FILED: December 15, 2020
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 20-1019 (L)
(1:18-cv-00562-GLR)

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LAWRENCE MILLS

Plaintiff – Appellant

v.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER JAMES LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police

Defendants - Appellees

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No. 20-1021
(1:18-cv-00562-GLR)

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LAWRENCE MILLS

Plaintiff - Appellant

V.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER JAMES

LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police

Defendants - Appellees

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ORDER

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court
/s/ Patricia S. Connor, Clerk

App. 3

FILED: September 28, 2020
UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT
No. 20-1019 (L)
(1:18-cv-00562-GLR)

LAWRENCE MILLS

Plaintiff - Appellant

v.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER JAMES LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police

Defendants - Appellees

App. 4

No. 20-1021 (1:18-cv-00562-GLR)

LAWRENCE MILLS

Plaintiff - Appellant

v.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER JAMES LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. Civ. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**No. 20-1019**

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LAWRENCE MILLS,

Plaintiff - Appellant,

v.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER JAMES LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police,

Defendants - Appellees.

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**No. 20-1021**

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LAWRENCE MILLS,

Plaintiff - Appellant,

v.

STATE OF MARYLAND; MARYLAND STATE POLICE; OFFICER ANTHONY HASSAN, In both his official and individual capacity as

an officer of the Maryland State Police; OFFICER JAMES LANTZ, In both his official and individual capacity as an officer of the Maryland State Police; OFFICER MATTHEW DULL, In both his official and individual capacity as an officer of the Maryland State Police,

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Appeals from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, District Judge. (1:18-cv-00562-GLR)

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Submitted: September 24, 2020
Decided: September 28, 2020

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Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Lawrence Mills, Appellant Pro Se. Phillip M. Pickus, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Pikesville, Maryland, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lawrence Mills appeals the district court's orders denying relief on his 42 U.S.C. § 1983 complaint and his post judgment motions under Fed. R. Civ. P. 59(e) and Fed. R. Civ. P. 60(b)(6). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Mills v. Maryland*, No. 1:18-cv- 00562-GLR (D. Md., Sept. 30, 2019; Dec. 23, 2019). We also deny Mills' motions for partial summary reversal and vacatur, and for initial hearing en banc. 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*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

LAWRENCE MILLS,

Civil Action No. GLR-18-562

Plaintiff,

v.

ANTHONY HASSAN, et al.,

Defendants.:

**MEMORANDUM OPINION**

THIS MATTER is before the Court on Plaintiff Lawrence Mills' Rule 60(b)(6) Motion (ECF No. 30) and Rule 59(e)(3) Motion (ECF No. 31). The Motions are ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will deny both Motions.

## I. BACKGROUND[1]

On March 13, 2015, Defendant Senior Trooper Anthony Hassan ("Hassan") arrested Mills for Driving Under the Influence of Alcohol ("DUI"), (Compl. ¶ 26, ECF No. 1), as well as negligent driving, reckless driving, failure to obey a properly placed traffic controldevice, driving or attempting to drive while impaired by alcohol ("DWI"), driving or attempting to drive a vehicle not equipped with an ignition interlock, and failure to obey designated lane directions, (Defs.' Mot. Dismiss Compl. Altern. Summ. J. ["Defs.' Mot."]Ex. 6 ["Court Records for Mar. 13, 2015 Stop"] at 2–4, ECF No. 11-8). On June 30, 2015,

[1] The Court sets forth the complete facts of this case in its September 30, 2019 Memorandum Opinion. (ECF No. 28). Here, the Court repeats only those facts necessary.

Mills was convicted of DUI in the District Court for Howard County, Maryland.[2] (Compl. ¶ 35). Mills was sentenced to two years and sixty days in prison with all but sixty dayssuspended. (Id.). Later that day, Mills posted bond and immediately appealed his conviction. (Id. ¶ 36). On February 19, 2016, a jury in the Circuit Court for Howard County, Maryland found Mills guilty of negligent driving and failure to obey lane directions but not guilty of DUI, DWI, and the other minor traffic offenses. (Court Records for Mar. 13,2015 Stop at 2–4). He was fined $230.00. (Id. at 3–4). On March 10, 2016, Mills was also convicted of the ignition interlock offense, which had been severed from the other chargesin the Circuit Court trial, and he was sentenced to one year in prison with all but seventy- five days suspended. (Id. at 2–4).

On February 23, 2018, Mills sued Hassan, Corporal James Lantz ("Cpl. Lantz"), Trooper Matthew Dull ("Tpr. Dull"),[3] the Maryland State Police ("MSP"), and the State ofMaryland, pursuant to 42 U.S.C. § 1983 (2018) for unlawful arrest, search, and seizure inviolation of the Fourth and Fourteenth Amendments. (ECF No. 1). Mills also asserted various state law claims, including malicious prosecution. The Complaint generally allegedthat there was no probable cause for Mills' arrest, and that Hassan fabricated evidence andcommitted perjury to secure his conviction.

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[2] In their Motion to Dismiss, Defendants state that Mills was convicted of all chargesin the Howard County District Court. (Defs.' Mot. at 1, 14, 42, ECF No. 11). The Court records indicate that Mills appealed from the Howard County District Court to the CircuitCourt for Howard County, (Court Records for Mar. 13, 2015 Stop at 2–4), and Mills doesnot dispute that he was convicted of all charges.

[3] When Cpl. Lantz and Tpr. Dull arrived at the scene, Hassan had already stopped Mills and was searching his car.

Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (internal quotations and citation omitted).

## 2. Analysis

Here, Mills alleges that he is entitled to relief under Rule 59(e) because the Court'sdismissal of his Fourth Amendment claim was based on "clear error of law." However, Mills resurrects a factual argument that he made while opposing Defendants' Motion to Dismiss: that Hassan did not have probable cause to arrest him for the ignition interlock offense, because Hassan only learned of the restriction after arresting and transporting Mills to the state police barracks. According to Mills, "when Hassan was taking out the evidence bag to return Mills property, he removed Mills ID from the wallet and inspectedit, and saw what he believed to be an interlock restriction, then proceeded to add on the charge." (Pl.'s Rule 59(e)(3) Mot. at 4, ECF No. 31 (quoting Pl.'s Mem. Opp. Defs.' Mot.Dismiss at 25–26, ECF No. 24)). Mills urges this Court to adopt his version of events regarding how and when Hassan learned of the ignition interlock restriction. Defendants argue that it does not matter when Hassan learned that Mills had an ignition interlock restriction on his license because an arresting officer's state of mind is irrelevant when determining if probable cause existed. Defendants rely upon Devenpeck v. Alford, 543 U.S. 146, 153 (2004), in which the United States Supreme Court invalidated "[t]he rule that the offense establishing probable cause must be 'closely related' to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest." The Court agrees with Defendants that, based

On May 17, 2018, Defendants filed a Motion to Dismiss or, in the Alterative, Motion for Summary Judgment. (ECF No. 11). Defendants argued, among other points, that Mills was improperly challenging his convictions in violation of Heck v. Humphry[4] and that his conviction in Circuit Court established probable cause as a matter of law. Theyfurther argued that the probable cause finding was not negated by Hassan's alleged falsehoods. On November 7, 2018, Mills filed an Opposition, (ECF No. 24), and a Cross Motion for Partial Summary Judgment, (ECF No. 23). In his Opposition, Mills asserted that Heck did not preclude him from asserting claims under § 1983, because Heck did not require favorable termination—i.e., reversal on appeal—of all convictions. He argued thatthe requirement was satisfied where some of the convictions, here DUI and DWI, were notupheld on appeal. Mills also argued that Hassan falsified his police report and committed perjury at various proceedings,[5] thereby invalidating any subsequent findings that probable cause existed for his arrest. Mills further argued that his § 1983 claims were viable becausehe was not only deprived of his right to a fair trial but also subject to a loss of liberty as a direct result of Hassan's dishonesty.

