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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

JOSEPH V. LIBRETTI, JR.,

Plaintiff,

vs.

TAYLOR COURTNEY, and
STEVEN WOODSON,
in their individual capacities,

Defendants.

2015 JUN 11 AM 10 06

STEPHAN GERIC, CLERK
CASPER

Case No. 14-CV-107-SWS

ORDER DENYING PLAINTIFF'S MOTIONS TO ALTER OR AMEND JUDGMENT

This matter comes before the Court on a Rule 59(e) motion by Plaintiff to alter or amend the Court's prior orders granting dismissal and summary judgment in Defendants' favor (Docs. 64, 65). Defendants filed oppositions to the motions (Docs. 66, 67). Having considered the parties' filings, the record herein, and being otherwise fully advised, the Court finds Plaintiff's motions to alter or amend judgments should be denied.

BACKGROUND

Plaintiff Joseph Libretti¹ filed this *Bivens* action² against Defendant Steven Woodson, who was a Special Agent for the United States Drug Enforcement Administration (DEA), and Defendant Taylor Courtney, who was a deputy sheriff with the Natrona County Sheriff's Office and a member of the Wyoming Division of Criminal Investigation (DCI) at all relevant times. (Docs. 1, 5.) Mr. Libretti challenged two warrants that were executed against his property, the first in June 2010 and the second in April 2011. He asserted 13 causes of action in his First

¹ Because Mr. Libretti proceeds pro se, the Court construes his pleadings liberally. See *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1310 (10th Cir. 2010).

² *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

Amended Complaint. (Doc. 5.) In short, Mr. Libretti alleged Defendant Woodson's applications for the search and seizure warrants were unconstitutionally defective for numerous reasons, and Defendant Courtney wrongfully seized some items from Mr. Libretti's residence and failed to return them in a timely manner. He sought monetary damages for the alleged violations of his Fourth Amendment rights.

The Court granted summary judgment in Defendant Courtney's favor (Doc. 56) and dismissal in Defendant Woodson's favor (Doc. 57). Mr. Libretti now seeks reconsideration.

STANDARD OF ANALYSIS

Rule 59(e) permits a motion to alter or amend a judgment to be filed within 28 days of the entry of the judgment. Fed. R. Civ. P. 59(e). "A Rule 59(e) motion to alter or amend the judgment should be granted only 'to correct manifest errors of law or to present newly discovered evidence.'" *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (quoting *Committee for the First Amendment v. Campbell*, 962 F.2d 1517, 1523 (10th Cir. 1992)) (internal quotations omitted).

Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.

Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (internal citations omitted).

DISCUSSION

1. Order Dismissing Defendant Woodson

The Court granted Defendant Woodson's motion to dismiss on the basis of qualified immunity, concluding as follows:

Assuming Mr. Libretti's allegations to be true, Defendant Woodson's affidavits in support of the warrant applications established arguable probable cause to support the issuance of the respective warrants. Therefore, Mr. Libretti has not overcome

Defendant Woodson's presumed qualified immunity because he has not shown that Defendant Woodson violated Mr. Libretti's constitutional or federally-protected rights. Accordingly, the First Amended Complaint must be dismissed as it relates to Defendant Woodson.

(Doc. 57 at p. 22.)

1.1 Application for Residential Search Warrant

Mr. Libretti now contends the Court erroneously interpreted several provisions of the affidavit in support of search warrant application and, absent those erroneous interpretations, the affidavit would lack arguable probable cause. (*See* Doc. 64 at pp. 2-7.) The Court has reviewed its prior findings and the record. Having done so, the Court disagrees with Mr. Libretti. Stated simply, the Court agrees with Defendant Woodson that there are ample undisputed facts from the affidavit that was used to support the search warrant application to find arguable probable cause existed to justify the search warrant. (*See* Doc. 66 at pp. 3-5.) The Court will not revisit these issues it has previously addressed. *See Servants of Paraclete*, 204 F.3d at 1012.

Mr. Libretti also argues the Court "erred in finding that legal herbs and legal Spice are indistinguishable, with the naked eye, from illegal Spice" (Doc. 64 at p. 6.) Again, the Court agrees with Defendant Woodson that Mr. Libretti cannot advance this new argument (that the two are somehow distinguishable) in a Rule 59 motion when it could have been raised in prior briefing. (*See* Doc. 66 at pp. 5-7.) The Court will not further address the issue because Mr. Libretti failed to present this argument in his response briefing after Defendant Woodson had directly raised the issue in the motion to dismiss.

1.2 Application for Seizure Warrant of Financial Assets

The Court previously determined, "Even reading the affidavit as Mr. Libretti contends it should have read, the Court is quite comfortable in finding it established at least arguable probable cause to support the seizure warrant." (Doc. 57 at p. 22.) Mr. Libretti's arguments on

this matter are simply modified repetitions of his earlier contentions (*see* Doc. at pp. 7-10), which is again an improper use of Rule 59(e). The Court will not revisit these issues it has previously addressed. *See Servants of Paraclete*, 204 F.3d at 1012.

2. Order Granting Summary Judgment in Favor of Defendant Courtney

The Court granted Defendant Courtney's motion for summary judgment on the basis of qualified immunity, concluding as follows:

Even viewing the evidence in the light most favorable to Mr. Libretti, he has not demonstrated Defendant Courtney violated his Fourth Amendment protections. The search warrant permitted Defendant Courtney to seize the challenged items. And Mr. Libretti is only grasping at straws when he alleges Defendant Courtney was required to learn of the results of DCI's testing and then return the items to Mr. Libretti that proved to be legal. The evidence shows Defendant Courtney could not have done so. Therefore, Mr. Libretti has not overcome Defendant Courtney's presumed qualified immunity because he has not shown that Defendant Courtney violated Mr. Libretti's constitutional rights. Accordingly, Defendant Courtney is entitled to summary judgment on Counts X through XIII.

(Doc. 56 at p. 11.)

2.1 Mr. Libretti had the Burden

Mr. Libretti first argues in his Rule 59(e) motion that the Court erroneously placed the burden on him because it was Defendant Courtney who filed the motion for summary judgment. (*See* Doc. 65 at pp. 2-3.) Mr. Libretti is incorrect. As the Court quoted in its order granting summary judgment:

When a defendant asserts qualified immunity, as [Defendant Courtney] does here, the burden shifts to the plaintiff to establish (1) a violation of a constitutional right (2) that was clearly established. *Id.* This is a "heavy, two-part burden" that the plaintiff must meet.

(Doc. 56 at p. 2 (quoting *Puller v. Baca*, --- F.3d ---, No. 13-1156, slip. op. at 10 (10th Cir. Mar. 20, 2015)).)

Additionally, Defendant Courtney challenged Mr. Libretti's lack of evidence demonstrating a distinction could be made in the field as to which herbs/spices were legal versus illegal. (See Doc. 17 at pp. 9-10.) After pointing out this dearth of support for Mr. Libretti's claim, the burden at the summary judgment stage then shifted to Mr. Libretti to establish a genuine issue for trial. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). In short, the burden was on Mr. Libretti.

2.2 Mr. Libretti did not Establish a Genuine Issue for Trial Concerning Whether Deputy Courtney Could Distinguish Legal Spice from Illegal Spice

Mr. Libretti argues the Court "erred in holding that it is impossible to distinguish between the legal substances that Courtney seized and controlled substances" (Doc. 65 at p. 2.) The Court, however, never held such. Instead, the Court noted that Defendant Courtney asserted it was not possible to distinguish between the two without laboratory analysis (Doc. 17 at pp. 9-10), and such assertion was supported by the Sixth Circuit's decision cited in the Order. (See Doc. 56 at p. 7 (quoting *Libretti v. Woodson*, --- F. App'x ---, 2015 WL 221617, at *4 (6th Cir. 2015) (unpublished) ("It is impossible to distinguish, with the naked eye, between legal herbs and those that have been chemically altered.")). Thus, Defendant Courtney, the party without the ultimate burden of persuasion at trial, needed to simply point out the lack of evidentiary support for the other party on an essential element of the claim. See *Adams v. Am. Guar. & Liab. Ins. Co.*, 233 F.3d 1242, 1246 (10th Cir. 2000) (the party without the ultimate burden may meet its summary judgment burden by "pointing out to the court a lack of evidence for the nonmovant on an essential element of the nonmovant's claim.") (quoting *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998)). Having done so, the burden was on Mr. Libretti to bring forward specific facts showing a genuine dispute for trial. He readily admits he did not do so, arguing he did not do so because Defendant Courtney failed to meet his summary judgment

burden. (Doc. 65 at pp. 2-5.) As set forth in the order granting summary judgment, the Court disagrees. The burden was on Mr. Libretti, and he failed to meet it.

Additionally, his attempts to meet his burden now (*see* Doc. 65 at pp. 5-7) are unpersuasive and untimely. The Court already addressed the issue in its prior order, and Mr. Libretti cannot now “advance arguments that could have been raised in prior briefing.” *Servants of Paraclete*, 204 F.3d at 1012.

2.3 Mr. Libretti did not Establish a Genuine Issue for Trial Concerning the Seizure of his Computer

Quite similar to the previous argument, Mr. Libretti contends the Court erred in finding he failed to carry his burden of setting forth a genuine dispute for trial with regard to the seizure of his computer. (Doc. 65 at pp. 8-10.) Defendant Courtney pointed out that it was a later forensic analysis that determined the computer contained no evidence of a crime (Doc. 17 at p. 10), which conforms to Mr. Libretti’s allegations in his amended complaint (*see* Doc. 5 ¶ 218). This sufficiently asserted a dearth of evidence to support Mr. Libretti’s claim that Deputy Courtney violated a constitutional right in seizing the computer without some sort of a “pre-seizure” examination. Mr. Libretti then failed to meet his burden of setting forth facts to suggest a genuine dispute for trial on this issue. And his attempts to do so now are unpersuasive and untimely. The Court already addressed the issue in its prior order, and Mr. Libretti cannot now “advance arguments that could have been raised in prior briefing.” *Servants of Paraclete*, 204 F.3d at 1012.

2.4 The Court Erred in Finding Mr. Libretti First Requested the Return of his Computer on January 26, 2012, but the Error was Immaterial

In the order granting summary judgment, the Court erroneously found “Mr. Libretti first requested that the government return his property when he was acquitted at the conclusion of his

criminal trial, which was January 26, 2012.” (Doc. 56 at p. 10.) In fact, he filed a motion in his criminal case demanding the return on September 28, 2011, and the Court granted that motion on November 9, 2011. (See *United States v. Libretti*, 11-CR-69-F, Doc. 148.)

In his motion to reconsider, however, Mr. Libretti fails to demonstrate why delivery of the computer in February 2012 would constitute unreasonable delay, though he conclusorily argues such. (See Doc. 65.) More significantly, however, Defendant Courtney expressly swore he had no participation or authority in the return of Mr. Libretti’s property. (Doc. 16-7 ¶¶ 8-9.) As the Court previously noted, “[r]egarding the return of his property, Mr. Libretti has not shown it was Defendant Courtney’s ‘own individual actions’ that resulted in the allegedly-wrongful retention of his property.” (Doc. 56 at p. 10.) This established Mr. Libretti’s claim that Defendant Courtney violated his constitutional rights in regard to the return of his property suffered from a lack of evidence. And once again, Mr. Libretti did not carry his burden of showing a genuine dispute for trial on this matter. Accordingly, the Court’s earlier erroneous dates do not substantively affect the analysis, and the result remains unchanged.

3. **Libretti’s Request for Leave to File Amended Complaint**

In both Rule 59(e) motions, Mr. Libretti alternatively requested leave to file an amended complaint. (Doc. 64 at pp. 9, 10; Doc. 65 at p. 10.) He provided no analysis as to why he should be permitted to do so. Additionally, the Court previously denied such a request (Doc. 29). Accordingly, the Court will not revisit the issue here.

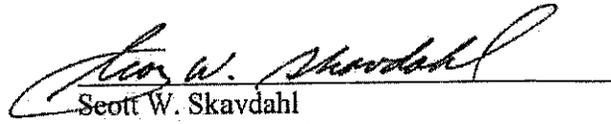
CONCLUSION

Mr. Libretti’s Rule 59(e) motion loses the forest for the trees. To get past Defendants’ claims of qualified immunity, it was Mr. Libretti’s burden to “establish (1) a violation of a constitutional right (2) that was clearly established.” *Puller v. Baca*, slip.

op. at 10; *see also Guttman v. Khalsa*, 669 F.3d 1101, 1125 (10th Cir. 2012) (shifting the burden to the plaintiff when a government actor asserts qualified immunity on a motion to dismiss). As the Court held in the order granting dismissal and order granting summary judgment, Mr. Libretti failed to carry his burdens of demonstrating the Defendants were not entitled to qualified immunity. He has put forth nothing in this motion for reconsideration to warrant altering or amending the Court's previous analyses and conclusions.

It is therefore ordered that Mr. Libretti's motions under Fed. R. Civ. P. 59(e) to alter or amend the Court's prior orders and judgments (Docs. 64, 65) are hereby **denied**.

Dated this 11th day of June, 2015.


Scott W. Skavdahl
United States District Judge