

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JOSEPH D. AMRINE,]	
]	
Plaintiff,]	
]	
v.]	Case No: 2:04-CV-04300NKL
]	
MARILYN SCHMUTZLER, et al.,]	
]	
Defendants.]	

**MOTION FOR SUMMARY JUDGMENT AND
SUPPORTING SUGGESTIONS**

Defendant Schmutzler, on behalf of the George Brooks' estate, asks the Court to grant summary judgment in her favor against plaintiff, pursuant to Fed.R.Civ.P. 56, because there exists no genuine issue of material fact and she is entitled to judgment as a matter of law.

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STATEMENT OF FACTS

1. Joseph Amrine was an inmate imprisoned at the Missouri State Penitentiary.

Ex. A, *passim*.

2. George Brooks was an investigator employed by the Missouri Department of Corrections (“DOC”), and assigned to the Missouri State Penitentiary. Ex. A, ¶ 6.

3. On October 18, 1985, inmate Gary Barber was fatally stabbed during a recreation period. Approximately 50 inmates, including Barber, Amrine, Jerry Poe, Randy Ferguson and Terry Russell were on outcount¹ to the multi-purpose room when the stabbing occurred. Barber was transported by stretcher to the prison hospital and pronounced dead approximately an hour later. Ex. A, ¶ 10; Ex. B.

4. Entry to and from the multi-purpose room during the recreation period and at the time Barber was stabbed on October 18, 1985, was limited to a locked door monitored by one of two corrections officers assigned to that location. One of those two officers was CO I John Noble. Ex. A, ¶ 10.

5. Brooks was notified at approximately 2:30 p.m. that an assault had been reported. Ex. B, p. 18.

6. Brooks met briefly with CO II David Dobson as Barber was carried by stretcher to the prison hospital. Dobson advised him that CO I Noble had custody of an ice-pick

¹ “Outcount” is a term of art referring to the location where prison officials may find an inmate when that inmate is not in his assigned cell.

type weapon. Brooks instructed Dobson to take custody of inmate Barber's clothing. Ex. B, p. 18.

7. Brooks went to the scene of the stabbing and briefly interviewed CO I Noble. It was Brooks understanding after talking with Noble that near the time of the stabbing Noble observed inmate Barber chasing another inmate, that shortly after the chase Barber approached Noble holding an ice-pick type weapon, dropped it, and then collapsed. Ex. B, pp. 18-19.

8. Brooks took custody of the ice-pick type weapon from Noble. Ex. B, p. 19.

9. The recreation room was sealed after the stabbing and corrections officers and/or law enforcement officials obtained identifying information for the inmates in the room and took scene photos. Ex. A, ¶ 14.

10. Brooks interviewed corrections officers present when Barber collapsed and others who reported to the scene afterwards. Ex. A, ¶ 17.

11. Brooks understood from officials at the scene that three inmates (Randy Ferguson (Caucasian), Clifford Valentine (black) and Terry Russell (black) had been escorted to the SMF base control area.² Brooks further understood Ferguson was reportedly been seen with blood on his face after Barber collapsed. Ex. B, p. 19.

12. Brooks searched Ferguson but identified no stains on his clothing, nor marks on his person. Ex. B, p. 19.

² SMF was an acronym for the Special Management Unit, a segregation unit within the Missouri State Penitentiary.

13. It was Brooks understanding after searching Ferguson that he had been working out on a punching bag near the time Barber was stabbed. Ex. B, p. 19.

14. Brooks searched Russell but found no blood stains on his clothing, nor marks on the inmate. Ex. B, p. 19.

15. After searching Russell and Ferguson, Brooks went to the scene of the stabbing and examined the area where Barber collapsed. Ex. B, p. 20.

16. Brooks instructed corrections officials at the scene to search the adjacent outdoor area and the inmates present in the multi-purpose room. Ex. B, p. 20.

17. After examining the scene, Brooks received a report via a confidential informant indicating that a prior altercation between Russell and Barber involved Amrine and that there was talk on the day of the incident among unspecified inmates that Amrine was going to stab Barber. Ex. B, p. 20.

