

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011CA1611

JONATHAN VALLERY

VERSUS

CITY OF BATON ROUGE, MELVIN "KIP" HOLDEN,
MAYOR-PRESIDENT, BATON ROUGE POLICE
DEPARTMENT, CHIEF OF POLICE, JEFFERY LEDUFF,
and OFFICER RUCKER

Judgment Rendered: May 3, 2012.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. C578697

The Honorable William A. Morvant, Judge Presiding

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* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

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Below it, the initials "RKH" and "TMH" are written.

CARTER, C. J.

The plaintiff appeals a judgment sustaining a peremptory exception raising the objection of prescription and dismissing his claims against the moving defendant.

FACTS AND PROCEDURAL HISTORY

Jonathan Vallery filed suit on May 26, 2009, seeking damages arising from an altercation with police in December 2007. Vallery contends that he was detained and arrested by Baton Rouge Police Officer Tumaini Rucker and that Officer Rucker used excessive force by striking Vallery with a police baton, causing Vallery to sustain a broken arm, and also by spraying Vallery with mace, causing injuries to Vallery's face and skin. As Vallery filed suit more than one year after the date of the complained-of incident, the trial court sustained a peremptory exception raising the objection of prescription and dismissed Vallery's claims against Officer Rucker.¹ Vallery now appeals, contending that Officer Rucker's actions constituted a crime of violence; therefore, the claims for damages are subject to the two-year prescriptive period of Louisiana Civil Code article 3493.10.

DISCUSSION

Liberative prescription is a mode of barring actions as a result of inaction for a period of time. La. Civ. Code Ann. art. 3447. The burden of proving that an action has prescribed rests with the party pleading prescription, unless the plaintiff's petition is prescribed on its face, in which case the plaintiff bears the burden of proving an interruption or suspension of the prescriptive period. *Roba, Inc. v. Courtney*, 09-0508 (La. App. 1 Cir.

¹ Vallery's claims against the other defendants remain outstanding. Appeal of this final judgment is appropriate pursuant to Louisiana Code of Civil Procedure article 1915A.

8/10/10), 47 So. 3d 500, 506. The introduction of evidence to support or controvert the peremptory exception raising the objection of prescription is permitted when the grounds do not appear on the face of the petition. *Pal v. Stranco, Inc.*, 10-1507 (La. App. 1 Cir. 8/3/11), 76 So. 3d 477, 485, writ denied, 11-1834 (La. 11/4/11), 75 So. 3d 925. If evidence is not introduced, the objection of prescription must be decided on the facts alleged in the petition, with all allegations accepted as true. *Id.*

Louisiana Civil Code article 3492 provides a one-year prescriptive period applicable to tort actions. Vallery's petition was filed more than one year after the altercation with Officer Rucker. Vallery contends, however, that he has alleged sufficient facts to bring his cause of action under the purview of Louisiana Civil Code article 3493.10, which provides:

Delictual actions which arise due to damages sustained as a result of an act defined as a crime of violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950 are subject to a liberative prescription of two years. This prescription commences to run from the day injury or damage is sustained.

For Article 3493.10 to apply, the petition must sufficiently allege an act defined as a *crime* of violence. After review of the facts, we conclude that it does not.

Louisiana Revised Statutes 14:2B defines a crime of violence as:

an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon.

Under the facts alleged in Vallery's petition, Officer Rucker's acts were undertaken in the context of a police arrest. Louisiana Code of

Criminal Procedure article 220 provides that a person must submit peaceably to a lawful arrest and that the person making the arrest “may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained.”

It is well-settled that under Louisiana law, excessive force may transform ordinarily protected use of force into an actionable battery, rendering the officer and his employer liable for damages. *See Penn v. St. Tammany Parish Sheriff's Office*, 02-0893 (La. App. 1 Cir. 4/2/03), 843 So. 2d 1157, 1161. However, those damages sound in tort, and it does not necessarily follow that the alleged use of excessive force equates to the commission of a crime of violence so as to invoke the two-year prescriptive period of Article 3493.10.

In this case, Vallery alleged that the altercation began when Officer Rucker exited his police unit and demanded that Vallery place his hands on its hood. Vallery questioned Officer Rucker, and Officer Rucker used his police baton to strike Vallery's arm, which Vallery alleges was raised to shield himself. Additionally, Officer Rucker sprayed Vallery with mace. Vallery was then handcuffed, transported to the police station, and ultimately charged with resisting a police officer and simple assault.

We find that the allegations of Vallery's petition fail to invoke the two-year prescriptive period of Article 3493.10. Rather, the general one-year prescriptive period of Article 3492 applies to Vallery's state law claims. To the extent that Vallery's petition states a cause of action for a civil rights violation under 42 U.S.C. § 1983, the one-year prescriptive period of Article 3492 is also applicable. *See Owens v. Okure*, 488 U.S. 235 (1989) (setting forth that actions brought pursuant to § 1983 are subject to the state's

general prescriptive period for personal injury actions, as opposed to any prescriptive period specific to intentional torts). As such, the trial court correctly sustained the peremptory exception raising the objection of prescription and dismissed Vallery's claims against Officer Rucker.²

CONCLUSION

For the reasons set forth, the judgment of the trial court is affirmed.

Costs of this appeal are assessed to Jonathan Vallery.

MOTION TO SUPPLEMENT DENIED; JUDGMENT AFFIRMED.

² Officer Rucker filed a motion seeking to supplement the appellate record with documents from the district court record in an effort to resolve an apparent discrepancy as to whether the altercation with Vallery occurred on December 30 or December 31, 2007. However, we find this to be unnecessary, as the petition filed on May 26, 2009, was clearly outside the applicable one-year prescriptive period of Article 3492. Accordingly, the motion to supplement is denied as moot.