

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1426

Gideon Charles Arrington, II

Plaintiff - Appellant

v.

Dyanna L. Street, Sued in her individual and official capacity; Anthony Charles Palumbo, Being sued in his individual and official capacity; Wade A. Kish, Being sued in his individual and official capacity; Kelsey R. Kelly, Being sued in her individual and official capacity

Defendants - Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:22-cv-02362-MJD)

JUDGMENT

Before LOKEN, GRUENDER, and ERICKSON, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

March 24, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1426

Gideon Charles Arrington, II

Appellant

v.

Dyanna L. Street, Sued in her individual and official capacity, et al.

Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:22-cv-02362-MJD)

ORDER

The appellant's motion for an extension of time to file the petition for rehearing is denied.

April 12, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

Race: Patient: Somali
 Assailant: African American/Black
 Number of Assailants:1

County Where Offense Occurred: Anoka County MN
 Was Offense Reported: yes
 Offense Reported To: Anoka County CID
 Case Number: 13262801
 Location of assault (as close as they can describe): Patient reports "Brooklyn Center I think. I don't know where we were"

Patient's Account of Incident: Patient states "well I was at work and I am a PCA and was unloading some things and this guy said to me hey did you know somebody died here? Im a detective. He was talking about the neighborhood and I don't know this neighborhood and I told him that. I went inside to work with the client for about a half an hour and then I said bye to the client and I told this lady about this guy and she was curious about it. He was still in the Green Village Parking lot when I left so he told me I can give you my phone number and I said I don't need your phone number I don't live around here. He also asked me if this parking lot had cameras. I said ok and continued to my car and when I was getting in the car he had me at gunpoint stating don't move! I will kill you! Get out of the car slowly and don't look anywhere. So he started calling me very bad names and was yelling at me to lay down. And then he put something over my face that was black over my face so I couldn't see and handcuffed my hands behind my back. He drove and drove for awhile and he drove into this garage and so when we were in the garage he put tape over my eyes and on my legs. So he got me out of the car and told me if I make any sounds I will kill you. When we got into the garage he took almost 500 dollars from my purse and said if I don't give him that he will kill me. He made me stand there for 15 minutes. He had me lay down in the garage and it was so cold. He was gone and left me in the garage for about 2 hours. I just kept hearing cars go by. So he came back and I was shivering, and cold and he almost put the bumper of his car on my leg. So begged him please to get me out of the garage to somewhere warm and he took me on the stairs and I heard kids crying and told me not to make a noise. He took me into a bathroom and made me sit on the toilet. So he told he had a gun and that he was detective and ask me questions and if I lied to him he was going to kill me. He asked me how many children I have and I said I have four and he asked me about their father and I told him I was divorced. He also asked me if I was the problem in the marriage and I said no. He told me you know why I got you and I said no. He asked me if I was Somali and I said yes and he said all you guys are good for is a bombs, you know explosive bombs. He said that's why he took me today because he wanted to kick my ass. I told him I wasn't a bad person, and he asked me why do Somalin hate blacks? I told him a lot of Somalin are married to blacks. He told me he was going to talk to his boss and see if they are going to let you go or not. It was like 20 minutes and he came back and told me to take off my clothes and I told him I cant because you have ties my hands. He told me to stand up and took off my clothes and begged him not to do this to me. So then he told me to lay down on my bottoms and used me and then left and I was crying. He told me to shut my mouth or he was going to shoot me. He tried to rape me in my rectal area and it hurt so bad I was crying to then he just did the other side. He did that for a long time and then just left. He kept going down stairs, like he was going down stairs to the kids. Then he came back and you are leaving so get in the bleach. So he held my hand and took me and put me in the bleach bath and he got me out and put me on a towel and told me to sit there. So he came back and told me to suck on my penis, you need this. I told him I was going to vomit and he got me this alcohol and he told me he was going to kill me and I told him

What they did
 was added the
 police report
 to this Fake
 sexual assault
 report.

Different
 statement
 Different statement
 she said front
 time. How would
 she know anything
 if she was blind
 Folded?

Apartment
 don't have a
 down stairs

about:blank

11/24/2013

Abdulle, Zamzam MRN: 1008382591

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to kill me, I wasn't going to do that. He came back again and got me up and laye me down in a room and started raping me again. So he said this is the last time and I will wash you up again in the bleach and I will wash your clothes. So he kept coming back and fourth every 5 minutes and he told me while your clothe are drying I want you to suck on my penis. I told him I cant do this because I was feeling like I was going to vomit. He told me that he was going to let me go and said he would drop me off at the bus stop and said he will kill me and every one in the house if I went to police. He got me my clothes and gave me my purse and took me in the car for about 10 minutes and then he said this is bus stop number 5 and this will take you too your house and he dropped me there and told me to turn around I will take the tape off. When he took off the tape he told me not to look or he will shoot my head off. He told me to walk til I see a stop sign and then turn and I started walking and never saw him. I got to a stop sign and I took a left and the bus stop was about 2 blocks down and there was no bus and kept walking. I kept walking and I was bye bluebird and CVS. My clothes were wet and I was cold and I flagged down a taxi driver. I wanted him to take me too my house because I was scared and he said he was going to call the police. The police brought me here.

Threats/Intimidation/Coercion/Force/Approximate size of assailant relative to victim: He handcuffed my hands behind my back, duct taped me and put a gun to my head and said don't move or I will kill you!

Objects involved: Gun, duct tape and handcuffs

1) Orifices involved: Vaginal: penetration device - penis, fingers and tongue

2) Did penetration take place, however slight?: Vaginal: penetration device - penis, fingers and tongue. Rectum: "he tried to put his penis in there and it hurt so bad and I cried and he stopped"

3) Did ejaculation occur?: Unsure "he kept going to the bathroom every five minutes and then coming back"

4) Any oral contact by assailant on patient?: Yes - where on body: mouth and vagina

5) Any oral contact by patient on assailant?: Yes- "he forced me too have my mouth on his penis and that's it"

6) Condom used?: no

7) Since offense, patient has: sponge bath to genital area, urinated, used mouthwash, washed clothing and drank. "he told me to get in the bathtub full of bleach and stay in there for 15 minutes and if I didn't he was going to shoot me. He also washed all my clothes in the washer with bleach. He had me take 2 baths both 15 minutes each in bleach"

8) Any patient injuries resulting in bleeding?: unknown "how am I supposed to know he blind folded me"

9) Did you scratch assailant?: (if yes collect fingernail swab) no- "he tied my hands behind my back"

10) Did assailant bleed?: no

What they did was added the police report to this Fake sexual assault report. These aren't answers given to the question that the SAME nurse is asking.

Don't make sense.

Abdulle, Zamzam MRN: 1008382591

11) Did the assailant keep anything that belonged to you? Yes (please explain) - underwear and almost 500 dollars

Told her I was going to give her \$500

12) Was patient menstruating at time of assault? No

13) Any other information not already documented: No

14) Did assailant strangle or choke you? No

I Like to Challenge the Authenticity of this paper

PRESENT PHYSICAL FINDINGS

ED Nursing Assessment

GENERAL APPEARANCE: Alert, Anxious, duct tape stuck in hair impossible / No evidence

EXTREMITIES/SKIN: marks on face and lower legs from duct tape

NEUROLOGIC: Orientation/LOC status: (A) alert

RESPIRATORY: Breath Sounds are clear

CARDIAC: Denies problem

ABDOMEN/GI: Feels nausea

GENITOURINARY: Denies problem

REPRODUCTIVE: Not Pregnant, last menstrual period was 11/23/2013

MUSCULOSKELETAL: Legs are very tender

Vagina wasn't hurting, couldn't walk from those type of tears
Should say bleeding