18. Brooks reviewed a list of inmates present in the multi-purpose room and determined that Amrine's name was on that list. Ex. B, p. 20.

19. Amrine was searched by Brooks at approximately 3:50 p.m.. Ex. A, ¶¶ 18, 20; Ex. B. He denied any knowledge of the stabbing at that time, although Brooks identified a red spot on the outer right leg of Amrine's pants and three small red spots on his undershirt that he presumed to be blood stains. Ex. A, ¶ 20; Ex. B, p. 20.

20. Amrine's clothing was bagged and placed in the evidence locker. Ex. A, ¶ 21; Ex. B, p. 20.

21. Sheriff Basinger and Deputy Sheriff Hemeyer arrived at approximately 4 p.m. and were present when Amrine was interviewed by Brooks. Ex. B, p. 21.

22. Amrine told Brooks that he and Barber were involved in a verbal dispute approximately two weeks before the stabbing after Amrine learned of reports that Barber told other inmates he had sexually assaulted Amrine. Ex. B, p. 22.

23. Amrine told Brooks that inmate Russell was one inmate who told him about Barber's statements. Amrine indicated that he confronted Barber with Russell's statements in Russell's presence, and when Barber denied those statements Russell and Barber fought. Ex. B, p. 21.

24. Amrine denied stabbing Barber, but admitted to Brooks that he was playing poker in the multi-purpose room when Barber was stabbed. Ex. B, p. 21.

25. Brooks confirmed that Barber and Russell had recently fought but understood both Barber and Russell signed a non-aggression pact prior to being released from cell detention. Ex. B, p. 22.

26. At approximately 5:35 p.m. on October 18, 1985, Brooks, Basinger and Hemeyer interviewed inmate Russell. Ex. B, p. 22.

27. After talking with Russell it was Brooks understanding that Amrine had told Russell that he intended to stab Barber on October 11, 1985 but that Russell's fight with Barber had prevented the stabbing. Ex. B, p. 22; Ex. C, p. 28

28. Russell reported to Brooks that he was given permission to exit the multi-purpose room by CO I Noble before Barber collapsed. He told Brooks he did not reenter the multi-purpose room until after Barber collapsed. Ex. C, p. 28-29.

29. CO I Nobles reported to Brooks on October 18, 1985, that he observed Barber chasing an inmate immediately prior to Barber's collapse. Nobles further reported that the inmate he thought Barber had been chasing was Russell. Ex. E.

30. CO I Bowers reported to Brooks on October 18, 1985, that shortly after Barber collapsed that he observed Russell in an area outside the multi-purpose room. In that same report Bowers noted that a short time later he saw Russell back in the multi-purpose room. Ex. F

31. Russell informed Brooks that after he reentered the multi-purpose room following Barber's collapse that Amrine told Russell he had stabbed Barber. Ex. C, p. 29.

32. Amrine was interviewed by Brooks a second time at approximately 10:30 p.m. on October 18, 1985. During that interview Amrine again denied he had stabbed Barber and maintained he was playing cards with inmates Willis, Jordan, Ball and Crume. Ex. B, p. 23.

33. Brooks asked Amrine to submit to a polygraph examination, but Amrine refused. Ex. A, ¶ 24.

34. On October 19, 1985, inmate Poe contacted corrections officials indicating he had information about the stabbing. Ex. A, ¶ 39.

35. On October 21, 1985, Poe told Brooks he had seen Barber's stabbing, seen Barber chase the inmate who had stabbed him, and tentatively identified the inmate he believed had stabbed Barber. Ex. D, pp. 30, 32, 34.

36. On October 22, 1985, inmate Russell consented to a polygraph test and it was Brooks' understanding that the test results indicated Russell was being truthful with respect to his statement. Ex. B, p. 24.

37. On October 22, 1985, Brooks interviewed inmates Dodson, Willis, Jordan, Crume, Ball and Hines. None admitted to Brooks that he had seen the stabbing. Ex. B, pp. 24-25.

38. Crume reported to Brooks that he saw Barber chasing Amrine from the back of the multi-purpose room. Ex. B, p. 25.

39. Hines reported to Brooks that he saw Barber chasing Amrine from the back of the room. Ex. B, p. 25.

40. Willis reported to Brooks that he observed Barber approaching a group of inmates, including Amrine, and threatened to kill one of the inmates in that group. Ex. B, p. 24.

41. Inmates Dodson and Jordan reported to Brooks that Amrine was playing poker with them when Barber collapsed. Ex. B, p. 24.

42. On December 2, 1985, Brooks forwarded to MSP warden Bill Armontrout a memorandum outlining his investigation and concluding that "it appear[ed]" Amrine

stabbed Barber based on Amrine's apparent belief that Barber had made statements about sexually assaulting him. Ex. B, p. 25.

43. On January 24, 1986, Brooks interviewed inmate Randy Jordan. At that time it was Brooks understood that Jordan had seen Amrine stab Barber. Ex. G, p. 41.

44. On April 8, 1986, Brooks interviewed inmate Wayne Garrison. At that time it was Brooks understanding based on Garrison's statements that Garrison had seen Amrine stab Barber, and then Barber chase Amrine briefly before Barber collapsed. Ex. H.

45. On April 9, 1986, Brooks interviewed inmate Henry Belk. At that time it was Brooks understanding based on Belk's statements that Belk has seen Barber behind Amrine holding a knife saying he was going to kill Amrine. Belk indicated that after Barber collapsed Amrine returned to a table of inmates playing poker and sat down. Ex. J, p. 56.

46. On April 17, 1986, inmate Randy Ferguson provided a statement in the presence of Brooks. In that statement Ferguson stated that prior to October 18, 1985, he had heard Amrine tell another inmate he planned to kill Barber, that he had heard Amrine planning to kill Barber, and that he had seen Amrine stab Barber. Ex. I, pp. 51, 52, 54.

47. Amrine's trial for Barber's murder began on April 28, 1986, and concluded with his conviction on. Ex. A, *passim*.

**SUGGESTIONS SUPPORTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

In 1985, inmate Gary Barber was murdered by another inmate at the Missouri State Penitentiary. Joe Amrine was charged, tried and convicted in 1986 for Barber's murder. Amrine contends he was denied his right to a fair trial and, as a result, was wrongfully convicted and imprisoned. Amrine apparently endured what all criminal justice safeguards hope to prevent: wrongful conviction and imprisonment. But the law does not allow Amrine to pin liability for his imprisonment on Brooks' estate on allegations the investigation Brooks was involved with more than 20 years ago could have been done better. Amrine must show that Brooks' conduct was intentional or reckless, and that he knew Amrine was innocent and that he acted in bad faith.

Summary Judgment Standard

This Court is all too familiar with the standard for granting summary judgment. Thus, defendant Schmutzler will not restate those standards here needlessly. She will, however, reiterate a few key points. First, a principal purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

Second, that summary judgment must be granted where there is no genuine issue of material fact and the record demonstrates that Schmutzler is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex*, 477 U.S. at 322; *Board of Educ. v. Pico*, 102 S.Ct. 2799, 2806 (1982). Where a factual record taken as a whole could not lead a

rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.

Matsushita Elec. Indus. Co. v. Zenth Radio Corp., 475 U.S. 574, 587 (1986).

Third, when the nonmoving party has the burden of proof at trial, as Amrine does here, Schmutzler need only point out “that there is an absence of evidence to support the nonmoving party’s case. *Celotex*, 477 U.S. at 322; see also *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir.2000)(holding that the *Celotex* “showing” can be made by “pointing out through argument the absence of evidence to support plaintiff’s claim”)

Finally, in its review, this Court views the facts in the light most favorable to Amrine and grants him the benefit of all reasonable inferences to be drawn from the evidence. *Adickes v. S.H. Kress & Co.*, 90 S.Ct. 1598, 1608 (1970). Evidence of a disputed factual issue which is merely colorable or not significantly probative will not prevent entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2511 (1986). Amrine must substantiate his allegations with more than speculation and conjecture to survive summary judgment. *Marquez v. Bridgestone/Firestone, Inc.*, 353 F.3d 1037, 1038 (8th Cir. 2004).

ARGUMENT

Introduction.

Amrine contends that Brooks’ investigation of the Barber murder and his conduct in the weeks leading up to trial violated his constitutionally protected procedural due

process rights (Count I), reflects a conspiracy between he and other defendants to deprive him of those rights (Count II) and, further, that Brooks maliciously prosecuted him for Barber's murder (Count III).

As to Count I, Amrine accuses Brooks of inadequately investigating Barber's murder by failing to personally interview each of the approximately 50 inmates present in the multi-purpose room where Barber was stabbed, not conducting an adequate follow-up investigation regarding facts asserted by a handful of inmates who said Amrine had not stabbed Barber, that Brooks failed to properly preserve blood evidence, that Brooks suppressed exculpatory evidence and actively participated in efforts to introduce false testimony against Amrine at trial. The remaining two counts lack any additional factual support and are, in sum, derivative claims purportedly supported by the allegations underlying Count I.

Collateral Estoppel.

At the threshold, Amrine is collaterally estopped from relitigating certain factual allegations here because he had a full and fair opportunity to litigate those allegations at trial proceeding and/or did litigate those matters in efforts to obtain post-conviction relief. *Allen v. McCurry*, 449 U.S. 90, 96 (1980)(emphasis added). Collateral estoppel principles are applicable in § 1983 litigation. *Migra v. Warren City School Dist. Bd. of Education*, 465 U.S. 75, 83-86 (1984). A party receives a full and fair opportunity to litigate his claim, so long as "the minimum procedural requirements of the Fourteenth

Amendment's Due Process Clause" have been satisfied. *Guenther v. Holmgreen*, 738 F.2d 879, 885 (7th Cir. 1984); see also *Willard v. Pearson*, 823 F.2d 1141, 1149 (7th Cir. 1987)(holding that state criminal court afforded full and fair opportunity to litigate Fourth Amendment claims).

In Missouri, a party is collaterally estopped from relitigating an issue decided in a prior suit when: 1) the issue decided in the prior adjudication is identical to the issue in the present action; 2) the prior adjudication resulted in a judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and 4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit. *Stine v. Warford*, 18 S.W.3d 601, 606 (Mo.App. 2000)(emphasis added).

Amrine contends here, in part, that Brooks' investigation was inadequate because he did not personally interview each inmate in the multi-purpose room at the time Barber was stabbed and then allegedly did not conduct an adequate follow-up investigation regarding factual details arising out of statements by a handful of inmates who claimed Amrine did not stab Barber. But Amrine's lawyer cross-examined Brooks during his April 29, 1986, trial testimony and opted not to address any of those issues. See Ex. K. The opportunity to cross-examine on those issues, even though Amrine's lawyer opted not to, reflects the fact that he was afforded a full and fair opportunity to litigate each of

those issues. See *Alexander v. City of South Bend*, 320 F.Supp.2d 761, 774-75 (N.D.Ind. 2004).

Moreover, Amrine's alibi witnesses testified for the defense and, thus, Amrine's lawyer had ample opportunity to explore any pertinent details that he believed had not been adequately considered during Brooks' investigation. Amrine's attorney was aware of other inmates who reportedly claimed Amrine did not stab Barber. Amrine's decision not to call any of those inmates does not change the fact that Amrine had the opportunity to explore their testimony at trial.

Amrine further alleges in this suit that Brooks did not properly preserve blood evidence on Amrine's clothing for testing that would likely have yielded data exonerating Amrine. See Ex. A. But again, Amrine's lawyer questioned Brooks about the manner in which that evidence was collected and handled during Brooks' trial testimony. See Ex. K. Amrine's lawyer did not question Brooks or any other witness about the allegation he makes here. Again, it is clear Amrine had a full and fair opportunity to address issues associated with proper preservation of blood evidence at trial but chose not to.

