

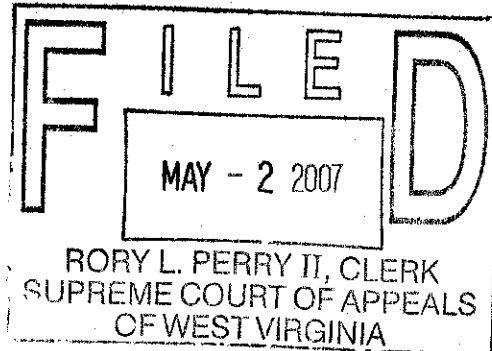
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
No. 33132

**CHARLES E. CANTERBURY,**

Petitioner,

v.

**WILLIAM R. LAIRD, IV**, in his individual and official capacity as Sheriff of Fayette County, **J.E. SIZEMORE**, in his individual and official capacity as a Fayette County Sheriff's Office detective; **S.W. KESSLER**, in his individual and official capacity as a Fayette County Sheriff's Office detective; **J.W. WRISTON**, in his individual and official capacity as a Fayette County Sheriff's Office detective; **DENNIS SPANGLER**, in his official capacity as Chief of Police of the Ansted Police Department; **W.K. WILLIS**, in his individual and official capacity as an Ansted Police Department lieutenant; **PAUL BLAKE**, in his individual and official capacity as prosecuting attorney of Fayette County; **GLEN A. CHAPMAN**, in his individual and official capacity as a Mount Hope Police Department detective; **LES FOSTER**, in his individual and official capacity as Chief of Police of Mount Hope Police Department; **CITY OF ANSTED**, a municipal corporation; **THE COUNTY COURT OF FAYETTE COUNTY**, a political subdivision, **CITY OF MOUNT HOPE**, a municipal corporation.



**Appellees.**

**APPELLEES' SUPPLEMENTAL BRIEF**

**I. INTRODUCTION**

In his Brief, the Appellant contends that “[i]t is instructive to read Federal Circuit Judge [Richard] Posner’s dissent in *Wallace v. City of Chicago*, 440 F.3d 421 (2006). Appellant’s Br. at 7. However, on February 21, 2007, the United States Supreme Court

affirmed the majority opinion in *Wallace*, see 127 S. Ct. 1091 (2007), and rejected Judge Posner's reasoning in applying *Heck v. Humphrey*, 512 U.S. 477 (1994) as "bizarre." *Wallace*, 127 S. Ct. at 1098. Because the Appellant places so much stock in Judge Posner's now discredited opinion, Appellant's Br. at 7-11, it behooves the Court to have an in depth analysis of the United State's Supreme Court's approach to this issue.

## II. *WALLACE v. KATO*, 127 S. Ct. 1091 (2007)

In *Wallace v. Kato*, 127 S. Ct. 1091 (2007), Wallace was arrested and convicted based upon a confession that was later ruled inadmissible on appeal. After the reversal of his conviction, the state dropped its charges against Wallace. Wallace then sued for false arrest. The Seventh Circuit Court of Appeal upheld the district court's grant of summary judgment against Wallace by a 2-1 vote. Judge Richard Posner dissented.

The Supreme Court affirmed and rejected Wallace's effort to bring a false arrest claim after the charges were dropped. The Supreme Court found that a cause of action for false arrest (and, not applicable in this case, the imprisonment incident to that arrest) accrues as soon as the allegedly wrongful arrest occurs and that the limitation period begins to run when that false imprisonment comes to an end, that is, when the victim becomes held pursuant to legal process—"when, for example, he is bound over by a magistrate or arraigned on charges." The Supreme Court explicitly rejected the argument that the cause of action did not accrue until the State dropped its charges against Wallace.

## III. ARGUMENT

- A. **Wallace reaffirms the common law rule that a statute of limitations begins to run when an injury is inflicted and that the effect of a statute of limitations cannot be placed in a plaintiff's hands.**

The Supreme Court in *Wallace* recognized that under “common law principles . . . it is ‘the standard rule that [accrual occurs] when the plaintiff has a “complete and present cause of action[,] that is when ‘the plaintiff can file suit and obtain relief.’”” 127 S. Ct. at 1095 (citations omitted). Contrary to the argument raised by the Appellant in this case that the underlying case be resolved before a false arrest claim would accrue, the Court observed that Wallace “was injured and suffered damages at the moment of his arrest[,]” *id.* at 1096 n.3, and recognized that “[t]here can be no dispute that petitioner could have filed suit as soon as the allegedly wrongful arrest occurred . . . so that the statute of limitations would normally commence to run from that date.” *Id.*<sup>1</sup>

The Court also rejected the argument that Appellant raises here that “the reasonable damages cannot be known until the underlying case is resolved.” Appellant’s Br. at 7. The Court said, “[u]nder 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.” *Wallace*, 127 S. Ct. at 1097.<sup>2</sup> The Court observed that this would “plac[e] the supposed statute of repose in the sole hands of the party seeking relief.” *Id. Cf. id.* at 1099 (footnote omitted) (“Defendants need to be on notice to preserve beyond the normal limitations period evidence that will be needed for their defense; and a statute that

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<sup>1</sup>The Court observed that in a false *imprisonment* case, as opposed to simply a false *arrest* case, the statute is triggered once the victim becomes held pursuant to legal process. *Wallace*, 127 S. Ct. at 1096. In this case, though, the Appellant was never incarcerated as a result of the allegedly false arrest.

