Lance Royals, in their individual and official capacities;[4] (2) the Madison County Sheriff's Department;[5] (3) Madison County Sheriff Blake Doring, individually and in his official capacity, and Madison County Investigators Matt Thornbury, Chad Brooks, and Kevin Turner, individually and in their official capacities;[6] (4) the Athens Police Department;[7] (5) Athens Police Chief Wayne Harper, individually and in his official capacity;[8] and (6) Athens Police Officer Johnny Morrell, individually and in his official capacity.[9] Also outstanding is plaintiffs' motion for "the Court to let a U.S. Marshall deliver [a] supeona [*sic*]."[10]

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[3] *Id.* at 1.

[4] Doc. no. 13.

[5] Doc. no. 14.

[6] Doc. no. 18.

[7] Doc. no. 24.

[8] Doc. no. 26.

[9] Doc. no. 27. Plaintiffs filed two responses in opposition to these motions to dismiss, the first on July 6, 2010, (doc. no. 37), and the second on July 8, 2010, (doc. no. 38). These responses appear identical in all respects, save for the dates on the signature page and the partial list of defendants names in the caption on the first page. Doc. no. 37, at 1, 4; doc. no. 38, at 1, 4. All references to the response will refer, for simplicity's sake, to the last-filed version.

[10] Doc. no. 36.

Upon consideration of the foregoing motions and as more fully set forth below, defendants' motions to dismiss are due to be granted because all of plaintiffs' claims are barred by the statute of limitations, or they are asserted against entities not amenable to suit. Accordingly, plaintiffs' motion for issuance of a subpoena is due to be denied as moot.

I. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b) permits a party to move to dismiss a complaint for, among other reasons, "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). This rule must be read together with Rule 8(a), which requires that a pleading contain only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While that pleading standard does not require "detailed factual allegations," *Bell Atlantic Corp. v. Twombly*, 544 U.S. 544, 550 (2007), it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. —, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

> To survive a motion to dismiss founded upon Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted], a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id*., at 570. 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*., at 556. The

> plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid*. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id*., at 557 (brackets omitted).

Iqbal, 129 S. Ct. at 1949-50.

"*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). The principle underlying this liberal construction is "to give a *pro se* plaintiff a break when, although he stumbles on a technicality, his pleading is otherwise understandable." *Hudson v. McHugh*, 148 F.3d 859, 864 (7th Cir. 1998). However, such "leniency does not give a court license to serve as *de facto* counsel for a party or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Investments, Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled in part on other grounds* (internal citations omitted). Moreover, "a litigant's *pro se* status in civil litigation generally will not excuse mistakes he makes regarding procedural rules." *Thompson v. United States Marine Corp*., No. 09-16523, 2010 WL 3860578, at *3 (11th Cir. October 7, 2010) (*per curiam*) (citing *McNeil v. United States*, 508 U.S. 106, 113 (1993) ("[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted

so as to excuse mistakes by those who proceed without counsel.")); *Albra v. Advan, Inc*., 490 F.3d 829, 829 (11th Cir. 2007) (same).

Though the Eleventh Circuit long held claims asserted under § 1983 against individual officers to a higher-than-usual standard, in light of the plausibility requirement as articulated in *Iqbal*, utilization of this standard is no longer warranted.

> [Even though] the *Iqbal* opinion concerns Rule 8(a)(2) pleading standards in general, the Court specifically describes Rule 8(a)(2) pleading standards for actions regarding an unconstitutional deprivation of rights. The defendant federal officials raised the defense of qualified immunity and moved to dismiss the suit under a 12(b)(6) motion. The Supreme Court held, citing *Twombly*, that the legal conclusions in a complaint must be supported by factual allegations, and that only a complaint which states a plausible claim for relief shall survive a motion to dismiss. The Court did not apply a heightened pleading standard.
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> While *Swann* [*v. Southern Health Partners, Inc.*, 388 F.3d 834 (11th Cir. 2004)] , *GJR*, and *Danley* [*v. Allen*, 540 F.3d 1298 (11th Cir. 2008)] reaffirm application of a heightened pleading standard for § 1983 cases involving defendants able to assert qualified immunity, we agree . . . that *those cases were effectively overturned* by the *Iqbal* court. Pleadings for § 1983 cases involving defendants who are able to assert qualified immunity as a defense shall now be held to comply with the standards described in *Iqbal*. A district court considering a motion to dismiss shall begin by identifying conclusory allegations that are not entitled to an assumption of truth-legal conclusions must be supported by factual allegations. The district court should assume, on a case-by-case basis, that well pleaded factual allegations are true, and then determine whether they plausibly give rise to an entitlement to relief.

