19-3141
Negrito v. Buonaugurio

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of December, two thousand twenty.

PRESENT:

JOHN M. WALKER, JR.,
ROBERT A. KATZMANN,
RICHARD C. WESLEY,
Circuit Judges.

Paul Noel Negrito, FKA Paul A.E. Noel,

Plaintiff-Appellant,

v. **19-3141**

Trooper James Buonaugurio,

Defendant-Appellee,

Captain Michael Eaton, Mayor Lovely A. Warren, Captain Kevin Reilly, Superintendent Keith Corlett,

Defendants.

For Plaintiff-Appellant: PAUL NOEL NEGRITO, pro se, Rochester, New York.

For Defendant-Appellee: BEEZLY J. KIERNAN, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Andrea Oser, Deputy Solicitor

General, Jennifer L. Clark, Assistant Solicitor General, *on the brief*), *for* Letitia James, Attorney General, State of New York, Albany, New York.

Appeal from a judgment of the United States District Court for the Western District of New York (Siragusa, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-appellant Paul Noel Negrito, pro se, appeals from a judgment of the United States District Court for the Western District of New York in favor of the defendants in the instant 42 U.S.C. § 1983 action. The complaint alleges that defendant-appellee James Buonaugurio, a state trooper, falsely arrested and imprisoned Negrito in violation of the Fourth Amendment during a traffic stop that resulted in three tickets for traffic violations. The district court subsequently granted Buonaugurio's motion to dismiss the complaint and denied Negrito's motion for a default judgment as moot, both of which Negrito challenges on appeal. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal.

I. Denial of Negrito's Motion for a Default Judgment

"We review the district court's decision [on a motion for a] default judgment for abuse of discretion." *Pecarsky v. Galaxiworld.com Ltd.*, 249 F.3d 167, 171 (2d Cir. 2001).[1]

We discern no error, let alone an abuse of discretion, in the district court's denial of Negrito's motion for a default judgment. Negrito argues that a default judgment is warranted because, allegedly, Buonaugurio did not file a timely answer or motion in response to his complaint within 21 days of the service. However, Buonaugurio was never properly served with the

[1] Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

summons and complaint. Service is proper if it complies with one of the methods outlined in Rule 4(e)(2) of the Federal Rules of Civil Procedure or with the law of the state where the district court is located or where service is made. *See* Fed. R. Civ. P. 4(e). The complaint and the summons were mailed to Buonaugurio, they were never returned as executed, and no proof of service was ever filed. Mailing, without any additional action taken, is not a sanctioned means of service under the Federal Rules or New York law. *See* Fed. R. Civ. P. 4(e)(2); N.Y. C.P.L.R. § 308. Therefore, a default judgment would have been improper. *See Rosa v. Allstate Ins. Co.*, 981 F.2d 669, 679 (2d Cir. 1992) (observing that a motion for default judgment was correctly denied when, *inter alia*, service was improper).

Moreover, Negrito's argument that the court misapplied Rules 55(c) and 60(b) of the Federal Rules of Civil Procedure is misdirected. Rule 55(c) permits a court to set aside an entry of default "for good cause" and set aside a default judgment in accordance with Rule 60(b). *See* Fed. R. Civ. P. 55(c). Here, the district court could not have misapplied these Rules, because there was no entry of default or default judgment to vacate.

II. Granting of Buonaugurio's Motion to Dismiss

"We review de novo a district court's dismissal of a complaint under Rule 12(b)(6), accepting all of the complaint's factual allegations as true and drawing all reasonable inferences in the [plaintiff's] favor." *Forest Park Pictures v. Universal Television Network, Inc.*, 683 F.3d 424, 429 (2d Cir. 2012).

As an initial matter, the district court was permitted to consider the documents by the City of Rochester Traffic Violations Agency ("TVA") in deciding the motion to dismiss, as they were public filings. *See Kavowras v. N.Y. Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) ("Judicial notice may be taken of public filings . . . ."); *Brass v. American Film Technologies, Inc.*, 987 F.2d 142,

150 (2d Cir. 1993) (observing that a court may consider "matters of which judicial notice may be taken" on a motion to dismiss).

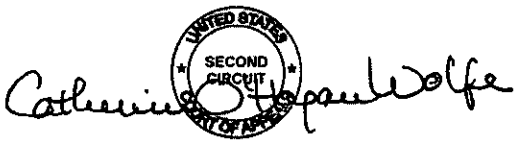
"The Fourth Amendment requires that an officer making [] a [traffic] stop have probable cause or reasonable suspicion that the person stopped has committed a traffic violation or is otherwise engaged in or about to be engaged in criminal activity." *Holeman v. City of New London*, 425 F.3d 184, 189 (2d Cir. 2005). "Probable cause is a complete defense to a constitutional claim of false arrest . . . and false imprisonment." *Betts v. Shearman*, 751 F.3d 78, 82 (2d Cir. 2014). The district court correctly ruled that probable cause existed because the TVA had ruled that Negrito was guilty of the three traffic violations for which he was issued tickets on the night he was stopped. We have ruled that a criminal conviction "normally would be conclusive evidence of probable cause" for the arrest, *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996), but we have not addressed the precise issue of whether an adjudication of guilt on a traffic violation conclusively establishes probable cause. *But see Coffey v. Town of Wheatland*, 135 A.D.2d 1125, 1126, 523 N.Y.S.2d 267 (4th Dep't 1987) (holding that a decision by an administrative law judge of the New York State Department of Motor Vehicles to revoke plaintiff's license based on a traffic violation collaterally estopped plaintiff from relitigating the existence of probable cause). Nevertheless, because the Monroe County Court affirmed the TVA's rulings and the TVA's documents note the criminal nature of its proceeding, we find it appropriate to hold that, in this particular context, the adjudication of guilt on Negrito's traffic violations establishes probable cause.[2]

[2] We are not persuaded by Negrito's argument that his appeal to the Monroe County Court "discredit[ed]" the TVA's determinations. Appellant's Br. 22–23. Although it is true that "[a] conviction that has been reversed on appeal is no evidence of the existence of probable cause," *Weyant*, 101 F.3d at 852, the Monroe County Court affirmed the TVA's rulings, and Negrito's

Further, Negrito's allegation that the stop was unlawfully prolonged was also properly dismissed. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's mission—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). Beyond ordinary inquiries, an officer may ask other questions "so long as [the] [unrelated] inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). Under this standard, most of Buonaugurio's inquiries—asking for Negrito's license and registration, examining the restriction on his license, attempting to give a preliminary breath test, and having him step out of the vehicle—were all "ordinary inquiries incident to [a traffic] stop." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005); *see also Rodriguez*, 575 U.S. at 355 (observing that examples of ordinary inquiries include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"). As to the remaining inquiries—such as whether Negrito was British and what his two middle initials stood for—it is not adequately alleged that these questions "measurably extend[ed] the duration of the stop." *Johnson,* 555 U.S. at 333.

We have considered all of Negrito's remaining arguments on appeal and have found in them no grounds for reversal. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



subsequent motion for leave to appeal his traffic convictions was denied by the New York Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of March, two thousand twenty-one.

Paul Noel Negrito, FKA Paul A.E. Noel,

Plaintiff - Appellant,

v.

Trooper James Buonaugurio,

Defendant - Appellee,

Captain Michael Eaton, Mayor Lovely A. Warren,
Captain Kevin Reilly, Superintendent Keith Corlett,

Defendants.

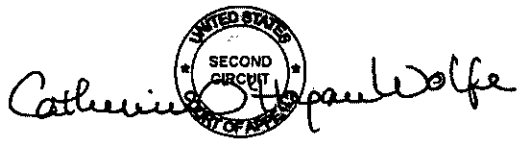
ORDER

Docket No: 19-3141

Appellant, Paul Noel Negrito, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL NOEL NEGRITO, formerly known as
Paul A.E. Noel,

Plaintiff,

DECISION AND ORDER
19-CV-6271 CJS

vs.

TROOPER JAMES BUONAUGURIO,

Defendant.

Siragusa, J. Before the Court in this civil rights action are: Defendant James Buonaugurio's motion to dismiss, filed on May 31, 2019, ECF No. 5; Plaintiff's "motion to oppose the motion to dismiss," filed on July 10, 2019, ECF No. 10; Plaintiff's motion to stay the proceedings until proof of service of the complaint is filed (presumably by Plaintiff), July 10, 2019, ECF No. 11; Plaintiff's motion seeking entry of default and default judgment against James Buonaugurio, July 30, 2019, ECF No. 16; and Plaintiff's motion seeking re-service of the complaint on James Buonaugurio by the U.S. Marshal, August 7, 2019, ECF No. 17. For the reasons stated below, ECF Nos. 10, 11, 16, and 17, are denied, and ECF No. 5 is granted and this case is dismissed.

Plaintiff sued Rochester, New York Mayor Lovely A. Warren, Captain Michael Eaton, the Chief Executive Officer of the New York State Police, and New York State Police Trooper James Buonaugurio. The Court conducted a screening of the complaint pursuant to 28 U.S.C. § 1915A, and dismissed all claims except Plaintiff's Fourth Amendment claim for an unreasonable traffic stop, false arrest, and false imprisonment against Trooper Buonaugurio. Decision and Order, May 3, 2019, ECF No. 3.

Defendant's motion to dismiss relies on information from public records and he asks the Court to consider it without converting the motion to dismiss into a motion for summary judgment. In *Brass v. American Film Technologies, Inc.*, 987 F.2d 142 (2d Cir. 1993), the Second Circuit wrote:

> When determining the sufficiency of plaintiffs' claim for Rule 12(b)(6) purposes, consideration is limited to the factual allegations in plaintiffs'...complaint, which are accepted as true, to documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit.

Brass, 987 F.2d at 150. Relying on the holding in *Falcon v. City Univ. of N.Y.*, 263 F. Supp. 3d 416 (E.D.N.Y. 2017), Defendant argues that the Court may consider the public records showing that since he was convicted of the traffic infractions written by Trooper Buonaugurio, and, therefore, Plaintiff cannot maintain this lawsuit. In *Johnson v. Pugh*, No. 11-CV-385 (RRM)(MDG), 2013 U.S. Dist. LEXIS 85699, at *5-6 (E.D.N.Y. June 18, 2013), the district court found "it proper to take judicial notice of plaintiff's guilty plea, conviction, and sentencing as a matter of public record without converting defendant's motion to one for summary judgment." In that case, Johnson had sued alleging false arrest. At the time the lawsuit was filed, Johnson's criminal case had not been adjudicated, but at the time of the motion to dismiss, he had been convicted of the crimes for which he had been arrested, and sentenced. The district court took that information into consideration when granting the defense motion to dismiss since Johnson's "plea and conviction establish probable cause for his arrest, rendering it privileged, [and therefore] Johnson cannot state a claim for false arrest." *Id.* at *7.

The same situation is present here. The public records from the City of Rochester, Traffic Violations Agency, dated April 11, 2019, show that Plaintiff was convicted of a seat belt

violation, being an unlicensed driver, and failing to comply with a license restriction, all in violation of New York Vehicle and Traffic Law §§ 509 and 1229. Although Plaintiff did not plead guilty to the offenses, the trial evidence established the trooper's probable cause for stopping him (not wearing a seatbelt), and the subsequently discovered violations of his restricted license. *See United States v. Scopo*, 19 F.3d 777, 782 (2d Cir. 1994) ("'When an officer observes a traffic offense—however minor—he has probable cause to stop the driver of the vehicle.' *United States v. Cummins*, 920 F.2d 498, 500 (8th Cir. 1990), *cert. denied*, 502 U.S. 962 (1992)."). As the Second Circuit observed in *Weyant v. Okst*, 101 F.3d 845 (2d Cir. 1996):

> If, following the arrest, the plaintiff was convicted of the charges against him, that conviction normally "would be conclusive evidence of probable cause." *Broughton v. State*, 37 N.Y.2d at 458, 373 N.Y.S.2d at 95. But this is so only if the conviction "survives appeal." *Id.* A conviction that has been reversed on appeal is no evidence of the existence of probable cause; to the contrary, "evidence of a subsequent dismissal, acquittal or reversal on appeal would . . . be admissible to refute . . . justification." *Id.*

Weyant, 101 F.3d at 852. Plaintiff has presented no evidence that his convictions were overturned on appeal. Therefore, the convictions shown by the public records presented by Trooper Buonaugurio establish that he had probable cause for the stop, arrest, and detention while he investigated the situation.

CONCLUSION

For the foregoing reasons, the Court grants Defendant's motion to dismiss, ECF No. 5, and denies the remaining outstanding motions as moot. The Clerk will enter judgment for Defendant and close this case.

DATED: September 16, 2019
Rochester, New York

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge