[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-12947

GLEN LANDAU,
LANDAU ENTERPRISES, INC.,
d.b.a. Fryer's Towing Service,

Plaintiffs-Appellants,

versus

THE CITY OF DAYTONA BEACH,
THE CITY OF HOLLY HILL,
JOSEPH W. SNOWDEN,
individually,
JOHN (JACK) BISLAND,
individually,
NICHOLAS CHAMPION,
individually,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:19-cv-00495-WWB-LRH

Before WILSON, JORDAN, and BRASHER, Circuit Judges.

PER CURIAM:

When a brand-new vehicle that has never been registered is stolen from a dealership, mayhem can ensue. This case is a good example.

After police in Holly Hill, Florida, found a stolen vehicle, they called a local towing company—Fryer's—to tow the vehicle. Regrettably, the police also simultaneously removed the stolen vehicle designation from their database without contacting Gary Yeomans Ford, the dealership from where the vehicle had been stolen. Fryer's tried to locate the owner of the vehicle, but it was unsuccessful, and then auctioned the vehicle. And when no one bought the vehicle at the auction, Fryer's tried to obtain title to it. In that process, however, the tag and title company, which had been provided a list of recently stolen vehicles, realized the vehicle had been reported stolen and contacted Gary Yeomans Ford.

After the vehicle was recovered, a seven-month criminal investigation ensued and led to the administrative search of the premises of Fryer's, which was located in Daytona Beach, Florida. It also led to the arrest of Glenn Landau—Fryer's president and part-owner—for grand theft of a motor vehicle and violation of Florida's tow lien statute.

Following a state bench trial, Mr. Landau was acquitted of all charges. Mr. Landau and Fryer's subsequently filed a civil rights lawsuit under 42 U.S.C. § 1983 against two police officers, a state attorney's office investigator, and two municipalities for alleged constitutional violations stemming from the search of Fryer's and Mr. Landau's arrest and prosecution.

In this appeal, Mr. Landau and Fryer's (the appellants) challenge the district court's order granting summary judgment in favor of the defendants. After review of the parties' briefs and the record, and with the benefit of oral argument, we conclude that the district court did not commit reversible error. First, though the district court failed to recognize that there was a genuine issue of material fact as to whether the administrative search of Fryer's was pretextual, the police officers were entitled to qualified immunity for the search because the illegality of their conduct was not clearly established. Second, the district court correctly concluded that Mr. Landau's Fourth Amendment rights were not violated and that the claims against the municipalities failed. We therefore affirm the district court's summary judgment order.

I

At summary judgment, we review the record in the light most favorable to the appellants—the nonmoving parties—and draw all reasonable inferences in their favor. *See Carrizosa v. Chiquita Brands Int'l, Inc.*, 47 F.4th 1278, 1328 (11th Cir. 2022).

A

On May 16, 2014, Nicholas Champion, an officer with the Holly Hill Police Department, was dispatched to investigate a suspicious vehicle parked outside an apartment building in Holly Hill. The vehicle had a stolen Georgia license plate affixed to it. Although the vehicle did not have any decals or any other indicia of its origin, during his investigation Officer Champion determined that the vehicle was a 2014 Ford Mustang that had been recently reported to the Daytona Beach Police Department as stolen from Gary Yeomans Ford in Daytona Beach.

That same day, officers from the Holly Hill Police Department contacted the Daytona Beach Police Department regarding the stolen Mustang, but the latter declined to process its recovery. The Daytona Beach Police Department, however, immediately removed the "stolen stop hold" that had been placed on the stolen Mustang in the NCIC/FCIC database. Officer Champion did not notify Gary Yeomans Ford about the recovery of the stolen Mustang.

After the Daytona Beach Police Department declined to process the recovery of the Mustang, the Holly Hill Police Department processed it, and called Fryer's to tow the Mustang to its facility.

Fryer's is a family-owned towing storage company, which has been in business since the 1920s. Mr. Landau was the president of Fryer's and one of the family members who worked at and managed the business. At the time of the tow, Fryer's had a contract with Holly Hill for recovering, towing, and storing vehicles at its request.

Fryer's then dispatched Doug English, one of its employees and a tow truck driver, to tow the Mustang. Because the Holly Hill Police Department was still investigating the stolen vehicle, Mr. English was supposedly asked to sign the Holly Hill Police Department's vehicle/property report (the tow sheet), which typically includes the name of the registered owner. Mr. English asserts that he never received a copy of the tow sheet before the tow was completed and was told that a copy would be faxed to Fryer's after it was completed. Officer Champion claims he informed Mr. English that the Mustang was stolen, but Mr. English asserts that he was not given any information regarding the owner of the Mustang or where it was stolen from.

B

After the Mustang was brought to Fryer's tow yard, Fryer's employees took steps to locate the owner of the vehicle, as required by Florida's tow lien statute, Fla. Stat. § 713.78. Specifically, Darcie Podgorski, a Fryer's employee in charge of compliance with § 713.78, ran the vehicle's identification number (VIN) through the auto dealer direct in the Motor Vehicles Databases and the National Motor Vehicle Tile Information System (NMVTIS), but no

person or entity was listed as the vehicle's owner. Ms. Podgorski then faxed the VIN and a complete description of the vehicle to the Daytona Beach Police Department with a request for a record search in all 50 states for the owner or lienholder of the vehicle. She received a response that there was no record within any of the 50 states that indicated the ownership of the vehicle.

Fryer's also requested a search for the vehicle in NCIS/INLETS, but that too was returned with no owner listed. Fryer's checked the Department of Highway and Motor Vehicles and the NMVTIS databases for information about the owner of the vehicle, but still received no results. Fryer's also sent a certified Notice of Claim of Lien and Proposed Sale of Vehicle, Mobile Home or Vessel to Ford Motor Company, but Ford never responded. Fryer's further checked the vehicle for any tag, sticker, or decals indicating registration from another state to no avail. Fryer's, however, did not contact the Holly Hill Police Department for information about the vehicle's ownership.

