No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Marino Scafidi,

Petitioner,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, ET AL.,

Respondent.

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Dr. Marino Scafidi D.C.
Pro Se Litigant
58 E La Vieve Lane
Tempe, Arizona 85284
Phone Number: (480) 789 - 3960
marinoscafidi@gmail.com

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5 Petitioner Dr. Marino Scafidi D.C. respectfully requests that the time to file a Petition for Writ of Certiorari in this Court be extended for 60 days to and including October 27, 2024.

The U.S. Circuit Court of Appeals for the Ninth Circuit denied my petition for rehearing and for rehearing en banc on May 31, 2024 following its decision of April 25, 2024, which affirmed the district court's decision granting summary judgment to the movants, thus dismissing my civil rights law suit brought under 42 U.S.C. §1983. My petition for certiorari currently is due on or before August 28, 2024.

This application for extension of time is being filed more than ten days before that date. *See* Supreme Court Rules 30.2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

Copies of the opinion of the court of appeals affirming the judgment of the district court, and of the order denying the petition for rehearing and rehearing en banc are attached to this application as Appendix A, and Appendix B, respectively.

This petition involves a direct conflict between federal and state court judicial orders on matters of federal and state constitutional law whereby the Nevada state courts concluded the LVMPD violated my Fourth and Fourteenth Amendment constitutional rights in the underlying criminal proceedings; yet the Ninth Circuit Court of Appeals blatantly ignored findings of fact and law from these state court judgments, which constituted the law of the case and implicated the doctrine of collateral estoppel. This petition will also raise further important constitutional questions of national importance on which the Ninth Circuit Court of Appeals decision conflicts with: (1) findings from the federal district court; (2) several mandatory precedents established by the Ninth Circuit and the Supreme Court of the United States; and (3) with persuasive authorities established by other

circuit courts of appeal.

Specific questions of national importance that this petition will address are:

- Whether the Ninth Circuit, when granting summary judgment to the movants, clearly ignoring Nevada state court judgments that concluded the LVMPD violated the Fourth Amendment (illegal search/seizure warrant ruling because probable cause never established due to fraudulent misrepresentations within the warrant affidavit) and Fourteenth Amendment (failure to preserve foreseeably exculpatory evidence), patently violated the Supreme Court's holding in *Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980); 28 U.S.C. § 1738; which held that "[F]ederal courts must 'give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered" ... collateral estoppel under 28 U.S.C. § 1738 based on state-court criminal proceedings applies to subsequent civil litigation under 42 U.S.C. § 1983. *Id* at 101, 104-05. Alternatively, whether the Ninth Circuit, in granting summary judgment to the movants, was insufficiently deferential to the Nevada state courts decisions concluding the movants had violated the Fourth and Fourteenth Amendments when the Ninth Circuit failed to show that the state court rulings, as decided by the Supreme Court in *Richter*, were "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement."

- Whether the Ninth Circuit by invading the province of the jury at the summary judgment stage and articulating the factual context of the case in the best light to the movants (defendants), while blatantly ignoring the nonmovant's (plaintiff's) theories of prosecution and factual evidence set forth in his affidavits and answers to interrogatories, failed to adhere to the Supreme Court axiom that in ruling on a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor" *Tolan*, 134 S. Ct. at 1863 (internal quotation marks and alteration omitted) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986))_... the court may not ignore the plaintiffs' evidence, which includes the affidavits and answers to interrogatories ... *Tolan*, 572 U.S. at 657 ("By failing to credit evidence that contradicted some of its key factual conclusions, the court improperly 'weigh[ed] the evidence' and resolved disputed issues in favor of the moving party").

- Whether the Ninth Circuit's decision whereby it egregiously and unfairly invaded the province of the jury conflicts with Supreme Court precedent regarding the "general rule that a 'judge's function' at summary judgment is

not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.' *Anderson*, 477 U.S., at 249 .... Summary judgment is appropriate only if 'the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.' [FRCP] 56(a). ... a court must view the evidence 'in the light most favorable to the opposing party.' *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598 ... (1970); see also *Anderson*, supra, at 255.... " *Tolan v. Cotton*, supra, 134 S. Ct. at 1866.

- Whether the Ninth Circuit concluding that the warrantless arrest and search in the nonmovant's hotel room does not violate the Fourth Amendment of the Federal Constitution because responding officers had probable cause to arrest petitioner plainly violates the Supreme Court's holding in *Payton v. New York*, 445 U.S. 573, 590, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980), that "absent exigent circumstances," the "firm line at the entrance to the house . . . may not reasonably be crossed without a warrant."

- Whether when a nonmovant asserts via affidavits and answers to interrogatories that law enforcement violated the Fourth Amendment by engaging in a presumptively unreasonable warrantless search and seizure in his hotel room absent probable cause and exigent circumstances; he establishes prima facie evidence to defeat the movants summary judgment motion on his Fourth Amendment warrantless search and seizure claims because the Supreme Court has held that 'Searches and seizures inside a home without a warrant are presumptively unreasonable,' *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006).

- Whether the court can retroactively apply inadmissible irrelevant and hearsay evidence that was unknown to law enforcement at the time of a warrantless presumptively unreasonable search/ seizure when the nonmovant unequivocally disputed the facts known to law enforcement at the time the petitioner was falsely arrested in his hotel room and his hotel room was illegally searched without a warrant; and the nonmovant effectively objected to the court considering such inadmissible evidence at the summary judgment stage. Alternatively, does the Ninth Circuit's decision blatantly violate the Supreme Court's holding in *Brinegar v. United States*, 338 U.S. 160, 175-176, that when the constitutional validity of a warrantless arrest is challenged, it is the function of a court to determine whether at the moment the arrest was made, the officers had probable cause to make it -- whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to

warrant a prudent man in believing that the petitioner had committed or was committing an offense.

- Whether probable cause based on facts known to law enforcement at the time of a warrantless search/ seizure in petitioner's hotel room is a different question from probable cause at the time of a continued wrongful arrest/ imprisonment; when considering new exculpatory information that became known after the initial warrantless search/ seizure. In other words, does probable cause dissipate when law enforcement discovers and/ or deliberately suppresses exculpatory evidence that would cause an objectively reasonably officer to believe that a suspect is innocent; and must the suspect be immediately released from custody if probable cause dissipates?

- Whether probable cause based on facts known to law enforcement at the time of an initial warrantless search/ seizure in petitioner's hotel room is a different question from probable cause at the time of a subsequent search/ seizure warrant affidavit; when considering the facts contained within the four corners of the latter warrant affidavit differ from facts known at the time of the former warrantless search/ seizure. Alternatively, whether the Ninth Circuit's decision ignoring the petitioner's successful state court challenge of the veracity of sworn statements used by police to procure a search warrant plainly violates the Supreme Court's holding in *Franks* v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), that a criminal defendant may "... challenge the truthfulness of statements made by law enforcement agents in a search warrant affidavit" should the defendant make "'a substantial preliminary showing' that: 1) the warrant affidavit contains a false statement made 'knowingly and intentionally, or with reckless disregard for the truth' and 2) that 'the allegedly false statement was necessary to the finding of probable cause.'" quoting *Franks*, 438 U.S. at 155-56.

- Whether probable cause based on facts known to law enforcement at the time of a warrantless search/ seizure in petitioner's hotel room is a different question from probable cause at the time at which a prosecution is initiated by the movant's; when considering the petitioner specifically alleged the malicious prosecution was initiated by the movants based on fabricated evidence contained within their search/ seizure warrant affidavit.

- Whether the court can retroactively apply inadmissible irrelevant and hearsay evidence that was unknown to the movants at the time they fabricated evidence within their search/ seizure warrant affidavit, while it patently ignores Nevada state court findings that support the nonmovants

direct and circumstantial fabrications of evidence claims based on the movants mischaracterizing witness's statements and suppressing exculpatory evidence of his innocence.

I will be unable to submit the petition for writ of certiorari within the 90 days provided by Rule 13 because legal counsel that assisted me in the Ninth Circuit proceedings is not admitted to practice before the Supreme Court. I have tried to secure counsel admitted to the U.S. Supreme Court Bar since the end of April, but I have not been able to retain representation that can help me thus far. Therefore, I may be compelled to proceed pro se, and given the complexity of the issues involved, this extension is necessary to adequately prepare and present the petition.

Attorney Craig Anderson, whom is the respondent LVMPD and the individual police officers' counsel in this case, advised me by email that he does not object to the requested extension of time. Attorney Brent Vogel, whom is respondent Dermanelian's counsel in this case, did not respond to my email inquiring if he objected to the requested extension of time.

WHEREFORE, Petitioner Marino Scafidi respectfully prays that this Court grant him an extension of time up to and including October 27, 2024, in which to file his petition for writ of certiorari.

Dated: July 8, 2024

Respectfully submitted,

/s/ Marino Scafidi
Dr. Marino Scafidi D.C.
Pro Se Litigant
58 E La Vieve Lane
Tempe, Arizona 85284
Phone Number: (480) 789 - 3960
marinoscafidi@gmail.com

CERTIFICATE OF SERVICE

I, Marino Scafidi, certify that I have this day served the foregoing Motion for Extension of Time to file Petition for Writ of Certiorari by priority mail, addressed to the Clerk of the Supreme Court of the United States, 1 First Street, NE Washington, DC 20543.

A copy of the foregoing has been served via priority mail to:

Craig R. Anderson
10001 Park Run Drive
Las Vegas, NV 89145-8857
Respondent

Brent Vogel
6385 South Rainbow Boulevard
Suite 600
Las Vegas, NV 89118
Respondent

This the 8th day of July, 2024.

/s/ Marino Scafidi
Dr. Marino Scafidi D.C.

APPENDIX A

NOT FOR PUBLICATION

FILED

APR 25 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARINO SCAFIDI, Plaintiff-Appellant, v. LAS VEGAS METROPOLITAN POLICE DEPARTMENT, a political subdivision on behalf of State of Nevada; et al., Defendants-Appellees, and FCH1, LLC, DBA Palms Casino Resort; et al., Defendants.	No. 23-15657 D.C. No. 2:14-cv-01933-RFB-VCF MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware, II, District Judge, Presiding

Submitted April 1, 2024**
Pasadena, California

Before: R. NELSON, VANDYKE, and SANCHEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant Marino Scafidi (Scafidi) brought claims against the Las Vegas Metropolitan Police Department (LVMPD), several of its officers, and an investigating nurse (collectively Appellees), alleging that he was arrested without probable cause and wrongfully prosecuted for sexual assault. The district court granted summary judgment for the Appellees. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. On September 1, 2012, Scafidi went on a date with Stephanie Carter at the Palms Hotel & Casino in Las Vegas, where Scafidi rented a room. The night went awry, ending with Carter locked in Scafidi's bathroom early the next morning, where she called 911. Carter reported that Scafidi was trying to harm her. Officers arrived, finding Carter locked and bleeding in Scafidi's hotel bathroom. Carter was taken to be interviewed and receive medical attention, while Scafidi was detained.

Carter told officers that Scafidi sexually assaulted her. A Sexual Assault Nurse Exam (SANE) stated that her "clinical impression" was "sexual assault." Based on this, and Carter's 911 call, Scafidi was arrested. Scafidi was charged for three counts of sexual assault. After several years, in 2017, Scafidi's charges were dropped.

2. Scafidi sued, asserting several claims. These included two claims against LVMPD: (1) a *Monell* claim, and (2) a negligence claim; two claims against just

the investigating officers and nurse: (1) a § 1983 claim; and (2) a false imprisonment claim; two claims against the officers and the nurse: (1) a § 1983 conspiracy claim, and (2) a malicious prosecution claim; and an intentional infliction of emotional distress (IIED) claim against all Appellees.

On May 15, 2018, the district court granted Appellees summary judgment because there was probable cause to arrest Scafidi and any issue with probable cause was precluded from relitigation, among other things. *Scafidi v. Las Vegas Metro. Police Dep't*, No. 2:14–cv–01933–RCJ–GWF, 2018 WL 2123372, at *3–4 (D. Nev. May 8, 2018). Scafidi appealed. We reversed, holding that "controlling Nevada state precedent expressly rejects the view that a probable cause determination at a preliminary hearing precludes later relitigation of that question." *Scafidi v. Las Vegas Metro. Police Dep't*, 966 F.3d 960, 963 (9th Cir. 2020). We also concluded that Scafidi's allegations that Defendants fabricated evidence or otherwise committed misconduct in bad faith created a triable issue of material fact as to probable cause. *Id.* at 963–64.

The case was remanded to the district court. On February 9, 2021, the district court granted summary judgment for the nurse that performed the SANE. *Scafidi v. Las Vegas Metro. Police Dep't*, No. 2:14-cv-01933-RCJ-GWF, 2021 WL 472920, at *8 (D. Nev. Feb. 9, 2021). On March 31, 2023, the district court granted summary judgment for the remaining Appellees. *Scafidi v. Las Vegas*

Metro. Police Dep't, No. 2:14-cv-01933-RFB-VCF, 2023 WL 2744737, at *11 (D. Nev. Mar. 31, 2023). Scafidi now appeals the district court's grant of summary judgment.

3. We review a grant of summary judgment de novo. *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1029 (9th Cir. 2004). Summary judgment is appropriate when "there is no genuine dispute [of] material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We hold that the district court correctly granted summary judgment for all Appellees and affirm.

First, Scafidi's § 1983 claims fail because undisputed evidence shows that Appellees did not violate his constitutional rights. To prove a § 1983 claim based on the Fourth Amendment, "'[s]eizure' alone is not enough," it must also be unreasonable. *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989). Scafidi's "seizure" was not unreasonable, because his arrest was based on probable cause as a matter of law. At the time of the arrest, the responding officer had found Carter locked and bleeding in Scafidi's hotel bathroom, and knew that Carter had called 911 and reported that Scafidi was trying to harm her. Based on these undisputed facts, a reasonable detective could conclude that a "fair probability" existed that a sexual assault occurred, which is sufficient to establish probable cause to arrest. *See United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

Scafidi's § 1983 claim based on deliberately fabricated evidence also fails as a matter of law because Scafidi has not presented evidence that an official "deliberately fabricated evidence." *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017). Scafidi alleges that Defendant Beza deliberately fabricated evidence in his search warrant application because the application stated that the SANE exam resulted in "positive findings," despite the fact that, in Scafidi's view, the SANE exam never "found or confirmed a sexual assault." But Scafidi's allegation does not raise a genuine factual dispute because the nurse's SANE exam indisputably says that her "clinical impression" was "sexual assault." Scafidi therefore has no direct evidence of fabrication. Scafidi also cannot establish his deliberate fabrication claim using circumstantial evidence because Scafidi presented no evidence that Defendants Pool and Beza should have believed Scafidi was innocent, given the results of the SANE exam and Carter's representations. *See Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc) (plaintiff can prove a fabrication claim using circumstantial evidence by showing that "[d]efendants continued their investigation . . . despite the fact that they knew or should have known that [the plaintiff] was innocent").

Because Scafidi has not raised triable issues as to whether Appellees violated his constitutional rights, his § 1983 conspiracy claim and his *Monell* claim

necessarily fail. *See Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989); *see also City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

Finally, Scafidi's state law claims fail because, as explained above, Appellees had probable cause to arrest him for sexual assault as a matter of law. The existence of probable cause bars these claims because "an arrest made with probable cause is privileged and not actionable." *Nelson v. City of Las Vegas*, 665 P.2d 1141, 1144 (Nev. 1983). In addition, the existence of probable cause is a required element, or affirmative defense, to Scafidi's false arrest, malicious prosecution, and IIED claims. *See, e.g., Schulz v. Lamb*, 504 F.2d 1009, 1011 (9th Cir. 1974) (false arrest claim); *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002) (malicious prosecution claim); *Palmieri v. Clark County*, 367 P.3d 442, 446 n.2 (Nev. Ct. App. 2015) (IIED claim). Along the same lines, Scafidi's negligence claim similarly fails because it is factually premised on a lack of probable cause.

Because Scafidi's claims fail as a matter of law, we affirm the district court's grant of summary judgment for Appellees.

AFFIRMED.

APPENDIX B

FILED

MAY 31 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARINO SCAFIDI,

Plaintiff-Appellant,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, a political subdivision on behalf of State of Nevada; et al.,

Defendants-Appellees,

and

FCH1, LLC, DBA Palms Casino Resort; et al.,

Defendants.

No. 23-15657

D.C. No.
2:14-cv-01933-RFB-VCF
District of Nevada,
Las Vegas

ORDER

Before: R. NELSON, VANDYKE, and SANCHEZ, Circuit Judges.

The panel has voted to deny the petition for panel rehearing and the petition for rehearing en banc. **Dkt. 38.** The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.