[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13635
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00605-CAP

AMANDA MOWELL,

Plaintiff-Appellant,

versus

CITY OF MILTON,
GEORGIA, CHARLES IVY,

Defendants-Appellees.

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

(April 23, 2020)

Before MARTIN, ROSENBAUM and BLACK, Circuit Judges.

PER CURIAM:

Following her arrest for various offenses under Georgia law, Appellant Amanda Mowell sued Appellee Officer Charles Ivy of the Milton Police Department and the City of Milton, Georgia, asserting several state-law tort claims as well as a false-arrest claim under 42 U.S.C. § 1983. She now appeals the district court's grant of summary judgment in favor of Officer Ivy and the Milton Police Department. Mowell argues the district court erred in concluding Officer Ivy was entitled to qualified immunity. After review, we reverse the district court's grant of summary judgment, concluding there are issues of material fact that preclude a determination as to Officer Ivy's entitlement to qualified immunity.

I. BACKGROUND

The events that resulted in Mowell's arrest were the culmination of an ongoing dispute between Mowell and a coworker of hers, Brankica (Pavlov) Ergotic, who at the time was renting a room from Mowell. While the facts relating to the underlying feud are not in dispute, many of the salient facts surrounding the arrest itself are. We briefly review the undisputed facts before laying out the conflicting versions of the arrest itself.

A. The Dispute

Around September 2015, Mowell permitted her subordinate coworker, Ergotic and Ergotic's young son to rent the downstairs bedroom of her townhouse for $600 a month. No formal lease agreement was signed, and Ergotic was not

given a key to the residence. At the time, Mowell also lived with her two minor children and her then-girlfriend Michelle Stump.

On January 24, 2016, Mowell discovered her washing machine (which Ergotic also used) was broken when she attempted to use the machine, and it flooded the floor of the laundry room. Believing Ergotic had overloaded the machine the night before, Mowell texted Ergotic to inform her the machine was broken, and asked her to chip in to replace the washing machine. What followed was a series of increasingly hostile text messages and phone calls between the two. While their correspondence began as a fight about the washing machine, it devolved into an argument about their living situation in general, and culminated in the two agreeing Ergotic would move out of the residence.

While the two originally agreed Ergotic would be out by the end of the month (January), Ergotic, at a later point in the conversation, indicated she would need more time to remove her belongings and that Mowell would have to evict her. In response, Mowell advised she would place some of Ergotic's belongings—enough to get her through a couple of days—on the sidewalk outside the house that day. According to Mowell, she decided to do this because Ergotic had threatened her during the course of their telephone conversations, saying "you just wait till I get home."

B. Mowell's Arrest

Upon returning to the residence and finding her belongings on the sidewalk, Ergotic called the Milton Police Department for assistance. Officer Ivy was the first to arrive on the scene, where he observed several personal belongings placed near the street in front of the residence. Officer Ivy approached the residence, knocked, and, when Mowell answered the door, questioned her about why someone's personal property was in the yard. Mowell explained the argument with Ergotic over the washing machine, and she told Officer Ivy she did not want Ergotic in the house around her small children because Ergotic had threatened her and Mowell believed she was on drugs. Officer Ivy believed Mowell smelled like she had been drinking—which she has consistently denied—and he claimed that, throughout their interaction and leading up to her arrest, she appeared upset and angry, forcing him to order her several times to calm down and stop yelling.[1]

At some point, Ergotic, driven by her sister-in-law, returned to the scene, though she did not approach the residence, opting instead to park down the street. Around the same time, another officer (and Officer Ivy's direct supervisor), Sgt. Ara Baronian, arrived on the scene. Upon Sgt. Baronian's arrival, Officer Ivy went

[1] Regarding Mowell's demeanor toward Officer Ivy, while she does not dispute Officer Ivy told her to stop yelling and cursing, she denies she was actually yelling, insisting she was simply using an "outside voice." And while she acknowledges some curse words "probably" came out of her mouth, she claims she was merely cursing "at the situation," not at any particular person.

over to speak with him about the situation before walking over to Ergotic's vehicle to speak with her. Officer Ivy then returned to speak with Mowell again. Officer Ivy explained Mowell would need to go through a formal eviction process if she did not want Ergotic to continue to live in the townhome.

To defuse the situation and because both officers could see how upset Mowell was becoming, the officers suggested Ergotic stay at another location for the night. Ergotic agreed, but insisted she needed to enter the residence to get her diabetes medication—which she had been unable to find amongst her belongings on the sidewalk—before she could leave for the night. Mowell, however, maintained Ergotic's medication was among the items she had placed on the sidewalk and that Ergotic did not need to enter the house. Throughout this conversation, Mowell was standing at or near the front entrance to her home. As Officer Ivy and Ergotic approached the door (purportedly so that Ergotic could enter the home to look for her medicine), Mowell put her hand up on the door frame to physically block Ergotic from entering the home.

It is at this point that the parties' versions of the events begin to diverge significantly. According to Officer Ivy (and Ergotic), when Ergotic attempted to enter the house, Mowell stood in front of her and physically pushed her away from the door. It was at that point Officer Ivy decided to arrest Mowell. Officer Ivy then grabbed Mowell's arm, which she immediately jerked away, saying "I'm not

going." He informed Mowell she was under arrest and attempted to grab her arm, but she again resisted what he considered to be a "lawful arrest." Using what he described as "soft techniques," Officer Ivy guided Mowell to the ground and placed her in handcuffs. Officer Ivy claims he then helped Mowell up off the ground and escorted her to his patrol car.[2]

Mowell, on the other hand, has consistently testified she never pushed Ergotic, nor did Ergotic ever get close enough to the front door for Mowell to push her. Instead, she claims after she put her hand on the doorframe and informed Officer Ivy that Ergotic's medicine was among the items she had placed outside, Officer Ivy immediately and without provocation grabbed her hand off the doorframe, placed it behind her back, cuffed her wrist, and performed a leg sweep, slamming her to the ground face first. Officer Ivy then pushed his knee into Mowell's back as he cuffed her other wrist before pulling her up. She asked Officer Ivy why he was handling her so roughly since she was "not resisting arrest."

After transporting Mowell to the Alpharetta Jail, Officer Ivy obtained warrants for Mowell's arrest for three offenses: (1) simple battery/family violence,

[2] After arresting Mowell, Officer Ivy provided Ergotic with a witness statement, which she completed and returned to him. That witness statement (as well as Ergotic's deposition testimony) largely corroborates Officer Ivy's recitation of the events leading to Mowell's arrest. Officer Ivy also filed an incident report setting out his version of events.

in violation of O.C.G.A. § 16-5-23.1; (2) disorderly conduct, in violation of O.C.G.A. § 16-11-39; and (3) obstruction/resisting an officer, in violation of O.C.G.A. § 16-10-24. But before a formal indictment was filed, Mowell entered into an agreement with the prosecutor, pursuant to which she entered a pre-trial diversion program, which involved completing 40 hours of community service and a one-hour anger management course. Upon completion of the pre-trial diversion program, the charges against Mowell were dismissed.

C. District Court Proceedings

Based on the above-described events, Mowell sued Officer Ivy and the City of Milton, Georgia (the City), asserting several state-law tort claims as well as a Fourth Amendment false arrest claim under 42 U.S.C. § 1983.[3] Following discovery, Officer Ivy and the City moved for summary judgment on all claims. The district court granted the motions.

As to Mowell's Fourth Amendment claim, the district court concluded Officer Ivy was entitled to qualified immunity. The district court first concluded there were issues of material fact precluding a finding that Officer Ivy had probable cause to arrest Mowell; in other words, viewing the facts in the light most favorable to Mowell established a constitutional violation. But the court went on

[3] Mowell initially filed suit in the State Court of Fulton County, Georgia, but the City and Officer Ivy removed the action to the District Court for the Northern District of Georgia.

to conclude her right to be free from arrest without probable cause under the circumstances was not clearly established, at least as to the disorderly conduct count. The court focused on the undisputed fact Mowell had, in the midst of an ongoing argument with Ergotic, placed Ergotic's property outside, putting it "in danger of being damaged or destroyed." *See* O.C.G.A. § 16-11-39(a).[4] This appeal followed.