Randall v. Scott, 610 F.3d 701, 709-10 (11th Cir. 2010) (emphasis supplied).

"A complaint is subject to dismissal for failure to state a claim 'when its allegations, on their face, show that an affirmative defense bars recovery on the claim.'" *Douglas v. Yates*, 535 F.3d 1316, 1321 (11th Cir. 2008) (quoting *Cottone v. Jenne*, 326 F.3d 1352, 1357 (11th Cir. 2003)). That a claim is barred by the applicable statute of limitations is such a defense. *See* Fed. R. Civ. P. 8(c). "If the allegations . . . show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim . . . ." *Jones v. Bock*, 549 U.S. 199, 215 (2007).

II. FACTS AS ALLEGED[11]

On October 9, 2007, five law enforcement officers — Deputy Sheriff Royals, Investigators Thornbury, Brooks, and Turner, and Officer Morrell — visited

[11] As always is the case in the context of ruling upon a motion to dismiss:

> At this point in the litigation, we must assume the facts set forth in the plaintiffs' complaint are true. *See Anza* [*v. Ideal Steel Supply Corp.*, 547 U.S. 451, 453,] 126 S. Ct.[1991,] 1994 (stating that on a motion to dismiss, the court must "accept as true the factual allegations in the amended complaint"); *Marsh v. Butler County*, 268 F.3d 1014, 1023 (11th Cir.2001) (*en banc*) (setting forth the facts in the case by "[a]ccepting all well-pleaded factual allegations (with reasonable inferences drawn favorably to Plaintiffs) in the complaint as true"). Because we must accept the allegations of plaintiffs' complaint as true, what we set out in this opinion as "the facts" for Rule 12(b)(6) purposes may not be the actual facts.

Williams v. Mohawk Industries, Inc., 465 F.3d 1277, 1281 n.1 (11th Cir. 2006) (alterations supplied).

plaintiffs' residence in Limestone County, Alabama.[12] The officers knocked and, when plaintiff Crutcher answered the door, they identified themselves.[13] Royals informed Crutcher that the officers were investigating a homicide that had occurred in neighboring Madison County, and that they would like to speak with both plaintiff Crutcher and Gray in conjunction with that investigation. However, plaintiff Gray, who apparently owned the residence, was at work at the time.[14] The officers then entered plaintiffs' home and, even though it is not clear whether Crutcher gave them express permission to do so, the officers began to question Crutcher about the homicide.[15] Investigator Thornbury sat down at the kitchen table, moving a sock

[12] Doc. no. 1, at 2; *see also* doc. no. 16, at 2. Plaintiffs have adopted defendants' statement of the facts, save for one dispute. *See* doc. no. 38, at 2. The complaint itself is internally contradictory, composed of multiple documents written by several different individuals, and lacks almost all factual detail. Hence, the court will refer, where necessary, to the recitation of the facts in the brief supporting the motion to dismiss of the Limestone County Sherriff's Department, Mike Blakely, and Lance Royal for purposes of this statement of facts. Plaintiffs also sought and were afforded leave to "supplement his [*sic*] original complaint by sumitting [*sic*] copies of the transcript relative to the evidence and events of" the underlying criminal trial in the form of "the stenographer's transcription of the suppression hearing which took place . . . ." Doc. no. 5, at 1; *see* doc. no. 34 (copy of the transcript of the suppression hearing). Where necessary, this statement of facts will also cite to this record submitted by plaintiffs as an amendment to their complaint.

[13] Doc. no. 1, at 6; doc. no. 16, at 2; doc. no. 34, at 7, 14, 23, 28.

[14] Doc. no. 1, at 8.

