

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DANYALE SHARRON TUBBS,

Plaintiff-Appellant,

v.

SHERRY A. PAYTON, named as, General Office
Assistant for Michigan Department of Corrections,

Defendant-Appellee.

No. 25-1950

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:22-cv-00649—Paul Lewis Maloney, District Judge.

Argued: July 30, 2026

Decided and Filed: September 10, 2026

Before: CLAY, GIBBONS, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Stephanie Katz, GOODWIN PROCTER LLP, New York, New York, for Appellant. Joshua S. Smith, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee. **ON BRIEF:** Stephanie Katz, Meghan K. Spillane, Allison M. Funk, GOODWIN PROCTER LLP, New York, New York, Christine A. Monta, RODERICK & SOLANGE MACARTHUR JUSTICE CENTER, Washington, D.C., Andrew Kim, GOODWIN PROCTER LLP, Washington, D.C., for Appellant. Joseph Y. Ho, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellee.

OPINION

JULIA SMITH GIBBONS, Circuit Judge. Under the Prison Litigation Reform Act (“PLRA”), incarcerated individuals may not bring any action challenging prison conditions under federal law “until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). This appeal arises out of appellant Danyale Tubbs’s attempt to file a lawsuit alleging a violation of his rights under the First and Fourteenth Amendments at Earnest C. Brooks Correctional Facility (“LRF”) in Muskegon Heights, Michigan, which is overseen by the Michigan Department of Corrections (“MDOC”). MDOC maintains its own policy for lodging grievances concerning prison conditions. In order to abide by the PLRA, Tubbs was required to first exhaust the remedies provided by MDOC before filing suit.

Tubbs filed his grievance with MDOC, and the department ultimately rejected his claim as time barred. Tubbs then sued in federal court, prompting appellee Sherry Payton to request summary judgment on failure-to-exhaust grounds. The district court granted summary judgment to Payton, finding that Tubbs did not properly exhaust his claims because he failed to complete the first step of the MDOC grievance process within the time frame provided by MDOC policy. Tubbs now challenges the district court’s ruling on appeal. For the reasons discussed below, we reverse the order of the district court.

I.**A.**

MDOC has a “Grievance Process” for prisoners in the state of Michigan seeking redress for “alleged violations of policy and procedure or unsatisfactory conditions of confinement.” PD 03.02.130 Policy Statement. Under this policy, prior to submitting a written grievance, the grievant must first “attempt to resolve the issue with the staff member involved within two business days after becoming aware of a grievable issue” unless prevented by circumstances outside of his control. *Id.* at ¶ Q. “If the issue is not resolved,” the grievant may then file a written Step I grievance within five business days after attempting to resolve the issue. *Id.* If the

grievant is dissatisfied with the response received at Step I or if he did not receive a timely response, he may then file a Step II grievance within ten business days of receiving the Step I response or within ten business days of when the response was due. *Id.* at ¶ DD. A grievant may then file a Step III grievance if he is further dissatisfied with the Step II response or does not receive a timely response. *Id.* at ¶ HH. The department's Step III response is final. *Id.* at ¶ II.

Inmates must pursue MDOC's grievance procedure through the end of Step III prior to filing a civil lawsuit in federal court to avoid offending the PLRA. *Belser v. Alton*, No. 15-2024, 2016 WL 11848552, at *3 (6th Cir. Oct. 4, 2016).

B.

The events underlying this case occurred during Tubbs's incarceration at LRF. On March 22, 2022, Tubbs received notice that a package containing a book written by his sister, a survivor of childhood sexual assault, was being withheld from his mail delivery by Sherry Payton, a mail room clerk employed by MDOC. In the rejection notice, Payton informed Tubbs that the book contained "details about the rape of a child." DE 37-1, Notice of Package/Mail Rejection, Page ID 195. Payton justified the rejection of the package by reasoning that the book "contain[ed] or encourag[ed] or provid[ed] instruction in the commission of criminal activity." *Id.*

After receiving the mail rejection, Tubbs requested an administrative hearing, which he understood to be the only way to overturn Payton's decision. A hearing took place before Prison Counselor Emmitt Short on April 5, 2022. The parties dispute whether this was the first or second hearing about the book. Tubbs says it was the first hearing, following his request for one in late March. Payton says it was the second hearing, although MDOC cannot tell us and has produced no evidence proving when the first hearing occurred. Despite the dispute about the date, the parties agree that at the first hearing, Short disagreed with Payton's decision to reject the book. Tubbs did not receive a copy of any report summarizing the hearing or Short's decision after the April 5, 2022, hearing.

Tubbs maintains that in early May 2022, after he did not receive either a new notice of mail rejection or a copy of his sister's book, he approached Short to inquire about the status of

his claim. According to Tubbs, Short scheduled a second hearing for a few days later, during which he explained that “despite his recommendation, the Book had been *submitted* to be placed on the Restricted Publications List.” DE 37, Tubbs Decl. Opp. Mot. Summ. J., Page ID 189. Indeed, Tubbs says Short showed him an email from Payton to prison administrators asking for help to “keep this book on the restriction list.” *Id.* Tubbs maintains that after this second hearing, he understood that because the book had only been submitted for restriction, a final determination had not yet been made. As mentioned, Payton disputes that any hearing occurred in early May and maintains that the second hearing was the one that took place on April 5, 2022.

Tubbs claims that shortly after the alleged early May hearing, on May 9, 2022, he received a copy of Short’s hearing report. The report, signed by Short, states: “[t]his is the second hearing, because the decision [Short] submitted to the mailroom was rejected the first time.” DE 37-3, Admin. Hr’g. Report, Page ID 214. The report recounted that Short had opined that Tubbs “should have received the book” because it “was written in a self-help perspective.” *Id.* But it explained that the “Central Office” recommended that the book not be allowed and that the book had been “submitted to be placed on the restricted list.” *Id.* That report is signed by Short and dated April 5, 2022, although Tubbs said that it described a hearing that transpired in early May and that he did not get the report until May 9, 2022. Addressing this discrepancy, Tubbs says that he does “not have first hand knowledge” why the report has the April 5, 2022, date, but he assumes that Short “kept the date of the first hearing on the Second Report because it was a continuation from the prior hearing.” DE 37, Tubbs Decl. Opp. Mot. Summ. J., Page ID 190.

That same day, on May 9, 2022, Tubbs filed a written Step I grievance against Payton “in an abundance of caution,” since he believed that the report “suggested that [he] was unlikely to receive the book.” DE 37, Tubbs Decl. Opp. Mot. Summ. J., Page ID 191. Tubbs maintains that he received no notice prior to May 9 that a final determination had been made as to whether he would receive his sister’s book. In his Step I grievance form, Tubbs stated that he had “spoke[n] to [Short] who agreed with me as to the disposition of the book” and that “Payton went outside of policy and the Warden at LRF to obtain support [to deny Tubbs access to his sister’s book].” DE 37-4, Prisoner/Parolee Grievance Form, Page ID 216. As a result, Tubbs alleged that Payton

had engaged in “unjust censorship” and infringed upon his “procedural due process.” *Id.* MDOC denied Tubbs’s Step I grievance two days later, on May 11, 2022, as untimely.

Tubbs then filed a Step II grievance on May 26, reiterating his first grievance against Payton and arguing that his Step I grievance was improperly rejected as untimely because he did not receive Short’s report until May 9. Notably, on both his Step I and Step II grievance forms, Tubbs listed the “Date of Incident” as May 9, 2022—the day he claims he discovered the likely result of the April 5 hearing when he read Short’s report. DE 37-4, Prisoner/Parolee Grievance Form, Page ID 216; DE 37-6, Prisoner/Parolee Grievance Appeal Form, Page ID 221. MDOC denied Tubbs’s Step II grievance and upheld his Step I rejection. Tubbs then submitted a Step III grievance, which MDOC ultimately rejected as well in July 2022, constituting the department’s final decision on the matter.

Having reached the end of his available remedies within MDOC, Tubbs filed this suit against Payton that same month in the Western District of Michigan. Tubbs asserted two claims for relief under 42 U.S.C. § 1983, alleging that Payton had interfered with his First Amendment right to free speech and Fourteenth Amendment right to due process by withholding his sister’s book. After screening the complaint prior to service, as mandated by the PLRA, the magistrate judge dismissed Tubbs’s complaint for failing to state a claim. Tubbs appealed to this court, and a three-judge panel vacated the magistrate judge’s decision and remanded the case for further proceedings.