II. DISCUSSION

We review *de novo* a district court's disposition of a summary judgment motion based on qualified immunity, applying the same legal standards as the district court. *Singletary v. Vargas*, 804 F.3d 1174, 1180 (11th Cir. 2015). Summary judgment is appropriate where "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 a case, like this one, involving qualified immunity, "[w]e resolve all issues of material fact in favor of the plaintiff, and then determine the legal question of whether the defendant is entitled to qualified immunity under that

[4] Having concluded Officer Ivy was entitled to summary judgment as to Mowell's § 1983 claim, the district court declined to exercise pendent jurisdiction over Mowell's remaining state-law claims, as the sole basis for removal had been excised from the case. *See* 28 U.S.C. § 1367(c)(3). Because we reverse the district court's summary judgment ruling as to the § 1983 claim, it continues to have supplemental jurisdiction over Mowell's state-law claims. *See id.* § 1367(a). We decline at this juncture to opine on the merits of those claims, which the district court ought to address in the first instance.

version of the facts." *Stephens v. DeGiovanni*, 852 F.3d 1298, 1313 (11th Cir. 2017) (quotation marks omitted).

Qualified immunity protects government actors performing discretionary functions from being sued in their individual capacities.[5] *See Wilson v. Layne*, 526 U.S. 603, 609 (1999). The doctrine shields government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). It does not, however, offer protection "if an official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]." *Id.* at 815 (quotation marks and emphasis omitted).

Our qualified immunity analysis proceeds in two steps, though we need not necessarily address the two steps in this order. *See Chesser v. Sparks*, 248 F.3d 1117, 1122 (11th Cir. 2001). First, we address the question of whether the facts as alleged, viewed in the light most favorable to Mowell, establish a constitutional violation at all. *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (receded from by *Pearson v. Callahan*, 555 U.S. 223, 227 (2009)). If no constitutional violation is established, then the defendants prevail, and "there is no necessity for further

[5] The parties here agree Officer Ivy was acting within the scope of his discretionary authority when he arrested Mowell. We therefore do not address this initial issue here.

inquiries concerning qualified immunity." *Id.* But if a constitutional right would have been violated under Mowell's version of the facts, we will then determine whether that right was clearly established. *Id.*

We first address whether, under Mowell's version of the events leading to her arrest, her right not to be arrested absent probable cause was violated before addressing whether that right was clearly established at the time of her arrest.

A. Fourth Amendment Violation

A warrantless arrest is constitutionally valid only when there is probable cause to arrest. *See United States v. Watson*, 423 U.S. 411, 417 (1976); *see also* U.S. Const. amend. IV ("The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ."). Probable cause exists if, "at the moment the arrest was made, 'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing' that [the suspect] had committed or was committing an offense." *Dahl v. Holley*, 312 F.3d 1228, 1233 (11th Cir. 2002) (quoting *Hunter v. Bryant*, 502 U.S. 224, 228 (1991)), *abrogated on other grounds by Lozman v. City of Riviera Beach*, 130 S. Ct. 1945, 1950, 1955 (2018).

Here, Officer Ivy ultimately obtained arrest warrants for three offenses under Georgia law: simple battery/family violence battery, disorderly conduct, and

obstruction/resisting an officer. We, like the district court, readily conclude that, viewing the evidence in the light most favorable to Mowell—that is, crediting her version of the events leading to her arrest—Officer Ivy did not have actual probable cause to arrest Mowell. *See Stephens*, 852 F.3d at 1313. To recap, Mowell has consistently maintained, both in her affidavit and deposition, that (1) she never shoved or even touched Ergotic; (2) she was not yelling or intoxicated, and never insulted or cursed at Ergotic or Officer Ivy; and (3) she never resisted Officer Ivy once he decided to arrest her.