After Fryer's failed to locate the owner of the Mustang, it scheduled a vehicle auction and advertised the car in a local newspaper. No one purchased the Mustang at the auction. Consequently, Fryer's submitted a title application for the Mustang to a tag and title agency. While processing Fryer's application, an employee of the agency discovered that the Mustang's VIN matched that of a vehicle reported stolen by Gary Yeomans Ford, which had

previously provided a list of stolen vehicles. The employee then notified Gary Yeomans Ford about Fryer's title application.[1]

C

After learning that Fryer's was in possession of the stolen Mustang, Gary Yeomans, the owner of Gary Yeomans Ford, called a friend—Craig Capri—who at the time was the captain of the Daytona Beach Police Department's criminal investigative division. Then Mr. Yeomans, Captain Capri, Detective Joseph Snowden, and several other officers went to Fryer's to conduct a search for the Mustang. During the search, the Daytona Beach Police Department located the Mustang and returned it to Gary Yeomans Ford. Shortly thereafter, an investigation was opened and Detective Snowden and John Bisland, an investigator with the State Attorney's Office, were assigned to it.

During their investigation, Detective Snowden and Investigator Bisland issued numerous subpoenas and interviewed nearly a dozen witnesses. Relevant to this appeal, Detective Snowden and Investigator Bisland spoke to Officer Champion twice regarding the stolen Mustang. During their second interview, Officer Champion testified under oath that he completed the tow sheet the night that the Mustang was towed to Fryer's, personally gave a completed copy of it to the Fryer's driver (Mr. English), and told the driver that the Mustang belonged to Gary Yeomans Ford.

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[1] Fryer's title application was ultimately denied for insufficiency.

Detective Snowden and Investigator Bisland also interviewed Brendon Kilroe, the systems operation manager for the tittle agency where Fryer's had applied to obtain title to the Mustang. Mr. Kilroe stated, under oath, that Mr. Landau called him to complain regarding the denial of the title application for the Mustang and that, during that conversation, Mr. Landau stated that he was aware the car belonged to Gary Yeomans Ford.

At the conclusion of their seven-month investigation, Investigator Bisland submitted a charging affidavit, signed before Detective Snowden, seeking an arrest warrant against Mr. Landau for grand theft of a motor vehicle and violation of the Florida tow lien statute, § 713.78(12)(a). The following day, a felony warrant was issued for Mr. Landau, and he was arrested at Fryer's later that same day.[2]

Simultaneously with Mr. Landau's arrest on February 12, 2015, the Daytona Beach Police Department conducted an administrative search of Fryer's for evidence of additional stolen vehicles being unlawfully retained at the property for violations of the Florida tow lien statute. The search was conducted during normal business hours by 13 officers and lasted approximately one hour. Following the administrative search, Detective Snowden applied for, and obtained, a search warrant seeking information and documents related to (1) the 2014 Mustang, (2) a 2012 Gray Corvette, and (3) a 2011 Chevrolet HHR.

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[2] Investigator Bisland also prepared a 29-page investigative summary.

D

Mr. Landau was subsequently charged by information with grand theft of a motor vehicle and violation of Florida's tow lien statute. Following a bench trial, Mr. Landau was acquitted of both charges. The state court acknowledged that the State Attorney's Office conducted a "thorough and professional investigation[.]" But it found that (1) Mr. Landau lacked the necessary intent to commit grand theft, and that (2) the state failed to prove that Mr. Landau violated the good faith provision of the Florida tow lien statute.

Almost a year-and-a-half after his acquittal in state court, Mr. Landau and Fryer's filed a state-court lawsuit asserting claims (under § 1983 and state law) against the City of Daytona Beach, the City of Holly Hill, Detective Snowden, Investigator Bisland, and Officer Champion. After the suit was removed to federal court, Mr. Landau and Fryer's filed an amended complaint asserting a total of 24 claims under both state and federal law.

E

The parties cross-moved for summary judgment. The district court granted summary judgment in favor of the defendants on all of the § 1983 claims and declined to exercise supplemental jurisdiction over the remaining state-law claims.

First, the district court concluded that Mr. Landau's false arrest claims against the defendants failed as a matter of law because he was arrested pursuant to an arrest warrant.

Second, the district court ruled that Mr. Landau's claim for malicious prosecution against Detective Snowden and Investigator Bisland failed because there was probable cause to charge Mr. Landau with grand theft and for a violation of the tow lien statute. The district court explained that, notwithstanding the veracity of Officer Champion's statements, there was independent probable cause because (1) there was testimony from a witness (Mr. Kilroe) who said he had personally spoken with Mr. Landau, who insisted that title to the Mustang should have been issued to him despite his knowledge that that it was owned by Gary Yeomans Ford, and (2) Mr. Landau failed to contact the Holly Hill Police Department to obtain the law enforcement report.

Third, the district court concluded that the administrative search of Fryer's was proper and reasonable because (1) the officers were acting on the possibility that Fryer's was storing stolen vehicles on its property; (2) the search was conducted during business hours; (3) the search lasted one hour; and (4) the officers did not brandish their weapons, use physical force, or threaten, detain, or search any employee.

Finally, the district court concluded that the claims against Officer Champion and the municipal defendants failed. This was because no constitutional violation had occurred.

After the district court denied a motion for reconsideration, this appeal followed. We set the case for oral argument.

II

The district court's grant of summary judgment in favor of the defendants is subject to *de novo* review. *See Williams v. Radford*, 64 F.4th 1185, 1188 (11th Cir. 2023). 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). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

III

Qualified immunity 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. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). Whether a defendant is entitled to qualified immunity is a question of law decided by the court. *See Courson v. McMillian*, 939 F.2d 1479, 1486–87 (11th Cir. 1991).

In order to receive qualified immunity, the officers first must show that they acted within the scope of their discretionary authority. *See Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002). Because that is not disputed here, the burden shifts to the appellants to show that qualified immunity is inappropriate. *See id.* To meet their burden, the appellants must show (1) that the officers violated their

constitutional rights and (2) that the illegality of the officers' conduct was "clearly established" when the incident occurred. *See Pearson*, 555 U.S. at 232. "These two steps do not have to be analyzed sequentially; if the law was not clearly established, we need not decide if the defendants actually violated the plaintiffs' rights, although we are permitted to do so." *Fils v. City of Aventura*, 647 F.3d 1272, 1287 (11th Cir. 2011).

IV

We first analyze the appellants' claims against all the individual defendants—Investigator Bisland, Detective Snowden, and Officer Champion—regarding the warrantless administrative search of Fryer's business. We then address Mr. Landau's Fourth Amendment claims. We conclude with the appellants' claims against the City of Daytona Beach for failure to train its police officers.[3]

A

The appellants challenge the district court's ruling against them regarding their claims related to the alleged warrantless administrative search of Fryer's business. *See* Appellants' Br. at 22–32. Specifically, Appellants argue that there was a genuine issue of material fact about whether the administrative search of Fryer's was "pretextual" and "unreasonable." *Id*. at 22.

[3] The appellants brought § 1983 claims against both the City of Holly Hill and the City of Daytona Beach, but now say that they "are no longer seeking relief against the City of Holly Hill." Appellants' Reply Br. at 16.

We agree with the appellants that there was a genuine issue of material fact as to whether the administrative search was pretextual. But we conclude that qualified immunity nonetheless applies to the individual defendants because the illegality of the conduct was not clearly established when the administrative search occurred.

1

In Florida, the warrantless physical inspection of towing facilities is specifically authorized by statute. *See* Fla. Stat. § 812.055(1)–(2). Law enforcement is permitted to inspect "any towing and storage facility" "for the purpose of locating stolen vehicles, vessels, or outboard motors; investigating the titling and registration of vehicles or vessels; inspecting vehicles, vessels, or outboard motors wrecked or dismantled; or inspecting records required in [Fla. Stat. § 319.30 and § 713.78]." *Id*.

Administrative inspections, such as those permitted by §812.055(1)–(2), are generally an exception to the Fourth Amendment's general probable cause and warrant requirement. *Bruce v. Beary*, 498 F.3d 1232, 1239 (11th Cir. 2007) (citing *New York v. Burger*, 482 U.S. 691, 702–03 (1987)). But "[t]he administrative search exception does not confer authority on law enforcement to ignore the requirement for a warrant where the primary purpose [of the search or seizure] was to detect evidence of ordinary criminal wrongdoing." *See Bruce*, 498 F.3d at 1239 (internal quotation marks omitted and alteration in the original) (quoting *City of Indianapolis*

v. Edmond, 531 U.S. 32, 37 (2000)). The Supreme Court has also explained that an otherwise proper administrative search is violative of the Fourth Amendment if it is conducted in an unreasonable manner. *See Donovan v. Dewey*, 452 U.S. 594, 598 (1981). So, the general analysis as to whether an administrative search is unconstitutional proceeds in two analytical steps: (1) whether the search was a true administrative search rather than pretext for an investigation of ordinary criminal wrongdoing; and (2) if it was a true administrative search, whether the search was conducted reasonably under the Fourth Amendment.[4]

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[4] The concurrence suggests that an officer's subjective level of suspicion is not relevant to the constitutionality of a particular administrative search. But this conflates the initial question of pretext and the subsequent question of reasonableness. This is likely due to much of the caselaw's use of the term "reasonable" without delineation between the reasonableness of a search at its inception—i.e., pretext—versus reasonableness in execution. *See, e.g., Bruce*, 498 F.3d at 1242 n.19 ("A factual finding of pretext would require, of course, the legal conclusion of unconstitutional unreasonableness.").

The Supreme Court has made clear that administrative searches do require an analysis of pretext, *because* they are exempt from the Fourth Amendment's probable cause requirement. *See, e.g., Ashcroft v. al-Kidd*, 563 U.S. 731, 735–36 (2011) (noting that administrative searches are an exception to the general Fourth Amendment's objective-circumstances analysis because "actual motivations do matter" to determine pretext) (collecting cases); *Whren v. United States*, 517 U.S. 806, 811–12 (1996) (explaining that an administrative search's "exemption from the need for probable cause (and warrant) . . . is not accorded to searches that are not made for those purposes"). Here, because we find a genuine issue of material fact as to whether the 2015 search was pretextual, we do not reach the question of reasonableness of the execution of the search.

Here, the constitutionality of the administrative search that Investigator Bisland and Detective Snowden conducted of Fryer's in February of 2015—the search that the appellants challenge—turns on whether the primary purpose of their search and seizure was to detect evidence of "ordinary criminal wrongdoing." *Id.* We conclude that there was a genuine issue of material fact regarding the pretextual nature of the administrative search conducted in this case.[5]

By the time of the February 2015 administrative search, Investigator Bisland and Detective Snowden had been conducting

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[5] The concurrence also correctly notes that we have held that where the facts are undisputed, reasonableness is a question for the trial judge and not the jury. *See Ziegler v. Martin Cnty. Sch. Dist.*, 831 F.3d 1309, 1319 (11th Cir. 2016). But this presupposes the lack of a genuine dispute of material fact. And in any event, we have also held that "[s]ummary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from these facts." *Warrior Tombigbee Transp. Co. v. M/V Nan Fung*, 695 F.2d 1294, 1296–97 (11th Cir. 1983). *See also Carrizosa v. Chiquita Brands Int'l, Inc.*, 47 F.4th 1278, 1334 (11th Cir. 2022) ("Where reasonable minds might differ on the inferences arising from undisputed facts, summary judgment should not be granted, and a fact finder should be permitted to determine which inferences to accept." (internal citations and quotations omitted)).

In the context of administrative searches, we have explained that "the question of whether [an] administrative search was a pretext for an illegal purpose is a factual question." *Bruce*, 498 F.3d at 1242 n.19. We are not the only ones to have come to this conclusion. *See United States v. Johnson*, 994 F.2d 740, 743 (10th Cir. 1993) ("Whether an administrative search is a pretext for a criminal investigation is a factual question.") (citing *Abel v. United States*, 362 U.S. 217, 225–30 (1960)).

their investigation of suspected stolen vehicles at Fryer's since July of 2014. This seven-month-long investigation included (1) 11 interviews with 10 different witnesses; (2) the issuance and review of responses to at least three different subpoenas for documents, including records from the Department of Highway Safety and Motor Vehicles; (3) a photo lineup; and (4) recordings from the law enforcement communications center. *See* D.E. 96-2. The investigation was also broad in scope given that it not only included the suspected stolen Mustang, but also the suspected stolen Corvette and HHR.[6]

Before the administrative search was executed, Investigator Bisland and Detective Snowden had secured an arrest warrant for Mr. Landau regarding the stolen Mustang. *See* D.E. 112-1. And, when the officers entered the premises to conduct the administrative search, they removed documents related to all the suspected stolen vehicles as well as other evidence of criminal wrongdoing—(1) the Mustang email sheet/tow dispatch, (2) the Corvette email sheet/tow dispatch, (3) Fryer's tow book, and (4) one clear tube with a green leafy substance. *See* D.E. 112-14.

