[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

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No. 21-12563

Non-Argument Calendar

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EMORY L. RICKERSON,

Plaintiff-Appellant,

versus

RODNEY SCOTT JETER,
individually,

Defendant-Appellee.

____

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 3:19-cv-00130-TCB

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Before JORDAN, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

This Section 1983 appeal turns on whether Rodney Scott Jeter, a Georgia State Patrol Officer, is entitled to qualified immunity based on his arrest of Emory Rickerson for obstruction of a law enforcement officer. Rickerson disobeyed multiple lawful orders to move a truck from the scene of an accident, resulting in his arrest. After careful consideration, we hold that Jeter was entitled to qualified immunity and affirm.

I. BACKGROUND

On October 10, 2017, Rebecca Buchanan was involved in a serious accident after losing control of her vehicle on a Georgia highway. When the dust settled, Buchanan's vehicle laid at rest on the highway's shoulder, and she was sprawled across its front seats. Several civilians came to Buchanan's aid, including retired firefighter Emory Rickerson. As the only person initially on the scene with experience responding to accidents, Rickerson parked his truck on the shoulder behind the debris field, turned on his hazard lights, and took charge of the effort to keep Buchanan alive. Specifically, Rickerson and two other civilians took turns caring for Buchanan, with two of the three kneeling and squatting to hold her head in position and keep her airway open while the third stood to the side and rested. When Rickerson wasn't holding Buchanan, he was instructing the other two civilians on how to do so properly.

Minutes after the crash, Rodney Scott Jeter, a Georgia State patrol officer, arrived at the scene. After he called 911, Jeter became concerned that emergency vehicles would not be able to access the scene. In an attempt to clear the way for emergency vehicles, Jeter identified Rickerson as the owner of the truck parked behind the crash site and ordered him to move his vehicle. He directed Rickerson to move the truck at least twice. When Jeter issued the orders, Rickerson was not actively holding Buchanan. Instead, he was standing beside the other two civilians, who were holding her, and continuing to issue instructions.

Rickerson disobeyed Jeter's orders to move the truck, explaining that it would force him to leave Buchanan, who he described as his patient. After Rickerson's last refusal, one of the other civilians asked for and received permission to move the truck for him. That civilian proceeded to move the truck herself about thirty seconds after being given permission. In the aftermath of Rickerson's refusals and the civilian intervention, Jeter told Rickerson that he would speak to him later.

Eventually, additional first responders arrived on the scene and a local Sherriff's Deputy interviewed Rickerson in Jeter's presence. Rickerson harshly critiqued Jeter, saying "I hope I never run into anybody like you again, you're a bad name to the fire service." Rickerson continued, telling Jeter that "I don't care about your background, I care about what happened right here. You're mad at me because I don't care about your background. I don't give a rat's ass about your background." Finally, Rickerson repeatedly asked

that he be returned his drivers' license (which the officers had taken to file a report) or taken to jail. Jeter then arrested Rickerson for misdemeanor obstruction of a law enforcement officer based on his refusal to move the truck. The charges were eventually dismissed.

Rickerson sued Jeter in the Northern District of Georgia, bringing a false arrest claim under the Fourth Amendment and a retaliatory arrest claim under the First Amendment. Jeter answered the complaint and moved for summary judgment after discovery, arguing that he was protected by qualified immunity. The district court granted Jeter's motion and entered judgment in his favor. Rickerson timely appealed.

II. STANDARD OF REVIEW

We review the district court's grant of summary judgment based on qualified immunity *de novo*, construing the facts and drawing all inferences in the light most favorable to the non-moving party. *Cantu v. City of Dothan, Al.*, 974 F.3d 1217, 1228 (11th Cir. 2020).

III. DISCUSSION

This appeal turns on the doctrine of qualified immunity. That doctrine "protects government officials performing discretionary functions from civil liability unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." *Johnson v. City of Miami*

Beach, 18 F.4th 1267, 1272 (11th Cir. 2021). Where, as here, it is undisputed that the officer acted within the scope of his discretionary authority, "the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Id.* (quoting *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002)). Because a plaintiff must show both a statutory or constitutional violation on the merits and that the right violated was "clearly established" at the time of the challenged conduct, we may begin our analysis with either element on appeal. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

A. Rickerson's False Arrest Claim

To survive summary judgment on a false arrest claim where qualified immunity is at issue, a plaintiff must create a genuine dispute of material fact concerning whether the arresting officer had arguable probable cause. *Alston v. Swarbrick*, 954 F.3d 1312, 1318 (11th Cir. 2020). Arguable probable cause exists if "reasonable officers in the same circumstances and possessing the same knowledge as the defendants could have believed that probable cause existed to arrest the plaintiff." *Id.* (cleaned up). Thus, the standard "allows for the possibility that an officer might reasonably but mistakenly conclude that probable cause is present." *Gates v. Khokhar*, 884 F.3d 1290, 1298 (11th Cir. 2018) (quotation omitted).

Jeter arrested Rickerson for allegedly violating Georgia's obstruction statute, which criminalizes "knowingly and willfully obstruct[ing] or hinder[ing] any law enforcement officer . . . in the lawful discharge of his or her official duties . . . ." O.G.C.A. § 16-10-

24(a) (2017). Rickerson makes three arguments that Jeter lacked arguable probable cause to arrest him for obstruction. We address each argument in turn.

1. Jeter's Orders Were Lawful

Rickerson begins with a threshold contention that Jeter's orders to move the truck were unlawful, and thus incapable of supporting probable cause for an arrest. Rickerson's argument on this point is rooted in Georgia Code Section 16-10-24.2, which criminalizes "knowingly and willfully obstruct[ing] or hinder[ing] any emergency medical technician, any emergency medical professional, or any properly identified person working under the direction of an emergency medical professional in the lawful discharge of [their] official duties . . . ." O.C.G.A. § 16-10-24.2(b) (2017). The statute defines "emergency medical technician," in relevant part, to mean "any person who has been certified as a[] . . . first responder." *Id.* § 16-10-24.2(a)(2). Rickerson stated in a declaration that he "was certified as a first responder in the 1990s" and that he worked for a local fire department from 1985 until 2012, when he retired. Thus, Rickerson argues that his conduct at the time of Jeter's orders—standing behind two civilians who were holding Buchanan and giving them instructions—was an exercise of an official duty that Jeter's order to move illegally obstructed.

Assuming for the sake of argument that this statute has some bearing on the legality of a law enforcement officer's orders to a first responder, we disagree that Jeter's order to Rickerson violated

the statute. Rickerson was not an "emergency medical technician" exercising an official duty at the time of the accident. Although he was once certified as a first responder and served as a firefighter for nearly three decades, Rickerson retired from that position in 2012, five years before the events resulting in this appeal. In the absence of any record evidence establishing that Rickerson was a certified first responder at the time of his arrest or that he was exercising an official duty while assisting Buchanan, we conclude that there is no genuine dispute of material fact as to whether Jeter's orders violated Section 16-10-24.2.

2. Disobeying Jeter's Orders Created Arguable Probable Cause to Arrest Rickerson for Obstruction

Rickerson argues in the alternative that even if Jeter's orders were lawful, his response to those orders—repeatedly and expressly disobeying—did not create arguable probable cause for Jeter to arrest him for obstruction. Again, we disagree.

Rickerson argues that, because Jeter ultimately achieved his objective of moving the truck, there can be no obstruction. He says that Georgia law provides that "probable cause [for an arrest under the obstruction statute] exists only where a person's statements prevent an officer from achieving the purpose of his lawful command." Georgia law, however, does not impose this requirement. Instead, actions like "refus[ing] to comply with an officer's directive or command," *Harris v. State*, 726 S.E. 2d 455, 458 (Ga. Ct. App. 2012), or "affirmatively interfer[ing] with [an] officer's actions,"

Lebis v. State, 808 S.E. 2d 724, 761 (Ga. 2017), are sufficient to establish obstruction. It is undisputed that Rickerson repeatedly refused to comply with Jeter's orders to move his truck. Those refusals "affirmatively interfere[ed]" with Jeter's intended action, moving the truck out of the way as soon as possible to clear the way for emergency vehicles. *Lebis*, 808 S.E. 2d at 761. At the very least, a "reasonable officer[] in the same circumstances and possessing the same knowledge as [Jeter] could have believed that probable cause existed to arrest [Rickerson for obstruction.]" *Alston*, 954 F.3d at 1318.

