[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13906
Non-Argument Calendar

D.C. Docket No. 1:15-cv-00164-JRH-BKE

CHAD STEFANI,

Plaintiff - Appellee,

versus

CITY OF GROVETOWN,
a municipality of the State of Georgia,
GARY JONES,
individually and in his official capacity,
JONES NALLEY,

Defendants - Appellants,

SCOTT WHEATLEY,
in his official capacity,
et al.,

Defendants.

Appeal from the United States District Court
for the Southern District of Georgia

(August 16, 2019)

Before MARTIN, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

This 42 U.S.C. § 1983 case stems from Chad Stefani's arrest and detention by the City of Grovetown's ("City") Department of Public Safety ("DPS") on charges of criminal attempt to commit child molestation. After these charges were dismissed for lack of probable cause, Stefani sued the City, Chief of Police Gary Jones, and several DPS officers, including Investigator Jones Nalley, alleging malicious prosecution and unlawful search, among other claims. The district court denied qualified immunity to Jones and Nalley on the § 1983 claims against them in their individual capacities and then granted partial summary judgment to Stefani as to liability on all other remaining claims. Jones, Nalley, and the City now appeal. After careful review, we reverse the denial of qualified immunity to Jones and Nalley and remand for entry of judgment in their favor. We vacate the partial grant of summary judgment in favor of Stefani and remand for further proceedings.

I.

At around 12:45 p.m. on February 17, 2015, a man approached Rachel Lucas outside her home as she was putting her kids—three young girls and a baby boy—into her truck. The man, whom Lucas did not recognize, asked if she wanted to make some extra money. When Lucas said "sure," the man responded that he was thinking of having kids and wanted to know if she had any daughters. He then

offered her $200 an hour to spend time alone with them. Lucas immediately called the police, and the man sped off in a blue, four-door Dodge Ram truck with no license plate. The dispatcher advised Lucas to come to the police station.

At the station, Lucas spoke with Sergeant Christopher Powell and recounted these events in person and in a written statement. She provided a description of the truck and of the suspect. She described the suspect as a white male, approximately 5'8" to 5'9" tall, between 180 and 200 pounds, with strawberry-blonde hair and goatee, wearing a blue jacket, a black hat, and a red-and-green flannel shirt.

Powell contacted the district attorney's office for advice as to whether a crime had been committed. Based on the information Powell provided, an assistant district attorney stated that the suspect could potentially be charged with "criminal attempt to commit child molestation." The attorney did not directly state that probable cause existed or tell Powell "to go take out a warrant and arrest a person for that," however, she "just gave . . . a potential charge."

At 1:35 p.m., Chief Jones posted Lucas's description of the suspect and his vehicle on DPS's Facebook page and asked for tips. Soon after, an anonymous tipster called and said to "look up Chad Stefani" because he drove a blue, four-door Dodge Ram truck and had previously been in trouble for "flashing women around Columbia County."

Based on the tip, Powell did an internet search and found a newspaper article with Stefani's picture. Powell then called Lucas and asked her to perform the same search. Lucas recognized the name and informed Powell that she went to high school with Stefani. She then found Stefani's picture and told Powell that Stefani "looked just like him." She explained, "I don't want to like be like a hundred percent, yeah, bam, that's him, but he looks identical. The only thing different was this man had a hat on so I didn't see if he had hair really good or if he was bald."

Powell conveyed this information to his supervisor, Captain Scott Wheatley, who then contacted the Columbia County Sheriff's Office to ask them to prepare a photographic line-up for DPS's use. Meanwhile, Jones spoke about the incident with a lieutenant from the Sheriff's Office, which was investigating a similar incident. The lieutenant expressed doubt that Stefani was the right suspect because the suspect was described as strawberry blonde with a goatee and he knew Stefani to be "bald-headed with a dark beard."

Wheatley assigned the case to Investigator Nalley, who started his shift at 3:00 p.m. At around 4:30 p.m., Lucas came to DPS and met with Nalley and Wheatley. After again recounting the details of the incident, Lucas was shown a photo array consisting of six pictures. She "immediately" identified Stefani as the suspect.

Following the photo array, Nalley prepared three warrants for Stefani's arrest and went to a county magistrate judge. The warrants, one relating to each of Lucas's

daughters, charged the crime of Criminal Attempt (Child Molestation). Nalley described the offense as follows: "[The] accused attempted to solicit[] said victim at the rate of $200.00 an hour, for the purpose of sexual gratification and to in pregnant [sic]." Nalley appeared before the magistrate and informed her, under oath, of: Lucas's allegation that the suspect had tried to pay money in exchange for spending time alone with her daughters; Lucas's description of the suspect and the vehicle; and Lucas's photo-array identification of Stefani. At that time, Nalley was not aware of and did not mention Lucas's initial identification of Stefani based on the internet search. Based on the affidavits and Nalley's oral testimony, the magistrate issued the arrest warrants just before 5:00 p.m.

Once the warrants issued, Jones updated DPS's Facebook page with that information. Later that evening, Stefani learned about the charges, retained defense counsel, and then turned himself in at around 10:45 p.m. Before invoking his right to remain silent, Stefani told Jones and Nalley that he "didn't do this" and that his truck was parked all afternoon. Stefani was denied bail due to prior convictions.

Stefani's then-fiance, Britland Gove (now Britland Stefani), accompanied Stefani to the police station and then spoke with Jones and Wheatley. Jones also spoke by phone to Stefani's brother, Brian, who employed Stefani at an electrical contracting company. Both Britland and Brian told Jones that Stefani could not be the suspect because his blue, four-door Dodge Ram truck was under video

surveillance at his workplace all day, and he had been driving a white company truck. Brian offered to provide this footage to DPS. Britland also noted that Stefani was bald and so did not match the suspect's description.

The morning after Stefani's arrest, Nalley went to Stefani's workplace—the business owned by Brian—to look at Stefani's truck and view the surveillance footage. Brian refused until Nalley obtained a search warrant. Brian also informed Nalley that he did not know how to copy the footage and that someone was coming by to assist him. Nalley left, obtained search warrants for Brian's business and Gove's residence, and then returned later than afternoon. He viewed and made a copy of the footage, which showed that Stefani's truck remained parked at the business during the relevant time period. Nalley also took pictures of the truck.

After viewing the surveillance footage, Nalley spoke with Lucas, who stated that Stefani's truck was the same color and style as the truck she saw. During this discussion, Lucas clarified that the suspect had facial hair that was light brown with reddish tint, not strawberry blonde. Several days later, Nalley executed a search warrant at Gove's residence to look for items of clothing matching Lucas's description. He seized a flannel shirt.

Nalley ended his investigation on February 25 and forwarded the investigative file to the district attorney's office. The district attorney's office chose to go forward with the case.

At Stefani's counsel's request, a specially set preliminary hearing was held on March 31, 2015, before a magistrate from another county. During the hearing, the defense disclosed for the first time that a private investigator hired by Stefani's counsel had obtained video footage showing Stefani getting lunch at a Taco Bell in a white truck minutes after the incident. At the conclusion of the hearing, the magistrate dismissed the charges, finding that there was no crime "even if this man did what she said in the police report." Specifically, the magistrate stated, there were "no substantial steps in furtherance of the commission of the crime of child molestation." Stefani was released the next day.

II.

Stefani sued Jones, Nalley, Powell, Wheatley, and the City in federal court in October 2015. After Stefani twice amended the complaint, the district court permitted the following claims to go forward: (1) a § 1983 claim for malicious prosecution against Jones, Nalley, and the City; (2) a § 1983 claim of unlawful search against Jones, Nalley, and the City; and (3) state-law claims for malicious prosecution and negligence against the City. The court dismissed all claims against Powell and Wheatley.

Following discovery, both parties filed summary-judgment motions. The district court denied qualified immunity to Jones and Nalley, granted partial summary judgment to Stefani as to liability on his § 1983 claims of malicious

prosecution and unlawful search and his state-law claim of malicious prosecution, and found that Stefani had abandoned his negligence claim. Underlying the court's conclusions was its determination that not even arguable probable cause supported Stefani's arrest. Jones, Nalley, and the City now appeal.

III.

We first consider Jones and Nalley's appeal of the denial of qualified immunity on the § 1983 claims against them in their individual capacity. We review *de novo* the denial of qualified immunity at summary judgment. *Moore v. Pederson*, 806 F.3d 1036, 1041 (11th Cir. 2015). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making this determination, we view the record and draw all reasonable inferences in favor of the non-moving party—here, Stefani. *Moore*, 806 F.3d at 1041.

Qualified immunity protects government officials from individual liability unless they "violate[] clearly established statutory or constitutional rights of which a reasonable person would have known." *Piazza v. Jefferson Cty., Ala.*, 923 F.3d 947, 951 (11th Cir. 2019) (quotation marks omitted). The aim is to give government officials breathing room "to carry out their discretionary duties without the fear of personal liability or harassing litigation." *Carter v. Butts Cty., Ga.*, 821 F.3d 1310, 1318–19 (11th Cir. 2016) (quotation marks omitted).

Officials invoking qualified immunity must show first that they were acting within the scope of their discretionary authority. *Id.* at 1319. If they were, the burden shifts to the plaintiff to show that qualified immunity is not appropriate. *Id.* To do so, the plaintiff must make two showings: (1) the defendant violated a federal statutory or constitutional right; and (2) the unlawfulness of the defendant's conduct was clearly established at the time of the alleged violation. *Paez v. Mulvey*, 915 F.3d 1276, 1284 (11th Cir. 2019). We may decide these issues in either order. *Id.*

The requirement that the right be clearly established is to ensure that "officers are on notice their conduct is unlawful." *Saucier v. Katz*, 533 U.S. 194, 206 (2001). To be clearly established, the right's "contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quotation marks omitted). In other words, "exiting precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). In this evaluation, "we look to law as decided by the Supreme Court, the Eleventh Circuit, or the Supreme Court of Georgia." *Barnes v. Zaccari*, 669 F.3d 1295, 1307 (11th Cir. 2012).

The parties agree that Jones and Nalley were engaged in discretionary duties at all relevant times. So we turn to whether Stefani showed that the defendants violated his constitutional rights and whether those rights were clearly established.

Stefani's central § 1983 claim is one of malicious prosecution. We have identified "malicious prosecution as a violation of the Fourth Amendment and a viable constitutional tort cognizable under § 1983." *Wood v. Kesler*, 323 F.3d 872, 881 (11th Cir. 2003). A § 1983 malicious-prosecution claim requires proof of (1) the elements of the common-law tort of malicious prosecution and (2) a violation of the plaintiff's Fourth Amendment right against unreasonable seizures. *Paez*, 915 F.3d at 1285; *Blue v. Lopez*, 901 F.3d 1352, 1357 (11th Cir. 2018). The common-law elements of malicious prosecution are (1) a criminal prosecution instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff's favor; and (4) caused damage to the plaintiff. *Kjellsen v. Mills*, 517 F.3d 1232, 1237 (11th Cir. 2008).

An arrest without probable cause is an unreasonable seizure that violates the Fourth Amendment.[1] *Paez*, 915 F.3d at 1285; *see id.* ("[T]he law requires that a warrant for an arrest be supported by sufficient information to establish probable cause." (quotation marks omitted)). By the same token, "the existence of probable cause defeats a § 1983 malicious prosecution claim." *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1256 (11th Cir. 2010).

[1] A seizure without probable cause pursuant to an arrest warrant generally gives rise to a § 1983 claim for malicious prosecution, *Whiting v. Traylor*, 85 F.3d 581, 585–86 (11th Cir. 1996), while a *warrantless* arrest without probable cause provides the basis for a § 1983 claim for false arrest, *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004).

Probable cause exists when the facts and circumstances, of which the official has reasonably trustworthy information, would cause a prudent person to believe that the suspect has committed, is committing, or is about to commit an offense. *Jordan v. Mosley*, 487 F.3d 1350, 1355 (11th Cir. 2007). In assessing probable cause, we deal with "the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." *Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998) (quotation marks omitted). "No officer has a duty to prove every element of a crime before making an arrest. Police officers are not expected to be lawyers or prosecutors." *Jordan*, 487 F.3d at 1355 (citation and quotation marks omitted).

Jones and Nalley do not contend that Stefani's arrest was supported by actual probable cause. Instead, they argue that they are protected by qualified immunity because they had "arguable probable cause."

"If an officer lacked probable cause to arrest, we must consider whether arguable probable cause supported the arrest at the time." *Carter*, 821 F.3d at 1319. "If so, the officer is still entitled to qualified immunity, even in the absence of actual probable cause." *Id.*

Arguable probable cause "exists where reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendants could have believed that probable cause existed to arrest." *Grider*, 618 F.3d at 1257 (quotation

marks omitted). In other words, qualified immunity still applies if the officer reasonably but mistakenly believed that probable cause existed. *Id.* The standard is an objective one and does not depend on the subjective beliefs or intent of the arresting officer. *Id.* But it does depend on "the information known to the defendant officers or officials at the time of their conduct." *Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) (quotation marks omitted). "Whether an officer possesses arguable probable cause depends on the elements of the alleged crime and the operative fact pattern." *Grider*, 618 F.3d at 1257.

Nalley obtained warrants to arrest Stefani for criminal attempt to commit child molestation, in violation of O.C.G.A. §§ 16-4-1 and 16-6-4(a)(1). Under Georgia law, "[a] person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step toward the commission of that crime." O.C.G.A. § 16-4-1. Therefore, to establish that a defendant attempted to commit child molestation, the state is required to prove "that he took a substantial step toward doing 'any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.'" *Reid v. State*, 825 S.E.2d 555, 557 (Ga. Ct. App. 2019) (quoting O.C.G.A. § 16-6-4(a)(1)). "[T]he focus is on the adult's action toward the child in relation to the adult's motive for that action." *Slack v. State*, 593 S.E.2d 664, 666 (Ga. Ct. App. 2004). "Whether a particular act

is 'immoral or indecent' is a jury question that may be determined in conjunction with the intent that drives the act." *Id.* The defendant's intent may be inferred from the circumstances surrounding the acts of which the accused is charged. *Schlesselman v. State*, 773 S.E.2d 413, 415 (Ga. Ct. App. 2015).

A.

Here, the district court erred in denying qualified immunity to Jones and Nalley on the § 1983 claims against them in their individual capacity. We conclude that these defendants "reasonably believe[d] that [their] conduct complie[d] with the law." *Pearson*, 555 U.S. at 244.

The "clearest indication" that the defendants "acted in an objectively reasonable manner" is the fact that a neutral magistrate issued the arrest warrants. *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) ("Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner."). While the warrants alone do not immunize Jones and Nalley, they are entitled to qualified immunity unless "it is obvious that no reasonably competent officer would have concluded that a warrant should issue." *Id.* at 547 (quotation marks omitted). The "threshold for establishing this exception is a high one" because it is the magistrate's job to determine whether the officer's allegations establish probable cause to issue a warrant. *Id.*; *Malley v.*

Briggs, 475 U.S. 335, 346 n.9 (1986) (noting that "the magistrate is more qualified than the police officer to make a probable cause determination.").

Stefani responds that qualified immunity is not appropriate for two independent reasons. First, according to Stefani, no reasonably competent officer would have concluded that a warrant should issue based on the suspect's alleged conduct. Second, he argues, Nalley misrepresented and omitted material facts when applying for the arrest warrants. We take each argument in turn.

1.

As noted above, criminal attempt under Georgia law consists of two elements: (1) intent to commit a specific offense; and (2) a substantial step toward the commission of that offense. The key issue with respect to probable cause in this case is the suspect's intent—that is, in offering Lucas $200 per hour to spend time alone with her three daughters, did the man have intentions that were innocuous or lascivious? If the latter, the suspect's offer to buy time with Lucas's daughters reasonably could be considered a substantial step toward commission of a child-molestation offense. *See Wittschen v. State*, 383 S.E.2d 885, 886–87 (Ga. 1989) (concluding that a substantial step toward the commission of child molestation had been made where the defendant drove up to two girls in a residential neighborhood and offered them money if they let him stick his hand down their pants).

The district court found that the suspect's offer, though "odd" and "socially improper" and "perhaps even creepy," did not establish arguable probable cause because there was "no evidence of the suspect's intended purpose." But intent is notoriously difficult to prove by direct means, and we do not expect officers to have direct proof of intent before making an arrest. *See Jordan*, 487 F.3d at 1355 ("[N]o police officer can truly know another person's subjective intent."). Instead, intent is most often inferred from the person's actions in a particular context. *See id.* (quoting the maxim "acts indicate the intention"); *Schlesselman*, 773 S.E.2d at 415.

Based on the suspect's actions as relayed by Lucas, a reasonable officer could have concluded that there was probable cause to believe that the suspect intended to commit an "immoral or indecent act" to or in the presence of Lucas's daughters "with the intent to arouse or satisfy the sexual desires of either the child or the person.'" *Reid*, 825 S.E.2d at 557. The suspect did not simply make a passing comment about her daughters. He made a direct proposition: $200 per hour to spend time with her three daughters, who were all under the age of ten. Not only that, but the suspect wanted time "alone" with them, away from Lucas's supervision. Isolating the girls from Lucas would be necessary only if the suspect intended to do something with the girls that he did not want Lucas to see. He then "sped off" when Lucas called the police.

While we cannot know with certainty what the suspect intended, probable cause deals with "the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." *See Rankin*, 133 F.3d at 1435. And in the absence of any other plausible reason why an adult man would offer a stranger $200 per hour to spend time alone with her three young girls and then speed off when the police are called, we cannot say it was unreasonable for the defendants to infer that the suspect's actions were motivated by sexual desire, even though he did not make any sexual comments.

Further supporting the objective reasonableness of the defendants' conduct is the fact that the district attorney's office had advised pre-arrest that the suspect could be charged with criminal attempt to commit child molestation.[2] *See, e.g.*, *Stearns v. Clarkson*, 615 F.3d 1278, 1284–85 (10th Cir. 2010) (collecting cases supporting the proposition that the pre-arrest advice of the prosecuting attorney's office is a factor relevant to the qualified-immunity analysis). The relevant criminal statutes are broadly worded and dependent largely on the element of intent, which is evaluated under the totality of the circumstances. *Reid*, 825 S.E.2d at 557–58. And as we have already established, there were some facts about those circumstances tending to suggest that the suspect may have attempted to solicit Lucas's daughters out of

[2] Among other responsibilities, district attorneys in Georgia have a statutory duty "[t]o advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses." O.C.G.A. § 15-18-6(7).

sexual desire. So in a case like this one, we think it's reasonable for an officer to consult and then take into account the opinion of a district attorney when deciding whether probable cause exists to support an arrest. After all, officers are "not expected to be lawyers or prosecutors." *Jordan*, 487 F.3d at 1355 (quotation marks omitted). While that advice did not alone establish that the defendants acted reasonably, we find that it supports their claim to qualified immunity in this case.

We acknowledge that a magistrate judge later concluded that probable cause was lacking.[3] But for the reasons we have explained, we cannot say it was "obvious that no reasonably competent officer," based on the facts known to the defendants at the time, "would have concluded that a warrant should issue." *Messerschmidt*, 565 U.S. at 547. Any lack of probable cause was not so "clear that a reasonable official would understand that what he is doing" violated Stefani's right to be free from unreasonable seizures. *See Hope*, 536 U.S. at 739

2.

We now consider the argument that qualified immunity does not apply because Nalley misrepresented and omitted material facts when applying for the arrest warrants.

[3] It appears that Nalley also reconsidered the issue of probable cause once the charges were dismissed. But his admission in that regard is not relevant because the standard for probable cause is an objective one that does not depend on the subjective beliefs of the particular officer. *See Grider*, 618 F.3d at 1257.

An arrest warrant is invalid "if the affidavit supporting the warrant contains deliberate falsity or reckless disregard for the truth." *Dahl v. Holley*, 312 F.3d 1228, 1235 (11th Cir. 2002) (citing *Franks v. Delaware*, 438 U.S. 154 (1978)), *abrogated on other grounds by Lozman v. City of Riviera Beach, Fla.*, 138 S. Ct. 1945 (2018). This rule applies equally "to information omitted from warrant affidavits." *Madiwale v. Savaiko*, 117 F.3d 1321, 1326 (11th Cir. 1997). Specifically, "a warrant violates the Fourth Amendment when it contains omissions made intentionally or with a reckless disregard for the accuracy of the affidavit.'" *Id.* at 1326–27 (quotation marks omitted). And because we are dealing with qualified immunity, the omitted facts must be "so clearly material that every reasonable law officer would have known that their omission would lead to a search [or seizure] in violation of federal law." *Haygood v. Johnson*, 70 F.3d 92, 95 (11th Cir. 1995). There is no constitutional violation "if, absent the misstatements or omissions, there remains sufficient content to support a finding of probable cause." *Dahl*, 312 F.3d at 1235.

Here, Stefani fails to offer proof that Nalley deliberately or recklessly misstated the evidence or omitted any clearly material fact.[4] Stefani claims that

[4] Because the arrest warrants were expressly issued based on the affidavit and "oral testimony given under oath," we consider both the affidavit and Nalley's oral testimony. *United States v. Hill*, 500 F.2d 315, 320 (5th Cir. 1974) ("[A] federal court . . . may consider an affiant's oral testimony, extrinsic to the written affidavit, which is sworn before the issuing magistrate, in determining whether the warrant was founded on probable cause."); *see Garmon v. Lumpkin Cty., Ga.*, 878 F.2d 1406, 1409 n.1 (11th Cir. 1989) (noting that oral testimony is relevant if the warrant indicates that it was based in part on such testimony).

Nalley misrepresented that the suspect's purpose was "sexual gratification and to in pregnant [sic]" and that he "offered money for the children to have sex with" them. These may have been overstatements, but Nalley made the magistrate aware that the suspect did not use any sexually charged or explicit speech. So it would have been clear to the magistrate that these comments were Nalley's inferences from the facts about the suspect's conduct, which were otherwise accurately presented. The magistrate was free to draw her own inferences and was not misled about facts material to the probable cause determination.

As for the "key exculpatory information" Stefani claims Nalley deliberately omitted, some of this information was not known to him when he applied for the warrants. Stefani asserts that Nalley omitted facts that "Lucas was not 100% sure that the individual who approached her matched the description of Stefani" and "Stefani's vehicle did not match the description of the unidentified individual's vehicle." But undisputed evidence reflects that Nalley did not learn of this information until after Stefani's arrest. So he could not have "intentionally" omitted it when appearing before the magistrate. *See Madiwale*, 117 F.3d at 1326–27.

Nor was the omitted information clearly material to probable cause, no matter what the particular magistrate may or may not have said about that issue. *See Grider*, 618 F.3d at 1257 (explaining that the standard for probable cause is an objective one that does not depend on subjective beliefs). Nalley accurately told the magistrate

that Lucas had identified Stefani in a six-person photo array. Even though Lucas had made an earlier identification and was not "a hundred percent" sure at that time, she was hardly equivocal. She also stated that Stefani looked "identical" and "just like him." And in light of Lucas's "immediate[]" identification of Stefani in the photo array, the minor inconsistencies between Stefani and the initial description provided by Lucas were not so clearly material that no reasonable officer would have omitted them. The same goes for the minor inconsistencies between Lucas's description of the suspect's truck and Stefani's truck. Including this information would not defeat probable cause to believe that Stefani was the suspect based on Lucas's photo-array identification.

Stefani also points to what he describes as "mounting exculpatory evidence"—including, most notably, alibi video evidence of Stefani's truck parked at another location during the time of the incident—but, again, this evidence was obtained *after* the arrest warrants had issued. Some of the evidence—information indicating that Stefani was at Taco Bell right around the time of the incident—was not even known to the prosecution until the day of the preliminary hearing on March 31, several weeks after Stefani's arrest. So we cannot consider this evidence in evaluating whether the defendants are entitled to qualified immunity in relation to obtaining the arrest warrants. *See Wilkerson*, 736 F.3d at 978 (qualified immunity depends on "the information known to the defendant officers or officials at the time

of their conduct, not the facts known to the plaintiff then or those known to a court later.").

Finally, despite some passing comments that are insufficient to preserve the issue for appeal, Stefani does not clearly argue that Jones and Nalley are liable for failing to seek dismissal of the charges after Stefani's arrest. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (passing references are insufficient to raise an issue for appeal). So any argument along these lines has been abandoned. In any case, law enforcement officers have no clearly established duty to do anything with exculpatory evidence "[i]f they have reason to believe the prosecutor already has" it. *McMillian v. Johnson*, 88 F.3d 1554, 1567 (11th Cir.), *opinion amended on reh'g*, 101 F.3d 1363 (11th Cir. 1996).

B.

In sum, Jones and Nalley are entitled to qualified immunity on Stefani's § 1983 claim of malicious prosecution because a reasonable officer in their position could have believed that probable cause supported the arrest. And since Stefani's § 1983 claim of unlawful search stands or falls with the malicious-prosecution claim, *see* Appellee's Br. at 22 ("[A]ny probable cause to justify the search of Stefani's home subsequent to his arrest would have to flow from the probable cause used for his arrest"), we likewise hold that Jones and Nalley are entitled to qualified immunity on the unlawful-search claim. We therefore reverse the denial of qualified immunity

to Jones and Nalley, vacate the partial grant of summary judgment to Stefani, and remand for entry of judgment in favor of Jones and Nalley.

IV.

As for the claims against the City, we vacate the partial grant of summary judgment in favor of Stefani. While a partial grant of summary judgment ordinarily is not an appealable order, we have "pendent appellate jurisdiction" to review matters that are "inextricably intertwined with an appealable decision," such as the denial of qualified immunity. *Smith v. LePage*, 834 F.3d 1285, 1292 (11th Cir. 2016) (quotation marks omitted). "Matters may be sufficiently intertwined where they implicate[] the same facts and the same law." *Id.* (quotation marks omitted).

That is the case here. The district court's decision to grant partial summary judgment to Stefani and against the City appears to be based primarily, if not solely, on its conclusion that Stefani's arrest was not supported by arguable probable cause. In other words, the decision is based on essentially the same facts and the same law as the qualified-immunity issues we have already resolved against Stefani. We therefore vacate the partial grant of summary judgment to the extent it rested on the lack of even arguable probable cause to support Stefani's arrest. We decline to consider any remaining arguments.

V.

For the foregoing reasons, we reverse the district court's August 24, 2018, order to the extent it denied qualified immunity to Jones and Nalley, vacate it to the extent it granted partial summary judgment to Stefani on the individual-capacity § 1983 claims, and remand for entry of judgment in favor of Jones and Nalley. We vacate that same order to the extent it granted summary judgment to Stefani on his § 1983 and state-law claims against the City, and we remand for further proceedings consistent with this opinion.

REVERSED IN PART, VACATED IN PART, AND REMANDED.