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[4] In Heck, the United States Supreme Court held that a plaintiff seeking damages under § 1983 for an allegedly unconstitutional conviction or imprisonment "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 calledinto question by a federal court's issuance of a writ of habeas corpus." 512 U.S. 477, 486–87 (1994) (citing 28 U.S.C. § 2254 (2018)). Accordingly, "[a] claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." Id. at 487 (emphasis original).[5] Hassan also testified at an October 30, 2015 suppression hearing in Howard County Circuit Court and at a February 4, 2016 Motor Vehicle Administration.

After the motions were fully briefed,[6] this Court issued a Memorandum Opinion and Order on September 30, 2019, granting the Defendants' Motion to Dismiss and denying Mills' Motion for Partial Summary Judgment as moot. (ECF Nos. 28, 29). The Court concluded that Mills' Fourth Amendment claims for false arrest and unreasonable search and seizure failed because "[u]nder Maryland law, a conviction determines conclusively the existence of probable cause, regardless of whether the judgment is later reversed in a subsequent proceeding," unless the conviction was secured through "fraud, perjury, or other corrupt means." (Sept. 30, 2019 Mem. Op. at 14, ECF No. 28) (internal quotations and citations omitted). The Court found that probable cause had been established because Mills was convicted of three offenses on appeal: negligent driving, failure to obey lane directions, and driving or attempting to drive a vehicle not equipped with an ignition interlock. The jury's decision to acquit Mills of DUI and DWI on appeal was inconsequential, because "Hassan had probable cause to arrest based on Mills'negligent driving, failure to obey lane directions, and driving without an interlock device," thereby justifying Mills' arrest "even if convictions stemming from the same arrest were later overturned." (Id. at 15–16). Accordingly, Mills' § 1983 claim was barred by Heck because, in challenging whether Hassan had probable cause for his arrest, Mills was collaterally attacking the conviction resulting from that arrest.

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[6] On November 21, 2018, Defendants filed an omnibus brief, replying to Mills' Opposition to their Motion to Dismiss and opposing his Cross Motion for Partial SummaryJudgment. (ECF No. 26). On November 30, 2019, Mills filed a Reply to Defendants' Opposition to his Cross Motion for Partial Summary Judgment. (ECF No. 27).

As to Mills' Fourteenth Amendment claims, the Court concluded that Mills had failed to adequately plead facts establishing a loss of liberty—i.e., conviction and incarceration—resulting from fabricated evidence. Mills was convicted of the ignition interlock offense in Howard County District Court, sentenced to jail, and then released onbond pending his appeal. However, the Court noted that Mills did not allege that "Hassan fabricated this charge or that his Ignition Interlock System was in place as required" and commented that "Mills does not even mention the Ignition Interlock charge in the Complaint." (Id. at 18). Having concluded that Mills failed to state a claim upon which relief could be granted, the Court did not reach Defendants' alternative arguments for dismissal and declined to exercise supplemental jurisdiction over Mills' state law claims. On October 9, 2019, Mills filed timely Rule 60(b)(6) and Rule 59(e)(3) Motions, seeking reconsideration of the Court's September 30, 2019 Order dismissing his Complaint. (ECF Nos. 30, 31). Defendants filed an Opposition on October 22, 2019. (ECFNo. 32). Mills filed a Reply on October 29, 2019. (ECF No. 33). Before this Court could rule on the merits of the pending motions, Mills filed a Notice of Appeal on October 30, 2019. (ECF No. 34). The Court addresses both Motions in turn.

## II. DISCUSSION

### A. Rule 59(e)(3) Motion

#### 1. Standard of Review

Although the Federal Rules of Civil Procedure do not expressly recognize motionsfor "reconsideration," Rule 59(e) authorizes a district court to alter or amend a prior final judgment in three circumstances: "(1) to accommodate an intervening change in controlling

law; (2) to account for new evidence not available at trial; or (3) to correct a clear error oflaw or prevent manifest injustice." United States ex rel. Carter v. Halliburton Co., 866 F.3d 199, 210 (4th Cir. 2017) (citing Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007)); see also Katyle v. Penn Nat'l Gaming, Inc., 637 F.3d 462, 470 n.4 (4th Cir. 2011). The United States Court of Appeals for the Fourth Circuit has held that Rule 59(e) may also be used to "correct manifest errors of . . . fact upon which the judgment is based." Md. Elec. Indust. Health Fund v. Kodiak Util. Const., Inc., JFM-02-3662, 2004 WL 112722, at *1 (D.Md. Jan. 20, 2004) (quoting Small v. Hunt, 98 F.3d 789, 797 (1996)) (internal quotations omitted). The party seeking post-judgment relief under Rule 59(e) must file the appropriatemotion within 28 days of the final judgment, specifically identifying the basis for reconsideration. Bolden v. McCabe, Weisberg & Conway, LLC, No. DKC 13-1265, 2014 WL 994066, at *1 n.1 (D.Md. Mar. 13, 2014). The court may properly deny the motion ifa movant fails to establish one of the criteria. See, e.g., Jarvis v. Enter. Fleet Servs. & Leasing Co., No. DKC-07-3385, 2010 WL 1929845, at *2 (D.Md. May 11, 2010), aff'd, 408 F.App'x 668 (4th Cir. 2011) (denying motion to reconsider because the plaintiff failedto identify valid circumstances that would cause the district court to alter or amend its prioropinion). Furthermore, "[a] motion for reconsideration is 'not the proper place to relitigatea case after the court has ruled against a party, as mere disagreement with a court's rulingswill not support granting such a request.'" Lynn v. Monarch Recovery Mgmt., Inc., 953 F.Supp.2d 612, 620 (D.Md. 2013) (quoting Sanders v. Prince George's Pub. Sch. Sys., No. RWT 08CV501, 2011 WL 4443441, at *1 (D.Md. Sept. 21, 2011)). A Rule 59(e) amendment is "an extraordinary remedy which should be used sparingly." Pac. Ins. Co.

upon Devenpeck, Hassan's knowledge of the ignition interlock restriction is irrelevant, because he had probable cause to arrest Mills for DUI.

The Court rejects Mills' argument for three additional reasons. First, Mills' thirty- six-page Complaint never mentions the ignition interlock offense and, despite dedicating three lengthy paragraphs to what allegedly transpired at the State Police Barracks, Mills never alleged the version of events he now implores the Court to adopt. Mills made this allegation for the first time in his Opposition to the Motion to Dismiss. However, a plaintiffmay not amend his complaint through responsive pleadings. Hurst v. District of Columbia, 681 F.App'x 186, 194 (4th Cir. 2017). Having failed to allege these facts in his Complaint or through an amended complaint, Mills cannot now claim that those facts entitle him to relief under Rule 59(e). See Potter v. Potter, 199 F.R.D. 550, 553 (D.Md. 2001) ("When parties file a motion with the court, they are obligated to insure that it is complete with respect to facts, law and advocacy Hindsight being perfect, any lawyer can construct a new argument to support a position previously rejected by the court, especially once thecourt has spelled out its reasoning in an order.").[7] Second, Mills cannot use his Rule 59(e) Motion to make an argument he failed to properly raise prior to the dismissal of his Complaint. Pac. Ins. Co., 148 F.3d at 403. Third, even if this Court concluded that Mills' arrest for the ignition interlock offense was not supported by probable cause—which it

[7] On October 26, 2018, Mills' attorney filed a Motion to Strike Attorney's Appearance, (ECF No. 18), which the Court granted on October 31, 2019, (ECF No. 19). Mills has represented himself since then. However, he was represented by counsel when the Complaint was filed.

does not—granting the Motion would not alter the futility of his § 1983 claim for false arrest. As the Court previously explained, Mills' conviction for negligent driving and failure to obey lane directions remain valid and "[i]f there was probable cause for any of the charges made . . . then the arrest was supported by probable cause, and the claim for false arrest fails." (Sept. 30, 2019 Mem. Op. at 13 (quoting Wells v. Bonner, 45 F.3d 90, 95 (5th Cir. 1995). Next, Mills argues that this Court erroneously relied upon Wilkerson v. Hester, 114 F.Supp.2d 446, 456 (W.D.N.C. 2000), in concluding that, for Fourth Amendment purposes, an arrest for multiple offenses constitutes a single transaction, such that probable cause for one offense constitutes probable cause for all offenses. Mills argues that the Court must analyze every charge separately to determine if each was supported by probable cause; in support thereof, he cites Janetka v. Dabe, 892 F.2d 187 (2d Cir. 1989), and Johnson v. Knorr, 477 F.3d 75 (3d Cir. 2007). Defendants contend that Mills made this same argument in his Opposition and that he is attempting to relitigate the issue. Defendants note that neither Janetka nor Johnson are binding on this Court and question their applicability to this case. The Court agrees with Defendants.

It is well established that a Rule 59(e) Motion cannot be used to relitigate issues previously briefed and decided. Medlock v. Rumsfeld, 336 F.Supp.2d 452, 470 (D.Md. 2002), aff'd, 86 F.App'x 665 (4th Cir. 2004) ("To the extent that Plaintiff is simply trying to reargue the case, he is not permitted to do so. Where a motion does not raise new arguments, but merely urges the court to 'change its mind,' relief is not authorized."). Nor can it be used to advance new legal arguments or theories that were previously available.

Pac. Ins. Co., 148 F.3d at 403. Here, Mills attempts to do both. Mills repeats the same probable cause argument previously rejected by this Court, and he now cites Janetka and Johnson to support that argument when he could have done so before his Complaint was dismissed. While the Motion could be denied on this basis alone, the Court reaches the substance of Mills' argument and concludes that neither Janetka nor Johnson compel individualized determinations of probable cause. As Defendants note, decisions issued by the Second and Third Circuit are not binding on this Court. Moreover, the Fourth Circuit has endorsed opinions issued by the Third and Ninth Circuits, which have held that a Fourth Amendment claim will fail where an officer has "probable cause for at least one charge for an arrest on multiple charges." Gantt v. Whitaker, 57 F.App'x 141, 149 n.7 (4th Cir. 2003) (per curiam) (first citing Barry v. Fowler, 902 F.2d 770, 773 n.5 (9th Cir. 1990), and then citing Edwards v. City of Phila., 860 F.2d 568, 575–76 (3d Cir. 1988)).

At bottom, Mills is not entitled to Rule 59(e) relief regarding the dismissal of his Fourth Amendment claims. The Court now considers Mills' Fourteenth Amendment claims.

Mills argues that dismissal of his Fourteenth Amendment claim was based on a factual error. He asserts that the Court incorrectly assumed that his Fourteenth Amendment claim was based on the jail sentence he received for the ignition interlock offense when it should have been based on the two hours he spent in custody following his conviction forDUI in Howard County Circuit Court. Defendants argue that Mills' malicious prosecution claim fails because he was convicted of all charges and, on appeal, three of those convictions were affirmed, including the ignition interlock offense. They also note that Mills never mentioned the ignition interlock offense in his Complaint. Defendants'

arguments are not responsive to Mills' contention that he suffered a deprivation of liberty following his DUI conviction. Nonetheless, the Court concludes that Mills is not entitled to relief under Rule 59(e). In his Complaint, Mills wholly failed to advance the factual andlegal arguments he now asserts in support of his Fourteenth Amendment claim. Mills cannot amend his factually deficient Complaint by way of a Rule 59(e) motion. Potter, 199 F.R.D. at 553. His responsive pleadings and Motion for Partial Summary Judgment are also conspicuously silent on the issue he now raises. As the Court previously stated, Millsis not entitled to reconsideration based on his failure to allege specific facts and legal theories prior to the dismissal of his case. Ford v. United States, No. CIV. RDB 12-2848, 2014 WL 1388261, at *2 (D.Md. Apr. 7, 2014), appeal dismissed, 582 F.App'x 183 (4th Cir. 2014); see also Jarvis, 2010 WL 1929845, at *2 (denying a Rule 59(e) motion where the plaintiff implored the court to "correct manifest errors of law or fact" but presented additional arguments that essentially sought "to have the court change its mind"). Accordingly, Mills' Rule 59(e) Motion is denied.

## B. Rule 60(b)(6) Motion

### 1. Standard of Review

A motion to alter or amend filed more than twenty-eight days of the judgment isgoverned by Rule 60(b). See Fed.R.Civ.P. 59(e). As a threshold matter, the party seeking relief under Rule 60(b) must establish "timeliness, a meritorious claim or defense, and alack of unfair prejudice to the opposing party." Mizrach v. United States, WDQ-11-1153, 2015 WL 7012658, at *4 (Nov. 12, 2015) (citing Aikens v. Ingram, 652 F.3d 496, 501 (4th Cir. 2011)). Only after the movant has made that preliminary showing will the court

consider the basis for the motion, which must allege one of the following: (1) "mistake, inadvertence, surprise, or excusable neglect"; (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial underRule 59(b)"; (3) fraud . . . misrepresentation, or misconduct by an opposing party"; (4) "thejudgment is void"; (5) "the judgment has been satisfied, released, or discharged; it is basedon an earlier judgment that has been reversed or vacated; or applying it prospectively is nolonger equitable"; or (6) "any other reasons that justifies relief." Fed.R.Civ.P. 60(b).

**2. Analysis**

Mills' Rule 60(b) Motion asserts the same deprivation of liberty argument he madein his Rule 59(e) Motion. The Court rejects the argument here, for the same reasons it didso in the Rule 59(e) Motion. The Court concludes that the Motion is not meritorious and, as such, is not entitled to further review under Rule 60(b)(6). Accordingly, Mills' Rule 60(b)(6) Motion is denied.

## III. CONCLUSION

For the foregoing reasons, the Court will deny the Plaintiff's Rule 60(b)(6) Motion(ECF No. 30) and Rule 59(e)(3) Motion (ECF No. 31). A separate Order follows.
Entered this 23rd day of December, 2019.

/s/
George L. Russell,
III United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

LAWRENCE MILLS,

Civil Action No. GLR-18-562

Plaintiff,

v.

ANTHONY HASSAN, et al.,

Defendants.:

**ORDER**

For the reasons stated in the foregoing Memorandum Opinion, it is this 23rd day of December, 2019, by the United States District Court for the District of Maryland, hereby: ORDERED that Plaintiff Lawrence Mills' Rule 60(b) (6) Motion (ECF No. 30) is
DENIED;

IT IS FURTHER ORDERED that Mills Rule 59(e)(3) Motion (ECF No. 31) is also DENIED; and
IT IS FURTHER ORDERED that the Clerk shall MAIL a copy of this Order and the foregoing Memorandum Opinion to Mills at his address of record.

/s/
George L. Russell, III
United States District Judge

IN THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF MARYLAND

LAWRENCE MILLS,

Civil Action No. GLR-18-562

v.

ANTHONY HASSAN, et al.

Defendants.

**MEMORANDUM OPINION**

THIS MATTER is before the Court on Defendants Senior Trooper Anthony Hassan ("Sr. Tpr. Hassan"), Trooper First Class Matthew Dull ("Tpr. Dull"), Corporal James Lantz ("Cpl. Lantz") (collectively, the "Trooper Defendants"), State of Maryland (the "State"), and Maryland State Police's ("MSP") Motion to Dismiss Complaint or, in the Alternative, Motion for Summary Judgment (ECF No. 11) and Plaintiff Lawrence Mills' Cross Motion for Partial Summary Judgment (the "Cross-Motion") (ECF No. 23). The Motions are ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons set out below, the Court will grant Defendants' Motionand deny Mills' Cross-Motion as moot.

## I. BACKGROUND

Just after midnight on March 13, 2015, Mills was driving south on Interstate 95,after spending the evening at the Horseshoe Casino in Baltimore, Maryland, when Sr.

[1] Unless otherwise noted, the Court takes the following facts from Mills' Complaint, (ECF No. 1), and accepts them as true. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56 (2007)).

Tpr. Hassan pulled him over. (Compl. ¶¶ 18–19, ECF No. 1). According to Sr. Tpr. Hassan's Incident Report, Mills' car was swerving between lanes. (Defs.' Mot. Dismiss Compl. Altern. Summ. J. ["Defs.' Mot."] Ex. 2 ["Incident Report"] at 3, ECF No. 11-4). Hassan smelled alcohol on Mills' breath and observed his eyes were "glassy and bloodshot." (Id.). In response to Sr. Tpr. Hassan's questions, Mills denied having had "anything to drink," before conceding that he "had some juice." (Compl. ¶ 19; see Incident Report at 3).

Mills stepped out of the car at Sr. Tpr. Hassan's request, but when Sr. Tpr. Hassan stated he was going to conduct field sobriety tests, Mills declined.(Compl. ¶¶ 19–21; Incident Report at 3). While checking Mills' Maryland driver'slicense, Sr. Tpr. Hassan noticed Mills had a restriction that required him to use an Ignition Interlock System ("Ignition Interlock") in his car. (Incident Report at 3).[2] When asked why there was no Ignition Interlock on his car's steering wheel, Mills said he had taken it out recently. (Id.). After stating he would "take [Mills] to jail," Sr. Tpr. Hassan searched Mills' vehicle. (Compl. ¶¶ 21–22). At that point, Tpr. Dull and Cpl. Lantz arrived at the scene. (Id. ¶ 22). Mills complained to them about Sr. Tpr. Hassan's search, but they declined to intervene. (Id. ¶ 23). Sr. Tpr. Hassan then searched Mills, placed

Mills in his police cruiser, and drove him to MSP's Waterloo Barracks. (Id. ¶¶ 24–25; Incident Report at 5).

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[2] Those convicted of certain alcohol-related driving offenses must participate in the IgnitionInterlock System Program, Md. Code Ann., Transp. § 16-404.1 (West 2019), and violating the Program is a criminal offense, id. § 16-113(k), (l).

At the Barracks, Sr. Tpr. Hassan read Mills the "DR-15 advise of rights" andasked him if he would submit to an Intoximeter breath test. (Compl. ¶ 25; Incident Report at 5). Mills requested to speak to an attorney, but Sr. Tpr. Hassan did not honor that request. (Compl. ¶ 25). Sr. Tpr. Hassan noted that Mills refused to take the breath test, (id.; Incident Report at 5), which resulted in the automatic suspension of Mills' driver's license, (Defs.' Mot. Ex. 4 ["DR-15 Form"], ECF No. 11-6); see Md. Code Ann., Transp. § 16-205.1(i) (West 2019). Sr. Tpr. Hassan charged Mills with Driving Under the Influence of Alcohol ("DUI"), (Compl. ¶ 26), as well as negligent driving, reckless driving, failure to obey properly placed traffic control device, driving or attempting to drive while impaired by alcohol ("DWI"), driving or attempting to drive a vehicle not equipped with an Ignition Interlock, and failure to obey designated lane directions,(Defs.' Mot. Ex. 6 ["Court Records for Mar. 13, 2015 Stop"] at 2–4, ECF No. 11-8). Sgt. Mitchell Nuzzo told Sr. Tpr. Hassan to let Mills speak with an attorney, and Sr. Tpr. Hassan allowed Mills call a friend to pick him up. (Compl. ¶¶ 26–27). Sgt. Nuzzo took Mills' mug shot and then informed Mills that his friend had arrived. (Id. ¶ 27). Mills walked to the lobby to meet his friend, received paperwork from Sr. Tpr. Hassan, andleft. (Id.).
On June 30, 2015, Mills was tried in the District Court of Maryland in Howard County and convicted of all charges. (Court Records for Mar. 13, 2015 Stop at 2–4; Compl. ¶ 35).[3] The District Court sentenced him to two years and sixty days in prison, with all but sixty days suspended; later that day, Mills posted bond and appealed.

[3] Defendants state in their Motion that the Howard County District Courtconvicted Mills of all charges. (Defs.' Mot. at 1, 14, 42).

On December 15, 2015, a jury in theCircuit Court for Howard County convicted Mills of the driving without an interlock device charge, which had been severed from the others, and the Circuit Court sentenced Mills to one year in prison, with all but seventy-five days suspended. (Court Records for Mar. 13, 2015 Stop at 3–4).

On February 18, 2016, another Circuit Court for Howard County jury heard the remaining charges against Mills. (Compl. ¶ 41; see Court Records For Mar. 13, 2015 Stop at 2–4, 10). Sr. Tpr. Hassan testified about the indications that Mills had been drinking, but the friend who came to pick Mills up from the MSP Barracks that night, Fernando Garcia, testified that Mills showed no signs of being drunk.(Compl. ¶¶ 41–42). The jury acquitted Mills of the reckless driving, failure to obey properly placed traffic control device, DUI, and DWI charges, but convicted him of the negligent driving and failure to obey lane directions charges, for which he was fined a total of $230.00. (Id. ¶ 43; Court Records for Mar. 13, 2015 Stop at 2–4).

Mills also requested a hearing regarding the suspension of his driver's license afterhe refused to take the alcohol breath test. (Compl. ¶ 39); see Md. Code Ann., Trans. § 16- 205.1. On February 4, 2016, an administrative law judge ("ALJ") held a hearing at theMotor Vehicle Administration ("MVA") to determine whether Mills had refused to submit to an Intoximeter test on the night he was stopped and arrested. (Compl. ¶ 39; Defs.' Mot. Ex. 9 ["ALJ Decision"] at 1, ECF No. 11-11).

Sr. Tpr. Hassan testified and was subjected to cross-examination by Mills' attorney. (Compl. ¶ 39). The ALJ found, by a preponderance of the evidence, that Hassan had "reasonable grounds to believe that [Mills] was driving or attempting to drive a motor vehicle while under the influence of or impaired by alcohol . . . ." (ALJ Decision at 2). The ALJ based his conclusion on Mills' alcohol-scented breath, glassy eyes, slurred speech, stumbling, and refusal to take field sobriety tests. (Id.). The ALJ concluded Mills violated § 16-205.1(f) and suspended his license for 120 days. (Id. at 3). The ALJ's Decision informed Mills of his right to appeal the administrative decision to the Circuit Court within thirty days. (Id.).

On February 23, 2018, Mills sued Defendants. (ECF No. 1). Mills' sixteen-count Complaint alleges: fabricated probable cause and unreasonable seizure in violation of the Fourth Amendment to the U.S. Constitution and false police report and perjury in violation of the Fourteenth Amendment (Count I)[4]; unlawful arrest and detention in violation of the Fourth and Fourteenth Amendments (Count III); unlawful search and seizure in violation of the Fourth Amendment (Count IV); wrongful conviction anddeprivation of substantive due process in violation of Article 24 of the Maryland Declaration of Rights (Count V); unreasonable search and seizure in violation of Article 26 of the Maryland Declaration of Rights (Count VI); false arrest and false imprisonment (Count VII); malicious prosecution, perjury, and fraud (Count IX); battery, only as to Sr. Tpr. Hassan, MSP, and the State (Count X);

[4] On November 7, 2018, Mills voluntarily dismissed Counts II, VIII, and XIII of the Complaint. (See Pl.'s Not. Vol. Dismiss. Spec. Claims, ECF No. 22). Mills bringseach count against all Defendants unless otherwise indicated.

negligence (Count XI); gross negligence (Count XII); negligent hiring, training, supervision, and retention, against MSP and the State (Count XIV); civil conspiracy (Count XV); and unlawful custom, pattern, or practice, against MSP and the State (Count XVI). (Compl. ¶¶ 79–205). Mills brings his federal claims under 42 U.S.C. § 1983 (2018). (Id. at 15, 17, 19, 20). He seeks monetary damages. (Id. at 17, 19–24, 26–28, 30–33, 35–36).

On May 17, 2018, Defendants filed their Motion to Dismiss Complaint or, in the Alternative, Motion for Summary Judgment. (ECF No. 11).[5] On November 7, 2018, Millsfiled an Opposition, (ECF No. 24), and a Cross-Motion for Partial Summary Judgment (ECF No. 23). On November 21, 2018, Defendants filed a Reply. (ECF No. 26). On November 30, 2018, Mills filed a Reply. (ECF No. 27).

## II. DISCUSSION

### Defendants' Motion

### 1. Conversion

Defendants style their Motion as motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, for summary judgment under Rule 56. A motionstyled in this manner implicates the Court's discretion under Rule 12(d). See Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cty., 788 F.Supp.2d 431, 436–37 (D.Md. 2011),

[5] On June 11, 2018, this Court granted Defendants' Motion as unopposed and closed the case. (ECF Nos. 12, 13). On June 12, 2018, Mills filed a Motion to Vacate Order of Dismissal. (ECF No. 14). On October 11, 2018, the Court granted Mills'unopposed Motion and re-opened the case. (ECF No. 15).

aff'd, 684 F.3d 462 (4th Cir. 2012). This Rule provides that when "matters outside the pleadings are presented to and not excluded by the court, the [Rule 12(b)(6)] motion must be treated as one for summary judgment under Rule 56." Fed.R.Civ.P. 12(d). The Court "has 'complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not considerit.'" Wells-Bey v. Kopp, No. ELH-12-2319, 2013 WL 1700927, at *5 (D.Md. Apr. 16, 2013) (quoting 5C Charles Wright & Arthur Miller, Federal Practice & Procedure § 1366, at 159 (3d ed. 2004 & Supp. 2012)). The United States Court of Appeals for the Fourth Circuit has articulated two requirements for proper conversion of a Rule 12(b)(6) motion to a Rule 56 motion: noticeand reasonable opportunity for discovery. See Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt., 721 F.3d 264, 281 (4th Cir. 2013).

When the movant expressly captions its motion "in the alternative" for summary judgment and submits matters outside the pleadings for the court's consideration, the parties are deemed to be on notice that conversion under Rule 12(d) may occur. See Moret v. Harvey, 381 F.Supp.2d 458, 464 (D.Md. 2005). The Court "does not have an obligation to notify parties of theobvious." Laughlin v. Metro. Wash. Airports Auth., 149 F.3d 253, 261 (4th Cir. 1998). Ordinarily, summary judgment is inappropriate when "the parties have not had an opportunity for reasonable discovery." E.I. du Pont de Nemours & Co. v. Kolon Indus.,Inc., 637 F.3d 435, 448 (4th Cir. 2011). Yet, "the party opposing summary judgment

'cannot complain that summary judgment was granted without discovery unless that party had made an attempt to oppose the motion on the grounds that more time was needed for discovery.'" Harrods Ltd. v. Sixty Internet Domain Names, 302 F.3d 214, 244 (4th Cir. 2002) (quoting Evans v. Techs. Applications & Serv. Co., 80 F.3d 954, 961 (4th Cir. 1996)).

To raise sufficiently the issue that more discovery is needed, the non-movant must typically file an affidavit or declaration under Rule 56(d), explaining the "specified reasons" why "it cannot present facts essential to justify its opposition." Fed.R.Civ.P. 56(d). A Rule 56(d) affidavit is inadequate if it simply demands "discovery for the sakeof discovery." Hamilton v. Mayor of Balt., 807 F.Supp.2d 331, 342 (D.Md. 2011)(citation omitted). A Rule 56(d) request for discovery is properly denied when "the additional evidence sought for discovery would not have by itself created a genuine issue of material fact sufficient to defeat summary judgment." Ingle ex rel. Estate of Ingle v.Yelton, 439 F.3d 191, 195 (4th Cir. 2006) (quoting Strag v. Bd. of Trs., 55 F.3d 943, 953 (4th Cir. 1995)).

Here, Mills filed a Rule 56(d) affidavit, requesting various specific discovery, including depositions of MSP employees related to the case. (Pl.'s Resp. & Mem. L. Opp'n Defs.' Mot. Dismiss Altern. Summ J. at 44–48, ECF No. 24). As a result, theCourt will not convert Defendants' Motion into one for summary judgment and will instead consider it under Rule 12(b)(6).

## 2. Standard of Review

The purpose of a motion under Rule 12(b)(6) is to "test[ ] the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999)). A complaint fails to state a claim if it does not contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), or does not "state a claim to relief that is plausible on its face," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw thereasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). Though the plaintiff is not required to forecast evidence to prove the elements ofthe claim, the complaint must allege sufficient facts to establish each element. Goss v. Bank of America, N.A., 917 F.Supp.2d 445, 449 (D.Md. 2013) (quoting Walters v. McMahen, 684 F.3d 435, 439 (4th Cir. 2012)), aff'd sub nom. Goss v. Bank of America, NA, 546 F.App'x 165 (4th Cir. 2013).In considering a Rule 12(b)(6) motion, a court must examine the complaint as a whole, consider the factual allegations in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. Albright v. Oliver, 510 U.S. 266,

268 (1994); Lambeth v. Bd. of Comm'rs, 407 F.3d 266, 268 (4th Cir. 2005) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). But, the court need not accept unsupported or conclusory factual allegations devoid of any reference to actual events, United Black Firefighters v. Hirst, 604 F.2d 844, 847 (4th Cir. 1979), or legal conclusions couched as factual allegations, Iqbal, 556 U.S. at 678.

The general rule is that a court may not consider extrinsic evidence whenresolving a Rule 12(b)(6) motion. See Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC, 794 F.Supp.2d 602, 611 (D.Md. 2011). But this general rule is subject to several exceptions. First, a court may consider documents attached to thecomplaint, see Fed.R.Civ.P. 10(c), as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic, see Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006). Second, a court may consider documents referred to and relied upon in the complaint—"even if the documents are not attached as exhibits." Fare Deals Ltd. v. World Choice Travel.com, Inc., 180 F.Supp.2d 678, 683 (D.Md.2001); accord New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am., 18 F.3d1161, 1164 (4th Cir. 1994). Third, a Court may consider matters of public record. Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009). In the event that any of these properly considered extra-pleading materials conflict with the "bare allegations ofthe complaint," the extra-pleading materials "prevail." Fare Deals, 180 F.Supp.2d at 683; accord RaceRedi Motorsports, LLC v. Dart Mach., Ltd., 640 F.Supp.2d 660, 664 (D.Md.2009).

He states that after the District Court initially sentenced him, the judge set a bond amount, and Mills was released on bond, which the state court records confirm. The only charge to which Mills was sentenced to incarceration and did not successfully appeal was the Ignition Interlock charge. But Mills has not alleged that Sr. Tpr. Hassan fabricated this charge or that his Ignition Interlock System was in place as required. Though Mills alleges Sr. Tpr. Hassan's perjury in detail through various trials and hearings, Mills does not even mention the Ignition Interlock charge in the Complaint. Accordingly, the Court concludes Mills has not adequately pleaded that Sr. Tpr. Hassan's alleged fabrication caused his incarceration. See Massey,759 F.3d at 354. As a result, the Court will grant Defendants' Motion as to Mills' Fourteenth Amendment claims.

**b. Mills' State Claims**

The remaining counts, Counts V–VII, IX–XII, and XIV–XVI, are all state law claims. The Court must, therefore, determine whether it is appropriate to retain jurisdiction over them. "[F]ederal courts are courts of limited jurisdiction." Home Buyers Warranty Corp. v. Hanna, 750 F.3d 427, 432 (4th Cir. 2014) (quoting Kokkonen v. Guardian Life Ins. Co.of America, 511 U.S. 375, 377 (1994)). "There are three principal bases for subject-matter jurisdiction in federal court: (1) federal-question jurisdiction; (2) diversityjurisdiction; (3) and supplemental jurisdiction." Costley v. City of Westminster, No.GLR-16-1447, 2017 WL 5635463, at *1 (D.Md. Jan. 26, 2017); see also Exxon Mobile Corp.v. Allapattah Servs., Inc., 545 U.S. 546, 552 (2005).

