

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

ANTHONY A. BROWNE,

Plaintiff,

vs.

SHERIFF DON ZELLER, LINN COUNTY
BOARD OF SUPERVISORS, DEPUTY
JAMES UHER, DEPUTY TIM PAYNE,
DEPUTY SERGEANT JOHN STUELE,
DEPUTY RICHARD SNOW, DEPUTY
DOUG RINIKER, DEPUTY BARRY
BRANDT, DEPUTY RANDY BRAMOW,
DEPUTY MICHAEL KASPER, DEPUTY
JEWEL BRANDT, CPD OFFICER PAUL
PRACHAR, and CPD OFFICER NICK
NOLTE,

Defendants.

No. C00-0159-PAZ

**MEMORANDUM OPINION AND
ORDER ON MOTION FOR
SUMMARY JUDGMENT**

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I. INTRODUCTION

This matter comes before the court pursuant to the Motion for Summary Judgment (Doc. No. 28) filed October 4, 2001, by the defendants Paul Prachar (“Prachar”) and Nick Nolte (“Nolte”) (collectively, the “defendants”). The plaintiff Anthony A. Browne (“Browne”) filed a resistance to the motion on November 9, 2001 (Doc. No. 33). The parties have consented to jurisdiction of this case by a United States Magistrate Judge, and by order of August 16, 2001, this matter was transferred to the undersigned for final disposition.

Browne filed this 42 U.S.C. § 1983 action on October 6, 2000. Venue is proper in this district as the defendants reside, and the events giving rise to this action occurred, in this district. 28 U.S.C. § 1391(b). Browne claims the defendants effectuated a false arrest upon him and further conspired to violate his constitutional rights. He seeks compensatory and punitive damages.

The defendants request summary judgment on the ground that Browne’s claim challenging the legality of his arrest is precluded by *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364 (1994). Secondly, the defendants assert Browne’s claim of conspiracy to violate his rights is conclusory and unsupported by any facts. Accordingly, the defendants argue Browne’s complaint fails to state a claim upon which relief may be granted.

Browne resists the motion for summary judgment, contending his Fourth Amendment rights were violated when Defendants Prachar and Nolte seized him and took him to jail for interference with official acts. Browne maintains no probable cause existed to believe he had committed this offense.

II. STANDARDS FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure governs motions for summary judgment and provides that either party to a lawsuit may move for summary judgment without the need for supporting affidavits. Fed. R. Civ. P. 56(a) & (b). Rule 56 further states that summary judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). “A court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party, . . . and give [the nonmoving party] the benefit of all reasonable inferences that can be drawn from the facts.” *Lockhart v. Cedar Rapids Comm. Sch. Dist.*, 963 F. Supp. 805, 814 (N.D. Iowa 1997) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)).

The party seeking summary judgment must “‘inform[] the district court of the basis for [the] motion and identify[] those portions of the record which show lack of a genuine issue.’” *Lockhart*, 963 F. Supp. at 814 (quoting *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986). A genuine issue of material fact is one with a real basis in the record. *Lockhart*, 963 F. Supp. at 814 n.3 (citing *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56). Once the moving party has met its initial burden under Rule 56 of showing there is no genuine issue of material fact, the nonmoving party, “by affidavits or as otherwise provided in [Rule 56],^{*} must set forth specific facts showing that there is a

^{*}*I.e.*, by “affidavits . . . supplemented or opposed by depositions, answers to interrogatories, or
(continued...) ”

genuine issue for trial.” Rule 56(e); *Lockhart*, 963 F. Supp. at 814 (citing *Matsushita*, 475 U.S. at 586, 106 S. Ct. at 1356).

Addressing the quantum of proof necessary to successfully oppose a motion for summary judgment, the United States Supreme Court has explained the nonmoving party must produce sufficient evidence to permit “‘a reasonable jury [to] return a verdict for the nonmoving party.’” *Lockhart*, 963 F. Supp. at 815 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986)). Furthermore, the Court has held the trial court must dispose of claims unsupported by fact and determine whether a genuine issue exists for trial, rather than “weigh the evidence and determine the truth of the matter.” *Lockhart*, 963 F. Supp. at 815 (citing *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510-11; *Celotex*, 477 U.S. at 323-24, 106 S. Ct. at 2552-53; *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1355-56).

The Eighth Circuit recognizes “summary judgment is a drastic remedy and must be exercised with extreme care to prevent taking genuine issues of fact away from juries.” *Wabun-Inini v. Sessions*, 900 F.2d 1234, 1238 (8th Cir. 1990) (citing Fed. R. Civ. P. 56(c)). The Eighth Circuit, however, also follows the principle that “summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *Id.* (quoting *Celotex*, 477 U.S. at 327); *Hartnagel v. Norman*, 953 F.2d 394, 396 (8th Cir. 1992).

Thus, the trial court must assess whether a nonmovant’s response would be sufficient to carry the burden of proof at trial. *Hartnagel*, 953 F.2d at 396 (citing *Celotex*, 477 U.S. at 322). If the nonmoving party fails to make a sufficient showing of an essential element of a claim with respect to which it has the burden of proof, then the moving party is

* (...continued)
further affidavits.” Fed. R. Civ. P. 56(e).

“entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323; *Woodsmith*, 904 F.2d at 1247. However, if the court can conclude that a reasonable jury could return a verdict for the nonmovant, then summary judgment should not be granted. *Anderson*, 477 U.S. at 248; *Burk*, 948 F.2d at 492; *Woodsmith*, 904 F.2d at 1247.

The court will apply these standards to the defendants’ motion for summary judgment.

III. MATERIAL FACTS

On the afternoon of August 26, 1999, Browne was driving a rented car in the 1500 block of First Ave S.E. in Cedar Rapids, Iowa, when he was stopped by the defendants, who are Cedar Rapids police officers. Upon request, Browne produced his driver’s license, registration, and car rental documents. Officers Prachar and Nolte told Browne he had been stopped because the bulb that illuminates the back license plate of his vehicle was burned out.

Officers Prachar and Nolte asked Browne to step out of his vehicle. Browne complied, and the officers asked him a few questions, including a question as to what he had in his mouth. Browne replied, “Gum.” Officer Prachar asked Browne to show him the gum, and Browne complied. Officer Prachar told Brown to spit out the gum. It appears from the pleadings that there is some dispute about what happened after that point. Browne claims he never refused to spit out the gum, and otherwise did nothing that constituted interference with official acts. However, resolution of these factual issues is not relevant to the defendants’ present motion.

Officers Prachar and Nolte placed Browne under arrest, handcuffed him, and transported him to the Linn County Jail, where he was booked on charges of driving a vehicle without a light illuminating the back license plate, failing to provide proof of

insurance, and interference with official acts. Brown was placed in a holding cell on the first floor of the jail.

Browne contends, “Before they left the jail, Defendants Prachar and Nolte informed Jewel Brant, James Uher, Tim Payne, Doug Riniker, and possibly others to assault the Plaintiff, place him on the ‘Board’, and charge him with as many additional false offenses as they felt they could.” (Doc. No. 34, ¶ 13) Further, Browne asserts, “All of the Linn County Defendants used excessive force and filed and prosecuted false charges against the Plaintiff as the result of a specific request to do so by Defendants Prachar and Nolte sometime before they left the Jail.” (*Id.*, ¶ 17)

On November 3, 1999, Browne went to trial on the charges of interference with official acts and improper license plate light. On November 4, 1999, Linn County Magistrate Barbara Liesveld found Browne guilty of both charges. These convictions have not been reversed on direct appeal or otherwise invalidated.

IV. LEGAL ANALYSIS

A. Overview of Civil Rights Claims Under 42 U.S.C. § 1983

Title 42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 was designed to provide a “broad remedy for violations of federally protected civil rights.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 685, 98 S. Ct. 2018, 2033, 56 L. Ed. 2d 611 (1978). However, section 1983 provides no substantive rights.

Albright v. Oliver, 510 U.S. 266, 271, 114 S. Ct. 807, 811, 127 L. Ed. 2d 114 (1994); *Graham v. Conner*, 490 U.S. 386, 393-94, 109 S. Ct. 1865, 1870, 104 L. Ed. 2d 443 (1989); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617, 99 S. Ct. 1905, 1916, 60 L. Ed. 2d 508 (1979). “One cannot go into court and claim a ‘violation of § 1983’ — for § 1983 by itself does not protect anyone against anything.” *Chapman*, 441 U.S. at 617, 99 S. Ct. at 1916. Rather, section 1983 provides a remedy for violations of all “rights, privileges, or immunities secured by the Constitution and laws [of the United States].” 42 U.S.C. § 1983; see *Albright*, 510 U.S. at 271, 114 S. Ct. at 811 (section 1983 “merely provides a method for vindicating federal rights elsewhere conferred”); *Graham*, 490 U.S. at 393-94, 109 S. Ct. at 1870 (same); *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S. Ct. 2502, 2504, 65 L. Ed. 2d 555 (1980) (“Constitution and laws” means section 1983 provides remedies for violations of rights created by federal statute, as well as those created by the Constitution).

To state a claim under 42 U.S.C. § 1983, Browne must establish two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) the alleged deprivation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 40 (1988); *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330, 106 S. Ct. 662, 664, 88 L. Ed. 2d 662 (1986). Because the court finds Browne has failed to present a viable claim for the violation of a right secured by the Constitution or laws of the United States, it is not necessary to address the second element.

B. Violation of a Constitutional Right

1. Unconstitutional Conviction

The Supreme Court’s decision in *Heck v. Humphrey*, 512 U.S. 477, 486, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994), forecloses a plaintiff from pursuing damages unless

he can show his conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by the issuance of a federal *habeas* writ. The rationale behind *Heck* is that a successful section 1983 action would imply the invalidity of the criminal conviction and lead to inconsistent results. This rule “avoids parallel litigation over the issues of probable cause and guilt . . . and it precludes the possibility of the claimant . . . succeeding in the tort action after having been convicted in the underlying criminal prosecution.” *Heck*, 512 U.S. at 484, 114 S. Ct. 2364 (citations omitted).

