

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

TOMMY WILBANKS,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 99-1109
	)	
CITY OF CORINTH, MISSISSIPPI,	)	
FRED JOHNSON, CHARLES M.	)	
SHIPMAN, WILLIAM N. GREGEEN,	)	
LARRY N. FUQUA, and	)	
MICHAEL Y. BECKNER,	)	
	)	
Defendants.	)	

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ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL DISMISSAL  
OR IN THE ALTERNATIVE FOR PARTIAL SUMMARY JUDGMENT<sup>1</sup>

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On May 7, 1999, Plaintiff, Tommy Wilbanks, filed a complaint in this action asserting that Defendants, the City of Corinth, Mississippi and five of its police officers violated his Constitutional rights. On August 18, 1999, due to a pending criminal action against Plaintiff instituted by the State of Mississippi, the court stayed Plaintiff's action until the criminal action is resolved. On October 22, 2001, the court lifted the stay on Plaintiff's case and on November 1, 2001, Defendants filed a motion for partial dismissal or in the alternative for partial summary judgment. Plaintiff has not responded to this motion.

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<sup>1</sup> Since Defendants have attached evidence of Plaintiff's conviction in Mississippi state courts, the court will treat Defendants' motion as a motion for partial summary judgment pursuant to Federal Rule of Civil Procedure 56.

### Facts

On May 11, 1998, Officers of the City of Corinth, Mississippi police department pursued a car being driven by Plaintiff. The pursuit terminated in Tennessee where Plaintiff stopped and attempted to flee on foot. Plaintiff alleges that he was apprehended, beaten, and taken back to Mississippi. Plaintiff alleges that Defendants removed him from Tennessee without notifying any state or local official and thereby failed to comply with extradition procedures.

The State of Mississippi charged Plaintiff with driving under the influence of alcohol, reckless driving, contributing to the delinquency of a minor, violation of the open container law, failure to yield, and driving on a suspended license. Plaintiff filed this action asserting claims of unlawful arrest, excessive force, failure to train and supervise, and illegal extradition. Plaintiff was ultimately found guilty of reckless driving, failure to yield to an emergency vehicle, and driving under the influence. Defendant has moved for dismissal or summary judgment on Plaintiff's unlawful arrest, unlawful prosecution, illegal extradition, and Eighth Amendment claims.

### Summary Judgment Standards

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. To prevail on a motion for summary judgment, the moving party has the burden of showing the "absence of a genuine issue of material fact as to an essential element of the nonmovant's case." Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989). The

moving party may support the motion with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The opposing party may not rest upon the pleadings but, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

"If the defendant . . . moves for summary judgment . . . based on the lack of proof of a material fact, . . . [t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The court's function is not to weigh the evidence, judge credibility, or in any way determine the truth of the matter. Anderson, 477 U.S. at 249. Rather, "[t]he inquiry on a summary judgment motion . . . is . . . `whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Street, 886 F.2d at 1479 (quoting Anderson, 477 U.S. at 251-52). Doubts as to the existence of a genuine issue for trial are resolved against the moving party. Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970).

If a party does not respond to a motion for summary judgment, the Federal Rules of Civil Procedure provide that "summary judgment, if appropriate, shall be entered against him." Fed. R. Civ. P. 56(e). The fact that Plaintiff did not respond does not require granting Defendant's motion. However, if the allegations of the complaint are contravened by

Defendant's affidavits and Defendant is entitled to judgment as a matter of law on those facts, then summary judgment is appropriate. Wilson v. City of Zanesville, 954 F.2d 349, 351 (6th Cir. 1992).

### Analysis

#### 1. Unlawful Arrest

In order for a plaintiff to assert a claim for unlawful arrest or unlawful prosecution, a plaintiff must be able to prove that the underlying criminal prosecution ultimately terminated in his favor. See Heck v. Humphrey, 512 U.S. 477, 484 (1994); Schilling v. White, 58 F.3d 1081, 1087 (6th Cir. 1995).

Defendants have offered unchallenged evidence which establishes that the underlying criminal charges resulted in Plaintiff's conviction. Accordingly, the court finds that there are no genuine issues of material fact concerning Plaintiff's unlawful arrest and unlawful prosecution claims and that Defendants are entitled to judgment as a matter of law. Accordingly, Plaintiff's unlawful arrest and unlawful prosecution claims are dismissed.

#### 2. Unlawful Extradition

In Barton v. Norrod, 106 F.3d 1289 (6th Cir. 1997), the Sixth Circuit dealt with factual circumstances similar to those involved in this case. There, as here, the plaintiff filed a 42 U.S.C. § 1983 claim alleging that defendants failed to follow extradition procedures. In Barton, the defendant police officers pursued the plaintiff from Tennessee into Kentucky, arrested him, and returned to Tennessee. The court found that fugitives lack standing to

assert a violation of the extradition statutes since those statutes are intended to facilitate administration of interstate justice. Id. at 1295.

Given the Sixth Circuit precedent in Barton, the court finds that cannot assert a claim for illegal extradition. Accordingly, Plaintiff's illegal extradition claim is dismissed.

### 3. Plaintiff's Eighth Amendment Claim

Defendants have moved for summary judgment on Plaintiff's Eighth Amendment claim asserting that Plaintiff was at all relevant times a pre-trial detainee not protected by the Eighth Amendment. The Eighth Amendment is designed to protect individuals who have been convicted of a crime from being subjected to cruel and unusual punishment. See Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979); Galas v. McKee, 801 F.2d 200, 205(6th Cir. 1986). Since pre-trial detainees have not been convicted, they are not protected by the Eighth Amendment. Accordingly, a pre-trial detainee cannot maintain an action alleging a violation of his Eighth Amendment rights since those rights do not apply to them. See id. It has been noted that pre-trial detainees must assert their claims of government abuse under the Fourth or Fourteenth Amendments. See Darrah v. City of Oak Park, 255 F.3d 301, 305 (6th Cir. 2001). The court finds that there is no genuine issue of material fact concerning Plaintiff's Eighth Amendment claim and Defendants are entitled to judgment as a matter of law. Accordingly, Plaintiff's Eighth Amendment claim is dismissed.

It should be noted that Plaintiff has also alleged that Defendant's violated his Fourteenth Amendment due process rights by exerting excessive force in arresting him. This

order will not affect Plaintiff's excessive force claim.

Conclusion

Defendants have submitted evidence which entitles them to judgment as a matter of law on Plaintiff's unlawful arrest, unlawful prosecution, illegal extradition, and Eighth Amendment claims. Since Plaintiff has not responded and summary judgment is appropriate, Plaintiff's unlawful arrest, unlawful prosecution, illegal extradition, and Eighth Amendment claims are DISMISSED.

IT IS SO ORDERED.

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JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

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DATE