The Court will, therefore, consider the public records submitted by Mills and Defendants.

3. Analysis

In their Motion, Defendants argue that collateral estoppel and the U.S. Supreme Court's holding in Heck v. Humphrey bar Mills' claims. Mills counters that each of Defendants' arguments does not apply to this case. The Court will analyze Mills' Complaint on a claim-by-claim basis, considering Defendants' arguments where relevant.

a. **Mills' Federal Claims**

In Counts I, III, and IV, Mills brings federal claims under the Fourth or Fourteenth Amendments. The Fourth Amendment claims relate to the alleged lack of probable cause for his arrest and are variously named false arrest, unlawful detention, and unlawful search and seizure. Mills' Fourteenth Amendment claims relate to alleged dishonesty— i.e., fabricated evidence, false police report, and perjury—and are essentially due process claims. The Court will first address the Fourth Amendment claims.

i. **Fourth Amendment Claims**

To plead a § 1983 claim "for false arrest in violation of the Fourth Amendment, [a plaintiff] must show that his arrest was made without probable cause." Carter v. Durham, No. WMN-14-2635, 2015 WL 641370, at *2 (D.Md. Feb. 12, 2015)

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[6] Defendants also argue that the Eleventh Amendment bars Mills' claims against the State, MSP, and Trooper Defendants in their official capacities; the State, MSP, and Trooper Defendants are not "persons" for the purposes of 42 U.S.C. § 1983; that Trooper Defendants are entitled to qualified immunity for Mills' federal claims and Maryland statutory immunity for Mills' state claims; and that Mills otherwise fails to state any of his claims. Because the Court concludes that Mills fails to state a claim based on Defendants' other arguments, the Court need not address these arguments.

(citing Street v. Surdyka, 492 F.2d 368, 372–73 (4th Cir.1974)). Similarly,"[t]o establish an unreasonable seizure under the Fourth Amendment, [a plaintiff] needs to show that theofficers decided to arrest [him] for [the charged crime] without probable cause." Brown v. Gilmore, 278 F.3d 362, 367 (4th Cir. 2002) (first citing Dunaway v. New York, 442 U.S. 200, 213 (1979); then citing Taylor v. Waters, 81 F.3d 429, 434 (4th Cir. 1996); and then citing United States v. Al–Talib, 55 F.3d 923, 931 (4th Cir. 1995)). "To prove an absence of probable cause, [a plaintiff] must allege a set of facts which made it unjustifiable for a reasonable officer to conclude that [the plaintiff] was violating" the law. Id. at 368. Probable cause exists if the evidence before the law enforcement officer is "sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect [has] committed . . . an offense." Gray v. State,

No. CCB-02-0385, 2004 WL 2191705, at *6 (D.Md. Sept. 24, 2004) (quoting Porterfield v. Lott, 156 F.3d 563, 569 (4th Cir. 1998)). Whether there is probable cause depends on the totality of the circumstances. Gilliam v. Sealey, 932 F.3d 216, 234 (4th Cir. 2019) (quoting Smith v. Munday, 848 F.3d 248, 253 (4th Cir. 2017)). "While probable cause requires more than bare suspicion, it requires less than that evidence necessary toconvict." Id. (quoting Munday, 848 F.3d at 253). Whether probable cause to arrest exists is based only on the information the officer had at the time of the arrest. Id. (first citing Munday, 848 F.3d at 253; and then citing Graham v. Gagnon, 831 F.3d 176, 184 (4th Cir.2016)).

"For [Fourth Amendment] purposes, an arrest on multiple charges is a 'single transaction,' and probable cause will be found to exist, so long as it existed for at least one offense." Wilkerson v. Hester, 114 F.Supp.2d 446, 456 (W.D.N.C. 2000) (quoting Barry v. Fowler, 902 F.2d 770, 773 n.5 (9th Cir. 1990)). Other circuits have held similarly. Id. (first citing Calusinski v. Kruger, 24 F.3d 931 (7th Cir. 1994) ("At the time of the arrest police officers need probable cause that a crime has been committed, not that the criminal defendant committed all of the crimes for which he or she is later charged.");and then citing Wells v. Bonner, 45 F.3d 90, 95 (5th Cir.1995) ("If there was probable cause for any of the charges made . . . then the arrest was supported by probable cause,and the claim for false arrest fails.")). The doctrines of res judicata and collateral estoppel preclude litigation of claimsor issues, respectively, under certain circumstances. Allen v. McCurry, 449 U.S. 90, 94 (1980). the purpose of the doctrines is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Id. (citing Montana v. United States, 440 U.S. 147, 153 (1979)). "Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so." Gilliam v. Sealey, 932 F.3d 216, 231 (4th Cir. 2019) (quoting Allen, 449 U.S. at 96). As such, the doctrines of res judicata and collateral estoppel apply to § 1983 actions and federal courts must afford preclusive effect toclaims or issues decided by state courts when that state's courts would do the same. Id.

To establish collateral estoppel, or issue preclusion, each of these questions must be answered affirmatively: (1) "Was the issue decided in the prior adjudication identical with the one presented in the action in question?"; (2) "Was there a final judgment on the merits?"; (3) "Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?"; and (4) "Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?" Colandrea v. Wilde Lake Cmty. Ass'n, Inc., 761 A.2d 899, 909 (Md. 2000).

"Under Maryland law, a conviction determines conclusively the existence of probable cause, regardless of whether the judgment is later reversed in a subsequent proceeding." Ghazzaoui v. Anne Arundel Cty., 659 F.App'x 731, 733–34 (4th Cir. 2016) (quoting Asuncion v. City of Gaithersburg, No. 95–1159, 1996 WL 1842, at *2 (4th Cir. Jan. 3, 1996) (unpublished)). Maryland recognizes an exception to that rule, however, if"the conviction was obtained by fraud, perjury or other corrupt means." Ghazzaoui, 659 F.App'x at 734 (quoting Zablonsky v. Perkins, 187 A.2d 314, 316 (Md. 1963)). Further, the Supreme Court held in Heck v. Humphrey that in order to recover damages for allegedly unconstitutionalconviction or imprisonment, or for other harm caused byactions whose unlawfulness would render a conviction orsentence 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 intoquestion by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. 512 U.S. 477, 486–87 (1994)

Here, the state courts have established that Sr. Tpr. Hassan had probable cause to stop and arrest Mills, and therefore the Court gives that determination preclusive effect. Because Mills was convicted of negligent driving, failure to obey lane directions, and driving without an interlock device, probable cause for the stop and arrest has been conclusively determined. See Ghazzaoui, 659 F.App'x at 733. Mills alleges that he did not commit any traffic violations and that Hassan therefore did not have probable cause to stop him, citing the Zablonsky exception.[7] Mills cannot make such a § 1983 claim, however, because such a claim would necessarily be a challenge to the probable cause for Mills' arrest, which led to his convictions, three of which remain valid. See Heck, 512 U.S. at 486–87. One jury convicted Mills of negligent driving and failure to obey lane directions, and another jury convicted him of driving without his Ignition Interlock. To overcome Heck, Mills would have to plead that his convictions have 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. He does not, and cannot, allege those necessary facts.

Mills clarifies that he is attacking the DUI and DWI charges of which he was acquitted when he appealed the District Court convictions to the Circuit Court. But Sr. Tpr. Hassan only arrested Mills once, and that arrest, from which the several charges against him flowed, was a single transaction. See Wilkerson v. Hester, 114 F.Supp.2d at 456.

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[7] The Court notes that Mills offers no explanation for why his car was stopped among all the others traveling on the highway that night.