Assuming, as we must at this point, that Mowell's recitation of the facts is the correct one, Officer Ivy would not have had probable cause to arrest her for any of the identified Georgia crimes. *See* O.C.G.A. § 16-5-23.1(a) ("A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another."); *id.* § 16-11-39(a) ("A person commits the offense of disorderly conduct when such person . . . [a]cts in a violent or tumultuous manner toward another person whereby such person . . . [or] the property of such person is placed in danger of being damaged or destroyed[,] . . . or [w]ithout provocation, uses to or of another person . . . 'fighting words' . . . ."); *id.* § 16-10-24 ("[A] person who knowingly and willfully obstructs or hinders any law enforcement officer . . . shall be guilty of a misdemeanor.").

Officer Ivy urges us to essentially disregard Mowell's sworn testimony in favor of his version of events, arguing he was entitled to rely upon Ergotic's witness statement (which corroborates his version of events) as a basis for probable cause. In support of this argument, he points us to two unpublished cases from our Circuit, which he claims stand for the general proposition that a plaintiff–arrestee's denial of wrongdoing is insufficient to create an issue of fact in a false-arrest case, at least where the arresting officer relies on witness statements or identifications. *See Rogers v. City of Orlando*, 660 F. App'x 819 (11th Cir. 2016); *Hendricks v. Collier Cty. Fla.*, 492 F. App'x 90 (11th Cir. 2012).[6]

But both *Rogers* and *Hendricks* were cases in which the arresting officer or officers did not observe the allegedly illegal conduct, and, as a result, the sole asserted basis for probable cause in each case was a witness statement or identification. *See Rogers*, 660 F. App'x at 821–22; *Hendricks*, 492 F. App'x at 91–92. Here, in contrast, Officer Ivy has not claimed his decision to arrest Mowell was based on Ergotic's witness statement, nor could he, since Ergotic did not prepare the statement until after Officer Ivy had conducted the warrantless arrest.[7]

[6] As these cases are unpublished, they do not constitute precedent we are bound to follow. In any event, as we explain, we find these cases distinguishable from the instant case.

[7] Indeed, Officer Ivy's uncontroverted testimony is that he "decided to arrest [Mowell]," "[a]fter she made contact with" Ergotic.

Instead, Officer Ivy's decision (i.e., his probable cause determination) was based on his observation of Mowell's conduct.

The problem for Officer Ivy is Mowell disputes his version of events in a way that completely undermines his asserted basis for placing her under arrest. *See Kingsland v. City of Miami*, 382 F.3d 1220, 1228–31 (11th Cir. 2004) (reversing a grant of summary judgment to defendant officers where the actual probable cause to arrest was based upon the defendant officers' testimony against the plaintiff–arrestee). Officer Ivy cannot resolve this factual dispute by pointing to a witness statement prepared after he had already made the decision to arrest Mowell.[8] The fact Ergotic's witness statement and deposition testimony corroborate Officer Ivy's version of events goes to the *weight* a factfinder might give his testimony vis-à-vis Mowell's, not to whether her testimony should be wholly disregarded at the summary judgment stage. *See Jones v. UPS Ground Freight*, 683 F.3d 1283, 1292 (11th Cir. 2012) (stating a court "may not weigh conflicting evidence or make credibility determinations" in considering a summary judgment motion (quotation marks omitted)).

[8] While it is true Officer Ivey subsequently obtained a formal arrest warrant, which may ostensibly have been based on Ergotic's witness statement, it is his decision in the moment to arrest Mowell that is the operative event for purposes of our Fourth Amendment analysis. In any case, Mowell asserts the subsequent arrest warrant was itself based on false affidavits sworn out by Officer Ivy.

Accordingly, we conclude, under Mowell's version of the facts, that she was arrested without actual probable cause, in violation of Fourth Amendment rights.

B. Clearly Established Right

Having concluded that, under Mowell's version of the facts, no actual probable cause existed for her arrest, we now turn to whether her right to be free from arrest without probable cause was clearly established under the circumstances. Again, we make this determination viewing the facts in the light most favorable to Mowell.

For a constitutional right to be clearly established, the contours of that right "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (citation omitted).

