

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IVAN G. MCKINNEY, MCKINNEY,**

**Plaintiff, Plaintiff,**

**v. v.**

**Civil Action Civil Action No. 08-3149 (ES)**

**MEMORANDUM OPINION**

Motion to Reopen ("Mot. 1"). In his Motion, Plaintiff argues that the Court based its summary judgment ruling on the fact that Sergeant Bracken sought a search warrant for the specific hotel room that was identified as the scene of the assault by the victim and the victim and the witness, but Plaintiff has "newly discovered evidence" which shows this to be untrue. (Mot. untrue; (Mot. 2). Specifically, Plaintiff alleges that he has the "original" telephonic search warrant and it did not and it did not include the hotel room number. (Id.) Plaintiff also argues that the warrant judge's notes, judge's notes, which were taken during the phone call seeking the search warrant, do not identify a room number. (Id.)<sup>2</sup>

Cir. 1967), and must show that the new evidence is material, could not have been discovered earlier, and "would probably have changed the outcome" of the proceedings. *Robis v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991) (3d Cir. 1991).

6. Plaintiff clearly could have located this evidence sooner. He obtained the warrant judge's 2006 notes and a copy of the warrant simply by requesting said information from the state court and public defenders' office in June-July 2015. (D.E. No. 154 (D.E. No. 154-1; Plaintiff's Appendix ("App.") 35, 43, 45). Certainly, he could have requested and received this information any time

evidence is not new. Moreover, the evidence does not call into question the summary judgment granted to Defendant. The “warrant” that Plaintiff has now supplied does not appear to be an actual warrant, but rather a form/questionnaire completed by the warrant judge describing the actions taken in the matter. The fact that the “warrant” and judge’s notes supplied by Plaintiff do not identify the hotel room number is of no moment because the actual search warrant, signed by the warrant judge at the same time as the form/questionnaire now provided by Plaintiff, does contain the specific hotel room number. (App. 2-4; 9). Plaintiff has not shown that a grave miscarriage of justice will occur if the judgment is not vacated and consequently, he is not entitled to relief under Rule 60(d).

9. For the foregoing reasons, Plaintiff’s Motion to Re-Open is DENIED. An appropriate order follows.



Esther Salas, U.S.D.J.