Shortly thereafter, Payton filed a motion for summary judgment, arguing that Tubbs failed to properly exhaust his claims under the PLRA because his Step I grievance, submitted over a month after the April 5, 2022, hearing date and Short’s April 5 hearing report, was untimely under MDOC policy. Notably, Payton attached an exhibit to her motion for summary judgment that had a version of the report dated April 5, 2022, which differs from the report Tubbs said he received on May 9. Payton’s exhibit does not say that the report followed a “second hearing,” and it is not signed by Short. Tubbs opposed summary judgment and attached to his opposition an affidavit setting out his testimony described above. With her reply brief, Payton attached an affidavit from Short. There, Short explained that his typical practice is “to finalize and sign a report the day of the hearing, and to provide the signed report to the mailroom

that same day.” DE 48, Ex. 1, PageID 276. Specifically, for this case, Short stated that “[a]fter the second hearing ended, [he] generated the signed April 5, 2022, hearing report” consistent with his typical process. *Id.*

On September 19, 2025, the district court granted Payton’s motion for summary judgment on exhaustion grounds. The court concluded that Tubbs “baldly assert[ed] . . . that he did not receive the April 5, 2022, report until May 9, 2022.” DE 49, Op. & Order, Page ID 286–87. The court further found that “[t]he only record of an administrative hearing regarding the denial of the book in question is [Short’s] report dated April 5, 2022, in which [Short] issue[d] his decision prohibiting [Tubbs] from receiving it.” *Id.* at 286. The court noted that Short “generated the signed April 5, 2022, report after the second administrative hearing, and that he provided the report that day to the mailroom for distribution.” *Id.* Accordingly, the court reasoned that Tubbs failed to present a genuine issue of material fact about whether he learned he would be denied access to his sister’s book on April 5, 2022, making his Step I grievance filed on May 9, 2022, untimely.

Tubbs timely appealed.

II.

We apply de novo review to dismissals of prisoners’ civil rights claims premised on the failure to exhaust administrative remedies. *Mattox v. Edelman*, 851 F.3d 583, 589 (6th Cir. 2017). Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if it “might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine where the “evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* When considering summary judgment, we must evaluate the evidence in the light most favorable to the non-moving party. *Mattox*, 851 F.3d at 590.

A prisoner’s failure to exhaust his available administrative remedies prior to filing suit “is an affirmative defense under the PLRA,” which means “that inmates are not required to specially plead or demonstrate exhaustion in their complaints.” *Jones v. Bock*, 549 U.S. 199, 216 (2007).

As a result, defendants carry the burden of proof for exhaustion and therefore shoulder “an initial summary judgment burden that is higher” because they “must show that the record contains evidence satisfying their burden of persuasion and that no reasonable jury would be free to disbelieve it.” *Morgan v. Trierweiler*, 67 F.4th 362, 366 (6th Cir. 2023) (citation modified). In cases challenging a litigant’s duty to exhaust, “[s]ummary judgment is appropriate only if defendants establish the absence of a ‘genuine dispute as to any material fact’ regarding non-exhaustion.” *Surles v. Andison*, 678 F.3d 452, 456 (6th Cir. 2012) (quoting *Risher v. Lappin*, 639 F.3d 236, 240 (6th Cir. 2011)).

III.

A.

Under the PLRA, Tubbs was required to satisfy MDOC policy when lodging his grievance over the mail rejection of his sister’s book before suing in the Western District of Michigan. *Surles*, 678 F.3d at 455 (“A grievant must undertake all steps of the MDOC process for his grievance to be considered fully exhausted.”); *Trierweiler*, 67 F.4th at 366 (“Compliance with prison grievance procedures, therefore, is all that is required by the PLRA to ‘properly exhaust.’” (quoting *Bock*, 549 U.S. at 218)). In doing so, Tubbs must have “adhere[d] to any time limitations that are part of the institutional grievance policy.” *Surles*, 678 F.3d at 455. The MDOC policy time limitations state that a grievant may attempt to resolve an issue with the staff member involved within two business days of becoming aware of it, and “[i]f the issue is not resolved, the grievant may file a Step I grievance” within five days of the attempt. PD 03.01.130 ¶ Q. Accordingly, under the Step I time limitations, Tubbs was required to file his Step I grievance within five business days after he “attempted to resolve [his] issue” with Payton if the issue remained unresolved. *Id.*

Tubbs argues on appeal that the district court erred in granting summary judgment to Payton because the evidence, viewed in the light most favorable to Tubbs, shows that his Step I grievance was timely. He contends that he filed the first grievance on May 9, 2022, the same day he received Short’s report and therefore became aware of the final determination concerning his sister’s book, which is well within the five days allowed by MDOC policy. Tubbs further

asserts that the district court improperly weighed the evidence against him and engaged in inappropriate credibility determinations at the summary judgment stage to reach its ruling. Payton, by contrast, argues that the district court properly determined that the evidence indisputably showed that Tubbs's Step I grievance was untimely because it was filed over a month after the April 5, 2022, administrative hearing, exceeding the five-day filing window for Step I grievances outlined by MDOC policy. Payton also asserts that it is not her burden at summary judgment to refute Tubbs's claim that he did not receive Short's report until May 9 and therefore did not learn the outcome of his claim before that date.

For Payton to succeed on her summary judgment motion, she must establish that there is no "genuine dispute as to any material fact" that Tubbs timely filed his Step I grievance. *See Surles*, 678 F.3d at 456; *Risher*, 639 F.3d at 240. The material fact at the heart of this exhaustion dispute is when Tubbs understood the outcome of the second hearing and therefore understood whether a final decision had been made concerning the mail rejection of his sister's book. As MDOC policy states, Tubbs was allowed to file his Step I grievance only after his issue with Payton was left unresolved. *See* PD 03.01.130 ¶ Q ("If the issue is not resolved, the grievant may file a Step I grievance."). Tubbs claims that he did not know whether a final decision had been made regarding his sister's book, and therefore whether his issue with Payton was left unresolved, until he received Short's hearing report on May 9, 2022. Accordingly, when Tubbs received Short's report is a material fact because only at that time did Tubbs know that his issue was unresolved and he could then file a Step I grievance, which thus sets the boundaries of our exhaustion inquiry. *See Anderson*, 477 U.S. at 248.

We note that the parties spend much time debating when the second hearing occurred. But the timing of that hearing, while important, is not necessarily dispositive of the exhaustion question. For instance, if a jury were to credit Tubbs's testimony that the second hearing occurred in early May, and that Short delivered his signed reports to the mail room the same day as the hearing, then it follows that Tubbs would not have known about the result of the hearing until May and thereafter promptly filed his Step I grievance. It would also negate Payton's ability to establish that Tubbs knew he would not get a copy of his sister's book in April; that would be impossible if the second hearing had not yet occurred. *See Est. of Romain v. City of*

Grosse Pointe Farms, 935 F.3d 485, 490 (6th Cir. 2019) (“A fact is material if it would establish or refute an ‘essential element[] of a cause of action or defense asserted by the parties[.]’” (alterations in original) (quoting *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984))). By contrast, if a jury were to credit Payton’s contention that the second hearing occurred on April 5, and that Short delivered his signed reports to the mail room the same day as the hearing, then it might be more likely that Tubbs received the report more than five days before filing his grievance on May 9. But the hearing date would not be dispositive: even if the second hearing occurred in April, that would not mean that Tubbs learned the hearing result in April; it could be that the mail did not get to Tubbs expeditiously. As it is Payton’s burden to prove that Tubbs failed to exhaust his claim, it is also her burden to provide evidence showing that it would be unreasonable for a jury to find that Tubbs did not learn he would not have access to the book until early May. *See Trierweiler*, 67 F.4th at 366 (defendants “must show that the record contains evidence satisfying their burden of persuasion [on exhaustion] and that no reasonable jury would be free to disbelieve it”) (citation modified).

B.

We hold that Payton failed to carry her burden to prove that no genuine dispute exists as to when Tubbs received the signed report and therefore learned the final resolution of the second hearing. On appeal, Payton argues that she is not required at the summary judgment stage to disprove Tubbs’s claim that he did not learn the outcome of the second hearing until May, or to “prove a negative” by showing that Tubbs did not receive Short’s hearing report until May 9 as he claims. CA6 R. 14, Appellee Br., at 30–31. We find her arguments unpersuasive.

