No. 17-5311

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

Darrel Thorn

Petitioner

Vs

Melvin McGary, et al.

Respondents

On Petition for a Writ of Certiorari to the
Court of Appeals for the Fifth Circuit, New Orleans, La.

Motion to file Brief Out of Time

Darrel Thorn

405 North 3rd St.

Ponchatoula, La. 70454

985-956-8272

Motion To File Brief Out Of Time

Petitioner Darrel Thorn files this Motion for brief out of time under Supreme Court Rule 21 and 44. The petitioner files this motion on the grounds that petitioner lives more than 2,000 miles from Washington D.C. and it takes anywhere from 5-7 days by mail for petitioner to receive mail from that distance.

Petitioner contends to this honorable Court that he did not receive the Letter of denial of Writ of Certiorari from the clerk dated October 2, 2017 until 7 days after it was mailed.

Supreme Court Rule 44 States that;

"Any petition for Rehearing of any Judgement or decision of the court on The merits shall be filed within 25 days after entry of the judgement or Decision, unless the Court or Justice shortens or extends the time."

Petitioner contends that due to the seven (7) day period of time it took for the letter of denial of Writ of certiorari to get to petitioner, petitioner did not have 25 days to file petition for rehearing.

Petitioner contends that given five (5) days at the latest for the letter of denial of petition for Writ of certiorari, November 1, 2017 was the last day to file his petition for rehearing.

Petitioner has put three (3) years seeking justice in this case and do not wish to have it wasted by a miscalculation of time.

Petitioner prays this honorable court for justice and to at least look at the petition for rehearing and the record. Petitioner contends that after the court look at the record in this case and still deny him, he can leave this case knowing this court was fair.

11/22/2017 Daniel Thorn

No.17-5311

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vs.

Melvin McGary et al.

Respondents

On Petition for a Writ Of Certiorari to the

Court Of Appeals For The Fifth Circuit, New Orleans, La.

Petition for Rehearing

Darrel Thorn

405 North 3rd St.

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Table of Contents

Table of Authorities ii

Petition for Rehearing 1

Factual & Procedural Background 2

A. Proceedings Below 2

B. Proceedings Before the Court 2

Argument 4

Reasons for Granting the Petition 5

Conclusion 8

Table of Authorities

1. Aoude V. mobile Oil Corp.
892 F. 2d 1115, 1118 (1st Cir. 1989)
Bullock V. United States 763 F.2d. 1115, 1121 (10th Cir. 1985)
2. Chambers V. Nasco Inc.
501 U.S. 32, 44 (1991)

3. Dixion V. Commissioner
nOOOO
nO-00-70858, 2003 U.S. App. Lexis 4831 at 1112
(9th Cir.) march 18, 2003

4. Dictograh Products co. V. Sonotone Corp.
230 F. 2d 131, 137 (2nd Cir. 1956)

5. Greiner V. City of champlin
152 F. 3d, 789 (8th Cir. 1998)

6. Kerner V. CIR, 387 F3d. 689 (1968 moores Federal practice, 2d. ed P512 60.23.

7. Hazel-Atlas class co. V. Hartford-Empire CO.
322 U.S. 238 (1944)

8. OX Ford clothes XX INC. V. Expeditors int'l, inc.
127 F. 3d. 574, 578 (7th Cir. 1997)

9. Pumphrey V. K.W. Thompson Tool Co. 62 F. 3d 1128, 1131 (9th Cir 1995)

10. Transaero INC. V. LaFuera Area Boliviana, 24 F.3d 457, 460 (2nd. Cir. 1994)

11. United States V. Beggerly, 524 US. 38 (1998)

12. United States V. Burke
NO 05-5277, 2006 WL 2135044 1 (3d. Cir 2006) (Quoting Herring V. united states, 424 F. 3d 384, 389 (3rd. Cir. 2007)

13. United states V. Barbarbosa no 07-1292, (2007) WL 2050881 1 (3rd. Cir. 2007)

14. Universal Oil Products Co. V Root Ref. Co. 328 U.S. 575, 580 (1946)

15. Marine Insurance Co. V. Hodgon 7 Cranch 332

16. Marshall V. Holmes 141 U.S. 589.

17. PickFord V. Talbott, 225 U.S. 651, 225 US. 657

18. Hopkins V. Hebard 235 U.S. 287

19 mercoid Corporation V. mid continent investment Co. 320 U.S. 661;

20. Martin Salt Co. V. ~~G.S~~ G.S. Suppiger Co. 314 U.S. 488

21. Southard V. Russell, 16 How 547

22. united States V. American Bell Telephone Co. 128 U.S. 315

23. Sinbbald V. S. United States Supra, 37 US 492

24. Roemer V. Simon, 91 U.S 149

25. In re San Ford 3 Tool Co, U.S 247

26. Demjanuk V. Petrovsky 10 F.3d 388, 348 (6th Cir. 1993)

27. Cleason V. Jandrucko, 860 F.2d 556, 559 (2d Cir 1989)

28. Rozier V. Ford motor Co. 573 F.2d 1332, 1338 5th Cir. 1978

29. Moores Federal Practice 3d 60.21 [4] [a] (3rd. ed 2003)

30. ~~Kup~~ Kupferman V. consolidated Research & ~~Mfg~~ Mfg Corp.

Petition For Rehearing

Petitioner seeks Rehearing of this case on the grounds that Fraud on The Court was committed by Defense Counsel using Rambo Tactics, misrepresenting facts, and withholding true facts in discovery process, which the court allowed 60(d)(3).

This case was flawed from the start. Petitioner filed his complaint in District Court on January 26, 2014. Petitioner was granted leave to proceed Informa Pauperis and Pro-Se litigant status.

The U.S. Marshall served petitioners complaint on 3/23/15 and defendants did not comply until 4/20/15, some 45 days later than the 21 day summons to respond. Petitioner filed a Motion for Default Judgement under FRCP 55 but the District Court denied Petitioners Motion, but granted defendants Motion for summary Judgment.

The District Court showed bias against petitioner throughout the litigation process because of his inexperience and lack of legal training in these matters. The district court deemed untrue facts into evidence because of a technicality the court said petitioner committed in his opposition to defendants motion for summary judgement.

Petitioner contends to this honorable court that this allegation was not true.

Factual & Proceedural Background

On January 26, 2014 petitioner was driving his car on North 11th St. traveling North on north 11th st. and Police Officer McGary was traveling South on North 11th st...

Police Officer McGary passed me up, turned around and came back and pulled me over for no reason. Officer McGary ordered me and my passenger miss Monica leblanc out of the vehicle and started to search me , my passenger and my car.

Officer McGary found four Xanax pills on me that belonged to my mother in which I had work and doctors permission to possess. Officer McGary put me in handcuffs and took me to jail. Officer McGary ordered my passenger Miss LeBlanc to drive my car home. (See Miss LeBlanc's Affidavit at ROA.16-30700. 11,)

Petitioner was incarcerated about a day and a half and was released on his on recognizance. Later, the District Attorney rejected the drug charge and the Ponchatoula Mayors Court dismissed the ticket written by McGary for parking in a roadway. Afterwards, petitioner filed a Civil Rights complaint against defendants for violation of 4th and 14th Amendment of the United States Constitution and violation of 42USC1983 and Police Harassment.

A. Proceedings Below

The Opinion of the United States court of appeals appears at Appendix ____to

The petition and is

Reported at _____A_____

Argument

Misrepresentation to the Court

1. There is nothing on the record that states: The District Attorney rejected the drug charge at his discretion. This deemed fact in evidence was not true. The district attorney rejected the drug charge because I turned in exculpatory evidence that showed I worked for the state and the federal government as a Direct Service Worker (DSW) and had work and doctors permission to be in possession of my mothers medicine. Also, I was working at the time Officer McGary stopped my vehicle. (See ROA.16-30700.11,22, and ROA.16-30700.112,).
2. There is nothing on the record that states: The ticket written by officer McGary was dismissed because of any plea bargain. This deemed fact in evidence is simply not true. The judge dismissed the ticket because it was not true and my eyewitness Miss Monica leBlanc said in her affidavit, the ticket was not true. (See ROA.16-30700.11,22,
3. There is nothing on the record that states: Officer McGary had permission to patrol North 11th st. The evidence on the record show that the Tangipahoa parish Sherriff Department patrols and controls that part of North 11th st.

   The evidence on the record show that police officer McGary and the Ponchatoula police department perjured themselves by stating in a document found in my request for production of documents, that McGary was patrolling North 11th st. when he stopped my vehicle.

4. Defense Counsel omitted Exculpatory Evidence after he subpoenaed my work documents that revealed that I had work and doctors permission to be in possession of my mothers medicine. Defense Counsel sent me a copy of the subpoenaed work documents but did not filed the documents with the Court to be put on the record. Petitioner filed a motion to add these subpoenaed work document to the records but the appeals court denied my motion.
5. Defense Counsel started to use Rambo Tactics against the petitioner (Pro-Se Litigant) by ordering petitioner to attend deposition set at his on time and date. Not knowing if petitioner was available to attend these dates. Petitioner had to file a motion for a protective order to stop defense counsel from using these Rambo Tactis. The motion was granted in part and denied in part which didn't state what was granted part and what was denied in part. (See ROA.16-30700.103,)
6. Petitioner filed a motion to the Diatrict Court to appoint a special master to sit in on deposition taken by defense counsel but the motion was denied by the Court. (See ROA.16-30700.121,
7. Defense Counsel subpoenaed everything around the petitioner with no interference from the court but when petitioner subpoenaed defendants the court interfered saying petitioners subpoena was to vague and broad which was written the same way defense counsel wrote his. The Court then ordered my supeona to be in camera. (See ROA,16-30700.171,) The Court found 2 complaints on officer McGary but did not give this evidence to petitioner which showed officer McGary to be dishonest. This was unfair and bias by the Court.
8. The Court did not allow petitioner to go in and inspe ct the records and documents in the Ponchatoula police department and the Mayors Office. By

Not allowing petitioner to go in and inspect stopped the petitioner from obtaining crucial evidence of petitioners complaint and evidence in the Ponchatoula police department and the mayor's office which showed that petitioner had problems and complaints about police officer McGary before.

Discovery Order

It is ordered that by Dec.31, 2015 The Ponchatoula police department shall produce to Mr. Thorn a copy of the complaint he filed against Melvin McGary and David Bryant for police harassment by Dec.31,15. The Ponchatoula police department shall produce to the court for in camera inspection all records of complaints against Melvin McGary and David Bryant for police harassment as stated in the document. (See ROA.16-30700.171,)

Petitioner filed a motion for the court to appoint a special master and an experience civil rights attorney to assist him in this case,more than three times. Petitioner even filed a motion to appoint legal counsel before defense counsels motion for summary judgement but the court denied my motion every time, knowing full well that petitioner is not an attorney and do not the experience in these matters (See ROA.16-30700.121,).

At the Pretrial Conference, just 6 days before trial, the court told defense counsel to file a motion for summary judgement without sufficient grounds. Afterwards, defense counsel filed his motion for summary judgement. Petitioner filed a motion in opposition and attached Mrs. Monica LeBlancs affidavit. Not having the knowledge and experience, petitioner believed that Mrs. LeBlanc's affidavit was enough to withstand summary judgment.

Then, defense counsel Keith M. Detwieler went back to his Rambo litigation Tactics and filed 4 other motions and stopped the normal course of Federal Rule Of Civil Procedure 56.

The unfair and bias part about this is that the court allowed it to happen. The court did not give petitioner a chance to respond to these motions and deemed untrue facts in evidence against petitioner and granted defense counsels motion for summary judgement.

Footnote

Federal Rule of Civil Procedure 56 States that; Any party may file a motion for summary judgement only if there are no genuine issues of a material fact in dispute.

In this case, the true facts in evidence show that petitioner could have filed a motion for summary judgement on all of his claims but did not because of the courts bias and not impartial methods used against him in this case.

There were more genuine issues of material facts in dispute but petitioner believed that Mrs. LeBlancs affidavit was enough. Mrs LeBlanc was an eyewitness who was there when this incident occurred and her testimony can give truth to this matter and disputes police officer McGary's ticket for parking in the street. (See ROA.16-30700.11,22,357,)

This fact is also supported by the dismissal of police officers McGary's ticket for parking in the street by the Ponchatoula Mayors Court. Mrs. LeBlanc had two (2) major back surgery's and could not get out of bed. Mr. Detweiler had all of the necessary information to contact Mrs. LeBlanc for deposition but failed to contact her.

Defense Counsel subpoenaed everything around petitioner but failed to subpoena Mrs. LeBlanc for deposition. Petitioner contends that it would not have been a good idea to subpoena his own witness.

Petitioner informed the court of Mrs. LeBlanc's illness but the court granted defense counsels motion to strike anyway.

Federal Statue 28USC 1654 states that; Pro-Se Litigants cannot be held to the same standards as a regular attorney. In fact, pro-se litigants should be given leniency and guidance.

This statue does not state that pro-se litigant should be construed liberally (to view with an open mind).

In this case, the court granted defense counsels motion for summary judgement based on deemed facts that was untrue. It was bias, not impartial and unfair for the court to grant defendants motion to strike Mrs. LeBlanc affidavit.

Reasons For Granting the petition

Call it fraud directed at the judicial machinery itself. This fraud was designed to deceive the courts into believing facts that were not true. The appeals court were unable to adjudicate this matter properly because the courts were influenced by false information. Fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudicating cases (Moores Federal Practice 3d 60 21 [4] [a] (3d ed, 2003).

In Halbert V. Michigan 545 U.S. 605,621 (2005) the court stated; "Particularly given the leniency typically afforded Pro-Se Litigants, that unfortunate series of events should not deprive petitioner of his day in court. As the court recognized on several occasion ovigating the appellate process without a lawyer's assistance is a perilous endeavor for a lay person."

In this case the court did not give petitioner the opportunity to properly support or address the deemed facts that were untrue. (See FRCP 56 (e)(1))

The Court did not give the petitioner leniency and guidance to correct the mistake of not stating other facts in dispute in this case. (FRCP 56(e)(1))

Conclusion

Petitioner contends that this honorable Court should review to answer the question 'whether the petitioners 14th amendment right to due process was violated. Petitioner contends that defense counsel with the assistance of the court committed Fraud on the Court pertaining to FRCP 56 (e)(1) and FRCP 60(d)(3). The evidence on the record proves that the District Attorney rejected the drug charge and the Ponchatoula Mayor's Court dismissed the ticket for parking in the street written by officer McGary.

This evidence proves that defendants violated petitioners Civil Rights quarranteed him under the 4th and the 14th amendment of the United States Constitution. The evidence on the record proves that officer McGary had no probable cause to stop petitioners vehicle and warrantless search and seizure petitioner and Mrs. LeBlanc was unconstitutional.

In this case, the petitioner complained to the Mayor, the Ponchatoula Police Department and the chief of police department and they did nothing to provide petitioner with equal protection under the law. Petitioner prays this honorable

court to declare the petitioner the winner or remand this case back to the district court for a trial by a jury. The petitioner is entitled to his day in court.

November 1, 2017

Daniel Shaw

Certificate Of Service

The petitioner Darrel Thorn certifies that on the 1st day of November he mailed a copy of the Petition for Rehearing to defendants attorney of record, Keith M. Detweiler of Neilson, Carter&Treas at the address of 3830 Causeway Blvd, suite 2850, Metarie, La. 700002.

11/1/2017 Darrel Thorn

Certificate of Compliance

The Petitioner Darrel Thorn Certifies that this petition is presented in good faith and not for delay.

11/1/2017 Darrel Thorn

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 5, 2017
Lyle W. Cayce
Clerk

No. 16-30700

DARREL THORN,

Plaintiff - Appellant

v.

MELVIN MCGARY, Police Officer; DAVID BRYANT, Police Officer; PONCHATOULA POLICE DEPARTMENT; ROBERT F. ZABBIA, Mayor; BRY LAYRISSON, Police Chief,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:15-CV-127

Before KING, JOLLY, and PRADO, Circuit Judges.

PER CURIAM:*

On January 26, 2014, Defendant–Appellee Melvin McGary, a police officer with the Ponchatoula Police Department, was on patrol when he observed a vehicle, which he later learned was occupied by Plaintiff–Appellant Darrel Thorn and a female passenger, Monica LeBlanc, parked on the roadway

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

of a winding two-lane street, in an area known for drug activity.[1] Officer McGary initially thought the vehicle and its occupants were stranded and pulled in behind the vehicle to obviate the danger facing its occupants and other motorists. Officer McGary immediately became suspicious as he observed Thorn moving about in the vehicle, in what Thorn admits was an attempt to hide a prescription pill bottle containing four or five Xanax pills that were not prescribed for him. As Officer McGary and Thorn spoke in the doorway of Thorn's vehicle, Officer David Bryant arrived in response to Officer McGary's call to dispatch. Both officers were familiar with Thorn through previous encounters. Officers Bryant and McGary then observed Thorn manipulating the waistband of his pants and the pill bottle fall to the ground. After Thorn was unable to produce a prescription for the Xanax in the bottle, he was placed under arrest for possession of a schedule IV controlled dangerous substance without a valid prescription, a felony under Louisiana law. *See* La. Stat. Ann. § 40:969. Thorn was also ticketed for parking in the roadway. Thorn's arrest was reported (along with other arrests) in the local newspaper.

After the ticket was dismissed as part of a plea deal and the drug charge was rejected by the district attorney, Thorn, proceeding pro se, filed the instant suit against Officers McGary and Bryant, as well as the Ponchatoula Police Department; the Mayor of Ponchatoula, Robert F. Zabbia; and the chief of the Ponchatoula Police Department, Bry Layrisson (collectively, Defendants). In relevant part, Thorn asserted a claim against Defendants under 42 U.S.C. § 1983 for a violation of the Fourth Amendment in connection with McGary's initial stop and his subsequent arrest, as well as a state law claim for defamation of character in connection with the newspaper report of his

[1] As discussed further below, these facts have been deemed admitted for purposes of summary judgment pursuant to the district court's local rules.

arrest.[2] Thorn attached (among other things) an 11-sentence affidavit from LeBlanc to his complaint.

Defendants moved for summary judgment. In accordance with the district court's local rules, Defendants' motion included "a separate and concise statement of the material facts which [they] contend[] present no genuine issue." E.D. La. Civ. R. 56.1. Thorn filed an opposition to the motion for summary judgment but failed to include his own statement of facts, as required by the district court's local rules. E.D. La. Civ. R. 56.2. Thorn's opposition argued that Defendants should be denied qualified immunity because he *alleged* his constitutional rights were violated. The only evidence Thorn offered in support of his opposition was the affidavit from LeBlanc attached to his complaint, which Defendants moved to strike after LeBlanc failed to respond to Defendants' requests for a deposition and Thorn was unable to provide a deposition date for her. The district court granted Defendants' motion to strike, as well as their motion for summary judgment. Based on Thorn's failure to present a controverting statement of facts, the district court, pursuant to its local rules, "deemed admitted" the material facts in Defendants' statement of facts for purposes of ruling on Defendants' motion. E.D. La. Civ. R. 56.2. Thorn timely appealed.

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[2] Although the district court liberally construed Thorn's complaint to include several other claims, our review is limited to the claims identified above. We liberally construe briefs of pro se litigants; however, pro se litigants must still comply with the principles of appellate procedure, including the principle that arguments must be briefed to be preserved. *See* Fed. R. App. P. 28; *see also Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). "'Conclusory briefing' that 'fails to address the . . . substantive reasons articulated by the [lower court]' is inadequate." *Legrand v. Gillman*, 576 F. App'x 334, 337 (5th Cir. 2014) (per curiam) (alteration and omission in original) (quoting *Stevens v. Hayes*, 535 F. App'x. 358, 359 (5th Cir. 2013) (per curiam)). Here, Thorn has not advanced any argument on appeal in support of any other claims, much less addressed the substantive reasons articulated by the district court for granting summary judgment on the other claims. Thus, Thorn has failed to preserve any argument concerning claims beyond those we address.

On appeal, Thorn contends that the district court erred in holding his opposition to Defendants' motion for summary judgment to the same standard as one drafted by an attorney. Thorn is correct that pleadings of pro se litigants, including oppositions to motions for summary judgment, must be construed liberally and reviewed less stringently than those drafted by attorneys. *See Haines v. Kerner,* 404 U.S. 519, 520 (1972); *McCrae v. Hankins*, 720 F.2d 863, 865 (5th Cir. 1983), *abrogated on other grounds by Hudson v. Palmer*, 468 U.S. 517, 531–33 (1984), *as recognized in Augustine v. Doe*, 740 F.2d 322, 328 & n.10 (5th Cir. 1984). However, "pro se parties must still comply with the rules of procedure and make arguments capable of withstanding summary judgment." *Ogbodiegwu v. Wackenhut Corrs. Corp.*, 202 F.3d 265, 1999 WL 1131884, at *2 (5th Cir. 1999) (per curiam) (unpublished); *see also Hulsey v. Tex.*, 929 F.2d 168, 171 (5th Cir. 1991) ("The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law." (quoting *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (per curiam))). As we have explained, "[t]he notice afforded by the Rules of Civil Procedure and the local rules" is "sufficient" to advise pro se litigants of their burden in opposing summary judgment; no "particularized additional notice" for pro se litigants is required. *Martin v. Harrison Cty. Jail*, 975 F.2d 192, 193 (5th Cir. 1992) (per curiam).

Here, the district court recognized that it was required to—and did in fact—liberally construe Thorn's complaint and opposition. But, as the district court also recognized, Thorn was not excused from complying with the Federal Rules of Civil Procedure, the district court's local rules, or most significantly, the tenet that he must identify evidence in support of his claims. The district court's local rules require an opposition to summary judgment to "include a separate and concise statement of the material facts which the opponent contends present a genuine issue." E.D. La. Civ. R. 56.2. If the opposition fails

to provide such a statement, "[a]ll material facts in the moving party's statement will be deemed admitted, for purposes of [summary judgment]." *Id.* Thorn was not excused from complying with this requirement by simple virtue of his pro se status.

Thorn next contends that the district court erred in striking LeBlanc's affidavit based on his failure to better assist Defendants in their (unsuccessful) attempts to take LeBlanc's deposition. We generally review a motion to strike for abuse of discretion, *see Cambridge Toxicology Grp., Inc. v. Exnicios*, 495 F.3d 169, 178 (5th Cir. 2007), but need not decide whether the district court abused its discretion in this case. As a result of Thorn's failure to follow the district court's summary judgment procedures, the material facts in Defendants' motion for summary judgment were "deemed admitted" for purposes of ruling on the motion. E.D. La. Civ. R. 56.2. Thorn's pro se status, as discussed above, did not excuse him from complying with the district court's local rules, and under the circumstances, they were properly enforced by the district court against him. *See Martin*, 975 F.2d at 193. Thus, regardless of whether the LeBlanc affidavit was properly stricken, the relevant facts for analyzing summary judgment are the uncontroverted ones in Defendants' motion.[3]

Thorn further contends that the district court erred in granting Officers McGary and Bryant qualified immunity from his § 1983 claim. We review a

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[3] Indeed, Thorn has failed to demonstrate any specific harm resulting from the district court's decision to strike the LeBlanc affidavit. The affidavit is both vague and conclusory, and "without more, a vague or conclusory affidavit is insufficient to create a genuine issue of material fact in the face of conflicting probative evidence." *Kariuki v. Tarango*, 709 F.3d 495, 505 (5th Cir. 2013). Specifically, the affidavit concludes McGary had "no reason" to take the actions he did but offers only a vague description of LeBlanc's observations in support. In fact, the affidavit's description is so vague that it is difficult to discern whether LeBlanc even challenges Officer McGary's testimony that Thorn's car was parked in the roadway and Officers McGary and Bryant's testimony that the pill bottle containing the Xanax fell from Thorn's pants independent of any pat down.

grant of summary judgment on the issue of qualified immunity de novo. *Curtis v. Anthony*, 710 F.3d 587, 593 (5th Cir. 2013) (per curiam). "A public official is entitled to qualified immunity unless the plaintiff demonstrates that (1) the defendant violated the plaintiff's constitutional rights and (2) the defendant's actions were objectively unreasonable in light of clearly established law at the time of the violation." *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011). According to Thorn, the dismissal of his ticket as part of a plea deal and the district attorney's rejection of his drug charge demonstrate that Officer McGary's initial stop and Officers McGary and Bryant's subsequent arrest lacked foundation and, thus, demonstrate that his Fourth Amendment rights were violated.[4] We disagree.

According to the facts deemed admitted, Thorn's vehicle was parked in the roadway of a winding two-lane street, which an officer would reasonably view as posing a danger to both the vehicle's occupants and other motorists and as constituting a traffic violation. Therefore, Officer McGary's initial stop did not violate the Fourth Amendment. *See United States v. Rideau*, 969 F.2d 1572, 1574 (5th Cir. 1992) (en banc) (holding that a stop based on reasonable suspicion and serving a community caretaking function did not violate the Fourth Amendment). Neither did Officers McGary and Bryant's subsequent arrest of Thorn. *See Resendiz v. Miller*, 203 F.3d 902, 903 (5th Cir. 2000) (per curiam) (holding that warrantless arrest based on probable cause did not violate the Fourth Amendment). Based on the totality of the circumstances

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[4] Thorn also appears to argue that liability for these alleged constitutional violations attaches to the remaining Defendants under § 1983, ostensibly on a theory of *respondeat superior*. The doctrine of *respondeat superior* does not apply in § 1983 cases, and Thorn has failed to provide any "proof of 1) a policymaker; 2) an official policy; 3) and a violation of constitutional rights whose 'moving force' is the policy or custom," which could support a traditional municipal liability theory. *Rivera v. Hous. Indep. Sch. Dist.*, 349 F.3d 244, 247 (5th Cir. 2003). Accordingly, the district court properly granted summary judgment on Thorn's § 1983 claim against the remaining Defendants.

known to Officers McGary and Bryant—including their prior experience with Thorn, Thorn's furtive movements as Officer McGary approached Thorn's vehicle, the unlabeled prescription bottle containing Xanax falling from Thorn's pants, and Thorn's inability to produce a valid prescription for Xanax—there was probable cause to conclude that Thorn violated La. Stat. Ann. § 40:969, *et seq.* The dismissal of the ticket and refusal to prosecute the drug charge do not compel the conclusion that Thorn urges upon us that a Fourth Amendment violation occurred. In fact, neither one necessarily demonstrates that Thorn was innocent. Rather, they merely represent exercises of prosecutorial discretion. Because Thorn has failed to satisfy the first-prong of the qualified immunity analysis—a violation of his Fourth Amendment rights—Defendants were properly granted qualified immunity.[5]

Thorn finally argues that the district court erred in granting summary judgment on his defamation of character claim. According to Thorn, the district court failed to account for the fact that the newspaper received the information about his arrest from "police blotters." Thorn, however, failed to present this argument to the district court or provide any evidence to support it. Moreover, even if he had, the fact remains that Thorn *was* arrested. Thus, he has failed to demonstrate that the information provided by the police

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[5] Thorn also seems to suggest that his Fourth Amendment rights were violated because Officer McGary's initial stop and Thorn's subsequent arrest appear to have occurred a short distance outside of Ponchatoula's city limits (on a stretch of road Officer McGary had always been given authority to patrol because curves in the road caused only small portions to leave city limits). Thorn, however, did not raise this argument in opposition to Defendants' motion for summary judgment, so the argument is waived. *See Yohey*, 985 F.2d at 225, 227; *see also Hensley v. Wal-Mart Stores, Inc.*, 290 F. App'x 742, 743–44 (5th Cir. 2008) (per curiam). Moreover, even if the argument were not waived, Thorn has not cited any authority clearly establishing that a stop or arrest under the circumstances violates the Fourth Amendment. Accordingly, he has failed to show that he could, in any event, satisfy the second prong of the qualified immunity analysis. *See Porter*, 659 F.3d at 445 (recognizing that qualified immunity shields officials unless the plaintiff demonstrates the defendant violated a constitutional right that was "clearly established").

blotters was false, let alone demonstrate the other elements required for a viable defamation claim under Louisiana state law. *See Trentecosta v. Beck*, 703 So. 2d 552, 559 (La. 1997) ("Four elements are necessary to establish a defamation cause of action: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury."); *see also Lee v. Pennington*, 830 So. 2d 1037, 1045 (La. Ct. App. 2002) (concluding report of the plaintiff's arrest was neither false nor defamatory). Indeed, we have already concluded that there was probable cause for Thorn's arrest, and under these circumstances, Louisiana law affords police officers a qualified privilege against defamation actions. *See Trentecosta*, 703 So. 2d at 562–64 (holding that police officers have a qualified privilege against defamation claims for "report[ing] the fact that a person was arrested and the charges for which the person is being held"); *see also Roche v. Aetna Cas. & Sur. Co.*, 303 So. 2d 888, 890 (La. Ct. App. 1974) (affirming dismissal of defamation claim where officer's arrest was supported by probable cause). The district court, therefore, did not err in granting summary judgment on Thorn's defamation of character claim.

In sum, Thorn has failed to present competent evidence or argument to withstand summary judgment on any of his claims against Defendants. Accordingly, the judgment of the district court is AFFIRMED.

Sincerely,

LYLE W. CAYCE, Clerk

Allen C. McIlwain

By: _____
Allen C. McIlwain, Deputy Clerk

Enclosure(s)

Mr. John Dennis Carter
Mr. Keith Michael Detweiler
Mr. Darrel Thorn ✓