Because Sr. Tpr. Hassan had probable cause to arrest based on Mills' negligent driving, failure to obey lane directions, and driving without an interlock device, Mills' arrest was justified even if convictions stemming from the same arrest were later overturned. See Wells, 45 F.3d at 95. In other words, the DUI and DWI charges flowed from the same stop and arrest that were based on the same probable cause that Mills cannot attack in this lawsuit. Mills' "assertions that there was no probable cause for his arrest and that the evidence gathered against him was obtained illegally is a collateral attack on his convictions which may not be presented in the context of a claim for damages." Carter, 2015 WL 641370, at *3. To allow him to proceed on his Fourth Amendment claim under § 1983 based on fabricated probable cause would be to allow animpermissible collateral challenge to his convictions by two juries. As the Supreme Courtheld, a claim for damages that makes such a challenge "to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." Heck, 512 U.S. at 487. As a result, Mills cannot challenge the probable cause for his arrest in this case and cannot "allege a set of facts which made it unjustifiable" for Sr. Tpr. Hassan to conclude that Mills had violated the law. Brown, 278 F.3d at 368. He therefore has not adequately pleaded his Fourth Amendment claims under § 1983.[8]

[8] In Count I of his Complaint, Mills appears to make a claim for bystander liabilityagainst Cpl. Lantz and Tpr. Dull. This claim fails. The Fourth Circuit has held that a law enforcement officer "may be liable under § 1983, on a theory of bystander liability, if he: (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act." Randall v. PrinceGeorge's Cty., 302 F.3d 188, 204 (4th Cir. 2002). According to the Complaint, Cpl.Lantz and Tpr. Dull's only involvement in the facts underlying this lawsuit was that they arrived at the side of the highway as Sr. Tpr. Hassan was in the process of arresting Mills.

For this reason, the Court will grant Defendants' Motion as to Mills' Fourth Amendment claims. The Court now turns to Mills' Fourteenth Amendment claims, whichtarget what happened when the charges were brought to court. [9]

### ii. Fourteenth Amendment Claims

The Fourteenth Amendment protects "against deprivations of liberty accomplishedwithout due process of law." Massey v. Ojaniit, 759 F.3d 343, 354 (4th Cir. 2014) (quoting Baker v. McCollan, 443 U.S. 137, 145 (1979)). The Fourth Circuit has recognized a due process "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity." Id. (quoting Washington v. Wilmore, 407 F.3d 274, 282 (4th Cir. 2005)). But "[f]abrication of evidence alone is insufficient to state a claim for a due process violation; a plaintiff must plead adequate facts to establish that the loss of liberty—i.e., his conviction and subsequent incarceration—resulted from the fabrication." Id. (citing Washington, 407 F.3d at 282–83). Here, Mills has not pleaded facts that show his incarceration resulted from the alleged fabrication. Mills does not allege he served any period of incarceration for any charge other than the Ignition Interlock violation.

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They could not have known Sr. Tpr. Hassan was violating Mills' constitutional rightsboth because they arrived mid-traffic stop, as Mills concedes, and because Mills' convictions support that Sr. Tpr. Hassan had probable cause. As a result, the Court will grant Defendants' Motion as to the claims Mills makes against Cpl. Lantz and Tpr. Dull.

[9] Mills' Fourteenth Amendment arguments and claims do not apply to the arrest. Taylor v. Waters, 81 F.3d 429, 435–36 (4th Cir. 1996) (noting that the Fourth Amendment provides all of the pretrial process that is constitutionally due to a criminal defendant).

Federal district courts have federal question jurisdiction over civil actions that arise under federal law. 28 U.S.C. § 1331 (2018). The Court has original jurisdiction over this case through federal question jurisdiction.

Because the Court has dismissed the § 1983 claims over which it had original jurisdiction, the Court declines to exercise supplemental jurisdiction over the remaining state law claims. See 28 U.S.C. § 1367(c)(3) (2018) (providing that "district courts may decline to exercise supplemental jurisdiction over a state claim if . . . the district court has dismissed all claims over which it has original jurisdiction"). Accordingly, the Court will dismiss Counts V–VII, IX–XII, and XIV–XVI.

### B. Mills' Cross-Motion

Because the Court has dismissed Mills' Complaint, the Court will deny Mills' Cross-Motion as moot.

## II. CONCLUSION

For the foregoing reasons, the Court will grant Defendants' Motion to Dismiss Complaint or, in the Alternative, Motion for Summary Judgment (ECF No. 11), construed as a motion to dismiss, and deny as moot Mills' Cross Motion for Partial Summary Judgment (ECF No. 23). A separate Order follows.

Entered this 30th day of September, 2019.

/s/
George L. Russell, III
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

LAWRENCE MILLS,

Civil Action No.GLR 18-562

Plaintiff,

v.
ANTHONY HASSAN, et al.,

Defendants

**ORDER**

For the reasons stated in the foregoing Memorandum Opinion, it is this 30th day ofSeptember, 2019, hereby:
ORDERED that Defendants' Motion to Dismiss Complaint or, in the Alternative, Motion for Summary Judgment (ECF No. 11), construed as a motion to dismiss, is GRANTED;
IT IS FURTHER ORDERED that Mills's Cross Motion for Partial SummaryJudgment (ECF No. 23) is DENIED AS MOOT; and
IT IS FURTHER ORDERED that the Clerk CLOSE this case and MAIL a copy ofthis Order and the foregoing Memorandum Opinion to Mills at his address of record.

/s/
George L. Russell, III
United States District Judge

## FACTS COMMON TO ALL COUNTS

17. On March 13, 2015, Mills was a patron at the Horseshoe Casino. While at the casino, hedid not consume alcohol at any time during the evening before getting in his car. Mills departed at 12:30 am to drive home. He drove southbound on I95; during which Mills did not commit anytraffic infractions.

18. Defendant Anthony Hassan, while acting under the color of law and as an agent and employee of Defendant State of Maryland and MSP, initiated the traffic stop without probable cause. Mills pulled over onto the left shoulder and Hassan approached the driver's side door. Hassan asked, "Where are you coming from?" Mills replied "Horseshoe Casino." Hassan then asked, "Have you had anything to drink?" Mills replied, "No." Hassan then asked "Horseshoe? And you're saying you had nothing to drink?" Mills replied, "No I had some juice." Hassan thenasked Mills to step out of the car.

19. Hassan then directed Mills to the back of his vehicle, at which time Hassan began explaining how he was going to conduct field sobriety tests ("SFST"). Mills declined to performany field sobriety tests, as he's permitted to do under Maryland law, and because there was no probable cause for the stop of his vehicle, nor reasonable articulable suspicion of intoxication. Hassan became agitated and grabbed Mills by his arm yelling, "You don't want to do this? Then I'm going to take you to jail!" Hassan continued to grab Mills by his left arm and began draggingMills forcefully toward his cruiser.

20. While still holding Mills' left arm, Hassan took Mills back to the trunk of his vehicle, where he released Mills

While Mills stood facing Hassan, Hassan took out a device to performthe horizontal nystagmus gaze (HGN) test. Hassan asked Mills to follow the light on the devicewith his eyes. Mills again declined to perform any field sobriety tests. Hassan again grabbed Mills, while repeatedly yelling, "I'm going to take you to jail!."

21. Hassan then released Mills and left him alone standing in front of Hassan's police cruiser. Hassan then walked to Mills' vehicle and began searching it. While Hassan illegally searched Mills' vehicle, another police cruiser, with Defendant MSP Troopers, Defendants Lantz and Dull exited the police cruiser. Of note, nothing illegal was found during Officers' illegal search,nor was any evidence located to suggest drinking.

22. Defendants Lantz and Dull exited their vehicle and spoke with Mills, while Hassan was still searching Mills' vehicle. Mills told Lantz and Dull that Hassan was searching his car without probable cause. Dull responded, "We just got here." Mills then reiterated that Officers' search was illegal; Dull then responded again "We just got here." Immediately upon Dull finishing the statement, Hassan grabbed Mills from behind and placed him in handcuffs then took Mills by force towards his cruiser while yelling; "I'm going to take you to jail!" As Hassantook Mills towards his cruiser, Defendants Dull and Lantz did not intervene or stop Hassan.

23. Hassan physically pushed Mills onto the trunk of his police cruiser and searched him. Hassan then placed Mills in his police cruiser. Hassan drove Mills to the Waterloo Barracks. Upon arriving at the barracks, Hassan readMills the DR-15 advice of rights, near the conclusion of reading the advice of rights, while Hassan was still reading, Sgt. Nuzzo entered the room. Upon Hassan finishing reading the DR- 15 he asked if

Mills would submit to the station breath test. Mills then requested that an attorneybe present to provide legal advice. Hassan then said, "It's a refusal." Hassan signed the DR-15 in the refusal section. Hassan further did not allow Mills an opportunity to contact an attorney,which Mills requested.

24. Hassan then charged Mills with Driving Under the Influence of Alcohol. Hassan then went to Nuzzo's office and got into an argument with Sgt. Nuzzo. Hassan told Sgt. Nuzzo that hewanted to take Mills to jail and Sgt. Nuzzo replied to Hassan "Just let him call someone to pick him up." Hassan insisted that he wanted to take Mills to jail and Nuzzo repeated his decision to Hassan to let Mills call someone. Hassan then walked over to Mills and said, "I have good news,I decided to let you call someone." Hassan retrieved a plastic bag with Mills' wallet and cell phone and handed Mills his cell phone.

25. Mills called a friend to pick him up, Hassan left the room, and within a few minutes, Sgt. Nuzzo entered and informed Mills he needed to take a mug shot. Nuzzo instructed Mills to standin front of a backdrop; Nuzzo then photographed Mills and told him he could sit back down. Nuzzo left the room and returned to his office. Minutes later, Sgt. Nuzzo returned and told Millsthat his ride had arrived. Mills then walked over to the lobby where Hassan was speaking with his friend. Hassan gave the paperwork to Mills, and then he left the barracks.

26. Hassan falsified his police report regarding the events that transpired; namely the alleged basis for the stop, results of the SFST (which tests never occurred), and physical observations about Mills at the scene and barracks.

27. All eyewitnesses at the traffic stop and

barracks observed Mills to appear sober without any sign of impairment and Hassan intentionally excluded Defendants Lantz, Dull and Mitchell Nuzzo from the police report.

28. Hassan submitted his falsified report for transmission to the Howard County State's Attorney's Office with intent to deceive and defraud, and for the purpose of instigating the criminal prosecution of Mills for a crime he did not commit

29. The Howard County State's Attorney's Assistant State's Attorney, Elizabeth Rosen, relied on the fabricated observations of Hassan. Without Officers' fabricated observations of intoxication, there was no evidence whatsoever to substantiate a finding of probable cause. Rosen contacted the other State Troopers from the Waterloo Barracks including Sgt. MitchellNuzzo, Defendants Lantz and Dull; but none of the other Officers were willing to corroborateany of Hassan's fabricated observations of impairment attributed to Mills.

30. At all criminal proceedings for Mills' DUI case, Hassan was the sole state's witness. Hassan deliberately misrepresented material facts to prosecutors before every criminal proceeding he attended; including, but not limited to Hassan stated to Rosen, *inter alia,* thatMills was unable to stand unassisted at the traffic stop and at the Barracks.

31. Mills retained counsel for his trial in Howard County District Court. Through the courseof Defendant Hassan's trial testimony, Hassan went on an uninhibited perjury binge that he undertook with impunity. Hassan fabricated the majority of his testimony and frequently addednew embellishments to his tale.

32. Hassan did not acknowledge in his testimony

the presence of eyewitnesses DefendantsLantz and Dull or Sgt. Nuzzo the night of the incident; to the contrary before, during, and afterthe trial, Hassan maintained that there were no other eyewitnesses to the incident.

33. On June 30, 2015, Mills was tried and convicted in the District Court for Howard County for Driving Under the Influence of Alcohol, and the judge imposed a sentence of 2 years and 60 days to the Department of Corrections, with 2 years suspended. The judge set Mills' appeal bond at $100,000.

34. Following Mills' release on bond, he appealed the conviction to the Circuit Court for Howard County. Based on information learned at trial, counsel filed for discovery, including photographs, video and the CAD Report. Mills was initially advised by the State that, "We havebeen informed that there are no photos and no other troopers associated with this matter." Counsel contacted Rosen again insisting that at least one photograph was taken at the barracks and that there were other Troopers who were eye witnesses at the traffic stop. Rosen was finally able to obtain the mugshot taken by Sgt. Nuzzo at the barracks and provide it to counsel. At the June 30, 2015, trial, Hassan continued to portray Mills in a false light, as being so intoxicated that he was on the verge of being comatose, unable to stand, requiring being lifted out of his car.The "booking" picture is demonstrative evidence that Hassan committed perjury.

35. Rosen obtained and provided counsel with, the CAD report for Mills' traffic stop. Duringa phone interview with Hassan, counsel informed Hassan that he had obtained the CAD report associated with the March 13, 2015, traffic stop. Hassan then admitted to counsel that two other Police Officers did, in fact, come to the scene, and provided their names, Defendants Lantz and Dull.

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36. However, Hassan told counsel that Defendants Lantz and Dull arrived at the scene after Mills was "already in custody".

***October 30, 2015; Suppression Hearing***

37. A hearing was held in Howard County Circuit Court to determine if Mills had been denied his right to an attorney. However, Hassan denied that Mills requested an attorney, which created a factual dispute as

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to whether Mills had actually asked for a lawyer. Hassan testified thatMills did not ask for a lawyer but that if Mills had asked for an attorney then Mills would 100% have been allowed to contact a lawyer. Mills testified that he asked for an attorney and that he was not permitted to contact an attorney. Further, Mills testified that he did not refuse the Breathalyzer test, that Hassan simply signed the DR-15 in the refusal section, saying,

"it's a refusal" simply based on Mills' request for an attorney. However, Hassan later changed his story;at Mills' MVA Hearing Hassan testified; "He wants to talk to a lawyer. I made him, so, I said sure you have a right to talk to your lawyer." Then at Mills' Jury Trial, Hassan even testified, that Mills called an attorney.

***February 4, 2016; MVA Hearing***

38. On February 4, 2016, an administrative hearing was held at the MVA branch in Bel Air, Maryland with Administrative Law Judge Brian Zlotnick. The purpose of the hearing was to determine whether or not Mills refused to submit to an intoximeter test on March 13th, 2015. At the MVA hearing, during direct examination and cross-examination from Defense Counsel Jeffrey

Hann, Esq., Hassan proceeded to falsely testify in detail regarding the circumstances surrounding Mills' arrest. During the course of Hassan's testimony, he repeatedly contradicted statements from the prior District Court Trial and Suppression Hearing. Among these contradictions, Hassan testified that Mills suddenly gained the ability to walk of his own accord only when eyewitness Garcia arrived.

39. Hassan falsely testified that Troopers Lantz and Dull showed up after Mills was in his patrol car. The reality was that Hassan placed Mills in front of his police cruiser and left Mills standing on his own while he searched Mills' car at the time Defendants Lantz and Dull arrivedat the scene. Mills walked over and had a conversation with them before Mills was arrested.

***February 18, 19 2016; Jury Trial***

40. A jury trial was held in Howard County Circuit Court, before the Honorable Richard Bernhardt, regarding the DUI case against Mills. Hassan proceeded to commit perjury again before the jury. Hassan testified that upon coming into contact with Mills he detected a strong odor of alcohol both from Mills and the interior of the vehicle.

41. He then claimed to have observed slurred speech and had to lift Mills out of the car because Mills was unable to stand. Hassan stated that he immediately placed Mills under arrest and in his patrol car, and that the other Troopers arrived only after Mills was in his patrol car. Hassan even testified that he believed Mills had alcohol poisoning.

42. Eyewitness Fernando Garcia testified that he picked Mills up from the Barracks the night of Mills' arrest. Garcia is employed by the State