Heck involved a section 1983 claim arising out of alleged unlawful acts by state prosecutors and police officers that had led to the plaintiff’s arrest, and ultimately his conviction. In analyzing whether Heck’s claim was cognizable under section 1983, the Court analogized to the common-law cause of action for malicious prosecution, one element of which is the termination of the prior criminal proceeding in favor of the accused. The Supreme Court upheld the dismissal of the suit, holding that if a “judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . the [section 1983] complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* at 487, 114 S. Ct. 2364. This rule stems not from exhaustion principles, but from “the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments. . . .” *Id.* at 486, 114 S. Ct. 2364.

Based upon *Heck*, a “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, 114 S. Ct. 2364. However, the Court pointed out, if a “plaintiff’s action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to

proceed, in the absence of some other bar to the suit.” *Id.* (footnotes omitted). Applying these principles to the case at hand, it is apparent that Browne’s first claim against these defendants, if successful, necessarily would imply the invalidity of his convictions for interference with official acts and improper license plate illumination.

Browne argues Officers Prachar and Nolte lacked probable cause to arrest him for interference with official acts. Browne was found guilty of this charge, and his conviction has not been invalidated. A section 1983 action for damages does not arise under these facts until the conviction has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by the issuance of a federal *habeas* writ. *Heck*, 512 U.S. at 486, 114 S. Ct. at 2372. Given that Browne’s conviction has not been overturned or declared invalid, his section 1983 claim for false arrest against Prachar and Nolte must be dismissed.

2. Conspiracy to Violate Rights

Browne’s second claim does not implicate the legality of his convictions. Browne contends Prachar and Nolte conspired to violate his rights by commanding the Linn County Jail defendants to use excessive force against him, and instructing the jailers to file additional charges against him. This claim, if successful, “will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff.” *Heck*, 512 U.S. at 487, 114 S. Ct. 2364 (footnote omitted). Thus, Browne’s second claim should be allowed to proceed in the absence of some other bar to the suit.

Browne’s conspiracy claim is similar to the claims asserted in *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996). In *Smithart*, the plaintiff had pleaded guilty in state court to assault with a deadly weapon. In his federal section 1983 lawsuit, the plaintiff alleged, first, that he had been arrested without probable cause and unfounded criminal charges had been brought against him, and second, that he had been the victim of excessive force during

his arrest. The Ninth Circuit Court of Appeals held the former claim was barred by *Heck* because it would necessarily imply the invalidity of the conviction, but the excessive force claim was not similarly barred. Even if the plaintiff recovered a judgment for damages on his excessive force claim, the validity of his underlying guilty plea and conviction would not be affected. Similarly, Browne's conspiracy claim is not precluded by *Heck*.

The Supreme Court has recognized that a conspiracy to violate constitutional rights states a claim under 42 U.S.C. § 1983. *Dennis v. Sparks*, 449 U.S. 24, 29, 101 S. Ct. 183, 186, 66 L. Ed. 2d 185 (1980); *Adickes v. Kress & Co.*, 398 U.S. 144, 152, 90 S. Ct. 1598, 1604, 26 L. Ed. 2d 142 (1970). However, to establish a *prima facie* case of conspiracy to violate rights protected under section 1983, Browne must demonstrate the defendants "'reached an understanding' to violate [his] rights." *Strength v. Hubert*, 854 F.2d 421, 425 (11th Cir. 1988) (quoting *Dykes v. Hosemann*, 743 F.2d 1488, 1498 (11th Cir. 1984)). Browne must "specifically present facts tending to show agreement and concerted action. Conclusory allegations are insufficient." *Anderson v. Douglas Cty.*, 4 F.3d 574, 578 (8th Cir. 1993). See *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990) (a plaintiff's factual allegations must suggest a "meeting of the minds" to sustain a claim of conspiracy); *Gibson v. U.S.*, 781 F.2d 1334, 1343 (9th Cir. 1986) (plaintiff must make specific allegations of each defendant's participation in the conspiracy and show an agreement or meeting of the minds); *Scherer v. Balkema*, 840 F.2d 437, 442 (7th Cir. 1988) (claim of conspiracy to violate rights under section 1983 requires showing of constitutional injury, express or implied agreement among defendants, and overt act depriving plaintiff of constitutional rights); *Fullman v. Graddick*, 739 F.2d 553, 556-57 (11th Cir. 1984) (complaint justifiably may be dismissed because of conclusory, vague, general allegations of conspiracy).

Browne's claims in this case are conclusory and unsupported by any facts tending to establish the defendants had an understanding or agreed plan between them to illegally

deprive Browne of his constitutional rights. Accordingly, Browne fails to state a conspiracy claim with an arguable basis in fact or in law.

V. CONCLUSION

Based on the pleadings, affidavits, exhibits, and admissions on file, and viewing the facts in the light most favorable to Browne, the court finds no genuine issue exists as to whether the defendants falsely arrested Browne or conspired to violate his rights. Accordingly, the defendants are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The Motion for Summary Judgment is **granted**. Judgment shall be entered in favor of Defendants Prachar and Nolte and against Browne.

IT IS SO ORDERED.

DATED this 15th day of April, 2002.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT