

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted January 7, 2025*

Decided January 8, 2025

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2261

SYRIS T. BIRKLEY,
Plaintiff-Appellant,

v.

KEVIN EADE and JOHN SCHAEFER,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-cv-1313-pp

Pamela Pepper,
Chief Judge.

ORDER

Syris Birkley conceded in a state prosecution that the police had probable cause to arrest him, but after the prosecution ended, he nonetheless sued the officers, alleging that they arrested him without probable cause. *See* 42 U.S.C. § 1983. The district court

* We have agreed to decide the case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

granted the defendants' motion to dismiss, relying on his state-court concession. Birkley does not contest the district court's rationale for dismissal; thus we affirm the judgment.

Birkley alleges that he and two others were arrested for their involvement in an armed robbery in the parking lot of a Target store in West Milwaukee, Wisconsin. The district court took judicial notice of the docket in Birkley's criminal case, and on appeal Birkley does not contest that step; thus we recite the facts on which the district court relied. Two men (one of whom was armed with a gun) approached a woman, grabbed her purse, pushed her to the ground, and then drove away. Law-enforcement officers reviewed a video recording of the incident and identified the getaway car. The officers then went to the home associated with that car and arrested two people, both of whom said that Birkley was at Target at the time of the robbery; one stated that Birkley committed the armed robbery. Detective Kevin Eade obtained a warrant, and Officer John Schaefer later arrested Birkley for the robbery. At his preliminary hearing, Birkley conceded that the state had probable cause for his arrest and robbery charge. Later, on the day of trial, the court dismissed the charge against Birkley.

After his criminal case was dismissed, Birkley filed this suit against Eade and Schaefer, but the case was short-lived. He alleged that the officers falsified documents and lied in the criminal complaint, leading to his arrest, search, and detention without probable cause in violation of his rights under the Fourth Amendment and the state law of defamation. The defendants filed separate motions to dismiss, which the court granted. It ruled that Birkley failed to state a claim that the police lacked probable cause for their actions because, among other problems with his claim, Birkley conceded at his preliminary hearing that the police had such probable cause. The district court then declined to exercise supplemental jurisdiction over Birkley's state-law claim.

On appeal, Birkley does not contest the district court's reasons for dismissing the case, including its rationale that Birkley failed to state a claim because he conceded at his preliminary hearing that the police had probable cause for their actions. "Probable cause is an absolute bar to a claim of false arrest asserted under the Fourth Amendment and section 1983." *Muhammad v. Pearson*, 900 F.3d 898, 907 (7th Cir. 2018) (citation omitted). Because Birkley disputes neither his concession nor the court's reliance on it to dismiss his suit, he has waived any argument, including one about judicial estoppel, *see New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), opposing the court's conclusion that his prior concession in state court defeats this case. *See Bradley v. Vill. of Univ. Park*, 59 F.4th 887, 897 (7th Cir. 2023). In his appellate brief, Birkley contends only that his arrest was invalid because the arrest warrant did not observe that he is a "Moorish

National” and it was not signed by an “Article III judge.” These contentions are frivolous, *see, e.g.*, FED. R. CRIM. P. 1(b)(4); 4(a)–(b), and require no further comment.

AFFIRMED