3. The Affirmative Defense of Justification Did Not Negate Arguable Probable Cause

Finally, Rickerson argues Jeter did not have at least arguable probable cause because Jeter had access to information that established that Rickerson possessed the affirmative defense of justification. Specifically, Rickerson cites Georgia's justification and "good Samaritan" statutes as operating together to provide an absolute defense to criminal liability for obstruction on the facts of this appeal. *See* O.C.G.A. §§ 16-3-20, 51-1-29 (2017).

Even assuming for the sake of argument that Rickerson's actions were justified under Georgia law, the existence of an affirmative defense does not negate arguable probable cause for purposes of qualified immunity. We have repeatedly held that the existence of facts that give rise to an affirmative defense does not defeat probable cause, actual *or* arguable. *See Jordan v. Mosley*, 487 F.3d 1350,

1356–57 (11th Cir. 2007) ("Under the law of probable cause, no police officer had a duty to resolve [the] legal question [of whether an arrested plaintiff had an apparent authority defense under Georgia law] before seeking out Plaintiff's arrest."); *Morris v. Town of Lexington*, 748 F.3d 1316, 1325 (11th Cir. 2014) ("Morris could plead the use of . . . force as a defense to a charge of assault; in fact, he prevailed when he was tried on that charge. But the fact remains that once Morris punched [a police officer,] the officers had probable cause, or at the very least arguable probable cause, to believe that Morris had committed an assault."); *Manners v. Cannella*, 891 F.3d 959, 971–72 (11th Cir. 2018) ("Moreover, the argument that [a statute criminalizing flight from law enforcement] is unconstitutional is an affirmative defense, not one the officer was required to consider at the outset of this encounter."); *Paez v. Mulvey*, 915 F.3d 1276, 1286 (explaining that "an affirmative defense to an alleged crime does not necessarily vitiate probable cause" because "police officers aren't lawyers; we do not expect them to resolve legal questions or to weigh the viability of most affirmative defenses").

B. Rickerson's Retaliatory Arrest Claim

Rickerson also argues that the district court improperly granted summary judgment to Jeter on his retaliatory arrest claim under the First Amendment. That is, Rickerson argues that Jeter unconstitutionally arrested him in retaliation for his speech. We disagree.

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We begin and end our analysis of this claim with the clearly established law element of qualified immunity. Under that element, we look to whether the officer's challenged conduct violated clearly established law at the time of the conduct. On October 10, 2017, when Rickerson was arrested, our precedents established that probable cause was an absolute bar to a retaliatory arrest claim. *See, e.g.*, *Dahl v. Holley*, 312 F.3d 1228, 1236 (11th Cir. 2002), *abrogated by Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018). The upshot is that, for an arrest in 2017, arguable probable cause gives an officer qualified immunity from a First Amendment claim for retaliatory arrest. *See, e.g.*, *Redd v. City of Enterprise*, 140 F.3d 1378, 1383 (11th Cir. 1998) ("Because we hold that the officers had arguable probable cause to arrest Anderson for disorderly conduct, we must hold that the officers are also entitled to qualified immunity from the plaintiffs' First Amendment claims."). The Supreme Court has since carved out exceptions to the rule that we expressed in *Dahl* and its progeny. *See Lozman*, 138 S. Ct. 1945; *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019). Clearly established law, however, is evaluated "at the time of the officer's supposedly wrongful act," not at the time of appellate review. *See Powell v. Snook*, 25 F.4th 912, 920 (11th Cir. 2022). So because Jeter had arguable probable cause to arrest Rickerson in 2017, he could not have violated Rickerson's clearly established First Amendment rights at the time of arrest. Because Jeter is entitled to qualified immunity as to Rickerson's false arrest claim under the Fourth Amendment, we likewise hold that he is entitled to qualified immunity as to the accompanying retaliatory arrest claim under the First Amendment.

IV. CONCLUSION

For the foregoing reasons, the district court's order granting summary judgment is **AFFIRMED**.