The issue the Supreme Court will decide in *McDonough v. Smith* is whether the statute of limitations for a due process fabrication of evidence claim begins to run when the criminal proceedings terminate in the defendant's favor, or when the defendant becomes aware of the tainted evidence and its improper use.

Edward McDonough, former Democratic Commissioner of Rensselaer County Board of Elections, approved forged absentee ballot applications which he claims he didn't know had been falsified. Youel Smith investigated and prosecuted McDonough. McDonough claims Smith “engaged in an elaborate scheme to frame McDonough for the crimes by, among other things, fabricating evidence.” After two trials, McDonough was ultimately acquitted.

Just before three years passed since McDonough was acquitted he sued Smith under Section 1983 for violating his due process rights by fabricating evidence and using it against him. Section 1983 allows citizens to sue state and local government officials in federal court for constitutional violations.

Section 1983 claims have a three-year statute of limitations. Smith claims that McDonough’s claim is time barred because he failed to file his lawsuit within three years of finding out that Smith used fabricated evidence against him.

The Second Circuit held that McDonough’s due process claim was time barred because the three-year statute of limitations started running when the fabricated evidence had been disclosed to him (as late as the end of his first trial), not on the day of his acquittal. McDonough argued his claim was most analogous to a malicious prosecution claim, which does not accrue until a favorable termination of the prosecution. But according to the Second Circuit: “Because the injury for this constitutional violation occurs at the time the evidence is used against the defendant to deprive him of his liberty, whether it be at the time he is arrested, faces trial, or is convicted, it is when he becomes aware of that tainted evidence and its improper use that the harm is complete and the cause of action accrues. Indeed, the harm—and the due process violation—is in the use of the fabricated evidence to cause a liberty deprivation, not in the eventual resolution of the criminal proceeding.”

Fabrication of evidence claims generally will be brought against prosecutors or state or local police officers. While the prosecutors or police officers are personally liable for money damages, their state and local government employers generally pay the damages. As a practical matter, the Second Circuit rule shortens the amount of time persons have to bring due process fabrication of evidence claims—which will make these claims easier for state and local governments to defend.

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