Physical Assessment & Level of Pain

Head: unremarkable, level of pain: denies pain

Scalp: unremarkable, level of pain: denies pain

Face: see photolog, level of pain: moderate

Neck: unremarkable, level of pain: denies pain

Chest: unremarkable, level of pain: denies pain

Right Arm: Shoulder pain, level of pain: moderate

Right Hand: Right hand abrasion, level of pain: moderate

Left Arm: Shoulder pain, level of pain: moderate

Left Hand: {unremarkable, level of pain: denies pain

Fingers: unremarkable, level of pain: denies pain

Back: unremarkable, level of pain: denies pain

Abdomen: unremarkable, level of pain: denies pain

Buttocks: unremarkable, level of pain: denies pain

Groin: Multiple vaginal tears

Right Leg: Severe tenderness

Right Foot: unremarkable, level of pain: denies pain

Left Leg: Leg pain, level of pain: moderate

Left Foot: unremarkable, level of pain: denies pain

Nothing about bruises or marks on wrist from handcuffs

Where are the DIAGRAMS

impossible for me to have have

No bleach found ON SKIN

Assessment of Fluorescence

Alternative Light Source Used: yes

Fluorescence seen: no Location of Fluorescence: None

Colposcope used: No

FORENSIC SPECIMENS

BCA

Suppose to be use to determine VAGINAL tears Posterior For claustr 11/24/2013

about:blank

Abdulle, Zamzam MRN: 1008382591

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Hair Combing: no
 Blood (DNA): yes
 Swabs for semen/sperm: oral, cervix, vaginal, rectal and perineum
 Swabs for Saliva on Skin, Location: not done
 Fingernail swabs obtained: no
 Other specimens collected: none
 Urine for Drugs and Alcohol: yes
 Blood for Drugs and Alcohol: yes

Photographs Taken: yes
 Camera Type: Canon Powershot
 Photos Downloaded by: Amy Molitor SANE RN
 Digital

Photo #1: Patient Identification label
 Photo #2: Photo for identification
 Photo #3: Site: Lower legs Description/size: duct tape abrasions View: normal
 Photo #4: Site: Lower legs Description/size: duct tape abrasions View: normal
 Photo #5: Site: Right lower leg abrasion Description/size: duct tape abrasions View: macro
 Photo #6: Site: Left lower leg Description/size: Duct tape abrasions View: macro
 Photo #7: Site: Right hand Description/size: abrasion View: normal
 Photo #8: Site: Right hand Description/size: abrasion View: macro
 Photo #9: Site: Right hand Description/size: abrasion View: macro
 Photo #10: Site: Face Description/size: left eye pain and duct tape abrasions View: normal
 Photo #11: Site: Left side of face Description/size: duct tape abrasion View: normal
 Photo #12: Site: Left eye Description/size: Redness View: normal
 Photo #13: Site: Right side of face Description/size: duct tape View: normal
 Photo #14: Site: Left side of face Description/size: Duct tape abrasion View: normal

Photo Disposition: law enforcement and SANE

Genital

Photo #1: Magnification: Normal Findings: Identification
 Photo #2: Magnification: Face Identification
 Photo #3: Magnification: Normal Findings: toilet paper in vagina
 Photo #4: Magnification: 8x Findings: Tear-fossa Navicularis
 Photo #5: Magnification: 8x Findings: Tear of labia majora
 Photo #6: Magnification: 13x Findings: Tears of fossa navicularis
 Photo #7: Magnification: 13x Findings: Multiple tears of fossa navicularis and posterior fourchette
 Photo #8: Magnification: 13x Findings: Multiple tears of posterior fourchette
 Photo #9: Magnification: 13x Findings: Multiple tears of posterior fourchette
 Photo #10: Magnification: 13X Findings: Multiple tears of posterior fourchette
 Photo #11: Magnification: 13X Findings: Posterior fourchette tears

Photo Disposition: SANE

Non-genital injuries photographed by police: no

Clothing obtained as evidence: Bra, pants
 Evidence: sexual assault kit: handed off to law enforcement, blood kit: handed off to law enforcement, urine kit: handed off to law enforcement, photograph(s): handed off to

Who took the photos

LPN

NEVER WAS ANY DUCT TAPE ABRASIONS.

There's no such thing.

she never WAS DUCT TAPE.

A NAME should be here suppose to have photos of the tears

Don't make ANY sense

impossible for me to do

went from multiple tears to 2 or 3 tears
 NO Diagrams

about:blank

what is this

11/24/2013
 11/24/2013

law enforcement and clothing: handed off to law enforcement

PLAN

There's suppose to be A

Consultation: ED staff physician

NAME here of the person who did the report.

Sexually Transmitted Infection (STI) Risk Assessment Completed: Azithromycin and Ceftriaxone/Rocephin

there's suppose to be the NAME OF the infection she had Not the medication

Pregnancy Risk Assessment Completed: Yes Plan B - Risks and benefits discussed.

HIV Risk Assessment Completed: Low HIV risk.
Exam results and plan of care reviewed with ED physician: No att. providers found.

who did the report? Name should be here

Follow-up Instructions to Patient: Preprinted discharge instructions reviewed with patient, and Discussed need to return to ED if patient becomes depressed or suicidal.

Disposition: Discharged by SANE. Time: To: home

SANE who? what is the nurse who discharged her

Location that patient will be following exam: home

what time WAS she discharged.

Home address: Apt 205
1221 Banneker Ave N
Minneapolis MN 55411
Phone: 612-598-9401 (home)
Pager/Cell phone: None
Other ways to contact patient: NONE

Accompanied By (name and relationship): Sister and childrens father

what are there NAME

No Signatures ANYWHERE
patient Signature
Examiner Signature
Physician Signature

challenge

the Authenticity of the SANE Report this paper



Find a Licensee

To search for a licensee, enter the name and/or license information below. Only enter numbers in the "number" field. For example, if the license number is R 12345-6, select registered nurse in the "license type" drop down field and enter 123456 in the "number" field.

Last Name

molitor

First Name

amy

License Type

- select -

Number

 Search

Results

1 matches found

Licensee Name

Birth Date

License Types

Certifications

 Molitor, Amy M

7/10/1977

LPN



Location

Minnesota Board of Nursing
1210 Northland Drive #120
Mendota Heights, MN 55120

Contact Us

Email nursing.board@state.mn.us (mailto:nursing.board@state.mn.us)
Phone (612) 317-3000



20+



Amy Molitor

[Timeline](#)[About](#)[Friends 120](#)[More](#)[Add Friend](#)

About

[Overview](#)[Work and Education](#)[Places Lived](#)[Contact and Basic Info](#)[Family and Relationships](#)[Details About Amy](#)[Life Events](#)

Work



LPN at Bethesda Pleasant View Nursing Home
March 26, 2014 - Present · Willmar, Minnesota



Former Licensed Practical Nurse (LPN) at Adara
Home Health Care
January 1, 2019 - April 10, 2020 · Hutchinson, Minnesota



Former Licensed practical nurse at Prairie River
Homecare
January 5, 2016 - December 31, 2018



Former LPN at Divine House Inc.
March 2012 - March 26, 2014 · Willmar, Minnesota



Former LPN at Recover Health
January 2012 - August 13, 2016



Former LPN/CNA at Golden Living Center
September 2007 - January 2012 · Olivia, Minnesota

APPENDIX D

FACTUAL EVIDENCE SHEET

1. ZamZam Abdulle has many inconsistencies in her statement.
2. Alford Humphrey has four different statements.
3. There wasn't any bruises, cuts, or marks on ZamZam Abdulle's wrist from handcuffs that she said were metal.
4. There wasn't any traces of bleach found on her skin.
5. Upon the search of my girlfriends and I apartment, there wasn't any evidence found pertaining to the crime that I had allegedly committed. They did not retrieve any guns, handcuffs, or anything pertaining to me impersonating a police officer (let me remind you, this was two weeks later not two months). Also there wasn't any DNA found of Ms. Abdulle's in the apartment either.
6. There are more than 2 or 3 steps to our staircase and it is not formed in a L shape.
7. She never had any vaginal tears.
8. No one checked the backseat of my car (Monte Carlo) for DNA or hair follicles of ZamZam Abdulle to see if I was telling the truth about us being in my car the whole time not the apartment.
9. No one checked to see if I did a \$500 title loan on my car that's where I had got the money from.
10. No one asked my step kids did they see or hear a woman in the apartment.
11. No one checked the camera's around the bus stop to see that I dropped her off around 5:30 like I told them (All four 8, 9, 10, and 11 is the result of INEFFECTIVE ASSISTANCE OF COUNSEL).
12. If you wash colored clothes in bleach, they are going to have bleach spots and be discolored (Ms. Abdulle's clothes weren't discolored or had any bleach spots).

13. Bleach is made with the elements of chloride and chlorine which has hydrochloric acid which is an aqueous solution of hydrogen chloride HCl that is a strong corrosive irritating acid. So with that being said, if I would had rubbed ZamZam Abdulle down with bleach, her skin would have been very irritated and if I would had put her in a tub full of bleach her skin wouldn't just been irritated but she would have had burns especially on and in her vagina.

14. If Ms. Abdulle's leg were ran over by my car she would have a big tire mark or bruise as big as a tire on her leg and even a possibility a broken or fracture bone (especially if it was the front tire because that's the heaviest part of a car because of the engine. The average car way's about 3000 pounds so let's say about 2000 pounds would be in the front of the car).

15. They said she had ductape abrasions on her legs from ductape because she told them I ductaped her. I looked up the word abrasion and it means; a wearing, grinding, or rubbing away by friction. Now if her legs are ductaped together, she wouldn't been able to move her legs for them to grind or rubbed them together, so there wouldn't have been any friction, **no friction = no irritation**. Not only that, I have a outstanding and fantastic memory. Ms. Abdulle had on tube socks and white sweatpants with little designs on them. So with that being said there wouldn't have been a mark on her leg at all from ductape because it wouldn't have gone through her sweatpants. If anything she had an imprint on her leg from the top half of her tube socks, that leaves an impression on the skin, when you have them on all day, and that is a fact.

16. There was no colposcope used or any other device to determine vaginal tears (you would definitely need to use the colposcope for the posterior fourchette tear since it's inside the vagina). So how did they determine she had tears? There never was any.

Colposcope = An instrument designed to facilitate visual inspection of the vagina.

this is why there wasn't
a medical exam done

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

GIDEON C. ARRINGTON, II,

Case No. 22-CV-2362 (MJD/JFD)

Plaintiff,

v.

REPORT AND RECOMMENDATION

DYANNA L. STREET; ANTHONY C.
PALUMBO; WADE A. KISH; and
KELSEY R. KELLY, sued in their
individual and official capacities,

Defendants.

Plaintiff Gideon C. Arrington, II, was convicted in state court after entering an *Alford*¹ plea to one count of first-degree criminal sexual conduct. *See Arrington v. State*, No. A20-1538, 2021 WL 2644484, at *1-2 (Minn. Ct. App. June 21, 2021) (providing procedural history of Arrington's criminal and post-conviction proceedings). In this matter brought under 42 U.S.C. § 1985, Arrington alleges that the judge who presided over the state-court proceedings and the attorneys who prosecuted him violated his federal constitutional rights. (*See generally* Compl., Dkt. No. 1.)

Because Arrington is a prisoner, he was directed to pay an initial partial filing fee in this matter consistent with 28 U.S.C. § 1915(b) before this lawsuit could proceed. (Dkt. No. 4.) Arrington has now paid the required initial fee. (Dkt. No. 6.) Accordingly, this matter is now before the Court for preservice review pursuant to 28 U.S.C. § 1915A.

¹ *See North Carolina v. Alford*, 400 U.S. 25 (1970).

Under 28 U.S.C. § 1915A(a), “[t]he court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b).

This Court warned Arrington before he paid the initial partial filing fee for this lawsuit that two barriers to relief appeared to be insuperable to him receiving relief from the judge and prosecutors in the state-court matter for alleged errors during the criminal proceedings. (Dkt. No. 5 at 3 n.2.) First, Arrington was warned that the claims raised in this action—essentially, that the attorneys who prosecuted him knowingly submitted false evidence to the state court, and that the judge who presided over the prosecution should have known that the evidence was false—necessarily imply the invalidity of his conviction and therefore appear to be barred by the holding of *Heck v. Humphrey*, 512 U.S. 477 (1994). Second, Arrington was warned that both judges and prosecutors are absolutely immune from claims for monetary damages for actions taken in their judicial and prosecutorial capacities. *See Stump v. Sparkman*, 435 U.S. 349 (1978) (judicial immunity); *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) (prosecutorial immunity).

Arrington, in addition to paying the initial partial filing fee, has offered two arguments regarding why this matter should not be dismissed pursuant to *Heck* or due to the immunity of the defendants. (Dkt. No. 5.) First, Arrington contends that he is not challenging the validity of his conviction in this action, but only “suing for the criminal act that was done to him.” (*Id.* at 1.) Arrington, however, misapprehends the scope of the *Heck* doctrine. *Heck* not only prohibits federal litigants from directly attacking the validity of a state-court conviction through a procedural vehicle other than habeas corpus, but also precludes non-habeas claims that “necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement.” *Heck*, 512 U.S. at 486. “[T]he district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* at 487. Arrington alleges that he is in prison due to the malfeasance of the defendants, and he seeks monetary and declaratory relief for that malfeasance. (*See, e.g.*, Compl. ¶ 17 (“By failing and refusing to overturn the plaintiff [sic] conviction . . . defendants have inflicted both cruel and unusual punishment on plaintiff.”); *id.* ¶ 37 (describing claim as “Conspiracy to Convict”).) Regardless of whether he is expressly seeking the invalidation of his conviction as a remedy, Arrington’s claims necessarily imply the invalidity of his conviction, as Arrington cannot succeed in this action without calling into doubt the lawfulness of his conviction. This is sufficient to bring this matter under the purview of *Heck*.

Second, Arrington argues that neither *Heck* nor judicial and prosecutorial immunity apply to this action because he is seeking relief for *conspiracy* to violate constitutional rights under § 1985 and not directly for violations of constitutional rights under 42 U.S.C. § 1983. But *Heck* and the doctrines of judicial and prosecutorial immunity apply equally to claims brought under § 1983 and to claims brought under § 1985. *See, e.g., Snelling v. Westhoff*, 972 F.2d 199, 201 (8th Cir. 1992) (per curiam) (affirming dismissal of claims under § 1985 on grounds of prosecutorial immunity); *Schwartz v. Weinstein*, 459 F.2d 882, 883 (8th Cir. 1972) (per curiam) (affirming dismissal of claims under § 1985 on grounds of judicial immunity); *Audette v. United States*, No. 20-CV-2495 (PJS/DTS), 2021 WL 1321088, at *3 (D. Minn. Feb. 25, 2021) (“Although *Heck* itself discusses only § 1983 claims, the rationale of *Heck* applies equally to any civil claim that necessarily implies the invalidity of the prisoner’s detention”); *Roberson v. Minnesota*, No. 16-CV-2578 (ADM/HB), 2016 WL 11198359, at *6 (D. Minn. Dec. 19, 2016) (noting, and citing cases for proposition, that “*Heck*’s holding has been extended to cover claims under [42 U.S.C.] §§ 1985 and 1986.”). It is the substance of Arrington’s claims, not the statute under which those claims are brought, which controls whether *Heck* or the immunity doctrines bar those claims from consideration.

Regarding the substance of those claims, as explained above, Arrington alleges that the defendants conspired to imprison him for a crime that he did not commit. Because those claims necessarily imply—indeed, practically assert—the invalidity of Arrington’s conviction, *Heck* bars the claim from being raised until such time that the conviction is reversed, vacated, or otherwise invalidated. *See Heck*, 512 U.S. at 486-87. Further,

Arrington alleges that the putative conspiracy between the judge and prosecutors was carried out through the introduction and consideration of evidence during the course of criminal and post-conviction proceedings. But the introduction and consideration of evidence are quintessentially judicial and prosecutorial actions of exactly the kind insulated from suit. *See Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam); *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1266 (8th Cir. 1996). Nor is Arrington saved from the effect of judicial and prosecutorial immunity through allegations that the defendants knowingly acted wrongfully or in bad faith. *See Mireles*, 502 U.S. at 11 (noting that “judicial immunity is not overcome by allegations of bad faith or malice”); *Stockley v. Joyce*, 963 F.3d 809, 818 (8th Cir. 2020); *Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016) (“Because the immunity depends upon the functional nature of the prosecutor’s activities, allegations of improper motive in the performance of prosecutorial functions will not defeat its protection.”). The defendants are absolutely immune from the claims for relief raised in this lawsuit.

In short, this action is squarely foreclosed by *Heck* and the doctrines of judicial and prosecutorial immunity. Under either rationale, dismissal of this action is warranted under § 1915A(b). A dismissal pursuant to *Heck* must generally be effected without prejudice, so that the litigant may return to Court and relitigate his claims for relief should his conviction later become invalidated. *See Gautreaux v. Sanders*, 395 F. App’x 311, 312 (8th Cir. 2010) (per curiam). Judicial and prosecutorial immunity are both absolute and permanent though, and a complaint dismissed on either basis is therefore appropriately effected with prejudice rather than without prejudice. *See Grazzini-Rucki v. Knutson*, 597 F. App’x 902, 903 (8th

Cir. 2015) (per curiam) (affirming dismissal with prejudice on judicial immunity grounds); *Aery v. Cremens*, No. 20-CV-0055 (JRT/ECW), 2021 WL 536269, at *6 (D. Minn. Jan. 28, 2021) (collecting cases for proposition that dismissal of claim due to prosecutorial immunity is appropriately effected with prejudice). Accordingly, the Court will recommend that this matter be dismissed with prejudice. Finally, because this matter cannot survive preservice review, it is recommended that Arrington's pending application to proceed *in forma pauperis* be denied. *See* 28 U.S.C. § 1915(e)(2)(B). Arrington remains responsible for the remainder of the \$350.00 statutory filing fee, which must be paid in installments over time; officials at the prison where Arrington is now detained should be apprised of that requirement. *See* 28 U.S.C. § 1915(b)(2).

