

APPENDIX

- "1" - MEMORANDUM OPINION FROM U.S. DISTRICT COURT; (Six Pages)
- "2" UNPUBLISHED Decision FROM the UNITED STATES COURT OF APPEALS (3-PAGES)
- "3" Declaration of our STAMPS (5-PAGES)

Franks hearing. The trial court denied Plaintiff's request for this untimely sought collateral Franks hearing. The denial was affirmed on appeal. Similarly, Plaintiff's conviction on appeal was affirmed.

Plaintiff now seeks relief in this Court claiming that his Fourth Amendment constitutional rights were violated when he was arrested without probable cause and when his cell phone was searched without a warrant. Plaintiff asserts that Defendant did not provide truthful information in pursuit of any arrest or search. Plaintiff's claims are based upon Title 42 U.S.C. 1983.

II. Standard of Review

The standard for review is set forth in the Federal Rules, "[t]he court shall grant summary judgment if 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). In order to challenge the motion "the party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" Bouchat v. Baltimore Ravens Football Club, Inc., 346 F.3d 514, 525 (4th Cir. 2003)(alteration in original). The Court is required to view the evidence in the light most favorable to the nonmoving party and to draw all reasonable inferences in his favor without weighing the evidence or assessing the witness' credibility. Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 644-45 (4th Cir. 2002). Not any factual dispute will defeat a motion for summary judgment, the requirement is that there be no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

III. Analysis

a. Plaintiff's claims are barred by collateral estoppel.

Defendant contends that Plaintiff had ample opportunity to raise the concerns which are the basis of this litigation, namely that the seizure of his phone and the subsequent search was unlawful. Defendant contends that Plaintiff's claims are barred by the doctrine of collateral estoppel. "Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Collins v. Pond Creek Mining Co., 468 F.3d 213, 217 (4th Cir. 2006). Collins sets forth five elements that must be satisfied:

- 1) that the issue sought to be precluded is identical to the one previously litigated;
- 2) that the issue was actually determined in the prior proceeding;
- 3) that the issue's determination was "a critical and necessary part of the decision in the prior proceeding;"
- 4) that the prior judgment is final and valid; and
- 5) that the party against whom collateral estoppel is asserted "had a full and fair opportunity to litigate the issue in the previous forum."

Id. Defendant contends, and the Court agrees, that the issue of whether Plaintiff's person and property were lawfully seized and/or searched was litigated in prior proceedings before the state trial and appellate courts.

Under criminal procedural law there is a specified time to challenge a supporting affidavit with respect to an arrest or search warrant. This occurs before the criminal trial by way of a Franks hearing. Plaintiff conceded these issues by waiver and cannot resurrect them here. Plaintiff had a "full and fair" opportunity to litigate these issues. The contents of Plaintiff's phone records, as well as the location data associated with his phone, made up a core component

of the evidence resulting in a guilty finding. Not only has Defendant established the doctrine of collateral estoppel by way of the original criminal proceeding, but should there be any doubt, the appellate decision provides clarity. See the Maryland Court of Special Appeals July decision (the "July CSA Decision")(ECF No. 63-3).

At issue was Plaintiff's right to a Franks hearing regarding the legitimacy of the warrant "supported by an affidavit containing materially false statements of fact. He further asserted that when he was arrested on that warrant, some of his personal belongings were improperly seized and that one of those items, a cell phone, was introduced as evidence at his trial. . . ." July CSA Decision 2. This issue is directly on point with the concerns raised here. To rule otherwise will do violence to, and is a direct assault upon, the decisions of the state courts which have considered this issue. To find otherwise on this record would be a direct contravention of the core principle of the doctrine of collateral estoppel.

b. Plaintiff cannot overcome the Heck Doctrine.

Plaintiff was convicted of conspiracy to commit armed robbery. Said convictions were reviewed and upheld on appeal. See the Maryland Court of Special Appeals February decision (the "February CSA Decision")(ECF No. 63-1). Under Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d. 383 (1994), Plaintiff cannot pursue this present claim.

Plaintiff is seeking to recover for a constitutional tort under 18 U.S.C. 1983. In Heck, the court expressly held that

In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus

Id. at 486-87. Plaintiff does not have a cognizable claim. There is no record that renders his conviction invalid. Instead of a reversal on direct appeal, Plaintiff's conviction was affirmed. Like the doctrine of collateral estoppel, the Heck decision eviscerates Plaintiff's claim for compensation.

c. It is clear Defendant had lawful authority to seize and search Plaintiff's cell phone.

Plaintiff contends that the State, by way of Defendant, did not have authority to search his cell phone as Defendant did not have a warrant to do so. Plaintiff is factually mistaken.

As an initial matter, the Court will incorporate the discussion set forth above regarding Plaintiff's waiver of this issue in the application of collateral estoppel preventing his attempt to do so here. Even if the Court were to consider the merits of Plaintiff's argument, it is just not based on fact.

Plaintiff was arrested on the basis of a lawfully issued warrant and the phone was taken from his person at the time of his arrest. Thereafter, Defendant obtained the proper authorization to retrieve the contents of the phone, as well as the cell site and call detail records. Defendant has provided:

- 1) a search warrant issued for the contents of the phone that was signed by Circuit Court Judge Sharon Burrell on December 4, 2014 (ECF No. 63-5);¹
- 2) the "Probable Cause Order" issued by a state judge permitting access to the cell site and call detail records of the subject phone. (ECF No. 63-6).

Plaintiff constructs an argument based on the recent decision of Carpenter v. United States, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018). Carpenter made clear that a search warrant

¹ While only the "application" is provided, it is clear a warrant was issued. The issuing judge executed an "oath" regarding the personal appearance of the affiant (Detective JM Gallagher) on the same date and referenced the application. Moreover, there is an executed return filed in the same court in a timely fashion.

supported by probable cause was required to obtain historical data from a suspect's phone which effectively was serving as a tracking device.

The conduct at issue here predates the Carpenter decision by the Supreme Court. Nonetheless, both the Probable Cause Order for the cell site and call detail records, as well as the application for a warrant to search Plaintiff's phone were supported by the very probable cause standard announced in Carpenter some four years later.

Even if Defendant failed to establish the existence of probable cause, Defendant correctly relies upon the case that is dispositive of this issue, namely United States v. Chavez, 894 F. 3d 593 (4th Cir. 2018). Chavez makes clear that when detectives reasonable rely upon court orders and the Stored Communications Act in obtaining cell site records, then the "good faith" exception to the exclusionary rule prohibits a retroactive invalidation of their efforts due to a subsequent change in the law. Id. at 608. There is no basis to attack the objective "good faith" shown by the efforts of Defendant to obtain judicial approval before searching the phone records.

IV. Conclusion

At the end of the day, Plaintiff's arguments survived Defendant's earlier filed motion to dismiss due to a lack of record support. Defendant has now supplied the requisite materials. Defendant has shown there is no dispute of material fact and that he is entitled to judgment as a matter of law. Accordingly, Defendant's Motion for Summary Judgment is GRANTED.

April 3, 2019

/s/
Charles B. Day
United States Magistrate Judge

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6520

RUPERT STAMPS,

Plaintiff - Appellant,

v.

DETECTIVE PARIS CAPALUPO,

Defendant - Appellee,

and

OFFICER LEROY ROLLINS,

Defendant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Charles B. Day, Magistrate Judge. (8:17-cv-00830-CBD)

Submitted: September 30, 2019

Decided: October 16, 2019

Before KING and AGEE, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Rupert Stamps, Appellant Pro Se. Edward B. Lattner, OFFICE OF THE COUNTY
ATTORNEY, Rockville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rupert Stamps appeals the magistrate judge's order granting Appellee summary judgment in Stamps' 42 U.S.C. § 1983 (2012) action.* "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." *Gen. Ins. Co. of Am. v. U.S. Fire Ins. Co.*, 886 F.3d 346, 353 (4th Cir. 2018). Summary judgment is appropriate "if 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).

Here, the magistrate judge granted summary judgment on three grounds: (1) that Stamps' claim was barred by the doctrine of collateral estoppel, (2) that Stamps' claim was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and (3) that Stamps' claim was meritless. We conclude that the first two grounds are erroneous. Collateral estoppel does not bar the claim because the Fourth Amendment violations Stamps alleged in his § 1983 complaint were not "actually litigated" in a prior proceeding. *Shader v. Hampton Improvement Ass'n, Inc.*, 115 A.3d 185, 193 (Md. 2015); *see also Allen v. McCurry*, 449 U.S. 90, 96 (1980). The *Heck* doctrine also does not bar the claim because, based on the abundance of evidence produced at trial, even if Stamps were successful in his § 1983 claim, the result likely would not render his conviction invalid. *See Heck*, 512 U.S. at 486; *Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 197 (4th Cir. 2015).

* The parties consented to proceed before a magistrate judge, pursuant to 28 U.S.C. § 636(c) (2012).

Despite these errors, we affirm the magistrate judge's grant of summary judgment because we agree that Stamps' claim is meritless. Stamps was arrested pursuant to a valid warrant, so the seizure of his phone, which was on his person at the time of the arrest, was constitutional. *See Riley v. California*, 573 U.S. 373, 382 (2014). Stamps' phone was then searched pursuant to a valid search warrant, which was also plainly constitutional. Stamps argues on appeal that his phone was searched prior to the issuance of the warrant, but there is no evidence to support this claim.

To the extent Stamps properly challenges the district court's March 15, 2018, dismissal order or raises a claim that *Carpenter v. United States*, 138 S. Ct. 2206 (2018), applies to his case, we affirm for the reasons stated by the district court, *Stamps v. Rollins*, No. 8:17-cv-00830-CBD (D. Md. Mar. 15, 2018), and the magistrate judge, *Stamps v. Rollins*, No. 8:17-cv-00830-CBD (D. Md. Apr. 4, 2019), respectively.

Accordingly, we affirm the judgment. 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

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