In the context of a false-arrest case, another way of framing the "clearly established" inquiry is whether, even if the officer lacked actual probable cause, he nonetheless had "arguable probable cause" for the arrest. *See Holmes v. Kucynda*, 321 F.3d 1069, 1079 (11th Cir. 2003) ("To receive qualified immunity protection, an officer need not have actual probable cause but only '*arguable probable cause*.'" (quotation marks omitted)). This inquiry boils down to whether the

officer "reasonably could have believed that probable cause existed, in light of the information the officer possessed," even if, with the benefit of hindsight, it turns out no actual probable cause existed. *Id.* (quotation marks omitted). In this way, "[e]ven law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity." *Hunter*, 502 U.S. at 227 (quotation marks omitted).

While Mowell arguably has not identified a case that is "on all fours," so to speak, with the facts of this case, we nonetheless find Mowell's version of events would not leave a reasonable officer with the impression he had probable cause to arrest Mowell for any of the charged crimes. *See Holmes*, 321 F.3d at 1078 ("[T]he fact pattern of prior cases used to show that a right is clearly established need not be 'fundamentally similar' or even 'materially similar' to the facts alleged. Rather, 'officials can still be on notice that their conduct violates established law even in novel factual circumstances.'" (quoting *Hope v. Pelzer*, 536 U.S. 730, 740–41 (2002))); *see also Keating v. City of Miami*, 598 F.3d 753, 766 (11th Cir. 2010) (noting a plaintiff can show a right is clearly established by demonstrating, *inter alia*, that "a broader, clearly established principle should control" or that the "case fits within the exception of conduct which so obviously violates [the] constitution that prior case law is unnecessary" (alteration in original) (quotation marks omitted)).

Again, if Mowell's testimony is to be believed, she did little more than raise her voice, express frustration with the situation, and put her arm out to block the entrance to her home. She had also, earlier in the day, placed some of Ergotic's belongings on the sidewalk in front of the residence. There can be little doubt a reasonable officer would not mistakenly believe a person who committed those actions would be subject to arrest for battery, disorderly conduct, or resisting an officer. *See Dahl*, 312 F.3d at 1233.

The relevant question here isn't whether Officer Ivy was mistaken in what he observed; it is whether, given what he observed—i.e., "the information [he] possessed"—he was mistaken in believing he had probable cause. *See Holmes*, 321 F.3d at 1079. And the divergent testimony from Officer Ivy (and Ergotic) and Mowell concerning Mowell's demeanor and actions leading up to the arrest precludes any determination, at this stage, as to what information Officer Ivy actually possessed. We therefore must assume the events transpired as Mowell has described them in her sworn testimony, and those facts simply would not lead a reasonable officer to reasonably believe he possessed probable cause.[9]

[9] To the extent Officer Ivy argues he had arguable probable cause to arrest Mowell for disorderly conduct based solely on her placing Ergotic's belongings on the sidewalk earlier in the day, we do not find this argument persuasive. As we have noted, Georgia's disorderly conduct statute—of which Officer Ivy was undoubtedly aware—provides in pertinent part that "[a] person commits the offense of disorderly conduct when such person . . . [a]cts in a violent or tumultuous manner toward another person whereby the property of such person is placed in danger of being damaged or destroyed." O.C.G.A. § 16-11-39(a)(2). There is no indication in the record that Officer Ivy had within his possession any information from which he could have

III. CONCLUSION

For the reasons discussed above, we conclude Officer Ivy was not entitled to summary judgment as to Mowell's § 1983 false-arrest claim based on qualified immunity. We reverse the district court's summary judgment ruling and remand for additional proceedings consistent with this opinion.

To be clear, we are not, by our decision today, definitively saying Officer Ivy is not entitled to qualified immunity. But because the answer to that legal question turns on a disputed set of facts, summary judgment is inappropriate. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1144 (11th Cir. 2007) (noting, in the context of a false-arrest case, that "[w]here . . . the resolution of disputed critical facts determines on which side of this line [an] officer's conduct fell, summary judgment is inappropriate").

REVERSED AND REMANDED.

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reasonably concluded Mowell placed Ergotic's property outside while "[a]ct[ing] in a violent or tumultuous manner toward" Ergotic or anyone else, as the statute requires.