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. This matter be **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915A.
2. The application to proceed *in forma pauperis* of plaintiff Gideon C. Arrington, II (Dkt. No. 2) be **DENIED**.
3. Arrington be directed to pay the unpaid balance (\$344.00) of the statutory filing fee for this action in the manner prescribed by 28 U.S.C. § 1915(b)(2),

and the Clerk of Court be directed to provide notice of this requirement to the authorities at the institution where Arrington is confined.

Dated: October 25, 2022

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

GIDEON C. ARRINGTON, II,

Plaintiff,

v.

ORDER

Civil File No. 22-2362 (MJD/JFD)

DYANNA L. STREET; ANTHONY
C. PALUMBO; WADE A. KISH; and
KELSEY R. KELLY, sued in their
individual and personal capacities,

Defendants.

Gideon C. Arrington, II, pro se.

The above-entitled matter comes before the Court upon the October 25, 2022 Report and Recommendation ("R&R") of United States Magistrate Judge John F. Docherty. (Doc. 7.) On November 9, 2022, Plaintiff filed an objection to the R&R. (Doc. 8.)

Judge Docherty recommends dismissing this case with prejudice because Defendants are immune from suit under the doctrines of judicial and prosecutorial immunity. (Id. at 4-6.) In his objection to the R&R, Plaintiff

reiterates his argument that Prosecutorial Defendants are not entitled to absolute immunity because their conduct of manufacturing false evidence “shocks the conscience” and was a “brutal and inhumane abuse of official power.” (Doc. 1 at 8-9; Doc. 8 at 2-3 (citations omitted).)

Even under Plaintiff’s theory that Defendants would at most be entitled to qualified immunity, Defendant Prosecutors are immune from prosecution in this case because when government officials are only entitled to qualified immunity, they are still “not subject to damages liability for the performance of their discretionary functions when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Buckley v. Fitzsimmons, 509 U.S. 259, 268 (1993) (citation omitted). Plaintiff presents no evidence that Defendants violated these standards. Thus, this case can be distinguished from Moran v. Clarke, cited by Plaintiff, which describes the voluminous evidence presented to the court in that case. 296 F.3d 638, 639-41 (8th Cir. 2002) Defendants are, therefore, entitled to immunity.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the

Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge John F. Docherty, dated October 25, 2022.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**
HEREBY ORDERED:

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge John F. Docherty, dated October 25, 2022 (**Doc. 7**);
2. This matter is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915A;
3. Plaintiff's Application to Proceed in forma pauperis (**Doc. 2**) is **DENIED**;
4. Plaintiff is directed to pay the unpaid balance (\$344.00) of the statutory filing fee for this action in the manner prescribed by 28 U.S.C. § 1915(b)(2); and
5. The Clerk of Court is directed to provide notice of the statutory filing fee payment requirement to the Authorities at the Institution where Plaintiff is confined.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 17, 2023

s/Michael J. Davis

Michael J. Davis

United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

Gideon C. Arrington, II,

JUDGMENT IN A CIVIL CASE

Plaintiff(s),

v.

Case Number: 22-cv-2362 MJD/JFD

Dyanna L. Street, Anthony C. Palumbo,
Wade A. Kish, Kelsey R. Kelly,

Defendant(s).

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge John F. Docherty, dated October 25, 2022 (**Doc. 7**);
2. This matter is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915A;
3. Plaintiff's Application to Proceed in forma pauperis (**Doc. 2**) is **DENIED**;
4. Plaintiff is directed to pay the unpaid balance (\$344.00) of the statutory filing fee for this action in the manner prescribed by 28 U.S.C. § 1915(b)(2); and
5. The Clerk of Court is directed to provide notice of the statutory filing fee payment requirement to the Authorities at the Institution where Plaintiff is confined.

Date: 1/18/2023

KATE M. FOGARTY, CLERK