<sup>2</sup>This accords with West Virginia state law. *See, e.g.*, Syl. Pt. 3, *Jones v. Trustees of Bethany College*, 177 W. Va. 168, 351 S.E.2d 183 (1986); *Thomas v. Gray Lumber Co.*, 199 W. Va. 556, 563, 486 S.E.2d 142, 149 (1997) (per curiam).

becomes retroactively extended, by the action of the plaintiff in crafting a conviction-impugning cause of action, is hardly a statute of repose.”).

The Supreme Court’s decision in *Wallace* reiterating the common law rule is fatal to the Appellant’s case. As such, this Court should affirm the circuit court.

**B. *Wallace* found that the accrual of a cause of action for false arrest is not impacted by the pendency of criminal charges.**

Like the Appellant, Wallace argued “that *Heck v. Humphrey*, . . . compels the conclusion that his suit could not accrue until the State dropped its charges against him.” *Wallace*, 127 S. Ct. at 1097. The Court in *Wallace* summarized *Heck*: “In *Heck*, a state prisoner filed suit under § 1983 raising claims which, if true, would have established the invalidity of his outstanding conviction. We analogized his suit to one for malicious prosecution, an element of which is the favorable termination of criminal proceedings[.]” *Wallace*, 127 S. Ct. at 1097.

The Supreme Court then explained why the *Heck* rule did not apply, “the *Heck* rule for deferred accrual is called into play only when there exists ‘a conviction or sentence that has *not* been . . . invalidated,’ that is to say, an ‘outstanding criminal judgment.” *Id.* at 1097-98 (citations omitted). The Court continued that *Heck*, “delays what would otherwise be the accrual date of a tort action until the setting aside of *an extant conviction* which success in that tort action would impugn.” *Id.* at 1098. The Court then explained that Wallace sought “the adoption of a principle that goes well beyond *Heck*: that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside.” *Id.* “The impracticality of such a rule should be obvious. In an action for false arrest it would require the plaintiff (and if he brings suit promptly, the

court) to speculate about whether prosecution will be brought, whether it will result in conviction, and whether the pending civil action will impugn that verdict,—all this at a time when it can hardly be known what evidence the prosecution has in its possession.” *Id.* The Court followed this reasoning further, “what if the plaintiff (or the court) guesses wrong, and the anticipated future conviction never occurs, because of acquittal or dismissal? Does that event (instead of the *Heck*-required setting aside of the extant conviction) trigger accrual of the cause of action? Or what if prosecution never occurs—what will the trigger be then?” *Id.* In light of this, the Court minced no words in calling this requested extension of *Heck*, “bizarre.” *Id.*

The Supreme Court’s decision in *Wallace* refusing to extend *Heck* to reach a “bizarre” result is terminal to the Appellant’s case. As such, this Court should affirm the circuit court.

**C. There is no fundamental unfairness in a cause of action for false arrest accruing before termination of the criminal proceedings.**

The Appellant claims that “[a]lthough there is no West Virginia case on point, it seems unfair, unreasonable and a denial of due process of require [sic] that a tort claim for false arrest should always be brought while the underlying criminal case is still pending.” Appellant’s Br. at 11. The Supreme Court in *Wallace* rejected just such an argument— that a plaintiff “would have had to divide his attention between criminal and civil cases.” *Wallace*, 127 S. Ct. at 1100 (citation omitted). The Court elucidated, “when has it been the law that a criminal defendant, or a potential criminal defendant, is absolved from all other responsibilities that the law would otherwise place upon him?” *Id.* The answer, of course, is never. And, any “unfairness” to the plaintiff can be mitigated by the plaintiff filing the

wrongful arrest complaint timely and then seeking a stay of the civil case pending resolution of the criminal case. *See Wallace*, 127 S. Ct. at 1098.

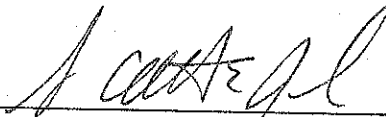
There is no fundamental unfairness in requiring a plaintiff to timely assert claims against a defendant. The circuit court should be affirmed.

#### IV. CONCLUSION

As the *Wallace* opinion makes evident, the path that the Appellant charts for this Court eviscerate the strong interest governments have in the timely filing of suits to alert them to potential claims and is contrary to the federal civil rights law, the common law, and common sense. For these reasons, the circuit court should be affirmed.

**THE COUNTY COMMISSION OF FAYETTE  
COUNTY, WILLIAM R. LAIRD, IV, J.E.  
SIZEMORE, S.W. KESSLER, AND PAUL BLAKE**

By Counsel



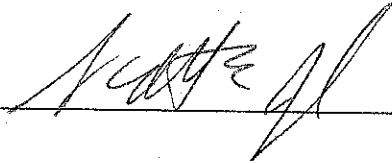
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CERTIFICATE OF SERVICE

I, Scott E. Johnson, hereby certify that on the 2<sup>nd</sup> day of May, 2007, I caused to be served the foregoing *Appellees' Motion to File Supplemental Brief* and *Appellees' Supplemental Brief* upon counsel of record, by depositing a true copy thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

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