Because exhaustion is an *affirmative* defense, Payton must provide evidence proving that Tubbs failed to file a written Step I grievance within five business days of attempting to resolve his issue and being unable to resolve his issue with her. *See Lamb v. Kendrick*, 52 F.4th 286, 298 (6th Cir. 2022) (“[D]efendants moved for summary judgment on the issue of exhaustion before discovery, and they bore the burden of production and persuasion on that affirmative defense.”) (citation modified); *Surles*, 678 F.3d at 456 (“A PLRA defendant bears the burden of proving that a PLRA plaintiff has not exhausted his administrative remedies.”). But Payton failed to do so. The district court ruled on Payton’s motion before discovery was conducted, yielding limited

available evidence at the outset. Compounding this problem is the fact that Payton attached only two exhibits to her motion for summary judgment, neither of which refute or conclusively disprove Tubbs's claim that he discovered the outcome of the April 5 hearing on May 9 when he received Short's report. Those exhibits were (1) a copy of the MDOC grievance policy, and (2) a report of all Step III grievances submitted by Tubbs since 2017, along with each specific grievance he submitted in this case regarding his sister's book.

The only evidence Payton submitted that potentially contradicts Tubbs's claim that he received the hearing report on May 9, 2022, is an affidavit prepared by Short, attached to her reply to Tubbs's opposition to her motion for summary judgment. In his affidavit, Short affirmed that that "[a]s a hearing officer," it was his practice to conduct hearings and prepare hearing reports directly afterwards. *See* DE 48, Ex. 1, Short Aff., Page ID 277. He confirmed that once he finalized a report on his computer, he printed, signed, and provided the report to the mailroom for distribution the same day of the hearing. For Tubbs's case, Short stated that he held two hearings involving the mail rejection. Although he disagreed with the rejection at the first hearing, MDOC policy required "any book on the restricted list . . . to be rejected." *Id.* at 278. He thus "conducted a second hearing; upheld the book rejection," and "informed Tubbs of the rejection." *Id.* Specifically, addressing delivering the report, he said: "After the second hearing ended, I generated the signed April 5, 2022, hearing report . . . for distribution under the process" he had described. *Id.*

Even crediting that affidavit, it does not address whether Short gave a copy of the report to Tubbs, showed Tubbs the report, or discussed the contents of the report in any way with him on April 5, 2022. Instead, at most, it implies only that Short informed Tubbs of the book's "rejection" when he "generated the signed April 5, 2022, hearing report." *Id.* Indeed, read closely, it is not even clear from the affidavit that Short affirmed that the second hearing occurred that day. It is therefore unclear whether Tubbs learned anything more than what he already knew going into the hearing, such as the fact that the book was placed on the restricted list. As a result, Short's affidavit, submitted by Payton to prove that Tubbs learned the outcome of his mail rejection claim the same day as the April 5, 2022, hearing, at most constitutes evidence that gives rise to an inference that Tubbs received and learned the outcome that day.

But it is also evidence that a reasonable jury would be free to disbelieve. *See Trierweiler*, 67 F.4th at 366.

Adding to the contestability of Payton's evidence is Tubbs's own affidavit, submitted with his opposition to Payton's motion for summary judgment. In his affidavit, Tubbs stated his belief that Short determined at the April 5, 2022, hearing that "a copy of the book should be given to [Tubbs] immediately." DE 37, Tubbs Decl. Summ. J., Page ID 188. As a result, Tubbs "expected to either receive the Book or another [mail rejection notice]," leading him to eventually approach Short to discuss the matter in early May after neither event occurred. *Id.* Tubbs also asserted that while he "understood that [Short] issued an Administrative Hearing Report" after the hearing on April 5, he "never received a copy." *Id.* Thus, to the extent that Payton relies on Short's affidavit to establish that Tubbs received notice of the final mail rejection on April 5 following the hearing, Tubbs's affidavit directly contradicts that evidence. And that contradiction gives rise to a genuine dispute of material fact regarding when Tubbs learned the final decision regarding his sister's book, and thus when he knew his issue was unresolved by Short such that he could file a Step I grievance. *See* PD 03.01.130 ¶ Q. Indeed, our circuit has previously recognized that "a prisoner's sworn affidavit, standing alone, may create a genuine dispute of material fact that forecloses summary judgment on exhaustion." *Lamb*, 52 F.4th at 296; *see also Moran v. Al Basit LLC*, 788 F.3d 201, 205–06 (6th Cir. 2015). In fact, such an affidavit may do so "even if the record lacks corroborating evidence." *Id.*; *see also Troche v. Crabtree*, 814 F.3d 795, 800 (6th Cir. 2016).

