

NONPRECEDENTIAL DISPOSITION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 April 5, 2023*

Decided April 13, 2023

BeforeDAVID F. HAMILTON, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 22-1912

RYAN P. O'BOYLE,
*Plaintiff-Appellant,**v.*GILBERT CARRASCO, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 16-cv-0959-bhl

Brett H. Ludwig,
*Judge.***ORDER**

Ryan O'Boyle, a Wisconsin prisoner, appeals the summary judgment against his claim that several Milwaukee police officers violated his Fourth Amendment rights by arresting and detaining him without probable cause. *See* 42 U.S.C. § 1983. The district court concluded that the officers obtained valid consent to enter O'Boyle's home, and that a state judge made a timely probable-cause determination. We affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

O'Boyle was a primary suspect in a stabbing at a Milwaukee music festival in 2011. (He had been identified by the victim from a photo array.) The police issued a temporary felony warrant for his arrest. Later that night, officers went to O'Boyle's last known address—a residence where he lived with his girlfriend. They were met at the door by his girlfriend's mother, Noreen Esselman, who identified herself as the homeowner. She confirmed that her daughter was O'Boyle's girlfriend and that O'Boyle was inside the house. According to the officers, they told Esselman there was probable cause for O'Boyle's arrest, and she agreed to let them in. They then proceeded upstairs to Boyle's bedroom and knocked on the door. When he answered, the officers asked if he would answer a few questions, and arrested him when he refused. O'Boyle, for his part, asserts that the officers never received consent from Esselman and instead forced their way into the house.

The officers took O'Boyle to a police station, where he was held pending a state judge's determination on probable cause. About 38 hours after the arrest, the judge signed a probable-cause determination stating that O'Boyle committed the stabbing. O'Boyle was eventually tried before a jury and convicted.

Meanwhile, O'Boyle brought this civil-rights suit, asserting that the officers had entered his home without consent, in violation of the Fourth Amendment. He added that he suffered prolonged detention because the state judge did not timely determine that the arrest was supported by probable cause. He also brought constitutional claims against the stabbing victim, a prosecutor, state court judges, and other police officers involved in his arrest and criminal proceedings.

At screening, *see* 28 U.S.C. § 1915A, Judge Pepper allowed O'Boyle to proceed with his Fourth Amendment claims against the officers who arrested him. She also permitted O'Boyle to proceed on a claim that an officer interrogated him without a lawyer present. For reasons not relevant here, she dismissed his claims against the stabbing victim, state court judges, a prosecutor, and a paralegal.

The remaining defendants then moved to dismiss the case on the pleadings. *See* FED. R. CIV. P. 12(c). Judge Ludwig, who had been reassigned the case, determined that O'Boyle could proceed on unlawful-entry and unlawful-detention claims against the officers who arrested and detained him. But the judge dismissed O'Boyle's unlawful-seizure claim (as barred by collateral estoppel) and his unlawful-interrogation claim (O'Boyle had not substituted a successor for a defendant officer who died before being served).

Discovery ensued, and O'Boyle sought to subpoena the stabbing victim and police officers to obtain signature samples to show that certain documents were forged and that his seizure was illegal. A magistrate judge quashed the request on grounds that the victim and officers had been dismissed from the case, and any attempt on O'Boyle's part to try to invalidate his conviction was barred by *Heck v. Humphrey*. See 512 U.S. 477, 482 (1994).

Judge Ludwig then granted the defendant officers' motion for summary judgment. He concluded that the officers had lawfully entered the home after Esselman gave her undisputed consent. The judge noted that officers may not rely on the consent of a co-occupant if a second occupant is physically present and objects, see *Georgia v. Randolph*, 547 U.S. 103, 122 (2006), but O'Boyle had not offered any evidence that he was present during the officers' interaction with Esselman or posed any objection to their entry into the home. The judge also determined that O'Boyle failed to rebut the officers' evidence that a judicial determination of probable cause was made within the permissible timeframe of 48 hours after his arrest. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

On appeal, O'Boyle primarily challenges the district court's ruling that the officers had consent to enter the home and arrest him. He acknowledges that there is no Fourth Amendment violation where an entry is conducted with an occupant's consent, see *Wonsey v. City of Chicago*, 940 F.3d 394, 399 (2019), but invokes a narrow exception to this rule when a co-occupant makes a contemporaneous objection to the search. According to that exception, "if a potential defendant with self-interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search." *Randolph*, 547 U.S. at 121. O'Boyle argues that he was inside the home when the officers arrived and would have objected to their entry had he been present for their conversation with Esselman.

The district court here properly determined that Esselman's consent justified the officers' entry into the home. As the court explained, O'Boyle offered no evidence to call into question the reasonableness of the officers' belief that she had consented to their entering. As for the exception in *Randolph*, O'Boyle concedes that he was not at the door when the officers interacted with Esselman. In his telling, he did not interact with them until they already had entered the home. And once the officers secured Esselman's consent to enter, they did not need to seek his.

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O'Boyle next generally argues that the evidence of Esselman's consent is underdeveloped. But he introduced no evidence to counter the officers' testimony about the manner and circumstances in which she consented. In a § 1983 case, once the defendants presented evidence of consent to the search, the burden shifts to the plaintiff to establish the lack of consent to search. *See Wonsey*, 940 F.3d at 399–400. O'Boyle offered nothing to meet this burden.

O'Boyle next generally challenges the court's ruling that the state judge made a timely determination of probable cause. But that determination needed to be made only within 48 hours of O'Boyle's arrest, *see McLaughlin*, 500 U.S. at 56, and the state judge's signed determination—which is self-authenticating, *see* FED. R. EVID. 902; *United States v. Hampton*, 464 F.3d 687, 689 (7th Cir. 2006)—indicates that it was made 38 hours after O'Boyle's arrest.

Finally, O'Boyle argues that the district court did not comply with Federal Rule of Civil Procedure 45(d)(3) when it quashed his subpoenas seeking signature samples from the stabbing victim and nonparty officers. O'Boyle maintains that he needed the signatures to prove that the photo array and other evidence were fabricated. But the magistrate judge overseeing discovery appropriately determined that the subpoenas were *Heck*-barred because O'Boyle's only discernible motive for issuing the subpoenas was to challenge the validity of his conviction. *See* 512 U.S. at 482.

We have considered O'Boyle's remaining arguments and none merit discussion.

AFFIRMED