Viewing the evidence in the record in the light most favorable to the appellants, and drawing all reasonable inferences in their

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[6] The record indicates Investigator Bisland and Detective Snowden possessed information related to the HHR prior to the February 2015 administrative search because that vehicle was in the tow yard when the Daytona Beach Police Department conducted the first search of Fryer's on July 9, 2014. *See* D.E. 112-21 ¶ 18. On that same day, the Daytona Beach Police Department placed an administrative hold on the Corvette. *See* D.E. 103 at 20–22.

favor, a jury could conclude that the purpose of the February 2015 administrative search was to detect evidence of "ordinary criminal wrongdoing" and not simply an administrative exercise for the purposes listed in § 812.055(1)–(2). The district court reasoned that the "[d]efendants were acting on information concerning the possibility that Fryer's was holding *other* stolen vehicles on its lot and evidence relating to their records and registration," but the evidence can also support a finding that the officers here were acting on more than a mere "possibility." *See* D.E. 148 at 12 (emphasis in original). The level of advanced planning undertaken well before the administrative search was conducted—as evidenced by the extensive nature of the investigation, the contemporaneous arrest warrant for Mr. Landau, and the officers' focus on removing documentary and physical evidence—exhibited the hallmarks of a direct and extensive criminal investigation. There is, moreover, no indication in the record that the search resulted in any administrative actions or proceedings. *Cf. Zadeh v. Robinson*, 928 F.3d 457, 471 (5th Cir. 2019) (administrative search of medical practice was not pretextual in part because state medical board initiated proceedings against doctor and there was no indication that there was any criminal prosecution).

Accordingly, the district court erred in failing to recognize the existence of a genuine issue of material fact as to whether the February 2015 administrative search was focused on ferreting out criminal wrongdoing or simply inspecting Fryer's towing business for statutory compliance. *See Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992) ("If reasonable minds

could differ on the inferences arising from undisputed facts, then a court should deny summary judgement.").

2

Given our conclusion about the existence of a genuine issue of material fact as to the pretextual nature of the administrative search, we next consider whether the illegality of the officers' conduct, even if true, was clearly established when the administrative search was conducted in February of 2015. We conclude that it was not.

A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quotation marks omitted). "The usual way of establishing that a constitutional violation was clearly established law is by pointing to a case, in existence at the time, in which the Supreme Court or this Court found a violation based on materially similar facts." *Cantu v. City of Dothan*, 974 F.3d 1217, 1232 (11th Cir. 2020). In assessing qualified immunity, "the government actor's intent and motivation are insignificant[ ]." *Flores v. Satz*, 137 F.3d 1275, 1277 n.4 (11th Cir. 1998).[7]

[7] There are, of course, other ways of showing that a right was clearly established. *See Waldron v. Spicher*, 954 F.3d 1297, 1304 (11th Cir. 2020) (summarizing the "three different ways that a plaintiff can prove that a particular constitutional right is clearly established").

The Supreme Court has emphasized that "specificity is especially important in the Fourth Amendment context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *City of Tahlequah v. Bond*, 142 S. Ct. 9, 12 (2021) (cleaned up) (quoting *Mullenix*, 577 U.S. at 12). "It is not enough that a rule be suggested by then-existing precedent"; rather, a "rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 11 (quotation marks omitted). "[E]xisting precedent must have placed the statutory or constitutional question beyond debate." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021) (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017)).

We cannot say that, at the time the February 2015 administrative search was conducted, the contours of the rules regarding the constitutionality of administrative searches of towing establishments were well-defined or that the constitutional question was beyond debate. *Cf. Zadeh*, 928 F.3d at 470 ("Because we have not so far required there to be a clear limit on determining whom officials select for an administrative search, the defendants reasonably could have believed that the administrative scheme here provided a constitutionally adequate substitute for a warrant.").

In *Bruce*, an analogous case involving an administrative search under § 812.055, we held in 2007 that the officers were permitted to conduct a warrantless administrative inspection of a body

shop. *See* 498 F.3d at 1242. There, we explained that under Supreme Court precedent "an administrative search [was] not rendered invalid because it is accompanied by *some suspicion* of wrongdoing." *Id*. (emphasis in original) (citing *United States v. Villamonte–Marquez*, 462 U.S. 579, 584 n.3 (1983)). We also explained that our own precedent established we had "approved administrative searches in response to information giving rise to some suspicion of illegal activity." *Id*. (citing *Crosby v. Paulk*, 187 F.3d 1339, 1348 and n.12 (11th Cir. 1999)). But we specifically declined to address "the question of where to draw [the] line" for the degree of suspicion of wrongdoing required for an administrative search to be invalid because we held that the officers were permitted to conduct the administrative inspection of the premises based on the criminal complaint they had received. *See id*.

Considering that Supreme Court and Eleventh Circuit precedent have held that administrative searches do not violate the Constitution simply because of the existence of some specific suspicion of wrongdoing, and that we have declined to draw a bright-line rule, we cannot say that the illegality of the officers' warrantless administrative search of Fryer's business in February of 2015 was clearly established when the search occurred. In other words, the contours of the rule regarding the level of suspicion of wrongdoing that would invalidate an administrative search were not so well-defined that we can say it was clear to a reasonable officer that conducting a warrantless administrative search was unlawful given the information possessed by Investigator Bisland and Detective Snowden in this case.

The appellants argue that "it was clearly established in 2015 that administrative searches – even where warranted – must be conducted reasonably." Appellants' Br. at 25. That argument, however, misses the mark. The relevant constitutional question for purposes of qualified immunity is not only whether the administrative search here was conducted reasonably, but also what degree of suspicion is required to invalidate a warrantless administrative search.

The appellants rely on a case from the Third Circuit, *Showers v. Spangler*, 182 F.3d 165, 171 (3d Cir. 1999), but they have not identified any case or robust controlling consensus of cases from the Supreme Court, the Eleventh Circuit, or the Florida Supreme Court to support their clearly-established argument. *See Bradley v. Benton*, 10 F.4th 1232, 1242–43 (11th Cir. 2021) (explaining that only "decisions from the United States Supreme Court, this Court, or the relevant state supreme court" are relevant in determining whether the law was clearly established).[8]

[8] Recognizing that *Spangler* is a case from outside this circuit, the appellants argue that "most circuits, absent precedent in their own jurisdictions, look to other circuits' law to see whether there is 'a consensus of cases of persuasive authority,' to determine clearly established law." Appellants' Reply Br. at 6 (citing *Thomas ex rel. Thomas v. Roberts*, 323 F.3d 950, 955 (11th Cir. 2003)). The appellants therefore ask us to "reconsider" our precedent in *Thomas* that "only Supreme Court cases, Eleventh Circuit caselaw, and [state supreme court] caselaw can 'clearly establish' law in this circuit." *See Thomas*, 323 F.3d at 955. We decline the appellants' invitation. First, we cannot overrule a prior published decision absent an intervening Supreme Court or Eleventh Circuit en

The appellants, moreover, do not even address or confront our refusal in *Bruce* to draw a brightline rule regarding the level of suspicion of wrongdoing required to invalidate a warrantless administrative search. The appellants' silence is fatal to their attempt to defeat qualified immunity.