[15] Doc. no. 1, at 2, 6; s*ee* doc. no. 34, at 8, 22-24, 35; doc. no. 38, at 2. Plaintiffs did not allege that Crutcher did not provide permission for the entry and, in fact, the documentation attached as "Ex. # 2" of plaintiffs' complaint affirmatively states that Crutcher gave permission to enter the residence. *Id.* at 6. Further, in the transcript of the suppression hearing that plaintiffs filed, with permission, "to supplement his [*sic*] original complaint," Judge Baker of the Limestone County Circuit Court stated that "[w]ithout dispute, according to testimony . . . there was consent to enter." Doc. no. 34, at 33; *see also id.* at 7, 23, 28. Plaintiffs have neither alleged nor alluded to any facts suggesting how, if permission was not given, the officers entered the apartment, since there are no facts at all indicating that the entry was forcible. *See* doc. no. 38, at 2; doc. no. 1, at 2. Even so,

from the end of the table where he was sitting.[16] The end of the sock was tied in a knot.[17] When Investigator Thornbury touched the sock, Crutcher grabbed his arm and reached for the sock, saying that it was his.[18] Instead of handing the sock to Crutcher, Thornbury tossed it to Deputy Sheriff Royals.[19] Royals opened the sock and found three clear plastic bags containing off-white powder.[20] Suspecting that the substance was cocaine, the officers requested permission to search the rest of the home and Crutcher gave both verbal and written consent.[21] The officers searched the rest of the kitchen and discovered a box of Ajax brand household cleanser that had a false bottom and a hidden compartment.[22]

The officers arrested Crutcher on suspicion that he was trafficking in cocaine.[23]

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plaintiffs' brief in opposition does assert that "plaintiff Crutcher never gave any of the named Defendants permission to enter the residence[;] they entered without authorization." Doc. no. 38, at 2. A plaintiff may not amend his complaint in a brief, but must follow the proper procedure for amendment. *Gilmour v. Gates, McDonald and Co.*, 382 F.3d 1312, 1314 (11th Cir. 2004) ("A plaintiff may not amend her complaint through argument in a brief . . . ."); *see also Albra v. Advan, Inc.*, 490 F.3d 829, 829 (11th Cir. 2007) ("[A]lthough we are to give liberal construction to the pleadings of *pro se* litigants, we nevertheless have required them to conform to procedural rules.") (citation and quotation marks omitted). Nevertheless, out of an abundance of solicitude to a *pro se* plaintiff and, more importantly, because whether permission was given or not will not affect the analysis, this court will consider this fact in rendering the judgment.

[16] Doc. no. 1, at 6; doc. no. 34 at 3-4.

[17] Doc. no. 1, at 6; doc. no. 34, at 4, 25.

[18] Doc. no. 1, at 6; doc. no. 34, at 24-25.

[19] Doc. no. 1, at 6; doc. no. 34, at 10-11, 24

[20] Doc. no. 1, at 6; doc. no. 16, at 3, ¶ 11; doc. no. 34, at 11-12, 28-29, 32.

[21] Doc. no. 1, at 6; doc. no 16, at 3, ¶¶ 11-12; doc. no. 34, at 26-27.

[22] Doc. no. 1, at 6; doc. no. 16, at 3, ¶ 13; doc. no. 34, at 27.

[23] Doc. no. 1, at 6; doc. no. 16, at 3, ¶ 14.

While the officers were still at the residence, Deputy Sheriff Royals contacted plaintiff Gray using Crutcher's cell phone.[24] Royals informed Gray that the police were at her home, that they were arresting Crutcher, and that she should "find a way to the County jail as soon as possible or they would come and get [her]."[25] Laboratory reports later confirmed that the powder found in the sock at plaintiffs' residence was cocaine and that it weighed, in total, just over four ounces.[26]

Crutcher was indicted and participated in criminal proceedings based on the cocaine trafficking charges in the Circuit Court of Limestone County.[27] In those proceedings, Crutcher moved to suppress any evidence stemming from the October 9, 2007 search on the grounds that the search violated his rights under the Fourth Amendment to the United States Constitution.[28] On October 29, 2009, the Alabama

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[24] Doc. no. 1, at 8.

[25] *Id.*

[26] Doc. no. 1, at 6; doc. no. 16, at 3, ¶ 15.

[27] *See* doc. no. 1, at 5 (Case Action Summary in the case of *State of Alabama v. Cordney Olando Crutcher*, Case no. CC 2008-39-RMB, appended to plaintiffs' complaint); doc. no. 16, at 4, ¶ 18; *see also generally* doc. no. 34 (copy of transcript of suppression hearing held on October 29, 2009 and submitted by plaintiffs "to supplement his [*sic*] original complaint" (doc. no. 5, at 1)). As defendants correctly note, none of the documentation appended to plaintiffs' complaint, nor any of the actual allegations made in it indicate that the prosecution to which plaintiff refers actually related to Crutcher's arrest on October 9, 2007. *See* doc. no. 19, at 3 n.3. Nonetheless, that must be the necessary implication of plaintiffs' allegations and, accordingly, the court reads the allegations, most favorably to plaintiffs, to make the claim that it was.

[28] *See* doc. no. 1, at 4 (copy of the State of Alabama's "Motion to Dismiss Due to Suppression of Evidence"); *see generally* doc. no. 34 (copy of transcript of suppression hearing), at 3-4.

court granted that motion[29] and, approximately one month later, the State filed a motion to dismiss the criminal charges pending against Crutcher, asserting that it could no longer meet its burden of proof.[30] Plaintiffs filed the present action on May 5, 2010.[31]

III. DISCUSSION

A. Claims Against the Entities

As an initial matter, the three entities named as defendants — the Limestone County Sheriff's Department, the Madison County Sheriff's Department, and the Athens Police Department — have all moved to dismiss the claims asserted against them on the basis that they lack capacity to be sued.[32]

A claim under § 1983 may only be maintained if brought against an entity that is legally capable of suit under the law of the state in which the action is brought. *See, e.g.*, Fed. R. Civ. P. 17(b)(3). "Sheriff's departments and police departments are not usually considered legal entities subject to suit . . . ." *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) (citations and internal quotation marks omitted). Under

[29] Doc. no. 1, at 3; doc. no. 16, at 4, ¶ 18.

[30] Doc. no. 1, at 4 (copy of the State's Motion to Dismiss Due to Suppression of Evidence, appended to and incorporated into plaintiffs' complaint).

[31] Doc. no. 1, at 1.

[32] Doc. no. 15, at 2-3 (Madison County Sheriff's Department); doc. no. 16, at 10 (Limestone County Sheriff's Department); doc. no. 25, at 1-4 (Athens Police Department).

Alabama law,

> All *municipal organizations* now existing in the State of Alabama, whether incorporated under the general laws of the state or by special act of the legislative department of the state government, and now exercising corporate powers or functions and *all towns and cities that may hereafter be incorporated* under the provisions of this title shall be bodies politic and corporate, using a common seal, which may at any time be changed, and having perpetual succession under the name now used or hereafter assumed as provided in this title, and each under such name as the "City of ....." or "Town of .....," as the case may be, *shall sue and be sued . . . .*

Ala. Code § 11-40-1 (emphasis supplied). Hence, while a municipality itself has the capacity to sue and be sued, the statutory language suggests, by negative implication, that the departments, divisions, or agencies of a municipality do not.

There is considerable authority holding that a "sheriff's department" does not constitute a legally suable entity under Alabama law. The Alabama Supreme Court so held in at least three instances. *See Ex Parte Haralson*, 853 So. 2d 928, 931 (Ala. 2003) ("It is clear under Alabama law that [a] sheriff's department is not a legal entity subject to suit."); *King v. Colbert County*, 620 So. 2d 623, 626 (Ala. 1993) ("The Colbert County Sheriff's Department is not a legal entity. Therefore, one cannot maintain an action against it."); *White v. Birchfield*, 582 So. 2d 1085, 1087 (Ala. 1991) ("The Chambers County Sheriff's Department is not a legal entity subject to suit. Therefore, a cause of action may not be maintained against the Chambers

County Sheriff's Department."); *see also Dean*, 951 F.3d at 1215 (recognizing that a "sheriff's department" lacks capacity to be sued).