Finally, Amrine contends that Brooks violated his Fourteenth Amendment procedural due process rights in that he "solicited, fabricated and coached" inmates Poe, Russell, and Ferguson to give false testimony. See Ex. A. It is counsel's understanding that it is those actions that form the basis for Amrine's associated accusation that Brooks suppressed otherwise unidentified exculpatory evidence. Each of those three inmates

testified for the prosecution and Amrine's lawyer had full opportunity to cross-examine each man regarding the purported motives for their testimony, including their interactions with Brooks, but inexplicably Amrine's counsel chose not to explore the issues. See Ex. L, M and N.

Moreover, during Amrine's plea for post-conviction relief, and later habeas actions, both Russell and Ferguson testified and recanted their trial testimony claiming they had not seen Amrine stab Barber and that they had been pressured by state investigators into giving false testimony. The courts assessing those claims determined that the recantations were not credible and denied relief. See Ex. O. The decision denying post-conviction relief was affirmed by the Missouri Supreme Court. See *Amrine v. Bowersox*, 238 F.3d 1023, 1027 (8th Cir. 2001). Poe's recantation, along with Russell and Ferguson's recantations, were similarly evaluated in later federal actions. As before, the recantations were deemed not credible by those courts. *Id.* at 1028; *Amrine v. Bowersox*, 128 F.3d 1222, 1223 (8th Cir. 1997); see also Ex. O.

Amrine brings these same allegations to the table here, the difference being this time he is seeking money damages instead of his freedom. But that difference is inconsequential. The material point is that the allegations that Brooks acted to cause Russell, Ferguson and/or Poe to testify falsely either have been or could have been adjudicated before. Therefore, Amrine is collaterally estopped from bringing those

claims again. Thus, for the reasons stated the Brooks' estate is entitled to summary judgment on Amrine's procedural due process claims.

Violation of Procedural Due Process (Count I).

In Count I, Amrine asserts via 42 U.S.C. § 1983, that Brooks violated his 14th Amendment procedural due process right³ to a fair trial by not conducting an adequate investigation, failing to properly preserve blood evidence, and coercing, coaching and fabricating false testimony by inmate witnesses Russell, Ferguson and Poe. Ex. A, p. 11, ¶57. As to that last of those allegations, Amrine attacks with circular reasoning, apparently contending that Brooks willfully suppressed exculpatory evidence by not stepping forward and admitting Amrine's assertion that he coerced, coached and fabricated false testimony. *Id.*

In addition to claiming Brooks violated his 14th Amendment procedural due process rights, Amrine claims that Brooks violated his procedural due process rights under 5th Amendment and Art. 1, § 10 of the Missouri Constitution, too. But both of those claims should be ignored. The 5th Amendment applies to the federal government, and reliance on it is redundant when the 14th Amendment is cited. *Scott v. Clay County, Tenn.*, 205 F.3d 867, 873 n. 8 (6th Cir. 2000). Moreover, § 1983 actions require violation

³ Amrine has not plead a substantive due process claim.

of a federal rights, not those arising from Missouri's constitution. See *Ebmeier v. Stump*, 70 F.3d 1012, 1013 (8th Cir. 1995).

The due process clause of the Fourteenth Amendment says, in relevant part, that no state shall "deprive any person of...liberty...without due process of law." U.S. Const., Amend XIV, §1. To establish a due process violation, Amrine must first show that Brooks infringed on a cognizable liberty interest. *Swipies v. Kofka*, 419 F.3d 709, 714 (8th Cir. 2005). Amrine must also show that Brooks deprived him of that liberty interest without first affording him sufficient process. *Id.* at 715. Due process ensures every person subject to a deprivation "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The circumstances of the deprivation dictate what procedures are necessary to satisfy the guarantee. *Id.* at 333-34.

