Appendix A

Opinion of the United States Court of Appeals for the Fourth Circuit, *Christian v. Payne, League*, No. 18-6315

Appeal from the United States District Court for the District of South Carolina, at Greenville. Timothy M. Cain, District Judge. (6:16-cv-01757-TMC)

Submitted: August 29, 2018 Decided: October 11, 2018

Before KING, DIAZ, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

USCA4 Appeal: 18-6315 Doc: 10 Filed: 10/11/2018

PER CURIAM:

Gregory T. Christian brought this 42 U.S.C. § 1983 (2012) action against K.A. Payne and Andrew League, alleging that these officers of the Greenville, South Carolina Police Department violated his Fourth Amendment rights when they searched him after he was accused of taking a ring at a South Carolina yard sale. The officers first conducted a pat down search for weapons and subsequently searched Christian's person for the ring. The district court adopted the magistrate judge's recommendation and granted summary judgment in favor of the officers, concluding that they were entitled to qualified immunity for both searches. Christian timely appealed. For the reasons that follow, we affirm.

"We review de novo a district court's grant or denial of a motion for summary judgment, construing all facts and reasonable inferences therefrom in favor of the

nonmoving party." *General Ins. Co. of Am. v. United States Fire Ins. Co.*, 886 F.3d 346, 353 (4th Cir. 2018). "A summary judgment award is appropriate only when the record shows 'that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Core Commc'ns, Inc. v. Verizon Md. LLC*, 744 F.3d 310, 320 (4th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). "[A]n otherwise properly supported motion for summary judgment" will not be defeated by the existence of some factual dispute; rather, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* at 247-48.

Qualified immunity—an affirmative defense to liability under § 1983—"shields government officials from liability for civil damages, provided that their conduct does not violate clearly established statutory or constitutional rights within the knowledge of a reasonable person." *Yates v. Terry*, 817 F.3d 877, 884 (4th Cir. 2016) (internal quotation marks omitted). Applied properly, qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (internal quotation marks omitted).

"In determining whether an officer is entitled to summary judgment on the basis of qualified immunity, courts engage in a two-pronged inquiry." *Smith v. Ray*, 781 F.3d 95, 100 (4th Cir. 2015). The first prong "asks whether the facts, viewed in the light most favorable to the plaintiff, show that the officer's conduct violated a federal right." *Id.* (citing *Saucier v. Katz*, 533 U.S. 194,

201 (2001)). "The second prong of the qualified immunity inquiry asks whether the right was clearly established at the time the violation occurred such that a reasonable person would have known that his conduct was unconstitutional." *Id.* "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right. In other words, existing precedent must have placed the statutory or constitutional question beyond debate." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (internal quotation marks, citations, and brackets omitted).

The two prongs of the qualified immunity test may be addressed in any sequence. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Under either prong, however, courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment.

Tolan v. Cotton, 134 S. Ct. 1861, 1866 (2014). "The purely legal question of whether the constitutional right at issue was clearly established is always capable of decision at the summary judgment stage, but a genuine question of material fact regarding whether the conduct allegedly violative of the right actually occurred must be reserved for trial." *Schultz v. Braga*, 455 F.3d 470, 476 (4th Cir. 2006) (quotation marks, brackets, and ellipses omitted).

Officer Payne stated that he conducted the pat down search for weapons out of concern for safety.

Police may conduct a patdown search without a warrant if, under the totality of the circumstances, the officer has an articulable, reasonable suspicion that a person is involved in criminal activity and that he is armed . . . . If

a reasonably prudent person would believe that his safety, or the safety of others, is endangered, he may conduct a limited search of outer clothing to discover any weapons.

United States v. Raymond, 152 F.3d 309, 312 (4th Cir. 1998). In this case, the officers responded to a report of a stolen ring at a yard sale by a suspect described as belligerent. Christian admitted that, during his encounter with the police, he reached into his pocket to retrieve his driver's license. There is no evidence in the record that the officers asked him for his identification or otherwise understood that Christian was reaching into his pocket for his license. Under a totality of the circumstances, an objectively reasonable officer in Payne's position would have believed that Christian may have been armed and was reaching for a weapon, and a reasonable officer would not have believed that conducting a pat down search in this situation would violate Christian's constitutional rights. We therefore conclude that the district court did not err in finding that the officers were entitled to qualified immunity on this claim.

Turning to the second search, an exception to the Fourth Amendment's general prohibition against warrantless searches is voluntary consent given by an individual possessing the authority to do so. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *United States v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996) (en banc). "Consent to search is valid if it is (1) knowing and voluntary, and (2) given by one with authority to consent." *United States v. Buckner*, 473 F.3d 551, 554 (4th Cir. 2007) (citations and

internal quotation marks omitted). "[W]hether a consent to a search was in fact voluntary or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (internal quotation marks omitted).

Christian signed a consent form giving the officers permission to conduct the second search. The form expressly stated that Christian gave his consent voluntarily and without any threats or promises. Christian, who was in his fifties at the time he signed the form, holds an aerospace engineering degree, and devoted his career to the Space Shuttle and Space Station programs at the Johnson Space Center in Houston, does not dispute that he understood the form he signed. However, he explains that he only signed the form out of fear and duress. Christian began removing his jacket and shoes and placed his hands on the patrol car without being instructed to do so after the officers asked him if they could search him for the ring. Even accepting Christian's statement, as we must on summary judgment orders, that he only signed the consent form out of fear and duress, we conclude that reasonable officers in the position of the Defendants would have understood Christian's actions, namely signing the consent form and positioning himself for a search without being instructed to do so, indicated his consent to the search. We therefore agree with the district court that Defendants also were entitled to qualified immunity with regard to the second search.

Accordingly, we affirm the district court's order granting

summary judgment in favor of Defendants. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

Summary Judgment of the U.S. District Court, District of South Carolina, Greenville Division *Christian v. Payne, League*, No. 6:16-1757-TMC

Plaintiff, Gregory T. Christian, proceeding *pro se*, filed this action pursuant to 42 U.S.C.§ 1983 alleging a violation of his constitutional rights. In accordance with 28 U.S.C. § 636(b)(1)and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Before the court is the magistrate judge's Report and Recommendation ("Report")(ECF No. 169), issued September 28, 2017, recommending that the court grant the motions for summary judgment filed by defendant Officer K.A. Payne ("Payne") (ECF No. 120) and defendant Officer Andrew League ("League") (ECF No. 123).[1] Also before the court is Plaintiff's motion, filed on October 10, 2017, to supplement his response to defendant Payne's motion with additional evidence. (ECF No. 172). The parties were advised of their right to file objections to the Report. (ECF No. 169 at 13). On October 16, 2017, Plaintiff filed objections. (ECF No. 173).

The recommendations set forth in the Report have no presumptive weight and the responsibility to

[1]Defendant League filed his motion as a motion to dismiss Plaintiff's third amended complaint or alternatively, a motion for summary judgment. (ECF No. 123). Because League incorporated matters outside of the pleadings in his motion (ECF No. 123-1 at 4), the magistrate judge treated it as a motion for summary judgment. *See* Fed. R. Civ. P. 12(d). Plaintiff did not object to this. (ECF No. 173). Accordingly, the court agrees with the magistrate judge's analysis and will treat both motions as motions for summary judgment.

make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a de novo determination of the portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the magistrate judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

I. BACKGROUND

The magistrate judge summarized the facts of this action in his Report. (ECF No. 169 at 2–5). Briefly, in Plaintiff's third amended complaint, Plaintiff alleges that he was improperly searched by officers of the City of Greenville Police Department in violation of the Fourth Amendment to the United States Constitution after being accused by a property owner, Anna Healy ("Healy"), of stealing a ring at a yard sale. (ECF No. 112). The incident occurred around 10:00 A.M. and lasted approximately 35 minutes. (ECF No. 151-3). Defendant officers arrived at the scene responding to a 911 call placed by Healy stating that a suspect, described as "a

white male with gray hair wearing a black leather jacket and blue jeans," had taken a ring from her yard sale. *Id.* As noted above, Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. (ECF No. 112). In his original complaint, Plaintiff named the City of Greenville ("City") as the only defendant. (ECF No. 1). Subsequently, on July 7, 2016, Plaintiff was permitted to amend his complaint in order to add defendant Payne. (ECF No. 22). On January 26, 2017, the court dismissed Plaintiff's claims against City. (ECF No. 87). On May 1, 2017, Plaintiff's fifth motion to amend was granted in order to permit him to file his third amended complaint and add League as a defendant. (ECF No. 111). On May 16, 2017, defendant Payne filed a motion for summary judgment. (ECF No. 120).