Though there is no authoritative ruling that squarely says as much, there is no reason why these holdings should not by analogy be equally applicable to a "police department." The negative inference drawn from the statutory section quoted above would logically apply in the same fashion. Additionally, the Alabama Supreme Court has recently noted in dicta that: "Generally, the departments and subordinate entities of municipalities, counties, and towns that are not separate entities or bodies do not have the capacity to sue or be sued in the absence of specific statutory authority. . . . *Among subordinate entities generally lacking the capacity to sue or be sued separately are police departments* . . . ." *Ex Parte Dixon*, No. 1081048, — So. 3d —, 2010 WL 3075294, at *1 n.1 (Ala. August 6, 2010) (citation and quotation marks omitted) (alteration in original) (emphasis supplied).

Furthermore, various federal district courts in Alabama have come to the conclusion that a "police department" does not constitute a suable entity under Alabama law. *See, e.g.*, *Johnson v. Andalusia Police Department*, 633 F. Supp. 2d 1289, 1301 (M.D. Ala. 2009) ("Johnson's claims against the Andalusia Police Department must fail because police departments are generally not considered legal entities subject to suit."); *Blunt v. Tomlinson*, No. 04-0124-CG-M, 2009 WL 921093,

at *4 (S.D. Ala. April 1, 2009) ("In Alabama, a city's police department is not a suable entity or a proper party under state law or for § 1983 purposes."); *Lee v. Wood*, No. 04-00710-BH-B, 2007 WL 2460756, at *7 (S.D. Ala. August 27, 2007) ("Inasmuch as the City of Mobile Police Department is not a suable entity under Alabama law, the claim against defendant City of Mobile Police Department is frivolous and due to be dismissed.").

Plaintiffs have conceded that their claims against the Limestone County Sheriff's Department and the Madison County Sheriff's Department are due to be dismissed. Their response opposing dismissal makes no similar concession with respect to the Athens Police Department, but neither does that response advance any argument to counter the Department's contention that it is not legally suable. Indeed, except for the caption, plaintiffs' response does not mention the Athens Police Department at all.[33] This court is strongly persuaded by both legal authority and logic that the Athens Police Department is not a legally suable entity. Even were this not so, however, plaintiffs have waived any argument they may have had that their action against the Athens Police Department is maintanable. *See, e.g.*, *Carvel v. Godley*, No. 10-10766, 2010 WL 4910167, at *2 (11th Cir. Dec. 2, 2010) ("'Yet even in the case of *pro se* litigants this leniency does not give a court license to serve as *de facto*

[33] Doc. no. 38, at 1; *see also* doc. no. 37, *passim* (plaintiffs' first response to defendants' motion to dismiss, which makes no mention of the Athens Police Department at all).

counsel for a party or to rewrite an otherwise deficient pleading in order to sustain an action.'") (quoting *G.J.R. Investments, Inc. v. County. of Escambia*, 132 F.3d 1359, 1369 (1998), *overruled in part on other grounds*). Accordingly, all of plaintiffs' claims against the Athens Police Department, the Limestone County Sheriff's Department, and the Madison County Sheriff's Department are due to be dismissed.

B. Plaintiffs' Claims Against the Individual Defendants

The individual defendants — *i.e.*, those persons who were either present at plaintiffs' residence when the allegedly unlawful search occurred, or who supervised officers that were there — all assert that plaintiffs' claims are barred by the applicable statute of limitations.[34] Plaintiffs respond that "the statute of limitations is due to be tolled . . . until the date on which a lawful authority determined that an actionable wrong, or injury had been committed"; and that, therefore, their claims are not time-barred.[35]

"All constitutional claims brought under § 1983 are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008). "In *Owens v. Okure*, the Supreme Court held that in section 1983 suits the federal

[34] Doc. no. 13, at 1; doc. no. 16, at 6-10; doc. no. 18, ¶ 4; doc. no. 26, ¶ 2; doc. no. 27, ¶ 2;. *see also* doc. no. 25, at 4-6.