First of all, Amrine's various negligent-investigation theories do not implicate a cognizable liberty interest. *Baker v. McCollan*, 443 U.S. 137, 145 (1979); *Wilson v. Lawrence County, MO*, 260 F.3d 946, 955 (8th Cir. 2001). By contrast, reckless or intentional failures to investigate under at least some circumstances can offend due process rights. *Wilson*, 260 F.3d at 955 (reckless or intentional failure to investigate other leads violates due process); see also *Villasana v. Wilhoit*, 368 F.3d 976, 980 (8th Cir. 2004)(damages under § 1983 for intentional non-disclosure of materially favorable evidence by law enforcement resulting in denial of fair trial); *Whitley v. Seibel*, 613 F.2d

682, 686 (7th Cir. 1980)(deliberately ignoring exonerating information indicating wrong person arrested).

But assuming, for example, that Amrine contends that Brooks recklessly or intentionally failed to investigate other leads (an allegation not made in his complaint), evidence indicating Brooks acted recklessly or intentionally with a purpose of depriving Amrine of a fair trial is required. *Villasana*, 368 F.3d. at 980. And the record is simply devoid of any credible direct evidence that depriving Amrine of a fair trial was Brooks' intent at any time; nor is there any circumstantial evidence permitting a reasonable inference that Brooks ignored other investigative leads with similar intent.

The evidence does reflect that Brooks investigated Barber's stabbing and received conflicting information from corrections officers and inmates. See Ex. B. He reviewed all of that information and made various determinations based on the totality of the evidence and then reached a preliminary conclusion that Amrine had stabbed Barber, because it appeared Amrine believed Barber had been telling other inmates he had sexually assaulted Amrine. *Id.*

Amrine also alleges Brooks wilfully failed to disclose exculpatory evidence as required under *Brady v. Maryland*, 373 U.S. 83 (1963). But even assuming, *arguendo*, that Brooks had such information, he was under no constitutional duty to disclose it to Amrine, law enforcement officials or the prosecuting attorney. Brooks was employed by DOC as an agency investigator and working adjunct with Cole County law enforcement

and prosecution officials. He was neither reported to or was supervised by law enforcement or prosecution officials. The *Brady* rule Amrine relies upon in support of his due process claim imposes a duty on prosecutors to share exculpatory evidence. Thus, Brooks had no constitutional duty under *Brady*. *Villasana*, 368 F.3d 980; see also *Mowbray v. Cameron County, Tx.*, 274 F.3d 269, 278 (5th Cir. 2001).

Even if there is a material dispute of fact as to whether Brooks deprived Amrine of a constitutionally-recognized liberty interest, he must still establish what process Brooks' denied him. *Swipies*, 419 F.3d at 714. And there is no evidence whatsoever that Brooks deprived Amrine of any procedural opportunities to challenge any of the matters he alleges in this case. Amrine ignores that he received every measure of procedural due process that the criminal justice system affords. Merely because prior attempts to overturn his conviction making similar arguments (e.g., the recantations), failed does not evidence that Amrine was denied procedural due process. And even if there were evidence that he had been denied some measure of procedural due process, there is no evidence that Brooks – a DOC investigative official – ever suggested, attempted to or caused any such deprivation.

Amrine was represented by counsel and apprized of the charge, and was properly notified of all relevant evidence and witnesses. Through his attorney he had the opportunity to conduct whatever discovery he deemed appropriate. At trial his attorney cross-examined the prosecution's witnesses and Amrine had the opportunity to present

witnesses on his own behalf. Following his conviction Amrine sought post-conviction relief at both in both state and federal courts, making virtually all the same arguments in those proceedings that he now advances in support of this claim for damages. In sum, there is no evidence Amrine was denied any measure of procedural due process and, thus, the claim he has presented must fail.

No Evidence of Conspiracy under 42 U.S.C. § 1983.

To prove a § 1983 conspiracy claim against Brooks there must be evidence that he conspired with others to deprive Amrine of a constitutional right, that at least one of the alleged coconspirators engaged in an overt act in furtherance of the conspiracy, and that the overt act injured Amrine. *Askew v. Millerd*, 191 F.3d 953 (8th Cir. 1999). Amrine must also advance sufficient evidence showing, in fact, that he was deprived of a constitutional right. *Id.*

Brooks should be granted summary judgment on Amrine's conspiracy claim because the only constitutional deprivation claimed – violation of his procedural due process rights – cannot succeed for the reasons discussed, *supra*.