We affirm, on qualified immunity grounds, the district court's grant of summary judgment in favor of Investigator Bisland, Detective Snowden, and Officer Champion on the claims related to the February 2015 search.

B

We next turn to Mr. Landau's claim that the individual defendants violated his Fourth Amendment right to be free from unreasonable seizure by engaging in malicious prosecution. *See* Appellants' Br. at 32. Mr. Landau contends that the actions of Officer Champion, Detective Snowden, and Investigator Bisland—providing false testimony or swearing out a false legal process—caused him to be unlawfully seized in violation of his Fourth Amendment rights. *See id*. We reject Mr. Landau's argument because there was arguable probable cause for his arrest and seizure.

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banc case. *See Scott v. United States*, 890 F.3d 1239, 1257 (11th Cir. 2018). Second, aside from *Spanger*, the appellants have failed to identify any consensus of authority either from this Circuit or elsewhere clearly establishing the level of suspicion of wrongdoing required to invalidate a warrantless administrative search. A single Circuit decision does not constitute a "consensus."

1

Mr. Landau asserted federal claims for false arrest and malicious prosecution against Officer Champion, Detective Snowden, and Investigator Bisland. The district court concluded that Mr. Landau's false arrest claims failed as a matter of law because it was undisputed that he was arrested pursuant to the arrest warrant that Detective Snowden and Investigator Bisland obtained for violations of the Florida grand theft of a motor vehicle statute and the Florida tow lien statute. Mr. Landau does not appear to challenge that conclusion on appeal. Mr. Landau instead challenges the district court's ruling on his malicious prosecution claim. Consequently, he has abandoned any challenge to the district court's ruling on his false arrest claims. *See Holland v. Gee*, 677 F.3d 1047, 1066 (11th Cir. 2012) (explaining that issues not raised in the initial brief are abandoned).

With that said, we focus on Mr. Landau's malicious prosecution claims. Malicious prosecution can violate the Fourth Amendment and constitute a viable constitutional tort cognizable under § 1983. *See 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 Mr. Landau's Fourth Amendment right against unreasonable seizures. *See Paez v. Mulvey*, 915 F.3d 1276, 1285 (11th Cir. 2019); *Blue v. Lopez*, 901 F.3d 1352, 1357 (11th Cir. 2018).

As to the first prong, 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 Mr. Landau's favor; and (4) caused damage to Mr. Landau. *See Kjellsen v. Mills*, 517 F.3d 1232, 1237 (11th Cir. 2008). *See also Thompson v. Clark*, 142 S. Ct. 1332, 1338 (2022) ("American courts described the elements of the malicious prosecution tort as follows: (i) the suit or proceeding was instituted without any probable cause; (ii) the motive in instituting the suit was malicious, which was often defined in this context as without probable cause and for a purpose other than bringing the defendant to justice; and (iii) the prosecution terminated in the acquittal or discharge of the accused.") (internal quotation marks and citation omitted). And as to the second prong, "it is well established that an arrest without probable cause is an unreasonable seizure that violates the Fourth Amendment." *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1256 (11th Cir. 2010). "Consequently, the existence of probable cause defeats a § 1983 malicious prosecution claim." *Id*.

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. *See Jordan v. Mosley*, 487 F.3d 1350, 1355 (11th Cir. 2007). But to receive qualified immunity, "an officer need not have actual probable cause, but only 'arguable' probable cause." *Grider*, 618 F.3d at 1257. 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." *Id*.

Mr. Landau argues that Investigator Bisland and Detective Snowden submitted false statements in support of the probable cause affidavit primarily because they relied on the false statements of Officer Champion. *See* Appellants' Br. at 34–35. Mr. Landau also asserts that they "fabricated evidence to influence the probable cause determination." *Id*. at 35. According to Mr. Landau, the district court erred when it concluded that "the statements upon which [he] relies were neither false nor misleading when considered in the context of the [c]harging [a]ffidavit." *See id*. at 40. Like the district court, we disagree with Mr. Landau's characterization of statements in the charging affidavit.

Generally, 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) (citations omitted). Mr. Landau provides a laundry list of what he calls "false" or "only partly true" facts that were included in the charging affidavit: (1) "Landau did not tow or come into possession of the vehicle"; (2) "Champion never provided Doug English, Fryer's' tow operator, with a yellow copy of the HHPD tow sheet that Champion prepared"; (3) "Champion never told English that the Mustang had been stolen and was owned by Yeomans Ford"; (4) "Landau never endeavored to obtain title to the Mustang, knowing the owner was Yeomans Ford"; (5) "the vehicle's owner was unknown and, even if known, Yeomans Ford was not the registered owner"; (6) "Landau never 'claimed a lien for the recovery, towing and storage of the described vehicle in the amount of $1,811.01'"; (7) "Landau never 'used Florida State Statute section

713.78 to conceal the fact that he knew the Mustang was owned by Gary Yeomans Ford' because it was not the owner [ ] and there was no requirement that Landau or Fryer's contact HHPD and obtain or review their police report to identify the owner"; and (8) "a check of the HHPD report for the tag number or other information identifying the vehicle would not have identified the owner, because the vehicle's tag was a Georgia tag stolen from another vehicle." Appellants' Reply Br. at 9–11.

Even when viewing Mr. Landau's laundry list of purportedly false facts or half-truths in the light most favorable to him, we are not persuaded that Investigator Bisland or Detective Snowden deliberately or recklessly misstated evidence or omitted any material fact which would negate arguable probable cause for his arrest. For starters, the Supreme Court has explained that probable cause "is not a high bar" and "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *D.C. v. Wesby*, 138 S. Ct. 577, 586 (2018). And arguable probable cause is a standard lower than probable cause. *See Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1332 (11th Cir. 2004). As noted, qualified immunity still applies if the officer reasonably but mistakenly believed that probable cause existed. *See Grider*, 618 F.3d at 1257.

Mr. Landau failed to establish that Investigator Bisland and Detective Snowden did not meet this minimum threshold of arguable probable cause. At best, all Mr. Landau has done, as the district court recognized, is create some issues of material fact as to the veracity of some of Officer Champion's statements, based on

after-the-fact events that came to light during his state criminal trial. For example, Mr. Landau states that "it is *contested* that [Officer] Champion prepared and authored a tow sheet and provided it to Doug English, Fryer's tow truck operator, at the scene of the tow" because "[t]his was proven to be false when [Officer] Champion *recanted his statements* about the tow sheet at the criminal trial after being given immunity for perjury." *Id*. at 41 (emphasis in original). That Officer Champion recanted a statement at trial, however, does not mean that Investigator Bisland and Detective Snowden falsified evidence or that a reasonable police officer could not have believed or relied on Officer Champion's sworn statement when he provided it. At the time of their investigation, Investigator Bisland and Detective Snowden did not know that any statements made by Officer Champion were inaccurate or false. Nor did they have any reason, based on the record in this case, to doubt or question Officer Champion's sworn statements.

For the reasons we discuss in more detail below, we conclude that Detective Snowden and Investigator Bisland had arguable probable cause. "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. Thus, we next evaluate the operative facts against the specific crimes that Mr. Landau was charged with—grand theft of a motor vehicle and violation of Florida's tow lien statue.

2

The elements of grand theft of a motor vehicle under Fla. Stat. § 812.014 are (1) the knowing and unlawful obtaining or use, or the knowing and unlawful endeavor to obtain or use, (2) the motor vehicle of another, (3) with the intent to either temporarily or permanently (a) deprive the owner or lawful possessor of a motor vehicle of the right to the vehicle or the benefit from it, or (b) to appropriate the motor vehicle for the accused's own use or for the use of any person not entitled to it. *See Fryer v. State*, 732 So.2d 30, 33 (Fla. 5th DCA 1999).

The charging affidavit submitted by Investigator Bisland, and signed by Detective Snowden, stated that (1) Mr. Landau endeavored to obtain title of the Mustang, knowing that the owner of the motor vehicle was Gary Yeomans Ford; (2) Mr. Landau used § 713.78 to conceal the fact that he knew the Mustang was owned by Gary Yeomans Ford, and circumvented the requirement to contact the Holly Hill Police Department and obtain or review their police report which would have identified the owner; (3) Mr. Landau advised he did not contact the Holly Hill Police Department for the report about the Mustang because it would not have made a difference; (4) Mr. Kilroe reported that Mr. Landau called his office upset and spoke specifically about the Mustang—stating "it was stolen, I recovered it, I have rights, I did my due diligence and I should be getting a title for that no questions about it"; and (5) Mr. Kilroe also reported that Mr. Landau told him, "I know it is their vehicle, I knew it was their vehicle because law enforcement had me tow it," when he mentioned the reason his office called Gary

Yeomans Ford about the Mustang. *See* D.E. 112-2 at 1–3. Investigator Bisland concluded that based on these facts—particularly Mr. Landau's alleged statements to Mr. Kilroe revealing his knowledge that Gary Yeomans Ford was the owner of the Mustang at the time Fryer's towed it—that he had probable cause to believe that Mr. Landau "knowingly endeavored to obtain the described 2014 Ford Mustang motor vehicle, with the intent to temporarily or permanently deprive Gary Yeomans Ford of the company's right or benefit from the motor vehicle by attempting to have it titled to Fryer's Towing Service[.]" *Id*. at 3.

Considering these facts, Investigator Bisland and Detective Snowden had at least arguable probable cause to arrest Mr. Landau for grand theft of a motor vehicle and were thus entitled to qualified immunity. Mr. Kilroe's statements, for example, indicated that Mr. Laundau knew the Mustang was owned by Gary Yeomans Ford.

Mr. Landau denies that Investigator Bisland and Detective Snowden had arguable probable cause because he could not have had the "specific intent required for the charge" and "specific intent is an essential element of grand theft." Appellants' Br. at 43. Mr. Landau's argument, however, fails because, even assuming that specific intent is an essential element of grand theft of a motor vehicle, "[a]rguable probable cause does not require an arresting officer to prove every element of a crime or to obtain a confession

before making an arrest, which would negate the concept of probable cause and transform arresting officers into prosecutors." *Lee*, 284 F.3d at 1195.

Additionally, as the district court observed, "[Investigator] Bisland consulted with a prosecutor at the State Attorney's Office on the applicable statutes throughout the investigation[.]" D.E. 148 at 9. *See* D.E. 101-9 at 60. And a "judicial officer in full possession of the facts—including how Landau came into possession of the vehicle—found that probable cause existed." D.E. 148 at 9. The fact that a neutral magistrate ultimately issued the arrest warrant undercuts Mr. Landau's argument. *See 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."). *See also Washington v. Howard*, 25 F.4th 891, 904 (11th Cir. 2022) ("If an officer fully and honestly places evidence before the magistrate, reasonably believing that there is probable cause, those 'procedural steps . . . shield against a Fourth Amendment claim.'").[9]

Mr. Landau also relies on the fact that he was acquitted of the criminal charges brought against him to argue that Investigator Bisland and Detective Snowden lacked arguable probable cause to arrest him for grand theft of a motor vehicle. *See* Appellants' Br. at 36. Mr. Landau's argument is foreclosed by our precedent. For

[9] And, as discussed, we reject Mr. Landau's argument that such search warrant was based on a falsified probable cause affidavit.

purposes of determining the reasonableness of an individual's seizure, "it is of no moment that [he] was later exonerated." *Washington v. Howard*, 25 F.4th 891, 904 (11th Cir. 2022). *See also United States v. Martinez-Fuerte*, 428 U.S. 543, 565 (1976) ("One . . . purpose [of the warrant requirement] is to prevent hindsight from coloring the evaluation of the reasonableness of a . . . seizure.").