[35] Doc. no. 38, at 3.

courts are to borrow the 'general' or 'residual' statute of limitations for personal injuries provided under the law of the state where the court hearing the case sits." *Lufkin v. McCallum*, 956 F.2d 1104, 1106 (11th Cir. 1992) (citing *Owens v. Okure*, 488 U.S. 235, 236, 249-50 (1989)); *see also Reynolds v. Murray*, 170 Fed. Appx. 49, 50 (11th Cir. 2006) ("Section 1983 has no statute of limitations of its own, and instead is governed in each case by the forum state's general personal injury statute of limitations."). In Alabama, that statute of limitations is two years. *See* Ala. Code § 6-2-38(*l*) ("All actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section must be brought within two years."); *Lufkin*, 956 F.2d at 1106 (applying Alabama's two year statute of limitations); *Jones v. Preuit & Mauldin*, 876 F.2d 1480, 1483 (11th Cir. 1989) ("[T]he two-year limitations period of Ala. Code 6-2-38(*l*) applies to section 1983 claims in Alabama."); *see also Holt v. Valls*, No. 09-16475, 2010 WL 3465719, at *2 (11th Cir. Sept 7, 2010) (holding a Fourth Amendment claim subject to and barred by the two year statute of limitations in Ala. Code § 6-2-38(*l*)).

In other words, "federal law looks to the law of the State in which the cause of action arose" to determine "the length of the statute of limitations" for a § 1983 action. *Wallace v. Kato*, 549 U.S. 384, 387-88 (2007). On the other hand, "the accrual date of a § 1983 cause of action" — that is, the date upon which the

limitations period begins to run — "is a question of federal law that is not resolved by reference to state law." *Id.* "The accrual date for an action under section 1983 is 'governed by federal rules conforming in general to common-law tort principles.'" *Burgest v. McAfee*, 264 Fed. Appx. 850, 852 (11th Cir. 2008) (quoting *Wallace*, 549 U.S. at 388).

> Under those principles, it is "the standard rule that [accrual occurs] when the plaintiff has 'a complete and present cause of action,'" *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201, 118 S.Ct. 542, 139 L.Ed.2d 553 (1997) (quoting *Rawlings v. Ray*, 312 U.S. 96, 98, 61 S.Ct. 473, 85 L.Ed. 605 (1941)), that is, when "the plaintiff can file suit and obtain relief," *Bay Area Laundry*, *supra*, at 201, 118 S.Ct. 542.

Wallace, 549 U.S. at 388 (alterations in original). "'Under the traditional rule of accrual . . . the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages. The cause of action accrues even though the full extent of the injury is not then known or predictable.'" *Id.* at 391 (quoting 1 C. Corman, *Limitation of Actions* § 7.4.1, pp. 526-527 (1991)). Stated differently, the statute of limitations for a § 1983 action begins to run from the date "the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008) (citation and quotations omitted).

Therefore, the question of whether plaintiffs' claims in this case are time-

barred turns upon the date when their cause of action accrued. If it accrued at or around the time that the allegedly unreasonable search occurred, October 29, 2007, then defendants' argument that the statute of limitations has run must prevail, unless the statute was tolled on some other basis. If it accrued at or around the time the Limestone County Circuit Court granted Crutcher's motion to suppress on the grounds that the officers' actions violated the Fourth Amendment, then the statute of limitations is no basis for dismissal.

Under the doctrine announced by the Supreme Court in *Heck v. Humphrey*, 512 U.S. 477 (1994), a plaintiff may not sue under 42 U.S.C. § 1983 "if a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction." *Id.* at 487. After that decision, some courts held that § 1983 unconstitutional search or seizure claims would not accrue until either any charges stemming from those searches or seizures were dropped, or any conviction based upon them was nullified. *E.g.*, *Harvey v. Waldron*, 210 F.3d 1008, 1010 (9th Cir. 2000) (concluding that under *Heck*, § 1983 claims of illegal search and seizure of evidence on which criminal charges are based do not accrue until the charges have been dismissed or the conviction has been overturned); *Shamaeizadeh v. Cunigan*, 182 F.3d 391, 396, 398 (6th Cir. 1999) ("[A] prisoner seeking to challenge an allegedly unconstitutional search and seizure in a § 1983 claim must show . . . that a decision in his favor would