On May 17, 2017, defendant League filed a motion to dismiss or alternatively a motion for summary judgment.[2] (ECF No. 123). On September 28, 2017, the magistrate judge filed a Report recommending that defendants' motions for summary judgment (ECF Nos. 120 and 123) be granted. (ECF No. 169). After the Report was filed, Plaintiff filed a motion to supplement his response to Payne's summary judgment motion with additional evidence, on October 10, 2017. (ECF No. 172). Subsequently, on October 16, 2017, Plaintiff filed objections to the Report. (ECF No. 173). Defendants filed a response in opposition to Plaintiff's motion (ECF No. 175) and to Plaintiff's objections (ECF No. 177). Plaintiff filed a reply to Defendants' response. (ECF No.

[2]Treated as a motion for summary judgment, as noted above.

178).

II. DISCUSSION

A. Plaintiff's Motion to Supplement his Response with Additional Evidence

Plaintiff filed a motion to supplement his response to Payne's motion for summary judgment with additional evidence on October 10, 2017 (ECF No. 172), twelve days after the magistrate judge filed his Report. In *Tyson v. Ozmint,* No. 6:06-0385-PMD-WMC, 2006 WL 3139682, at *3 (D.S.C. Oct. 31, 2006), this court noted that 28 U.S.C. § 636(b)(1) permitted a district court to receive additional evidence when ruling on objections to a Report and Recommendation. "However, this court is not required to consider any evidence that was not before the magistrate judge." *Tyson,* 2006 WL 3139682, at *3. In *Virgin Enters. Ltd. v. Virgin Cuts, Inc.,* 149 F. Supp. 2d 220, 223–24 (E.D. Va. 2000), the court explained why the consideration of additional evidence is not favored:

> While there may be cases in which receipt of further evidence is appropriate, there are substantial reasons for declining to do so as a general matter. First, permitting piecemeal presentation of evidence is exceptionally wasteful of time of both the magistrate and district judges, the former having been compelled to write an arguably useless report based on less than the universe of relevant evidence and the latter being deprived of the benefit of the magistrate judge's considered view of the record. Second, opposing parties would be

> put to the burden of proceedings which, to a considerable degree, would be duplicative. Third, there would be instances in which parties would be encouraged to withhold evidence, particularly evidence which might be embarrassing as well as helpful on the merits, in the expectation of using it before the district judge only if they fail to prevail before the magistrate judge on a more abbreviated showing. Finally, routine consideration of evidence in support of objections which could have been presented before the magistrate judge would reward careless preparation of the initial papers.

Virgin Enters. Ltd., 149 F. Supp. 2d at 223–24 (quoting *Morris v. Amalgamated Lithographers of America,* 994 F. Supp. 161, 163 (S.D.N.Y. 1998)).

In this case, both parties have repeatedly referenced and quoted the in-car audio recording of the encounter (ECF Nos. 120-1, 123-1, 151), however, as noted by the magistrate judge, the audio recording was never submitted by any party. (ECF No. 169 at 5). Both parties have access to the audio and neither party objects to the validity of the recording. (ECF No. 172 at 2). Plaintiff alleges that he misunderstood the proper method for incorporation of an audio recording to the record. (ECF No. 172 at 2). In his later reply (ECF No. 178) he refers to and discusses Federal Rule of Civil Procedure 15(a), however, such rule is inapplicable to the

present circumstance.

Defendants object to the supplementation of the record at this late juncture and argue that Plaintiff's reason is insufficient, that Plaintiff had numerous earlier opportunities to submit a transcript or the audio itself, that Plaintiff could have requested an extension to respond further to the summary judgment motions prior to the filing of the Report, and that Defendants would be prejudiced by not having the opportunity to inspect the "professionally prepared transcript" before its filing. (ECF No. 175). Because both parties had access to the audio recording for a significant portion of this litigation,[3] the extremely late filing of the transcript weighs strongly against admission. Moreover, allowing a party to provide additional evidence only after receiving an unfavorable recommendation weighs against judicial economy and fairness. *See Virgin Enters. Ltd.,* 149 F. Supp. 2d at 223–24. Further, without submission of the actual audio, the court has no means of determining the validity of the transcript, which was submitted as a copy with no signed certification by the transcriber. Accordingly, based on the foregoing, and in the interest of fairness to both parties and judicial economy, the court must deny Plaintiff's motion at this time.

[3]In a motion for subpoena filed on February 6, 2017, Plaintiff asserted that approximately sixmonths after he filed his complaint he learned of the in-car audio of the incident, requested a copy, and was given one. (ECF No. 93). Thus, Plaintiff was in possession of the in-car audio for over seven months at the time that the Report was filed.

B. Report and Recommendation

In his Third Amended Complaint, Plaintiff asserts a claim against defendants Payne and League alleging that his Fourth Amendment rights have been violated under the color of state law pursuant to § 1983. The magistrate judge determined that summary judgment is warranted because defendants Payne and League are entitled to qualified immunity. (ECF No. 169 at 9 & 12). Qualified immunity protects government officials performing discretionary functions from civil damage suits as long as the conduct in question does not "violate clearly established rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). To determine if qualified immunity applies, a district court must determine whether a plaintiff has alleged the deprivation of an actual constitutional right and whether the particular right was clearly established at the time of the alleged violation. *See Tolan v. Cotton,* 134 S. Ct. 1861, 1865–66 (2014) (per curiam); *Wilson v. Layne,* 526 U.S. 603, 609 (1999).

Specifically, addressing Plaintiff's allegation that two illegal searches took place, the magistrate judge found that (1) it was reasonable for the officers to believe that criminal activity was afoot and that Plaintiff might be a danger to officer safety so as to justify the "first search," a protective frisk for weapons, and (2) given the totality of the circumstances, the officers could reasonably have believed that Plaintiff voluntarily consented to the "second search." (ECF No. 169 at 12).

Plaintiff's objections largely repeat the arguments contained in his third amended complaint and

his responses to Defendants' summary judgment motions.[4] (ECF Nos. 112, 149, 151, & 173). Liberally construing the objections, the court is able to glean three allegations of error in the magistrate judge's Report.

First, Plaintiff argues that the magistrate judge erred in not accounting for ongoing discovery items. (ECF No. 173 at 4–5). However, the magistrate judge ruled previously on Plaintiff's argument regarding ongoing discovery in an order filed June 12, 2017. (ECF No. 147). The magistrate judge found that further discovery should not be permitted pending a ruling on Defendants' dispositive motions. (ECF No. 147 at 3–4). *See Behrens v. Pelletier*, 516 U.S. 299, 308 (1996) (The qualified immunity defense "is meant to give government officials a right, not merely to avoid standing trial, but also to avoid the burdens of such pretrial matters as discovery . . . as inquiries of this kind can be peculiarly disruptive of effective government." (internal quotations omitted)); *Lescs v. Martinsburg Police Dep't*, 138 F. App'x 562, 564 (4th Cir. 2005) (holding that District Court did not abuse its discretion in refusing discovery until dispositive motions on qualified immunity were ruled on). According to Rule 72(a) of the Federal Rules of Civil Procedure, "A party may serve and file objections to [a nondispositive order of the magistrate judge] within 14 days after being served with a copy. A party may not

[4] *"The purpose of magistrate review is to conserve judicial resources." Nichols v. Colvin, No. 2:14-cv-50, 2015 WL 1185894, at *8 (E.D. Va. Mar. 13, 2015) (citing United States v. Midgette, 478 F.3d 616, 621 (4th Cir. 2007). General objections or restatements of arguments addressedby the magistrate judge are akin to failure to object. Id.*

assign as error a defect in the order not timely objected to." Fed. R. Civ. P. 72(a). Plaintiff failed to appeal or object to the magistrate judge's order on his discovery motions (ECF No. 147) and consequently waived his right to object. *See Solis v. Malkani,* 638 F.3d 269, 274 (4th Cir. 2011). Therefore, present objections to that order are untimely and do not address a specific portion of the magistrate judge's Report. Accordingly, Plaintiff's objections regarding discovery are meritless and are denied.

Second, Plaintiff spends a large portion of his objections arguing that the magistrate judge erred in finding that Defendants were entitled to qualified immunity regarding the first search, the weapons pat-down, of Plaintiff. In his objections, Plaintiff merely repeats his prior arguments that his hands were not in his pockets, that the claims of the yard sale operators were unsubstantiated, and denying that he was acting aggressive, agitated, belligerent, argumentative, threatening, or loud. (ECF No. 173 at 7–8). These arguments were previously made by Plaintiff in his third amended complaint and his response to defendant Payne's motion for summary judgment. (ECF Nos. 112 and 151). He also repeats factual allegations from his affidavit. (ECF No. 151-1). These arguments were all considered and addressed by the magistrate judge in his Report. (ECF No. 169). Further, in his objections, Plaintiff seems to take issue with the officers' view and description of his behavior. (ECF No. 173 at 8). He contends these descriptions are not "testable" and not supported by articulable facts, and that he "cannot deny

an impression." *Id.* at 6. However, reviewing courts assess an officer's judgment "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Ryburn v. Huff*, 565 U.S. 469, 477 (2012). As the Fourth Circuit has admonished, "judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *E.W. by and through T.W. v. Dolgos*, No. 16-1608, 2018 WL 818303 (4th Cir. Feb. 12, 2018) (quoting *Ryburn*, 565 U.S. at 477). Applying the required standard, the court finds Plaintiff's arguments unpersuasive and agrees with the magistrate judge's analysis and conclusion. Accordingly, Plaintiffs objection is overruled.

Third, Plaintiff argues that the magistrate judge erred in finding the officers reasonably believed that the second search was consensual, despite the signed consent form, because Plaintiff's consent resulted from fraud and coercion. (ECF No. 173 at 10). Again, Plaintiff's objection largely reasserts the allegations from his third amended complaint (ECF No. 112) and his responses to Defendants' summary judgment motions which have been addressed by the magistrate judge (ECF Nos. 149 and 151). Plaintiff repeatedly claims that he was told a "falsehood" by the officers that caused him to consent to the search. However, his objection is vague and Plaintiff fails to identify with specificity what "falsehood" he refers to. It appears that Plaintiff is alleging that the Defendants lied when allegedly informing Plaintiff that several people had seen him put the ring in his pocket. First, this allegation was already

considered by the magistrate judge in his Report, which concluded that the considering the totality of the circumstances, Defendants' belief that the search was consensual was reasonable. (ECF No. 169 at 9–11). Second, assuming for the sake of this argument that Plaintiff accurately repeated Defendants' statement, Plaintiff has provided the court with no support for his allegation that such a statement was untruthful or a "falsehood." Finally, Plaintiff reasons in his objections that the statement caused him to consent to be searched because he believed several people claiming to have witnessed a theft would provide probable cause for officers to perform such a search.

In fact, the statement of one witness, such as Healy in the present case,[5] is often sufficient to provide probable cause. *Ferrera v. Hunt*, C.A. No. 0:09-2112, 2012 WL 1044488 at *4 (D.S.C. March 28, 2012) ("[It] is well settled that probable cause can often be established by the statement of a crime victim."); *Torchinsky v. Siwinski*, 942 F.2d 257, 262 (4th Cir. 1991) ("It is surely reasonable for a police officer to base his belief in probable cause on a victim's reliable identification of his attacker. Indeed, it is difficult to imagine how a police officer could obtain better evidence of probable cause than an identification by name of assailants provided by

[5]According to Payne's affidavit, Healy told him at the scene that while she had not actually seen Plaintiff take the ring, he was the only person near the ring when she believed it went missing. (ECF No. 120-2 at 2). Judging by the information in the record, Defendants did not have a reason to be suspicious of Healy or question her statements.

a victim, unless, perchance, the officer were to witness the crime himself."); *Beauchamp v. City of Noblesville, Ind.,* 320 F.3d at 743 ("The complaint of a single witness or putative victim alone generally is sufficient to establish probable cause to arrest unless the complaint would lead a reasonable officer to be suspicious, in which case the officer has a further duty to investigate."). Accordingly, based on the facts of this case (the 911 call and the statement or statements at the scene), the officers could have reasonably believed they had probable cause to arrest Plaintiff. Plaintiff's understanding of the situation was, therefore, correct. Thus, even if the alleged statement was untruthful, Plaintiff was not materially misled.

Whether consent is voluntarily given is judged by the totality of the circumstances. *United States v. Mendenhall,* 446 U.S. 544, 557 (1980). "In viewing the totality of the circumstances, it is appropriate to consider the characteristics of the accused (such as age, maturity, education, intelligence, and experience) as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers present; and the duration, location, and time of the encounter)" and "[w]hether the accused knew that he possessed a right to refuse consent . . . ." *U.S. v. Lattimore,* 87 F.3d 647, 650 (4th Cir. 1996) (citations omitted).

The incident took place at 10:00 A.M. in broad daylight at a yard sale open to the public. (ECF No. 169 at 11). The encounter with Defendants lasted approximately 35 minutes. *Id.* Defendant Payne provided

an affidavit testifying that Plaintiff verbally consented to the search. *Id.* Further, Plaintiff did not contest in his affidavit that he voluntarily began removing his jacket and shoes and put his hands on the trunk of the car, without being asked to do so, indicating his voluntary consent. *Id.* Further, it is undisputed that Defendant Payne presented Plaintiff with a consent to search form notifying Plaintiff in writing of his right to refuse and confirming that Plaintiff was consenting voluntarily without coercion, which Plaintiff signed. *Id.* At the time of the search, Plaintiff was 53 years old and holds a Bachelor of Science in Aerospace Engineering from the University of Florida. (ECF No. 151-6). Plaintiff's affidavit described coercion in the form of an officer gabbing his left arm and telling him that he was standing too close, and Defendant Payne telling Plaintiff that several people saw him put a ring in his pocket. (ECF No. 151-1). Judging by the totality of the circumstances, Defendant officers could have reasonably believed that Plaintiff was aware of his right to refuse, yet voluntarily consented to the search. *See Doctor v. City of Rock Hill,*

[6]In his objections, Plaintiff references and quotes from his provided transcript regarding the second search. (ECF No. 173 at 11). As stated above, the court denies Plaintiff's motion to supplement the record with this transcript. However, even if the court were to consider the transcript, Plaintiff's objection would fail. His objection alleges that language from the defendant officers was coercive and led to his consent to the second search. *Id.* However, reviewing Plaintiff's provided transcript, the language in question clearly occurred in the context of the weapon pat-down and not the second, consented search, and regardless, is not inherently coercive. *Id.* Accordingly, considering the record before the court, and even considering Plaintiff's transcript, his objection fails.

C.A. No. 0:15-265-JMC-SVH, 2016 WL 4251597, at *3 (D.S.C. July 19, 2016), *report and recommendation adopted by* 2016 WL 4196666 (D.S.C. Aug. 8, 2016) ("Even if Plaintiff did not voluntarily consent to the alleged search, Defendants are entitled to qualified immunity, because they could have reasonably believed that Plaintiff consented to be searched."). Therefore, Plaintiff's objection is overruled.[6] Accordingly, the court agrees with the magistrate judge and finds that Defendants are entitled to summary judgment.

III. CONCLUSION

After a thorough review of the Report and the entire record in this case, the court adopts the magistrate judge's Report (ECF No. 169) and incorporates it herein. Accordingly, Defendants' motions for summary judgment (ECF Nos. 120 and 123) are **GRANTED**. Additionally, Plaintiff's motion to supplement his response to defendant Payne's motion with additional evidence (ECF No. 172) is **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

February 28, 2018
Anderson, South Carolina