Payton invokes the "sham affidavit" doctrine as a basis for this court to disregard Tubbs's declaration. *See* CA6 R. 14, Appellee Br., at 27–28. During oral argument, counsel invoked the doctrine once again. *See* Tr. Oral Arg. 16:00–20:00. The sham affidavit doctrine prevents a party from filing an affidavit "that contradicts his earlier sworn testimony." *France v. Lucas*, 836 F.3d 612, 622 (6th Cir. 2016) (citing *Reid v. Sears, Roebuck & Co.*, 790 F.2d 453, 460 (6th Cir. 1986)). More specifically, it mandates that the affidavit "be stricken unless the party opposing summary judgment provides a persuasive justification for the contradiction." *Id.* (citation modified).

We reject the application of the sham affidavit doctrine to Tubbs’s declaration for two reasons. First, the doctrine contemplates prior *testimony* given, either during deposition or trial, which is not the factual scenario at hand. *See, e.g., id.* at 622–23 (trial); *Briggs v. Potter*, 463 F.3d 507, 512–13 (6th Cir. 2006) (deposition); *Johnson v. Ford Motor Co.*, 13 F.4th 493, 501–02 (6th Cir. 2021) (deposition). We are dealing only with documents filed before the district court, not prior sworn testimony.

Second, Tubbs’s declaration is not contradictory to or in tension with the statements he made in any prior documents filed with the district court or MDOC. Tubbs has never claimed, in front of the district court or here now on appeal, that he learned the final decision regarding his sister’s book at or immediately following the hearing in April or that the April hearing was the only one. He also never made such claims in his written grievances to MDOC. In fact, Tubbs explicitly stated in his Step I grievance that, at the first hearing, Short “agreed with” him and “determined that” he “could have the book.” DE 30-3, Step III Grievance Report & Relevant Grievances, Page ID 158. And in his Step II grievance, Tubbs said that he “didn’t receive the response or hearing report until” May 9, 2022. *Id.* at 156. Tubbs has thus always claimed that he discovered the final decision concerning Payton’s mail rejection when he received Short’s hearing report on May 9, 2022, after the second hearing. He has never stated that he learned the outcome of that hearing on any other date or at any other alleged hearing.

Beyond Tubbs’s affidavit—which is likely enough on its own to show the existence of a genuine dispute—there is further corroborating evidence in the record to support non-exhaustion. Both Tubbs’s Step I and Step II grievances list May 9, 2022, as the “Date of Incident,” providing additional support that May 9 is the date Tubbs received Short’s report, learned that the issue was unresolved, and subsequently filed his written Step I grievance. DE 37-4, Prisoner/Parolee Grievance Form, Page ID 216; DE 37-6, Prisoner/Parolee Grievance Appeal Form, Page ID 221. Moreover, as noted, in his Step II grievance form, Tubbs argued that his grievance was “improperly rejected as grievant didn’t receive the . . . hearing report until [May 9, 2022].” DE 37-6, Prisoner/Parolee Grievance Appeal Form, Page ID 221. While Tubbs could have made the contours of his exhaustion argument clearer in both grievances, we liberally construe his filings, as is practice in our circuit, to recognize that the evidence corroborates his claim. *See Mattox*,

851 F.3d at 591 n.5; *Reynolds-Bey v. Harris*, 428 F. App'x 493, 498 (6th Cir. 2011); *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) (“Pro se plaintiffs enjoy the benefit of a liberal construction of their pleadings and filings.”).

The fact that there appear to be two reports dated April 5, 2022, further bolsters Tubbs’s testimony. The version Tubbs attached to his complaint was signed and referenced a “second hearing.” DE 1-1, Admin. Hr’g Report, Page ID 11. The version Payton submitted with her motion for summary judgment was unsigned and did not mention any other hearings. Comparing the two gives rise to a reasonable inference that Payton’s version may have been drafted on April 5, 2022, after the first hearing, and later supplemented. The fact that Tubbs’s version references a second hearing gives rise to the reasonable inference that there was a second hearing after the April 5, 2022, preliminary report was drafted, and that Short simply did not update the date on the second report. Indeed, the fact that Payton and MDOC have not produced any evidence of when MDOC held a hearing prior to April 5, 2022, severely undercuts the force of Payton’s evidence. *See Clay v. United Parcel Serv., Inc.*, 501 F.3d 695, 712 (6th Cir. 2007) (“The general rule is that where relevant information is in the possession of one party and not provided, then an adverse inference may be drawn that such information would be harmful to the party who fails to provide it.” (citation modified)). We would expect such an institution to keep track of its hearings or, based on Short’s affidavit, that he would have prepared a report after this alleged hearing from before April 5, 2022. By construing these documents in the light most favorable to Tubbs, in addition to crediting the evidence presented in Tubbs’s declaration, we recognize a body of evidence that allows for a jury to find that Tubbs timely filed his grievance. *See Anderson*, 477 U.S. at 248.

Finally, we reject the district court’s assertion that Tubbs “offer[ed] nothing more than speculation to counter” the evidence provided by Payton. DE 49, Op. & Order, Page ID 287. Specifically, the district court found that no “genuine issue of material fact” existed because Tubbs’s “grievance—not to mention his complaint—says nothing about [his allegation that he did not receive a copy of Short’s report until May 9].” *Id.* at 286–87. The court further criticized Tubbs for not countering Short’s testimony, which was submitted with Payton’s reply brief. *Id.* at 287. The court held that these failures, in addition to other flaws the court identified in

Tubbs's argument, resulted in evidence "such that no reasonable trier of fact could find that [Tubbs's] initial grievance was timely." *Id.* at 287. Two critical flaws undermine the district court's reasoning.

First, while Tubbs may not have explicitly stated that he received Short's report on May 9 in his Step I grievance, his form does reference its contents. For example, he alleged that although Short "agreed" with Tubbs "as to the disposition of the book," nonetheless "Payton went outside of policy and the Warden at LRF to obtain support" to uphold Tubbs's mail rejection. DE 37-4, Prisoner/Parolee Grievance Form, Page ID 216. This accusation mirrors the contents of the report, which stated that although Short "believed . . . Tubbs should have received the book," nonetheless "it [was] the recommendation of Central Office in Lansing" that the book be restricted. DE 37-3, Admin. Hr'g. Report, Page ID 214. And as already discussed, the Step I grievance lists May 9, 2022—the date he alleges he received a copy of Short's report—as the "Date of Incident." DE 37-4, Prisoner/Parolee Grievance Form, Page ID 216. Although Tubbs did not explicitly state the date he received the report, it was not obvious, least of all to him, the need to be so specific; when Tubbs filed his Step I grievance, he did so believing it was timely. The information available in the grievance, along with the statements made in the Step II appeal and Tubbs's declaration, raise the inference that he did in fact receive Short's report on May 9 and filed his written grievance the same day. *See Does 8-10 v. Snyder*, 945 F.3d 951, 961 (6th Cir. 2019) (stating that all inferences when considering summary judgment must be made in favor of the non-moving party). At minimum, there is a genuine dispute as to this material fact. *See Anderson*, 477 U.S. at 248.

Second, it is a well-established principle in the PLRA exhaustion context that "the failure to exhaust 'must be established by the defendants.'" *Surles*, 678 F.3d at 455 (quoting *Napier v. Laurel County*, 636 F.3d 218, 225 (6th Cir. 2011)). Accordingly, "inmates are not required to specially plead or demonstrate exhaustion in their complaints." *Bock*, 549 U.S. at 216; *see also Surles*, 678 F.3d at 455. Thus, the district court's grant of summary judgment to Payton on the grounds that Tubbs's complaint failed to mention that he did not "receive [Short's report] until May 9, 2022," is erroneous. DE 49, Op. & Order, Page ID 286–87. Tubbs did not need to demonstrate in his complaint that he exhausted his administrative remedies. *See Bock*, 549 U.S.

at 216; *Surles*, 678 F.3d at 455. The need to prove exhaustion fell squarely on Payton's shoulders. *Trierweiler*, 67 F.4th at 366.

When considering a motion for summary judgment, we must “consider the evidence in the light most favorable” to Tubbs. *Mattox*, 851 F.3d at 590; *Rhinehart v. Scutt*, 894 F.3d 721, 735 (6th Cir. 2018). This includes “drawing all inferences” in his favor. *Snyder*, 945 F.3d at 961 (quoting Fed. R. Civ. P. 56(a)). After examining all the available evidence, we find that at least one genuine dispute exists as to a material fact, and necessarily when the clock began to run on Tubbs's time to exhaust. Accordingly, the district court erred in granting Payton's motion for summary judgment on exhaustion grounds.

IV.

For the foregoing reasons, we reverse the judgment of the district court and remand for further proceedings consistent with this opinion.