not imply the invalidity of a future conviction."); *Covington v. City of New York*, 171 F.3d 117, 124 (2d Cir. 1999) ("[I]f 'success on [a § 1983] claim would necessarily imply the invalidity of a conviction in a pending criminal prosecution, such a claim does not accrue so long as the potential for a judgment in the pending criminal prosecution continues to exist.'" (quoting *Smith v. Holtz*, 87 F.3d 108 (3d Cir. 1996)) (second alteration in original); *Beck v. City of Muskogee Police Department*, 195 F.3d 553, 557 (10th Cir. 1999) ("*Heck* precludes § 1983 claims relating to pending charges when a judgment in favor of the plaintiff would necessarily imply the invalidity of any conviction or sentence that might result from prosecution of the pending charges. Such claims arise at the time the charges are dismissed."); *Washington v. Summerville*, 127 F.3d 552, 556 (7th Cir. 1997) ("If success on these claims would have necessarily implied the invalidity of a potential conviction on the murder charge, then Washington's claims did not accrue until the day on which the murder charge was dismissed."); *Smith*, 87 F.3d at 113 ("[W]e hold that a claim that, if successful, would necessarily imply the invalidity of a conviction on a pending criminal charge . . . does not accrue so long as the potential for a judgment in the pending criminal prosecution continues to exist.").

The foregoing pronouncements, however, have never been the rule in this circuit. Noting that the Supreme Court had expressly suggested as much, albeit in

dicta, with respect to "a suit for damages attributable to an allegedly unreasonable search" in the *Heck* decision, the Eleventh Circuit has repeatedly noted that "*Heck v. Humphrey* . . . is no bar to a civil action [under § 1983 based upon an unlawful search] because, even if the pertinent search did violate the Federal Constitution, [the] conviction might still be valid considering such doctrines as inevitable discovery, independent source, and harmless error." *Datz v. Kilgore*, 51 F.3d 252, 253 n.1 (11th Cir. 1995) (*per curiam*) (citing *Heck*, 512 U.S. at 487 n.7); *accord Moore v. Sims*, 200 F.3d 1170, 1171 (8th Cir. 2000) (*per curiam*) (holding unlawful seizure claim not barred by *Heck*); *Beck v. City of Muskogee Police Department*, 195 F.3d 553, 558 (10th Cir. 1999) (determining that *Heck* did not apply to defendant's claims of illegal arrest, search, and seizure).

"Because an illegal search or arrest may be followed by a valid conviction . . . a successful § 1983 action for Fourth Amendment search and seizure violations does not necessarily imply the invalidity of a conviction." *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003); *see Wallace v. Smith*, 145 Fed. Appx. 300, 301-02 (11th Cir. 2005); *Vickers v. Donahue*, 137 Fed. Appx. 285, 289 (11th Cir. 2005). Unless a determination that the challenged search was unconstitutional would "negate an element of the offense," which will rarely be the case, then there is no unavoidable conflict between such a ruling and a subsequent criminal conviction and,

consequently, *Heck* is inapposite. *Id.*; *see also id.* at 1160-61 (noting the Circuit split and discussing relevant cases); *Vickers*, 137 Fed. Appx. at 289. Moreover, *Wallace* roundly rejected the application of *Heck* as a bar in face of "an anticipated future conviction" as "bizarre" and unfounded, completely undermining the logic of many of the decisions that had held § 1983 illegal search claims did not accrue until after any underlying criminal case had terminated. *Wallace*, 549 U.S. at 393-94; *see, e.g.*, *Fox v. DeSoto*, 489 F.3d 227, 234 (6th Cir. 2007) ("In no uncertain terms, . . . the Supreme Court in *Wallace* clarified that the *Heck* bar has no application in the pre-conviction context."); *Hargroves v. City of New York*, 694 F. Supp. 2d 198, 210-12 (E.D.N.Y. 2010) (holding that *Wallace* had overruled prior Second Circuit law so that the statute of limitations on § 1983 claim under the Fourth Amendment began to run at the time of the allegedly illegal search or seizure); *Lynch v. Nolan* 598 F. Supp. 2d 900, 903 (C.D. Ill. 2009) (holding the same with respect to Seventh Circuit precedent); *Kucharski v. Leveille*, 526 F. Supp. 2d 768, 774 (E.D. Mich. 2007) (collecting cases from numerous circuits effectively overruled by *Wallace* and holding the same with respect to Sixth Circuit precedent).

