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

TERRELL TOOTEN,

Plaintiff,

v.

Case No. 2:21-cv-1094-MSN-tmp
JURY DEMAND

CITY OF COVINGTON, COVINGTON POLICE DEPARTMENT,

Defendant.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS
AND
DISMISSING PLAINTIFF'S REMAINING CLAIM FOR LACK OF STANDING

Before the Court is Defendants' Motion to Dismiss ("Motion") filed February 25, 2022. (ECF No. 41.) Plaintiff responded in opposition on March 10, 2022 ("Response"). (ECF No. 45.) Defendant filed a reply in support on March 24, 2022. (ECF No. 46.) The matter is ripe for adjudication, and the Court finds a hearing is not necessary. For the reasons set forth below, Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART**, and Plaintiff's remaining claim is **DISMISSED** for lack of standing.

BACKGROUND

This case arises out of a misdemeanor traffic citation, or what is commonly referred to as a "traffic ticket." Specifically, a ticket for the unlawful use of a wireless telecommunication device in violation of Tennessee Code Annotated § 55-8-199, which an officer with the Covington Police Department issued to Plaintiff on April 20, 2021. (ECF No. 40 at PageID 130–31.) Plaintiff was

given a court date of May 26, 2021 for the ticket. (*Id.* at PageID 132.) Plaintiff appeared in the Covington Municipal Court on that date and told the court he believed he did not violate the statute because the device he was holding was a "speaker," and even if he did violate the statute, he sought to attend driving school to keep the ticket off his driving record. (*Id.* at PageID 132–33.) The court advised Plaintiff that driving school was not available, and Plaintiff ultimately set the matter for trial on June 16, 2021. (*Id.* at PageID 133.)

At trial, the officer who issued the ticket testified as to various matters, including the device Plaintiff was using. (*Id.* at PageID 134.) After hearing the officer's testimony, the court refused to dismiss Plaintiff's ticket. (*Id.*) Plaintiff again requested that he be allowed to attend driving school, but the court denied Plaintiff's request, finding it was within the judge's discretion whether an offender is allowed to complete driving school in lieu of the fine under Tenn. Code Ann. § 55-8-199. (*Id.*)

Plaintiff alleges the Covington Municipal Court judge incorrectly interpreted Tenn. Code Ann. § 55-8-199, and that it is the offender, not the court, who has discretion about attending driving school. (*Id.* at PageID 136.) Further, Plaintiff contends that "Due Process and Equal Protection has [sic] been violated, in that Plaintiff, or anyone else who is charged with a violation of this law, is allowed to utilize the option of Driving School, as required by the statue." (*Id.* at PageID 135.) Plaintiff alleges that even if it is within the court's discretion to allow an offender to attend driving school, the court is still required to consider the "facts and circumstances of the offender, before making that determination." (*Id.*)

Plaintiff claims that when he appeared in the Covington Municipal Court in May and June, there were multiple other individuals in court for traffic tickets for violation of Tenn. Code Ann. § 55-8-199. (*Id.* at PageID 132–34.) Plaintiff alleges these individuals all received fines and were

not given the opportunity to complete driving school. (*Id.*) Plaintiff also says that none of the individuals were instructed their tickets would result in points being "placed on their license," or that a violation of the statute was a "criminal offense and a Class C Misdemeanor." (*Id.* at PageID 132–35.)

Plaintiff also asserts he was "denied Due Process and Fundamental Fairness" because the Covington Municipal Court judge and the Covington City Attorney are "related within the 3rd degree of relationship," and this relationship was not disclosed to Plaintiff. (*Id.* at PageID 138–40.)

Plaintiff appealed his traffic ticket to the Circuit Court of Tipton County, Tennessee, which held a *de novo* trial on the matter on July 16, 2021. (*See* ECF No. 41-1 at PageID 60.) The Circuit Court found Plaintiff guilty of violating Tenn. Code Ann. § 55-8-199, but it allowed Plaintiff to complete a driver education course (*i.e.*, driving school) pursuant to Tenn. Code Ann. § 55-10-301 in lieu of the statutory fine and costs. (*Id.* at PageID 61.) On August 16, 2021, Plaintiff appealed the Circuit Court's judgment to the Tenneessee Court of Appeals. (*See* ECF No. 24-2 at PageID 62.)[1]

In terms of relief, Plaintiff seeks compensatory damages of $100,000, attorneys' fees pursuant to 42 U.S.C. § 1988, as well as a declaration and injunction, which Plaintiff describes as follows:

> 72. Plaintiff is requesting a declaration from this Court that Defendant is in violation of Tennessee Code Annotated Section 55-8-199 in the way that it treats individuals charged with the violation of the statute.