Further, while Amrine asserts that Brooks joined with other defendants in a conspiracy to pin the Barber murder on him. To advance beyond summary judgment Amrine must “allege with particularity and specifically demonstrate material facts that Brooks and the other defendants reached an agreement.” *Marti v. City of Maplewood*, 57

F.3d 680, 685 (8th Cir. 1995). The record contains no specific material facts, circumstantial or otherwise, that indicate Brooks formed an agreement to violate Amrine's constitutional rights. While Brooks may have worked adjunct with other defendants investigating Barber's murder, that alone does not establish an unlawful conspiracy. *Myers v. Morris*, 810 F.2d 1437, 1445 (8th Cir. 1987).

Thus, Schmutzler is entitled to summary judgment on Amrine's claim of conspiracy.

Qualified Immunity.

Brooks is entitled to qualified immunity on all of Amrine's claims brought under § 1983. Qualified immunity protects a government official from suit in his performance of a discretionary function, unless his conduct violated a clearly established constitutional or statutory right of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The immunity "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Cross v. City of Des Moines*, 965 F.2d 629, 631 (8th Cir. 1992)(citing *Hunter v. Bryant*, 112 S.Ct. 534, 547 (1991)).

"The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that this conduct was unlawful in the situation to be confronted." *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

"For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

Hope v. Pelzer, 536 U.S. 730, 739 (2002). Thus, the relevant inquiry is whether the state of the law at the time of Brooks' conduct gave him "fair warning" that his actions were unconstitutional. *Id.*

Qualified immunity is analyzed in a two-step process. See *Washington v. Normandy Fire Protection Dist.*, 272 F.3d 522 (8th Cir. 2001). The first issue is whether Brooks' alleged actions or inactions violated a constitutional right. *Saucier*, 533 U.S. at 201. If so, then the second step is to determine whether the right was clearly established at the time the relevant acts occurred. *Id.* at 202. As to the first step in the process, Schmutzler will not restate the arguments set forth above in connection with Amrine's procedural due process claim. Those arguments are, however, incorporated herein by reference.

Turning attention to the second step of the analysis it is apparent that the basis for Amrine's claims against Brooks were not settled matters of law that put Brooks on notice in 1985 and 1986 that his alleged actions violated Amrine's procedural due process rights. For example, Amrine contends that Brooks violated his due process rights by not personally interviewing each inmate in the multi-purpose room in connection with his investigation. Yet review of applicable Supreme Court, Eighth Circuit and Missouri Supreme Court law does not yield any cases that would have suggested to Brooks that no

interviewing each inmate risked violating Amrine's due process rights. Similarly, there is an absence of applicable law from the relevant period that would have alerted Brooks that his actions with regard to preserving blood evidence risked creating a procedural due process violation.

Amrine contends that Brooks violated a constitutionally recognized duty to disclose exculpatory evidence. Even if such a duty was applicable to Brooks in his role as a DOC investigator, the relevant case law does not suggest that such a duty was clearly established during the relevant timeframe. In *Villasana*, 368 F.3d at 979, the Court made it clear that *Brady's* absolute duty of disclosure is limited to the prosecutor. *See also Gibson v. Superintendent of N.J. Dep't of Law and Pub. Safety Div. of State Police*, 411 F.3d 427, 443-333 (3rd Cir. 2005). It was not clearly established now, nor was it established in 1985 that Brooks had any duty under *Brady*. Furthermore, to the extent Amrine is alleging that Brooks had a duty to disclose exculpatory evidence after his conviction it was not clearly established that Brooks was under any such duty. *See Gibson*, 411 F.3d at 444 (declining to find that police officers had a duty to disclose potentially exculpatory evidence to a convicted criminal after the criminal proceedings ended).

Finally, Amrine alleges that Brooks fabricated, coerced or coached inmates Ferguson, Russell and Poe to testify falsely at his trial. Schmutzler maintains that Brooks' actions were proper and in no way an effort to coerce or induce any inmate to

testify falsely. The pleadings and record leave unclear precisely what Amrine contends Brooks did to support his conclusory allegations. Given the uncertainty, Schmutzler will reserve her response to those allegations until Amrine comes forward with record citations to evidence supporting his conclusions.

Thus, for the reasons noted, *supra*, Schmutzler maintains Brooks is entitled to qualified immunity and that this Court should grant summary judgment to her for that reason.

No Malicious Prosecution.

A claim for malicious prosecution requires: 1) commencement of a prosecution against Amrine; 2) instigation of that prosecution by Brooks; 3) termination of the proceeding in favor of Amrine; 4) lack of probable cause for the prosecution; 5) evidence that Brooks' conduct was actuated by malice, and; 6) that Amrine for harmed as a result of the malicious prosecution. *Cassady v. Dillard Dept. Stores*, 167 F.3d 1215, 1219 (8th Cir. 1999).

Summary judgment is warranted because there is no evidence that Brooks commenced Amrine's prosecution, that probable cause supporting Brooks' belief Amrine had stabbed Barber was missing, or that any action taken or not taken by Brooks was actuated by malice against Amrine.

First, the record contains no evidence indicating Brooks commenced a murder prosecution against Amrine. And even if evidence indicated he agreed with the prosecutor's decision to prosecute Amrine for Barber's killing, there must be additional evidence that Brooks' involvement in the prosecution must have been initiated primarily for a purpose other than that of bringing an offender to justice. *See Sanders v. Daniel Int'l Corp.*, 682 S.W.2d 803, 806 (Mo.banc 1984). There is no evidence indicating that Brooks acted with any purpose but to bring a perceived criminal offender to justice.

Second, Amrine must provide evidence showing Brooks lacked probable cause to believe Amrine had killed Barber. *See Sanders v. Daniel Int'l Corp.*, 682 S.W.2d 803, 807 (Mo. banc 1984). Probable cause is determined upon the objective facts available to Brooks at the time of his relevant actions and exists if the totality of facts based on reasonably trustworthy information would justify a prudent person in believing Amrine had stabbed Barber. *Smithson v. Aldrich*, 235 F.3d 1058, 1062 (8th Cir. 2000).

Review of the facts available to Brooks clearly supports his perception that Amrine had indeed stabbed Barber. Amrine admitted at the outset that he knew Barber had reportedly told other inmates he had sexually assaulted Amrine. Though Amrine denied that information motivated him to stab Barber, his denial that being labeled as the victim of a homosexual prison assault to other inmates did not evoke a desire to revenge himself on Barber is nothing short of incredible. Brooks was also aware that some inmates reported that Barber was chasing Amrine in the moments before Barber's collapse. In

addition, Russell told Brooks that Amrine had been planning to stab Barber in the days before the attack. Moreover, Russell told Brooks Amrine had told him he stabbed Barber after Russell returned to the multi-purpose room after Barber's collapse. And Brooks believed Russell had successfully passed a polygraph examination indicating he was being truthful with regard to the information he had reported. It also worth noting that Brooks offered Amrine an opportunity to buttress his denial that he had stabbed Barber by taking a polygraph examination. Amrine refused. The totality of that information alone certainly frames sufficient probable cause to support Brooks' preliminary conclusion that Amrine had stabbed Barber.

Third, there is no evidence whatsoever suggesting that Brooks took or did not take any action in connection with the Barber murder because of some malicious intent aimed at Amrine. In the absence of any such evidence it is patent that Amrine cannot satisfy his evidentiary burden regarding this element and that his malicious prosecution claim must fail.

Thus, for the reasons, *supra*, Schmutzler asks this Court to grant her summary judgment on Amrine's claim of malicious prosecution.

WHEREFORE, defendant Schmutzler asks that this Court grant her summary judgment for the reasons set forth, *supra*.

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CERTIFICATE OF SERVICE

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