Finally, Mr. Landau argues that it was unreasonable for Investigator Bisland and Detective Snowden to interpret Mr. Kilroe's testimony "as establishing that [he] knew, when the vehicle was towed, that it was owned by Gary Yeomans." Appellants' Br. at 50. That argument fails because even taking Mr. Kilroe's testimony in the light most favorable to Mr. Landau—namely that Mr. Landau knew the Mustang belonged to the dealership because that is what the police told him when they went to arrest him and search the premises—the result remains the same.[10]

The issue is not what was known to Mr. Landau, but whether the information reported by Mr. Kilroe to Investigator Bisland and Detective Snowden was sufficient to support a finding of arguable probable cause. We think that it was. And, for the same reason we previously noted, Mr. Landau's reliance on Mr. Kilroe's

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[10] Mr. Landau notes that Mr. Kilroe's complete testimony from the sworn statements that he provided to officers before Mr. Landau's arrest is as follows: "Q: So Glenn [Landau] told you that he knew it as Yeoman's vehicle? A: Yes. Q: Because that's what was represent[ed] to him --A: Yes. Q: -- by law enforcement. A: And he said that there was - that - he said Gary Yeomans and like five or six cop cars are at his business now, and he was all mad because now he's looking bad." Appellants' Br. at 50 n.32 (citing D.E. 101-10 at 37).

after-the-fact testimony during the state criminal trial does not tip the scales in his favor. *See* Appellants' Br. at 50 (citing Mr. Kilroe's trial testimony, D.E. 151-2 at 28 ("Q: Did he indicate that he knew who the owner was of the vehicle before July 9, 2014? A: No not to us.")).

3

Under the relevant provisions of Fla. Stat. § 713.78, it is a misdemeanor for "[a] person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to [instructions from a law enforcement agency]," *see* §§ (4)(a) and (2)(d) (respectively), and "who claims a lien for recovery, towing, or storage services," *see* § (4)(a), to fail to make "a good faith effort" to locate the name and address of the owner of the towed vehicle, including "[a] check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer," *see* §§ (4)(e) and (4)(e)(4) (respectively). *See generally* Fla. Stat. § 713.78(12) (making it a misdemeanor to violate, in relevant part, subsections (2) and (4)).

With respect to the tow lien statute violation, Investigator Bisland stated in the charging affidavit that "[Mr.] Landau used . . . Florida State Statute 713.78 to conceal the fact that he knew the Mustang was owned by Gary Yeomans Ford and circumvented the requirement to contact [the Holly Hill Police Department] and obtain or review their police report which would have identified the

owner." D.E. 112-2 at 2. After explaining the notice requirements under § 713.78, Investigator Bisland acknowledged that Mr. Landau "initiated and performed several statutory requirements to meet 'a good faith' effort . . . to identify the owner of the motor vehicle." *Id*. Investigator Bisland, however, alleged that Mr. Landau violated § 713.78 by "failing to check or request the Holly Hill Police Department report for the tag number or other information identifying the motor vehicle[.]" *Id*. Investigator Bisland believed that "[a] check of the Holly Hill Police Department report for the tag number or other information identifying the motor vehicle would have resulted in the immediate identification of the owner; Gary Yeomans Ford." *Id*. Investigator Bisland further noted that "[c]ompleting some of the requirements of the 'Good Faith' section of the statute allowed [Mr.] Landau to give the appearance of legitimately searching for the true owner of the Mustang, however he also knew the searches conducted would provide 'No Record Found' results regarding the identity of the owner." *Id*. Investigator Bisland therefore concluded that Mr. Landau had violated § 713.78(12)(a)—a misdemeanor of the first degree. *See id*. at 3.

We conclude that Investigator Bisland and Detective Snowden had at least arguable probable cause to arrest Mr. Landau for violations of Florida's tow lien statute and are therefore entitled to qualified immunity. A reasonable officer, with the information that Investigator Bisland and Detective Snowden had at the time they completed the charging affidavit—(1) that Fryer's (through its driver, Mr. English) had received the tow sheet which identified the owner of the vehicle, (2) that a search of the tow sheet would have

resulted in the immediate identification of the owner of the vehicle, and (3) that Mr. Landau knew that some of the searches that were conducted to meet the good faith requirement would turn up empty-handed—could have believed that Mr. Landau violated Florida's tow lien statute.

Significantly, the statute at issue here, § 713.78(4)(e)(4), expressly required the good faith effort to include "[a] check of the law enforcement report for a tag number *or other information identifying the vehicle or vessel*, if the vehicle or vessel was towed at the request of a law enforcement officer," as occurred in this case. Investigator Bisland and Detective Snowden could have reasonably believed (even if that belief later turned out to be mistaken or insufficient for a conviction) that the failure to contact the Holly Hill Police Department to determine the owner of the vehicle, when considered under the totality of the circumstances, was sufficient to arrest Mr. Landau.

Mr. Landau argues that the charging affidavit "baldly accused" him of not meeting the good faith requirement of the tow lien statute. *See* Appellants' Br. at 46. According to Mr. Landau, a check of the vehicle's tag number "would not have produced any information about the Mustang's owner." *Id*. Thus, Mr. Landau accuses the officers—based in part on the findings of the state court—of knowing that Fryer's had conducted "an exhaustive good faith search" but failing to "provide that evidence in the Charging Affidavit." *Id*. This argument is unpersuasive for several reasons.

First, as we previously explained, the good faith requirement to check the police report when a vehicle has been towed at the request of the police is not limited to checking the "tag number" but also requires a check for "other information identifying the vehicle or vessel." *See* § 713.78(4)(e)(4). Although Mr. Landau is correct that a check for the tag number ultimately would not had been helpful because the Mustang had a stolen Georgia license plate, a check of the report from the Holly Hill Police Department would have resulted in the "immediate identification of the owner" of the Mustang, as Investigator Bisland and Detective Snowden noted in the charging affidavit. *See* D.E. 112-2 at 2. The report listed "Gary Oman's Ford" (presumably a typo for "Gary Yeomans") on two separate places as the "Lien Holder" and "Registered Owner," and listed the address of the registered owner as the "Daytona Beach Auto Mall." *See* D.E. 112-8.

Second, Investigator Bisland and Detective Snowden did not fail to provide evidence of the "exhaustive" good faith search that had been conducted. *See* Appellants' Br. at 46. Contrary to Mr. Landau's contention, the charging affidavit expressly acknowledged that Mr. Landau "initiated and performed several statutory requirements to meet a 'good faith' effort as outlined in Florida State Statute (FSS) to identify the owner of the motor vehicle[.]" D.E. 112-2 at 2. The charging affidavit even noted that both Mr. Landau and Mr. English denied having received the tow sheet on May 16, 2014. *See id*. Additionally, the comprehensive 29-page investigative summary prepared by Investigator Bisland explained in detail all the efforts Fryer's had undertaken to identify and locate

the owner of the Mustang based in part on the testimony of Ms. Podgorski. *See* D.E. 101-11 at 24–26. Thus, Mr. Landau's characterization that the warrant was "infirm due to intentionally or recklessly false statements and/or omissions that were necessary to the probable cause determination" fails. *See* Appellant's Br. at 46–47.