[1] Based on the publicly available docket information, *see* https://www.tncourts.gov/PublicCaseHistory/CaseDetails.aspx?id=82938&Number=True (last visited June 1, 2022), the matter is still pending before the Tennessee Court of Appeals, with Plaintiff (defendant/appellant in the Tennessee Court of Appeals matter) filing his brief on May 21, 2022, and Defendant (plaintiff/appellee in the Tennessee Court of Appeals matter) yet to file its brief.

> 73. Plaintiff is requesting that this Court: enjoin Defendant convicting individuals of this offense without first seeing if they qualify for Driving School; inform individuals charged about their right to Driving School if they are first-time offender[s]; require Defendant to apply the actual facts of the case to the law to determine guilt or innocence; inform individuals charged that they are charged with a criminal offense of a Class C Misdemeanor; and to offer Driving School.

(*Id.* at PageID 138.)

STANDARD OF REVIEW

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides for dismissal for lack of jurisdiction over the subject matter. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction may be premised on a facial or factual attack. *See Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014); *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). A facial attack questions the sufficiency of the pleading without disputing the facts alleged in it. *See Gentek Bldg. Prods., Inc.*, 491 F.3d at 330. A factual attack challenges the factual allegations underlying the assertion of jurisdiction. *See United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). When reviewing a facial attack, a district court takes the allegations of the complaint as true. *Gentek Bldg. Prods., Inc.*, 491 F.3d at 330. A factual attack "controvert[s] the accuracy (rather than the sufficiency) of the jurisdictional facts asserted by the plaintiff and proffer[s] materials . . . in support of that position." *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001).

DISCUSSION

Defendants argue that, pursuant to the *Rooker-Feldman* doctrine, this Court lacks subject matter jurisdiction over Plaintiff's claims in this matter. (*See* ECF Nos. 41; ECF No. 41-1 at PageID 147–49.) This is a facial attack on the Court's jurisdiction. Plaintiff alleges that *Rooker-*

Feldman is inapplicable, but other than disputing that he lost in state court, his exact arguments are not entirely clear.

Federal law empowers only the Supreme Court to review "final judgments or decrees rendered by the highest court of a State." 28 U.S.C. § 1257. The negative implication of § 1257 is that lower federal courts lack jurisdiction to review state court judgments. This is known as the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine represents "the general principle that '[f]ederal district courts do not stand as appellate courts for decisions of state courts' . . . ." *RLR Invs., LLC v. City of Pigeon Forge, Tenn.*, 4 F4th. 380, 387 (6th Cir. 2021) (quoting *Hall v. Callahan*, 727 F.3d 450, 453 (6th Cir. 2013); *see Hood v. Keller*, 341 F.3d 593, 597 (6th Cir. 2003) ("The purpose of the doctrine is to prevent 'a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights'") (citing *Tropf v. Fid. Nat'l Title Ins. Co.*, 289 F.3d 929, 936 (6th Cir. 2002)).

To determine whether a plaintiff seeks review of a state court judgment, in which case a district court would lack jurisdiction, a court must look to the "source of the injury the plaintiff alleges in the federal complaint." *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). "If the source of the plaintiff's injury is the state-court judgment itself, then *Rooker-Feldman* applies." *VanderKodde v. Mary Jane M. Elliott, P.C.*, 951 F.3d 397, 402 (6th Cir. 2020) (citing *McCormick*, 451 F.3d at 393). "If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim." *Lawrence v. Welch*, 531 F.3d 364, 368–69 (6th Cir. 2008) (quoting *McCormick*, 451 F.3d at 394). In other words, where the plaintiff presents "some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party," a court may still exercise jurisdiction. *McCormick*,

451 F.3d at 393 (quoting *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005)). However, an "important exception" is "that 'if a third party's actions are the product of a state court judgment,' then challenging the acts would be to challenge the judgment itself." *Hancock v. Miller*, 852 F. App'x 914, 921 (6th Cir. 2021) (quoting *McCormick*, 451 F.3d at 394). "A court cannot determine the source of the injury 'without reference to [the plaintiff's] request for relief.'" *VanderKodde*, 951 F.3d at 402 (alteration in original) (quoting *Berry v. Schmitt*, 688 F.3d 290, 299 (6th Cir. 2012)).

The Sixth Circuit has previously explained that "[t]he *Rooker–Feldman* doctrine 'does not prohibit federal district courts from exercising jurisdiction where the plaintiff's claim is merely a general [i.e. facial] challenge to the constitutionality of the state law applied in the state action, rather than a challenge to the law's application in a particular state case.'" *Carter v. Burns*, 524 F.3d 796, 798 (6th Cir. 2008) (quoting *Hood v. Keller*, 341 F.3d 593, 597 (6th Cir. 2003)). Where the plaintiff alleges that a state court interpreted and applied a state statute to his case in an unconstitutional manner, however, his complaint is an as-applied constitutional challenge and is prohibited under the *Rooker–Feldman* doctrine. *Durham v. Haslam*, 528 F. App'x 559, 563 (6th Cir. 2013) (citing *Carter*, 524 F.3d at 799).

Rooker-Feldman also "does not bar 'forward-looking, general challenges to state-court practices.'" *Brent v. Wayne Cnty. Dept. of Human Servs.*, 901 F.3d 656, 674 (6th Cir. 2018) (quoting *Shafizadeh v. Bowles*, 476 F. App'x 71, 73 (6th Cir. 2012)). Put differently, "the *Rooker-Feldman* doctrine does not bar a plaintiff from attempting to 'clear away' an allegedly unconstitutional state-law policy going forward . . . ." *Id.* (citing *Evans v. Cordray*, 424 F. App'x 537, 540 (6th Cir. 2011)). For example, in *Hood v. Keller*, the plaintiff was arrested for criminal trespass because he failed to obtain a permit before preaching and handing out religious materials

on the Ohio Statehouse grounds. 341 F.3d at 596. He filed a complaint in federal court challenging the constitutionality of the Ohio administrative code provision that required a permit for use of the Ohio Statehouse grounds. *Id.* at 595. The Sixth Circuit found that the *Rooker-Feldman* doctrine did not bar his complaint because the plaintiff asserted "no demand to set aside the verdict or the state court ruling." *Id.* at 598.

Here, the *Rooker-Feldman* doctrine bars at least some of Plaintiff's claims, because the Covington Municipal Court judgment is the source of Plaintiff's alleged injuries. In its Motion, Defendant states that Plaintiff "asks the Court to declare that the municipal court's judgment is in violation of § 55-8-199; to award him compensatory damages because of the alleged defects in the municipal court's judgment against him; and to issue injunctive relief to address the alleged defects in the municipal court's judgment against him." (ECF No. 41-1 at PageID 146.) And although Plaintiff does not challenge Defendant's characterization of his requested relief, this Court does not interpret Plaintiff's requested relief in the same manner as Defendant. First, to be clear, to the extent Plaintiff is seeking (1) a declaration that the Covington Municipal Court's judgment is in violation of § 55-8-199, (2) compensatory damages because of alleged defects in that judgment against him, or (3) an injunction to address the alleged defects in the municipal court's judgment *against him*, those claims are clearly barred by *Rooker-Feldman*, and to that extent, Defendant's Motion is **GRANTED**. However, Plaintiff appears to seek forward-looking relief in Paragraph 73 of the Amended Complaint:

> 73. Plaintiff is requesting that this Court: enjoin Defendant convicting individuals of this offense without first seeing if they qualify for Driving School; inform individuals charged about their right to Driving School if they are first-timmer offender[s]; require Defendant to apply the actual facts of the case to the law to determine guilt or innocence; inform individuals charged that they are charged with a criminal offense of a Class C Misdemeanor; and to offer Driving School.

(ECF No. 40 at PageID 138.) This type of declaratory relief is not barred by the *Rooker-Feldman* doctrine, and to the extent Defendant's Motion seeks dismissal of this claim for relief on that basis, it is **DENIED**.

Yet, even though not barred by *Rooker-Feldman*, Plaintiff's claim for forward-looking injunctive relief must nevertheless be dismissed for lack of standing. Although not raised in Defendants' Motion, this Court has an independent duty to examine its jurisdiction. *See Glennborough Homeowners Assoc. v. U.S. Postal Serv.*, 21 F.4th 410, 413 (6th Cir. 2021) (citing *Taylor v. Owens*, 990 F.3d 493, 496 (6th Cir. 2021)); *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 405 (6th Cir. 2019) (standing is "jurisdictional and must be addressed as a threshold matter"); *U.S. v. Ellis*, 125 F. App'x 691, 695 (6th Cir. 2005) (holding that it is "incumbent" upon the Court to determine whether a party has "standing to challenge the constitutionality of the officers' actions[,]" even when the issue of standing is not raised by the parties).

"To have standing, a plaintiff must allege (1) an injury in fact (2) that's traceable to the defendant's conduct and (3) that the courts can redress." *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–61 (1992)). "If a party does not have standing to bring an action, then the court has no authority to hear the matter and must dismiss the case." *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 344 (6th Cir. 2016) (citation omitted). "The party seeking to invoke federal jurisdiction bears the burden to demonstrate standing and he 'must plead its components with specificity.'" *Daubenmire v. City of Columbus*, 507 F.3d 383, 388 (6th Cir. 2007) (quoting *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999) (further citation omitted)). A plaintiff's allegations in support of standing are analyzed for plausibility under the same standard as a motion under Federal Rule of Civil Procedure 12(b)(6). *See*

Glennborough Homeowners Assoc., 21 F.4th at 414 (explaining the standard for alleging facts supporting standing aligns with that governing motions to dismiss under Fed. R. Civ. P. 12(b)(6)); *Ass'n of Am. Physicians & Surgeons v. U.S. Food & Drug Admin.*, 13 F.4th 531, 545 (6th Cir. 2021) ("Should *Twombly*'s plausibility test apply to a motion to dismiss on standing grounds too? We think so."). A standing analysis "is not a merits inquiry." *Gerber*, 14 F.4th at 505; *see Kanuszewski*, 927 F.3d at 407 ("standing analysis does not consider the merits of Plaintiffs' claims"). The plaintiff must have standing throughout every stage of the litigation for each claim and form of relief sought. *Uzuegbunam v. Praczewski*, 141 S. Ct. 792, 801 (2021); *Glennborough*, 21 F.4th at 414 ("A plaintiff must demonstrate standing for each claim she seeks to press and for each form of relief she seeks").

In the context of injunctive relief, allegations of past injuries alone are not sufficient to confer standing. *See Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 257 (6th Cir. 2018) (citing *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1984)). On the other hand, the threat of future harm can provide standing if there is a "'substantial risk' that the harm will occur." *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 405 (6th Cir. 2019) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)). In other words, the plaintiff must allege or "demonstrate actual present harm or a *significant possibility* of future harm." *Brent*, 901 F.3d at 675 (emphasis added) (citing *Fieger v. Ferry*, 471 F.3d 637, 643 (6th Cir. 2006)); *see also O'Shea*, 414 U.S. at 495–96 (explaining that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief"); *Golden v. Zwickler*, 394 U.S. 103, 109–10 (1969) (dismissing suit seeking a declaration that a state statute was unconstitutional and finding that the plaintiff lacked standing because even though the plaintiff was prosecuted under the statute previously, the likelihood of the plaintiff's repeat exposure to the statute was remote);

Grendell v. Ohio Sup. Ct., 252 F.3d 828, 832 (6th Cir. 2001) ("[T]he mere fact that [the plaintiff] was previously sanctioned by the Ohio Supreme Court . . . is not an adequate injury in fact to confer standing for declaratory and injunctive relief."). "'Allegations of *possible* future injury' are not sufficient." *Kanuszewski*, 927 F.3d at 405 (emphasis added) (quoting *Clapper*, 568 U.S. at 409). The "threatened injury must be certainly impending," and "a highly attenuated chain of possibilities" does not satisfy this requirement. *Id.* at 405–06 (quoting *Clapper*, 468 U.S. at 410).

Based on his Amended Complaint, Plaintiff has not adequately alleged standing to pursue forward-looking injunctive relief because he does not include allegations of likely future harm. Plaintiff's allegations relate to a past injury and do not demonstrate a significant possibility that he will again be subject to the alleged harm. Because Plaintiff fails to plausibly plead standing for any forward-looking injunctive relief, that claim is **DISMISSED**.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, and Plaintiff's remaining claim for forward-looking injunctive relief is **DISMISSED** for lack of standing.

IT IS SO ORDERED, this 27th day of June, 2022.

s/ Mark S. Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE