

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY

Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No. 2022-CP-10-00798

Gregory K. Green, #299039,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2025-000800

SUPPLEMENTAL APPENDIX

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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Gregory Kyle Green,	)	Civil Action No. 2:21-cv-01376-RMG-MGB
	)	
Plaintiff,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	
Michael Sanchez,	)	
	)	
Defendant.	)	
	)	

Plaintiff Gregory Kyle Green (“Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, brings this civil action seeking relief pursuant to 42 U.S.C. § 1983. This matter is now before the Court upon Defendant’s Motion for Summary Judgment. (Dkt. No. 62.) Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2), D.S.C., this matter has been assigned to the undersigned for all pretrial proceedings. For the reasons set forth below, the undersigned recommends that Defendant’s motion (Dkt. No. 62) be denied.

BACKGROUND

Plaintiff is currently incarcerated at Lee Correctional Institution in Bishopville, South Carolina for a murder conviction.¹ The instant case centers around the constitutionality of Plaintiff’s underlying arrest warrant and whether that warrant was procured by false statements in violation of Plaintiff’s Fourth Amendment rights. Plaintiff filed his initial Complaint on May 7, 2021. (Dkt. No. 1.) Upon Order of the Court, Plaintiff filed an Amended Complaint on September 7, 2021. (Dkt. No. 10.) According to the Amended Complaint, on or around July 7, 2017,

¹ See SCDC Inmate Search, <http://www.doc.sc.gov/InmateSearchDisclaimer.html> (last visited March 31, 2023); see also *Tisdale v. South Carolina Highway Patrol*, No. 0:09-cv-1009-HFF-PJG, 2009 WL 1491409, at *1 n.1 (D.S.C. May 27, 2009), *aff’d*, 347 F. App’x 965 (4th Cir. Aug. 27, 2009) (noting that the court may take judicial notice of factual information located in postings on government web sites).

Defendant Michael Sanchez, a detective with the North Charleston Police Department, procured an arrest warrant against Plaintiff by “providing falsified information” to the issuing magistrate judge. (Dkt. No. 10 at 4–5.) More specifically, Defendant Sanchez apparently informed the judge that Plaintiff’s cell phone records placed him at the scene of the crime and a witness had identified Plaintiff as one of the perpetrators. (*Id.*) Plaintiff claims that while Defendant Sanchez repeated these false statements at the preliminary hearing on August 15, 2017, he later admitted that he did not have Plaintiff’s cell phone records at the time he sought the arrest warrant from the magistrate judge. (*Id.*) Plaintiff also claims that Defendant Sanchez never verified the alleged witness statement that implicated Plaintiff’s involvement in the crime. (*Id.*) Plaintiff clarifies that he is not challenging the validity of his murder conviction, but rather, is seeking monetary damages for the aforementioned violations of his constitutional rights. (*Id.* at 5.)

After an initial review of Plaintiff’s Amended Complaint, the Court determined that Plaintiff plausibly alleged a § 1983 claim against Defendant Sanchez for purportedly violating Plaintiff’s Fourth Amendment rights by arresting him pursuant to a “constitutionally defective warrant.” (Dkt. No. 28 at 2.) The Court further determined that Plaintiff failed to allege any plausible claims against Defendant North Charleston Police Department and therefore dismissed it as a Defendant. (*Id.*) Additionally, on September 14, 2022, the Court denied Defendant Sanchez’s Motion to Dismiss, or in the alternative, Motion for Summary Judgment. (Dkt. Nos. 36; 47.) The Court rejected Defendant’s arguments that Plaintiff’s claim is barred by the applicable statute of limitations and by the Supreme Court’s ruling in *Heck v. Humphrey*, 412 U.S. 477 (1994). (Dkt. Nos. 36 at 3–6; 47.)

Discovery in this case ended on December 14, 2022. (Dkt. No. 49.) On January 11, 2023, Defendant filed a Motion for Summary Judgment, arguing that Plaintiff has not established a

genuine issue of material fact exists in support of his constitutional claim. (Dkt. No. 62 at 7.) On January 12, 2023, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond to the motion. (Dkt. No. 63.) Plaintiff responded to the motion on January 20, 2023. (Dkt. No. 65.) On January 25, 2023, Defendant filed a reply to Plaintiff's response. (Dkt. No. 66.) As such, the motion before the Court has been fully briefed and is ripe for disposition.

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment shall be granted “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “Facts are ‘material’ when they might affect the outcome of the case, and a ‘genuine issue’ exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party.” *News & Observer Pub’g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A party may support or refute that a material fact is not disputed by “citing to particular parts of materials in the record” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment “‘against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’” *Phillips v. Nlyte Software Am. Ltd.*, 615 Fed. App’x 151, 152 (4th Cir. 2015) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

When a court considers the motion, “‘the nonmoving party’s evidence is to be believed, and all justifiable inferences are to be drawn in that party’s favor.’” *News & Observer Pub’g Co.*,

597 F.3d at 576 (*quoting Hunt v. Cromartie*, 526 U.S. 541, 552 (1999)); *see also Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123-24 (4th Cir. 1990). The moving party has the burden of proving that summary judgment is appropriate. *Bd. of Trs., Sheet Metal Workers' Nat'l Pension Fund v. Lane & Roderick, Inc.*, 736 Fed. App'x 400, 400 (4th Cir. 2018) (citing *Celotex Corp.*, 477 U.S. at 322–23). Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. *See Fed. R. Civ. P.* 56(c), (e); *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015).

Because Plaintiff is representing himself, this standard must be applied while liberally construing his filings in this case. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

DISCUSSION

Plaintiff's sole claim is a § 1983 claim against Defendant Sanchez for allegedly violating his Fourth Amendment right to be free from unreasonable searches and seizures. More specifically, Plaintiff alleges Defendant "provid[ed] falsified information" in his affidavit underlying the arrest warrant, and Plaintiff's arrest pursuant to that warrant was therefore unlawful. (Dkt. No. 10 at 4–6.) Defendant argues that he is entitled to summary judgment on this claim because, even without the allegedly falsified statement in the affidavit, there was still sufficient probable cause within the affidavit to support Plaintiff's arrest. (Dkt. No. 62 at 7.) Defendant further argues that he is entitled to qualified immunity to the extent "he made a mistake as to the information provided." (*Id.* at 4–5.)

A. Standards

1. Fourth Amendment Unreasonable Seizure

“The Fourth Amendment prohibits law enforcement officers from making unreasonable seizures, and seizure of an individual effected without probable cause is unreasonable.” *Brooks v. City of Winston-Salem*, 85 F.3d 178, 183 (4th Cir. 1996) (citing *Graham v. Connor*, 490 U.S. 386, 396–97 (1989)). A party challenging the veracity of a warrant application must show that the officer(s) deliberately or with a “reckless disregard for the truth” made material false statements in the warrant application, *Franks v. Delaware*, 438 U.S. 154, 171 (1978), or omitted from that application “material facts with the intent to make, or with reckless disregard of whether they thereby made, the [application] misleading,” *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990) (citation omitted). “Reckless disregard can be evidenced by an officer acting ‘with a high degree of awareness of [a statement’s] probable falsity,’ meaning that ‘when viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.’” *Humbert v. Mayor & City Council of Baltimore City*, 866 F.3d 546, 556 (4th Cir. 2017) (quoting *Miller v. Prince George’s Cty., MD*, 475 F.3d 621, 627 (4th Cir. 2007)), *as amended* (Aug. 22, 2017), *cert. denied sub nom. Mayor & City Council of City of Baltimore, Maryland v. Humbert*, 138 S. Ct. 2602, 201 L. Ed. 2d 1003 (2018). “Omissions are made with reckless disregard when the evidence demonstrates that a police officer ‘failed to inform the judicial officer of facts [he] knew would negate probable cause.’” *Id.* (quoting *Miller*, 475 F.3d at 627).

“Moreover, in order to violate the Constitution, the false statements or omissions must be ‘material,’ that is, ‘necessary to the [neutral and disinterested magistrate’s] finding of probable cause.’” *Miller*, 475 F.3d at 628 (quoting *Franks*, 438 U.S. at 155–56.) “To determine materiality, a court must excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the corrected warrant affidavit would establish probable cause.” *Id.*

(internal quotations and citation omitted). “If the ‘corrected’ warrant affidavit establishes probable cause, no civil liability lies against the officer.” *Id.*

2. Qualified Immunity

“Qualified immunity shields government officials from civil liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Hill v. Crum*, 727 F.3d 312, 321 (4th Cir. 2013) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity protects officers from liability for “bad guesses in gray areas” and bases liability on the violation of bright-line rules. *Id.* (quoting *Braun v. Maynard*, 652 F.3d 557, 560 (4th Cir. 2011)). “Qualified immunity provides ‘an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.’” *Cloaninger ex rel. Estate of Cloaninger v. McDevitt*, 555 F.3d 324, 330 (4th Cir. 2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). The Supreme Court has “repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam).

In determining whether an officer is entitled to summary judgment on the basis of qualified immunity, the court applies “a familiar two-step inquiry.” *Harris v. Pittman*, No. 17-7308, 2019 WL 2509240, at *10 (4th Cir. June 18, 2019) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). At step one, courts ask “whether the facts alleged or shown, taken in the light most favorable to the plaintiff, establish that the police officer’s actions violated a constitutional right.” *Id.* (quoting *Meyers v. Balt. Cty.*, 713 F.3d 723, 731 (4th Cir. 2013)). “At step two, the question is whether the right at issue was ‘clearly established’ at the time of the officer’s conduct.” *Id.* (quoting *Meyers*, 713 F.3d at 731). District court and court of appeals judges are “permitted to exercise their sound discretion in deciding which of the two prongs of the

qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Pearson*, 555 U.S. at 236 (2009).

B. Evidence

In connection to a prior motion, Plaintiff submitted the arrest warrant at issue here as well as excerpts of testimony from Plaintiff’s underlying criminal trial. (Dkt. No. 21-1.) The arrest warrant is signed by the magistrate judge and Defendant Sanchez and states that “there is probable cause to believe that the defendant named above did commit the crime[]” of “murder” and that “probable cause is based on the . . . facts” set forth in Sanchez’s affidavit. (Dkt. No. 21-1 at 1.)

Personally appeared before me, a magistrate of this County, one, [illegible] who, first being duly sworn, deposes and says that

Gregory Kyle Green

did within this County and State on the 8th day of June, 2017 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

MURDER

16-3-10

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based upon the following facts:

On June 8th, 2017, at approximately 4:30 A.M., while at 2278 Bailey Street, which is located in the City of North Charleston, County of Charleston. State of South Carolina, the defendant, Gregory Kyle Green, did commit the offense of MURDER, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 AM., officers of the North Charleston Police Department responded to a report of a fire located at 2278 Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims [sic] residence the night of the incident. This vehicle was described as a light blue new

Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag MJK 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witnesses description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant. All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

(Dkt. No. 21-1 at 1.)

Plaintiff has submitted trial testimony from third parties Jonathan Seabrook ("Seabrook"), Lanica Walker ("Walker"), and Kendall Rice ("Rice"). During Seabrook's testimony, he indicates that he was "sitting outside of [his] house," apparently on the night of the murder, watching someone "going in and out." (Dkt. No. 21-1 at 2.) His testimony includes the following exchange:

Q. As you just told Mr. Waring you also told Detective Sanchez that you heard that man in the car say a name, right?

A. Yes.

Q. But when you told them the name you weren't certain what it was, right?

A. No.

Q. You said it could have been Kone, right?

A. Yes.

Q. Could have been Kwan?

A. Yes.

Q. Could have been Corn?

A. Yes.

Q. You didn't know which one of those it was?

A. Yes.

(Dkt. No. 21-1 at 2–3.)

During Walker’s testimony, she appears to describe what an unnamed person told her about the murder at issue. Her testimony includes the following exchange:

A. . . . He said as he proceeded to the steps he said he heard some commotion and then he said that he heard two gunshots. So he turned around and he ran to his car. And as he was proceeding to back out he said a young man came out with a gun and he was bloody and he jumped in the car.

Q. Did he tell you where they went after the guy jumped in his car?

A. He said he took him back to the house.

Q. And did he tell you what happened after he took this person who jumped in his car with blood on his clothes and a gun did he tell you what happened when he went back to the house?

A. The guy’s female helped him change his clothes and he said they bleached out the car.

Q. Did he tell you what happened after he bleached out the car?

A. He said he left. He said he told the guy to burn the house down. And then he said that he left.

Q. Did he tell you who this person was?

A. No, I don’t know who the person was.

(Dkt. No. 21-1 at 4.)

Finally, during Rice’s testimony, the following exchange is recorded:

Q. When you met with detectives about this case you described the person you saw across the street.

A. I described the person who I thought it was.

Q. Okay. I know you didn’t get a good look at his face, right?

A. I never saw the person.

Q. But you were able to say a few things about what he looked like.

A. I was describing somebody.

Q. And you even told officers that you recognized the guy.

A. I was describing somebody.

Q. You said that you had seen him at Mr. Rivers’ house for the past four days before Mr. Rivers was killed.

A. Not the guy who we’re trying today.

Q. I’m sorry?

A. Not the guy who we’re trying today. The guy who I thought it was was a whole different guy.

Q. Because you said he was dark skinned, right?

A. Right.

Q. Three shades darker than you. . . .

(Dkt. No. 21-1 at 5.)

After this exchange, Rice discusses some texts he exchanged with Seabrook, apparently on the night of the murder, in which Rice is giving “a play by play of what” he is hearing because he is “in the house at the time.” (*Id.* at 8.)

Q. And as far as that conversation the man in that car had with Mr. Seabrook you said you didn’t hear any of that, right?

A. I mean we just went over that. They said that I did hear that.

Q. Did you hear the name that the driver of that car said?

A. No, ma’am.

Q. And that’s what you said in all your interviews, right?

A. Yes, ma’am.

Q. And even though you don’t know that name—

A. —no ma’am—

Q. Detective Sanchez brought up some names to you, right?

A. Right.

Q. He asked you about a guy named Kone.

A. Right.

Q. He asked you about Gregory?

A. Right.

Q. He brought those names up.

A. Correct.

Q. You didn’t mention them.

A. No, ma’am.

Q. You told him you didn’t know anyone by those names.

A. No ma’am.

Q. You said you had never heard the name of Kone.

A. No, ma’am.

(Dkt. No. 21-1 at 8–9.)

Plaintiff has also submitted trial testimony from Defendant Sanchez. During his testimony, Sanchez describes “some mistakes” he made “in this case.” (*Id.* at 10.) Sanchez explains that he initially obtained a search warrant for Plaintiff’s phone records in June of 2017, but accidentally requested the wrong time frame. (*Id.* at 12.) The murder occurred on June 8, 2017 and Sanchez requested records from February to April of 2017. (*Id.*) He eventually obtained the proper phone records in September 2019, approximately a month before Plaintiff’s criminal trial. (*Id.* at 15.)

Sanchez testified that he “definitely did not have [Plaintiff’s] phone records in July of 2017.” (*Id.*) When asked specifically about the arrest warrant, Sanchez acknowledged that the information in his affidavit about Plaintiff’s phone records “was not accurate.” (*Id.* at 17.) Sanchez also discussed his testimony at Plaintiff’s preliminary hearing, in which he testified about phone records disproving Plaintiff’s alibi. Sanchez acknowledged that this testimony was given “fifteen days before [he] retrieved the data.” (*Id.* at 25–6.)

C. Analysis

Plaintiff argues that Defendant’s affidavit included several pieces of false information: (1) that Plaintiff’s cell phone records placed him at the crime scene; and (2) that witnesses gave information placing Plaintiff at the crime scene. (Dkt. Nos. 10 at 4–5; 65 at 2.) In his Motion, Defendant appears to dispute both that he provided false information in his affidavit with reckless disregard and that the exclusion of the alleged false information would deprive the warrant of probable cause to arrest Plaintiff for murder. (Dkt. No. 62.) Notably, neither party has provided any evidence with their briefing on the dispositive motion. The only evidence in the record are the documents discussed above, which Plaintiff submitted with his prior motion to appoint counsel. (Dkt. No. 21.)

As an initial matter, the parties dispute what facts Defendant had within his knowledge at the time he gave his affidavit testimony. Plaintiff argues that in addition to Defendant’s representations about Plaintiff’s cell phone records, his representations about the witness statements were also false. (Dkt. No. 65 at 2.) More specifically, Plaintiff asserts that Walker is the witness mentioned in the affidavit who allegedly provided Defendant with the third party confession. According to Plaintiff, Walker’s trial testimony indicates she could not have identified or implicated Plaintiff in the murder. (*Id.*) Likewise, Plaintiff asserts that Seabrook and Rice are

the other witnesses mentioned in the affidavit. According to Plaintiff, these third parties did not unequivocally identify Plaintiff as being at the scene of the crime. (*Id.*) In his motion, Defendant refers to the trial testimony provided by Plaintiff as “random excerpts” and argues that “[t]here is nothing within the documents discussing the Defendant’s witnesses found in the arrest warrant affidavit.” (Dkt. No. 62 at 6.)

Construed in the light most favorable to Plaintiff, the evidence indicates Defendant must have “had obvious reasons to doubt the accuracy of the information he reported” to the magistrate judge concerning Plaintiff’s phone records. *Humbert*, 866 F.3d at 556. Plaintiff has submitted evidence establishing that Defendant did not obtain the proper phone records until after he gave his affidavit testimony, and Defendant admitted at trial that the information in his affidavit about Plaintiff’s phone records “was not accurate.” (Dkt. No. 21-1 at 17.) Additionally, the undersigned finds that the third party trial transcripts create a genuine issue of material fact as to whether Defendant “must have entertained serious doubts as to the truth of his statements” in the affidavit about witnesses placing Plaintiff at the scene of the crime. *Humbert*, 866 F.3d at 556. When considered with Defendant’s affidavit testimony in the arrest warrant, the trial transcripts support the inference that Defendant exaggerated or misrepresented information to the magistrate judge about witnesses unequivocally placing Plaintiff at the scene of the crime.

In his affidavit, Defendant made the following representations about witnesses placing Plaintiff at the scene of the crime:

. . . A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness’ statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description. . . . The witnesses also heard the name “Kone” uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant.

(Dkt. No. 21-1 at 1.)

When construed in the light most favorable to Plaintiff, Walker's trial testimony indicates that she is the source of the "third party confession" referenced in Defendant's affidavit. The portion of her testimony in the record indicates she did not know the person who "committed the murder" and therefore could not have implicated Plaintiff to Defendant. (Dkt. No. 21-1 at 1, 4.) Similarly, the trial testimony from Seabrook and Rice, when construed in the light most favorable to Plaintiff, indicates these are the other witnesses referenced in Defendant's affidavit. Their testimony indicates they "viewed the car drop off and pick up the suspect," and that the person they described to Defendant did not match Plaintiff's description. (*Id.* at 1, 2–3, 5–6.) Further, Rice's testimony indicates he did not hear the name "Kone" uttered by the co-defendant, and that when Defendant mentioned the name "Kone" to Rice, he denied hearing that name. (*Id.* at 1, 8–9.) Based on the foregoing, the undersigned finds that the evidence creates an inference that Defendant did not accurately describe in his affidavit the information he was given from witnesses about the night of the murder. *See Miller*, 475 F.3d at 630–31. ("An investigation need not be perfect, but an officer who intentionally or recklessly puts lies before a magistrate, or hides facts from him, violates the Constitution unless the untainted facts themselves provide probable cause.").

Further, had the magistrate judge been fully and accurately informed of the statements obtained from Rice, Seabrook, and Walker, and had Defendant omitted the information about Plaintiff's phone records, the magistrate judge would not have found probable cause to issue the arrest warrant for Plaintiff. Without the foregoing information, there is no compelling information connecting Plaintiff to the crime scene.² *See United States v. Lull*, 824 F.3d 109, 118 (4th Cir. 2016) (finding a law enforcement officer's reckless omission of facts from his affidavit, which

² While "trace evidence of blood" was found in a car described at the crime scene, Plaintiff is only connected to this car through the above-mentioned witness statements. (Dkt. No. 21-1 at 1.)

undermined the reliability of a confidential informant, were material and invalidated the search warrant); *McDougald v. Kersey*, No. 1:20-cv-666, 2022 WL 17091685, at *7 (M.D.N.C. Nov. 21, 2022) (denying summary judgment on Fourth Amendment unreasonable seizure claim where “[t]here are disputed questions of material fact as to whether Detective Sadovnikov told the magistrate judge the truth or recklessly hid significantly material facts from the magistrate”). Accordingly, there is a genuine issue of material fact as to whether the false statements and omissions at issue are material, that is, “necessary to the neutral and disinterested magistrate’s finding of probable cause.” *Miller*, 475 F.3d at 628 (internal quotation marks omitted).

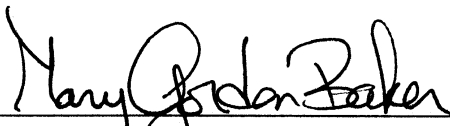
Further, given these questions of material fact, the undersigned cannot find Defendant is entitled to qualified immunity on Plaintiff’s Fourth Amendment unreasonable seizure claim. *See McDougald*, 2022 WL 17091685, at *7 (defendant is not entitled to qualified immunity where disputed questions of material fact exist as to whether defendant “told the magistrate judge the truth or recklessly hid significantly material facts from the magistrate. The constitutional right to a warrant based on probable cause, not false or misleading statements by a law enforcement officer, is well-established”); *Mattox v. City of Beaufort*, No. 9:14-cv-0384 DCN, 2015 WL 4488036, at *9 (D.S.C. July 22, 2015) (“In viewing the facts in a light most favorable to the Plaintiff, a genuine issue of material fact exists as to whether Defendant Dowling is immune from suit under the doctrine of qualified immunity because he did not act in an objectively reasonable manner when he arrested the Plaintiff based on a warrant he obtained by swearing an affidavit with multiple material false statements and omissions.”).

CONCLUSION

Based on the foregoing, the undersigned **RECOMMENDS** that Defendant’s Motion for Summary Judgment (Dkt. No. 62) be **DENIED**.

IT IS SO RECOMMENDED.

April 6, 2023
Charleston, South Carolina



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Gregory Kyle Green

Plaintiff,

v.

Michael Sanchez,

Defendant.

Case No. 2:21-cv-1376-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that Defendant’s motion for summary judgment be denied. (Dkt. No. 67). Defendant has filed objections to the R & R. Plaintiff has filed no reply.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

By way of background, Plaintiff, a *pro se* prisoner, has filed an action against Defendant, a detective with the North Charleston Police Department, asserting that his Fourth Amendment right to be free from unreasonable searches and seizures was violated by Defendant providing

materially false statements to a state magistrate in an affidavit to authorize the issuance of an arrest warrant charging Plaintiff with murder. These allegedly false statements included a representation that phone records of Plaintiff placed him at the scene of the crime when the Defendant had not obtained the phone records and certain witnesses placed Plaintiff at the murder scene but their later testimony at trial did not corroborate those representations.

Plaintiff has brought an action under 42 U.S.C. § 1983 for money damages against Defendant and asserts he does not challenge his subsequent conviction for murder. A party challenging the veracity of a warrant application must show that the officer deliberately or with reckless disregard for the truth made materially false statements in the warrant application. *Franks v. Delaware*, 438 U.S. 154, 171 (1978). For false statements to be material, there must be a showing that there would not have been probable cause to issue the arrest warrant if the false statements had been omitted. *Miller v. Prince George's County, MD.*, 475 F.3d 621, 628 (4th Cir. 2017).

The Magistrate Judge had before her a limited record, primarily the Defendant's application for the issuance of a murder warrant and various excerpts from the transcript from Defendant's murder trial. (Dkt. No. 21-1). These records indicated testimony of the Defendant at trial in which he admitted that his statement that he had phone records placed Plaintiff at the scene of the murder was untrue. (*Id.* at 10-15). The trial excerpts also include testimony from three witnesses who did not corroborate statements in the application that placed Plaintiff at the scene of the murder. (*Id.* at 3-9). The Magistrate Judge concluded that, viewing the evidence in a light most favorable to the nonmoving party, the record before the Court supported a finding that Defendant made materially false statements in the warrant application and probable cause would

not have existed to issue the warrant in the absence of these false statements. (Dkt. No. 67 at 11-14).

Defendant has filed objections to the R & R arguing that the record contained only partial trial transcripts and there was no evidence to support the Magistrate Judge's conclusions that the trial witnesses were, in fact, the persons referred to in the application for the warrant. (Dkt. No. 69). A review of the record before the Court confirms the fact that there are certain gaps in the record before the Court, which are perhaps the product of Plaintiff acting *pro se* and presently incarcerated in state prison. The incomplete record raises serious issues, however, that should be resolved only after obtaining a full record in this matter with the assistance of competent counsel appointed by the Court.

Therefore, the Court declines to adopt the R & R (Dkt. No. 67) and remands the matter to the Magistrate Judge to develop a fuller and more complete evidentiary record. To that end, the Court will appoint counsel to represent Plaintiff before the Magistrate Judge and this Court regarding his claim. Discovery should be reopened in this matter under the guidance and direction of court appointed counsel for Plaintiff. The Court would be benefitted by a copy of the full trial transcript and discovery on what information Defendant had at the time he made the challenged representations in the application for a warrant. With this fuller record, the Magistrate Judge and this Court will address Defendant's motion for summary judgment.

Based on the foregoing, the Court declines to adopt the R & R of the Magistrate Judge (Dkt. No. 67) and remands this matter to the Magistrate Judge for further actions consistent with this Order.

AND IT IS SO ORDERED.

May 16, 2023
Charleston, South Carolina

s/ Richard Mark Gergel
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Gregory Kyle Green,	)	
	)	CASE NO. 2:21-cv-01376-RMG-MGB
Plaintiff,	)	
	)	PLAINTIFF’S MEMORANDUM IN
v.	)	OPPOSITION TO DEFENDANT’S
	)	RENEWED MOTION FOR SUMMARY
Michael Sanchez,	)	JUDGEMENT
	)	
Defendant.	)	

Plaintiff respectfully files this memorandum in opposition to Defendant’s motion for summary judgment (Dkt. No. 84). The Court should deny Defendant’s Renewed Motion for Summary Judgment because there is sufficient evidence to show that Officer Sanchez acted with reckless disregard and because the “corrected” arrest warrant affidavit lacks sufficient evidence to create an individualized suspicion as to Mr. Green’s guilt of the crime alleged.

PROCEDURAL BACKGROUND AND NATURE OF THE CASE

Plaintiff refers to his motion for summary judgment as to Defendants’ affirmative defenses for a statement of the procedural background and nature of the case.

STANDARD OF REVIEW

Summary judgment is appropriate if a party “shows that there is no genuine dispute as to any material fact” and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In other words, summary judgment should be granted “only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts.” *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). “In determining

whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party.” *HealthSouth Rehab. Hosp. v. Am. Nat’l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996).

APPLICABLE LAW

This is a section 1983 claim alleging that Defendant Officer Sanchez violated Mr. Green’s Fourth Amendment rights by arresting him based on a deficient warrant, i.e. without probable cause. The Fourth Amendment requires the government to have particularized probable cause – or “individualized suspicion” – of wrongdoing before it can arrest a person. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003).

The standard for Plaintiff’s claim was summarized by the Fourth Circuit in *Miller v. Prince George’s County*, 475 F.3d 621 (2007). There are two prongs to Plaintiff’s claim. First, Plaintiff must show the officer misstated or omitted facts deliberately or with reckless disregard. *Id.* at 627. Second, the falsities or omissions must be “material.” “To determine materiality, a court must excise the offending inaccuracies and insert the facts recklessly omitted, and then determine whether or not the ‘corrected’ warrant affidavit would establish probable cause. If the ‘corrected’ warrant affidavit establishes probable cause, no civil liability lies against the officer.” *Id.* (internal citations omitted).

STATEMENT OF MATERIAL FACTS

This case centers on what the “corrected” arrest warrant contains and whether the “corrected” warrant is sufficient to establish probable cause. Accordingly, Plaintiff will first summarize the Defendant’s arrest warrant, show the actual facts known to Defendant Sanchez at the time, and then analyze the “corrected” affidavit.

Officer Sanchez's arrest warrant dated July 7, 2017, states in pertinent part:

On June 8th, 2017, at approximately 4:30 A.M., while at 2278 Bailey Street, which is located in the City of North Charleston, County of Charleston. State of South Carolina, the defendant, Gregory Kyle Green, did commit the offense of MURDER, in violation of section 16-3-10 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully shoot the victim, Freeman Rivers which resulted in his death.

Facts to establish the aforesaid are that on June 8th, 2017, at approximately 4:46 AM., officers of the North Charleston Police Department responded to a report of a fire located at 2278 Bailey Street. Fire fighters located the body of a male later identified as Freeman Rivers. Autopsy showed that Rivers had sustained multiple gun shots which resulted in his death. Detectives obtained a description of the vehicle used by the defendant who was seen entering and fleeing the victims [sic] residence the night of the incident. This vehicle was described as a light blue new Chrysler 200. Video from the area an hour prior to the incident shows a 2017 light blue Chrysler 200 bearing SC tag MJK 304 entering the neighborhood and pulling into the Cheapway Gas Station at 3615 Dorchester Road. A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence. The witness' statements were corroborated by details provided by other witnesses that viewed the car drop off and pick up the suspect and gave the initial description.

In addition, the witness stated the vehicle had blood transfer to the interior of the car as the suspect of the crime was covered in blood at the time of the incident. On June 22, 2017, Doucet's 2017 Chrysler 200 was located, after being reported stolen on June 19, 2017. Testing on the interior of the vehicle reviewed presumptive positive results for trace evidence of blood after a search was conducted of the car pursuant to a lawful search warrant. Defendant's cell phone records indicate that he was on Bailey Street during the time of the incident and match the witnesses' description and timeline of events. The witnesses also heard the name "Kone" uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant. All this done against the law, peace and dignity of the State of South Carolina. Det. M. Sanchez and witnesses to be named in court are witness to prove the same.

(Dkt. No. 21-1 at 1) (emphasis added)

The facts as revealed in discovery show that several key pieces of information included in the arrest warrant are incorrect, misleading, or omitted, and specifically the underlined statements above:

Statement No. 1: “Defendant’s cell phone records indicate that he was on Bailey Street during the time of the incident and match the witnesses’ description and timeline of events”

It is undisputed that Officer Sanchez did not have Mr. Green’s cell phone records for June 8, 2017, when this affidavit was signed on July 7, 2017. (Ex A – Def.’s Resp. to Request to Admit). The parties agree this statement is completely false.

Statement No. 2: “A witness to be named in court provided a third party confession indicating that the co-defendant dropped off and picked up the defendant who committed the murder and advised him to burn the house along with the evidence.”

The “witness to be named in court” is Lanica Walker. She is the former girlfriend of Terence Doucet (the “co-defendant”), the owner of the 2017 Chrysler 200, who provided the “third-party confession” to her. (Ex. B – Sanchez Dep 51:16-52:25). Ms. Walker was interviewed on June 21, 2017, at NCPD and the interview was recorded and later transcribed. (Walker Tr., Dkt No. 84-5). Her transcript makes clear that Ms. Walker never provided a name for the shooter or implicated Mr. Green by name or alias. She specifically said she did not know who the shooter was when asked (Walker Tr. 16:13-17; 61:20-22, Dkt. No. 84-5).

Statement No. 3: “The witnesses also heard the name ‘Kone’ uttered by the co-defendant when searching for him in front of the house, and this is a known alias of the defendant.”

There were two people that were across the street from where the alleged murder occurred. They are Kendyl Rice and Jonathan Seabrook. These are the “witnesses” referenced above. (Sanchez Dep. 55:3-16). Both of them provided recorded interviews.

Mr. Rice said he never heard the name “Kone”, and he was not familiar with that name at all (Rice Tr. 12:7-19, Dkt No. 84-4). Mr. Rice said he did not know the name that was called out

that night (Rice Tr. 31:16-22). He also said he believed the murderer to be someone in his late 40s, from 49 to 52, and that the person had been visiting the victim for the last 3 or 4 days prior to the shooting (Rice Tr. 9:15-22; 78:8-22)

The other witness, Mr. Seabrook, only said he heard a driver on his street say the name “Korn” or “Kone”. (Seabrook Interview at minute 3 to minute 4, Dkt. No. 84-2)

ARGUMENT

Taking all inferences in favor of Plaintiff Mr. Green, there is more than sufficient evidence to create an issue of fact whether Officer Sanchez violated Mr. Green’s Fourth Amendment rights under *Miller*. First, Officer Sanchez recklessly included false information in his affidavit and omitted key facts. Further, the “corrected” affidavit is insufficient to establish probable cause because it lacks sufficient facts pointing to Mr. Green as the suspect.

1. *Plaintiff has sufficient evidence to satisfy the “reckless disregard” prong*

Plaintiff has sufficient evidence to demonstrate the first prong of the *Miller* analysis. Indeed, Defendant appears to concede this element because he does not meaningfully address it in his motion. Further, this element is satisfied because Officer Sanchez has admitted he did not have the cell phone records he claimed put Mr. Green at the scene of the crime. Sanchez at first testified he must have been looking at another suspect’s records from some other crime and got them confused. (Ex. B - Sanchez Dep. 61:23-66:2). Sanchez later said he was confused because he did have records for Mr. Green at the time, but they were from the wrong dates, 2/1/17 to 4/20/17 (Ex. C – Def. Disc. Resp. dated Dec. 12, 2023). Both these excuses are so easily disproved that they create an inference of knowing falsity or recklessness.

First, the “switched records” excuse is unlikely because Sanchez testified that he is and was a sophisticated interpreter of cell phone records, and the records easily identify who they belong to. Further, Sanchez could not state what “other case” he was referring to. (Sanchez Dep. 65:2-4; 99:3-17). So the “switched records” excuse is most likely a post-hoc rationalization. This excuse also begs the question of why that other person would not be a suspect in the crime if they were in the area that night.

Next, the “wrong date” records excuse also is demonstrably false. First, Sanchez did not have the “wrong date” records for Mr. Green when he took out the arrest warrant on July 7, 2017, because Verizon emailed the records to him on July 16, 2017. Sanchez requested the “wrong date” records via a search warrant to Verizon dated June 15, 2017. (See Ex. D – Search Warrant of June 15, 2017). However, Verizon did not provide those records until July 16, 2017, nine days after the arrest warrant was obtained. (Ex. E – Verizon Cert form; Ex. F – Verizon email to Sanchez; Sanchez Dep. 79:9-80:1 (explaining Verizon emailed him the search warrant response)). Furthermore, the “wrong date” records do not contain any cell site data that could be used to locate Mr. Green – even on those wrong dates. (Ex. G – Green Cell Phone Records). Verizon’s explanation form “Historical Call Detail w/ Cell Sites Explanation Form” shows that data on which cell tower the caller used is needed to show the approximate location of the caller. However, that data does not appear in the spreadsheets Verizon sent to Sanchez.

Moreover, despite Plaintiff requesting a copy of the correct phone records from Officer Sanchez via discovery request, and the NCPD, the Ninth Circuit Public Defender, and the Ninth Circuit Solicitor via subpoena, no one has been able to produce them. In fact, on September 18, 2023, counsel in this case and NCPD personnel performed a diligent search together at the NCPD office and through its case file for Mr. Green and still no one could find the correct cell

phone records. (Ex. I – Cordray Dep. 14:5-15:4; 18:21-21:22) The only cell records ever produced in this action are the ones from the wrong dates and before the shooting. (Ex. G – Green Cell Phone Records)

Finally, as noted above, Mr. Rice said he saw the murderer and it was a man in his late 40s. Accordingly, he provided an eye-witness account that describes someone other than Mr. Green, who would have been only in his mid-30s. This information was omitted from the warrant.

2. Plaintiff satisfies the “materiality” prong because the “corrected” affidavit does not establish probable cause

Materiality is determined by “correcting” the affidavit to excise or redact the false statement(s), and then assessing whether the remaining averments in the affidavit are sufficient to establish probable cause. Here, there is clearly an issue of fact for the jury whether the “corrected” affidavit is sufficient to establish probable cause for Mr. Green’s arrest.

The touchstone of probable cause is individualized suspicion that the suspect committed the alleged crime. Here, nearly all of Officer Sanchez’s testimony in the affidavit that purports to identify Mr. Green is not truthful. To implicate Mr. Green, Officer Sanchez relies on two things and two things only: witness testimony and cell phone records. As shown below, Sanchez misstates and omits key witness testimony. Further, the cell phone records, which he regards as the most pivotal evidence, are a fabrication.

Regarding the witness testimony, no one identifies Mr. Green as the suspect except perhaps Mr. Seabrook, and he does so only indirectly. The witnesses at issue here are Ms. Walker, Mr. Rice, and Mr. Seabrook. Sanchez swore in his warrant affidavit that Ms. Walker

identified Mr. Green as the shooter – however, Ms. Walker said she had no idea who the murderer was. Sanchez also swore that “witnesses” (i.e. more than one) heard the name “Kone”. These “witnesses” are Rice and Seabrook. However, Mr. Rice said he never heard the name Kone, ever. Further, Rice described the murderer to be over a decade older than Mr. Green. In fact, only Mr. Seabrook mentioned he heard the name “Korn” or “Kone”, but he could not be sure which one.

Finally, the key piece of evidence linking Mr. Green to the crime - the cell phone records - are admittedly false. The cell data was the most important information included in the warrant to identify and implicate Green. Indeed, Officer Sanchez stated at the preliminary hearing on August 15, 2017, (at which point he still did not have Mr. Green’s relevant records), that the cell tower data placing Mr. Green at the scene of the crime was the “red flag” that “positive(ly)” identified him as the suspect (Ex. H – Prelim H’g Tr. 29:17-30:12).

In sum, the “corrected” affidavit contains incomplete information to create an individualized suspicion that Mr. Green committed the murder. With the misstatements excised, there is no evidence linking Mr. Green to the crime other than one witness, Seabrook, who testified only that he heard a name that sounded something like a nickname Mr. Green uses. Seabrook provided no other evidence linking Mr. Green to the crime. Further, when one considers that the other witness, Rice, described the murderer as someone not matching Mr. Green’s description, any reasonable suspicion must fail. Therefore, taking all inferences in favor of Mr. Green, there is an issue of fact for the jury whether the “corrected” affidavit establishes probable cause. *See Ornelas v. United States*, 517 U.S. 690, 695 (1996) (stating probable cause is a “common sense, non-technical” concept that deals “with the factual and practical

considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”).

CONCLUSION

The Court should deny Defendant’s Renewed Motion for Summary Judgment because, taking all inferences in Plaintiff’s favor, there is sufficient evidence to show that Officer Sanchez acted with reckless disregard and because the “corrected” affidavit lacks sufficient evidence to create an individualized suspicion as to Mr. Green’s guilt of the crime alleged.

Dated: January 12, 2024

Respectfully Submitted,

By: s/Matthew A. Nickles

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