

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 08-22798-CIV-JORDAN

ANTHONY BROWN)
)
 Plaintiff)
)
 vs.)
)
 CITY OF MIAMI, et al.)
)
 Defendants)
)
 _____)

**CLOSED
CIVIL
CASE**

ORDER ADOPTING R&Rs AND DISMISSING COMPLAINT AS TIME-BARRED

In 1994, a Miami jury convicted Mr. Brown of burglary. The victim of the burglary identified Mr. Brown as the intruder. The evidence at trial also showed that a latent fingerprint found at the victim's apartment matched the standard ink fingerprints of Mr. Brown. Mr. Brown was later sentenced to 20 years in prison. Mr. Brown has since been attempting to demonstrate his innocence.

Mr. Brown alleges in this action under 42 U.S.C. § 1983 that he was denied his right to due process, *see Brady v. Maryland*, 373 U.S. 83 (1963), based on the failure of the defendants to preserve, evaluate, and disclose to him potentially exculpatory evidence regarding the identity of a man known to him as "Spanny." Mr. Brown alleges that he entered the victim's apartment only because "Spanny" invited him in, and because he believed that the apartment belonged to "Spanny." Both Mr. Brown and "Spanny" were arrested within a few blocks of the apartment, but the victim identified Mr. Brown from a police lineup as the burglar, and the police later released "Spanny." According to Mr. Brown, the police released "Spanny" because he was a confidential informant or had some other connection with the authorities. Mr. Brown also contends that the police failed to run a search on another latent fingerprint taken from the apartment which would likely link "Spanny" to the scene of the crime. This fingerprint evidence, says Mr. Brown, would have allowed him to argue at trial that "Spanny" invited him into the apartment.

On preliminary screening, I adopted Magistrate Judge White's report to the extent that it recommended dismissal of Mr. Brown's claim for declaratory relief, but concluded that, under *Bradley v. Pryor*, 305 F.3d 1287 (11th Cir. 2002), Mr. Brown could proceed with his claim for

injunctive relief (i.e., requiring the defendants to provide him with the identity of "Spanny" or run a search on the fingerprint from the apartment). *See* Order [D.E. 9].

Mr. Brown subsequently moved to dismiss his claims against three of the defendants – Marie Claud Nelson, William Clayton, and William Jaeger – and Magistrate Judge White issued a report [D.E. 43] recommending that Mr. Brown's motion be granted. Upon de novo review, I adopt that report and grant Mr. Brown's motion [D.E. 42]. Accordingly, the claims against Ms. Nelson, Mr. Clayton, and Mr. Jaeger are dismissed without prejudice.

The remaining defendants – Assistant State Attorney David Paulus, former Assistant State Attorney Mark Shapiro, and Miami Police Officer Jose Depena – have moved to dismiss the complaint. Magistrate Judge White issued a report [D.E. 45] recommending dismissal based on statute of limitations grounds. Mr. Brown has filed objections to the report [D.E.48], and the defendants have responded to the objections [D.E. 50, 52]. Upon de novo review, and for the reasons which follow, I adopt Magistrate Judge White's report and dismiss the complaint.

As an initial matter, it is undisputed, as Magistrate Judge White explained, that the statute of limitations for Mr. Brown's *Brady* claim is 4 years. *See Owens v. Okure*, 488 U.S. 235, 236 (1989); Fla. Stat. § 95.11(3)(p). A § 1983 claim for damages based on a *Brady* violation generally accrues when the conviction is set aside. *See, e.g., Johnson v. Dossey*, 515 F.3d 778, 782 (7th Cir. 2008) (discussing *Heck v. Humphrey*, 512 U.S. 477 (1994)). But Mr. Brown's remaining *Brady* claim is for injunctive relief, and the accrual rule of cases like *Johnson* does not apply because Mr. Brown's claim does not seek to invalidate his conviction. In a § 1983 case similar to this one, in which the plaintiff alleged in part that the prosecutors had failed to provide him with discovery and had withheld evidence from him, the Eleventh Circuit ruled that "[f]ederal law determines the date on which the statute [of limitations] begins to run, and 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 reasonably prudent regard for his rights.'" *Zalaz v. Pierce*, 2008 WL 4672323, * (11th Cir. 2008) (quoting *Brown v. Ga. Bd. of Pardons and Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003)). I believe Magistrate Judge White correctly concluded that Mr. Brown's *Brady* claim for injunctive relief accrued when he became aware that the defendants had failed to identify

or investigate “Spanny” and had failed to try to match the other latent fingerprint found at the apartment.

A statute of limitations, of course, is an affirmative defense, and a court should not grant a motion to dismiss on statute of limitations grounds unless it is clear from the face of the complaint that the action is untimely. *See La Grasta v. First Union Securities*, 358 F.3d 840, 845 (11th Cir. 2004). Here, however, it is clear from Mr. Brown’s complaint and its attachments (including excerpts of the trial testimony) that the *Brady* claim is time-barred. First, Mr. Brown alleges in his complaint that he had met “Spanny” and was arrested with “Spanny.” on December 22, 1994. By the time of his trial in 1996, Mr. Brown knew that the police had let “Spanny” go without investigating him and without getting any information that could be used to find “Spanny.” Second, as alleged in the complaint, and as corroborated by the excerpt of the trial testimony attached to the complaint, the fingerprint examiner testified at trial that she had only been able to match one of the latent fingerprints taken from the apartment to Mr. Brown, and that the other fingerprint did not match Mr. Brown. The examiner also testified that she had not been given any “elimination prints” – fingerprints belonging to the apartment’s occupants – by the police. Third, according to his own sworn declaration – also attached to the complaint as an exhibit – Mr. Brown started making inquiries in 2001/2002 about any police notes concerning “Spanny,” and also sought to obtain a copy of the report concerning the other latent fingerprint. Thus, Mr. Brown knew as early as 1996, and as late as 2002, that the police had not preserved or given him any information about “Spanny,” that only one latent fingerprint found at the apartment matched his own fingerprints, and that any report concerning the second unmatched fingerprint was possibly relevant.¹

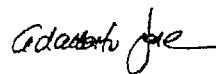
Although Mr. Brown says he only received confirmation in 2005 that the second fingerprint report did not exist, the statute of limitations began to run in 1996 or, at the latest, at the end of 2002. Simply stated, Mr. Brown knew at trial that the police had let “Spanny” go and that the second latent fingerprint belonged to someone else. The fact that the examiner did not prepare a report about the

¹The fact that Mr. Brown’s trial counsel did not file a *Brady* motion during trial does not eliminate Mr. Brown’s actual knowledge of testimony and evidence presented during the trial.

second latent fingerprint does not mean that the statute of limitations began to run in 2005.² Given that Mr. Brown filed this action in 2008, well beyond the 4-year statute of limitations, it is time-barred.

The complaint is dismissed as untimely, and this case is closed. All pending motions, including Mr. Brown's motion for summary judgment [D.E. 47], are denied as moot.

DONE and ORDERED in chambers in Miami, Florida, this 17th day of June, 2009.



Adalberto Jordan
United States District Judge

Copy to: Magistrate Judge White

Counsel of Record

Anthony Brown, Prisoner #196060, Dade Correctional Institution, 19000 S.W. 377th Street, Florida City, FL 33034 (latest address provided by Mr. Brown)

²There is no constitutional requirement that an examiner prepare a written report on a latent print that does not match a defendant. As long as the defense is told about the existence of non-matching prints, *Brady* is satisfied.