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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAROLD COLEMAN HALL,

Plaintiff - Appellant,

v.

CITY OF LOS ANGELES; et al.,

Defendants - Appellees.

No. 07-56853

D.C. No. CV-05-01977-GPS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George P. Schiavelli, District Judge, Presiding

Argued and Submitted July 6, 2009  
Pasadena, California

Before: FERNANDEZ and N.R. SMITH, Circuit Judges, and MILLS,\*\* District Judge.

Harold C. Hall filed this lawsuit for damages under 42 U.S.C. § 1983, alleging that Los Angeles Police Department (“LAPD”) detectives violated his due process rights by fabricating evidence that led to his conviction for first-degree

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\*\* The Honorable Richard Mills, Senior United States District Judge for the Central District of Illinois, sitting by designation.

murder. Hall also alleges that City of Los Angeles (the “City”) and LAPD policies, practices, and customs contributed to his false conviction.

After being convicted in 1984, Hall remained incarcerated until a Ninth Circuit panel granted his habeas petition, overturned his conviction because it was based on false evidence, and ordered him released. *Hall v. Dep’t of Corrections*, 343 F.3d 976 (9th Cir. 2003) (per curiam). Despite granting Hall habeas relief, the panel refused to grant relief on Hall’s assertion that his confession was coerced and involuntary. *Id.* at 981 n.5 (“Hall also claims: (1) he was denied the right to self-representation, in violation of the Sixth Amendment; (2) that his September 11, 1985, confession was coerced and involuntary; and (3) that he was denied his *Miranda* rights as to his first two statements. We have examined the record and find that these claims are without merit.”).

Hall brought § 1983 claims against Detectives Arneson and Crocker, the City, and the LAPD. When the City, LAPD, and individual detectives moved for summary judgment on Hall’s subsequent § 1983 claim, they argued that (1) Hall did not adduce sufficient evidence to withstand summary judgment on his claims against the individual detectives, and (2) could not establish that liability accrued to the City or LAPD. The district court granted summary judgment in favor of the individual detectives, the City, and the LAPD.

Hall bases his claims against the individual detectives on *Devereaux v. Abbey*, 263 F.3d 1070, 1075 (9th Cir. 2001), which states that Hall has a constitutional right to be free from prosecution based on “deliberately fabricated evidence.” To survive summary judgment on this claim, Hall must show that the detectives either (1) continued their investigation of him despite the fact they knew or should have known he was innocent (*Devereaux* prong (1)), or (2) used investigative techniques that were so coercive and abusive that the detectives knew or should have known that they would yield false information (*Devereaux* prong (2)). *Id.* at 1076. The district court concluded that Hall did not adduce enough evidence to meet his burden on *Devereaux* prong (1). We agree; Hall’s evidence cannot meet his heavy burden to establish that the officers knew or should have known he was innocent.

We disagree, however, with the district court’s decision against Hall on *Devereaux* prong (2). The district court concluded that the previous panel’s statement in footnote 5 of its Opinion prevented Hall from arguing that LAPD Detectives Arneson and Crocker used investigative techniques that were coercive and abusive, thereby eliminating his ability to recover under prong (2). While the denial of habeas relief on a certain issue essential to a subsequent § 1983 claim *may* have preclusive effect for purposes of the § 1983 claim, *see Hawkins v. Risley*,

984 F.2d 321, 324–25 (9th Cir. 1993), “[p]reclusive force [only] attaches to determinations that were necessary to support” the panel’s judgment in Hall’s habeas action. *Resolution Trust Corp. v. Keating*, 186 F.3d 1110, 1115 (9th Cir. 1999) (citing *Segal v. American Tel. & Tel. Co., Inc.*, 606 F.2d 842, 845 n.2 (9th Cir. 1979)). Moreover, “[a] determination adverse to the winning party does not have preclusive effect.” *Fireman’s Fund Ins. Co. v. Int’l Market Place*, 773 F.2d 1068, 1079 (9th Cir. 1985). The statements made in footnote 5 should not have been given preclusive effect, because they (1) were not necessary to support the panel’s judgment, and (2) were adverse to Hall, the winning party. Because the district court’s decision regarding collateral estoppel prevented the court and the parties from discovering and considering the evidence relating to *Devereaux* prong (2), we reverse the district court on its determination regarding prong (2).

We also remand this case to the district court for proceedings to determine whether the City and/or the LAPD are liable under *Monell v. Dep’t of Social Servs.*, 436 U.S. 658 (1978). The district court concluded during the summary judgment hearing that Hall “conceded . . . that there was insufficient evidence to sustain Hall’s claim of *Monell* liability against the City [] and LAPD.” The district court therefore did not discuss *Monell* liability in its order granting the City and LAPD summary judgment, but nevertheless granted summary judgment on this

issue. The district court erred by making this determination. The record indicates that Hall did not abandon his claim at the summary judgment stage, but instead submitted it on the pleadings already filed. Accordingly, the district court should have analyzed Hall's claim and made a decision on its merits. Because the district court did not make such a determination, we remand this case to the district court for further proceedings.

Each party shall bear its own costs on appeal.

**AFFIRMED in part, REVERSED in part, and REMANDED.**