Accordingly, it is plain that, under the law to be applied here, plaintiffs' cause of action accrued when the allegedly unlawful search occurred, and *not* when a court subsequently held it to have been unlawful. *Cf. Moore v. McDonald*, 30 F.3d 616,

621 (5th Cir. 1994) (holding that plaintiff's "claim as to the allegedly unreasonable search of the car accrued" on the date of the search). That date preceded the date plaintiffs filed this action by nearly two years and seven months. Therefore, plaintiffs' action is time-barred unless the statute of limitations was tolled. Plaintiffs have not pointed to any principle of law that would have tolled the statute of limitations and this court's independent examination of Alabama law, from which any applicable tolling principle would arise, has disclosed none. *See* Ala. Code § 6-2-8 (outlining tolling provisions, none of which are applicable here); *Whitson v. Baker*, 755 F.2d 1406, 1409 (11th Cir. 1985) (state law determines whether limitations period is tolled); *cf. Hughes*, 350 F.3d at 1160 (holding limitations period under Alabama law not tolled by incarceration).

Still, plaintiffs assert that the "running time of the statute of limitations is due to be tolled and not started to run until the date on which a lawful authority determined that an actionable wrong[] or injury had been committed" and, therefore, that "defendants assertion of staue [*sic*] of limitation violation by the plaintiffs must fail," because "Crutcher is not an attorney and lacked any knowledge of even a potential claim . . . ."[36] In light of the fact that Crutcher and his attorney in the underlying criminal proceeding attacked the search as unconstitutional this assertion

[36] Doc. no. 38, at 3, ¶ 1.

is questionable. Yet even setting that aside, Crutcher's lack of knowledge of a *claim* is immaterial when all of the *facts* that could give rise to it were known to him on the date the five officers visited his residence. Even assuming an "actionable wrong" occurred here, that wrong was actionable immediately after it occurred, not when the state court determined that the evidence derived from it would be suppressed. Plaintiff had "'a complete and present cause of action,'" on October 9, 2007, and the statute of limitations began to run on that day. *Wallace*, 549 U.S. at 388. It has since expired.

Plaintiffs' assertion that they were unaware of the claim, even construed with the utmost liberality as a plea for equitable tolling of the limitations period, fails for similar reasons. "Equitable tolling is applied sparingly and is an extraordinary remedy that is 'limited to rare and exceptional circumstances, such as when the State's conduct prevents the petitioner from timely filing.'" *Powe v. Culliver*, 205 Fed. Appx. 729, 732 (11th Cir. 2006) (quoting *Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005)). "Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Wallace*, 549 U.S. at 396-97. Unfamiliarity with the nuances of search and seizure law is such a common state of affairs and, particularly where a plaintiff's every incentive is to immediately determine whether a search or seizure was valid, does not warrant

equitable tolling. More importantly, there is no indication whatsoever that the State or any of the defendants precluded plaintiffs from timely filing their claims.

The court holds that any "person with a reasonably prudent regard for his rights" should have known of the facts that gave rise to plaintiffs' allegations in this case on October 9, 2007. *McNair*, 515 F.3d at 1173. Plaintiffs did not initiate this action until May 5, 2010. At that point, the applicable two year statute of limitations had already lapsed. Accordingly, plaintiffs' claims against all of the individual defendants are due to be dismissed.

IV. CONCLUSION AND ORDER

In light of the foregoing, the motions to dismiss filed by all defendants in this action are GRANTED. All of plaintiffs' claims are due to be, and the same hereby are, DISMISSED with prejudice as barred by the applicable statute of limitations or alleged against entities not amenable to suit. Plaintiffs' motion for issuance of a subpoena is DENIED as moot. Costs are taxed to plaintiff. The Clerk is directed to close this file.

DONE and ORDERED this 30th day of December, 2010.

United States District Judge