Finally, as we previously explained, the state court's finding that Mr. Landau had conducted a good faith search for the owner of the vehicle "by anyone's measure" does not affect arguable probable cause. *See Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) ("What counts for qualified immunity purposes relating to probable cause to arrest is 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.") (internal quotation marks omitted).

In sum, the district court correctly ruled that Investigator Bisland and Detective Snowden were entitled to qualified immunity.[11]

C

Next, we address the appellants' claim against the City of Daytona Beach for the 2015 raid of Fryer's and the resulting seizures based on the City's failure to properly train its police officers on how to conduct administrative inspections. The district court ruled that the appellants' § 1983 municipal liability claims against

[11] We also affirm the district court's grant of qualified immunity for Officer Champion for the cogent reasons set out in its order. *See* D.E. 148 at 14–15.

the City of Daytona Beach necessarily failed because neither Mr. Landau nor Fryer's could establish an underlying constitutional violation by the individual officers. *See* D.E. 148 at 15. But, as discussed earlier, we conclude that the district court erred in failing to recognize a genuine dispute of material fact as to whether the officers' 2015 administrative search was pretextual and unconstitutional. Nonetheless, because the appellants did not establish a City of Daytona Beach custom or policy that caused the potential violation, we affirm on alternative grounds.[12]

"The Supreme Court has placed strict limitations on municipal liability under [§] 1983." *Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998). This liability may only be premised on a constitutional violation carried out by the municipality itself and cannot be based on theories of respondeat superior or vicarious liability. *See id.*; *Knight ex rel. Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 818 (11th Cir. 2017). Rather, "a municipality may be held liable for the actions of a police officer only when municipal 'official policy' causes a constitutional violation." *Gold*, 151 F.3d at 1350 (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694–95 (1978)). And this "official policy" must be the "moving force behind the constitutional violation." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (internal citation and bracket omitted). Thus, "to impose § 1983 liability on a municipality, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom

[12] We may affirm the district court's order on any ground supported by the record. *See Powers v. United States*, 996 F.2d 1121, 1123 (11th Cir. 1993).

or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004).

In limited circumstances, municipal policy or custom may include a failure to provide adequate training if the deficiency "evidences a deliberate indifference to the rights of its inhabitants." *City of Canton*, 489 U.S. at 385. Deliberate indifference "is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bd. of Cnty. Comm'rs of Bryant Cnty., Okla. v. Brown*, 520 U.S. 397, 410 (1997). *See also Connick v. Thompson*, 563 U.S. 51, 61 (2011) ("A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train."). To establish deliberate indifference in this context, "a plaintiff must present some evidence that the municipality knew of a need to train and/or supervise in a particular area and the municipality made a deliberate choice not to take any action." *Gold*, 151 F.3d at 1350. A plaintiff may do this by pointing to evidence that municipal policymakers "are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights." *Connick*, 563 U.S. at 61. Requisite notice can be established in two ways: (1) if the municipality is aware that a pattern of similar constitutional violations exists and nevertheless fails to provide adequate training to remediate those violations; or (2) if the likelihood for constitutional violation is so high that the need for training would be obvious. *Gold*, 151 F.3d at 1351–52.

The appellants argue that both alternatives are satisfied here.

First, the appellants point to two additional allegedly pretextual administrative searches as evidence of a "pattern of similar constitutional violations" sufficient to constitute actual or constructive notice on behalf of the City of Daytona Beach: (1) the 2014 administrative search conducted at Fryer's in this case, and (2) the facts at issue in *Bakri v. City of Daytona Beach*, 716 F. Supp. 2d 1165 (M.D. Fla. 2010). Neither suffices to put the City of Daytona Beach on notice.

The facts of *Bakri* do not support appellants' assertion that the City of Daytona Beach was on notice that its officers were engaged in a pattern of conducting unconstitutional administrative searches. Namely, the officers in *Bakri* did not conduct an administrative search at all, let alone one sufficiently similar to the search conducted at Fryer's in 2015. *See, e.g.*, *Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005) (finding no municipal liability where plaintiff introduced list of cases of excessive force but could not show that "any of them involved factual situations that are substantially similar to the case at hand").[13]

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[13] To the extent the appellants tangentially argue that City policymakers "ratified" the alleged constitutional violations, that argument is foreclosed by our holding in *Salvato v. Miley*, 790 F.3d 1286, 1297 (11th Cir. 2015). In *Salvato*, we acknowledged that a police department's "persistent failure to take disciplinary action against officers can give rise to the inference that a municipality has ratified conduct"; however, we also declined to find ratification where a sheriff "fail[ed] to investigate a single incident." *Id.* Likewise, the suggestion in

In *Bakri*, it is undisputed that the officers arrived at Mr. Bakri's place of business to arrest his son but did so without a warrant. *See* 716 F. Supp. 2d at 1169. During that warrantless arrest attempt, the officers handcuffed Mr. Bakri, broke his wrist, and eventually charged him with resisting with violence for refusing to allow the officers entry. *See id.* at 1169–70. The district court held that the officers' conduct constituted an unconstitutional search and seizure in violation of the Fourth Amendment. *See id.* at 1172–74. Unlike the situation here, there is no indication that the officers in *Bakri* proclaimed—at the time of the constitutional violation—that they were conducting an administrative search. Rather, during the course of litigation and as justification for their qualified immunity defenses, the officers merely proposed that their warrantless search of the business was justified under Florida's Beverage Law, Fla. Stat. § 562.41, an argument the district court rejected. *See id.* at 1172–73. The district court in *Bakri* did not hold that the officers conducted an unreasonable or pretextual administrative search; rather, the court merely rejected the officers' *post hoc* argument that they were entitled to search the premises anyways. *See id.* As such, we reject the appellants' argument that *Bakri* put the City of Daytona Beach on actual or constructive notice of a pattern of similar, pretextual administrative searches.

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the appellants' brief that Craig Capri was a policymaker because he is now the chief of police is rejected; he was not the chief of police at the time of the search. *See* Appellants' Br. at 52 n.33.

Disposing of the facts of *Bakri* as inapposite, we are left with only one additional allegation of a similar unconstitutional administrative search—the 2014 administrative search conducted at Fryer's in this very case. First, there was no finding prior to the 2015 administrative search that the 2014 search was itself pretextual or otherwise unconstitutional; thus, the 2014 search would not have put the City on notice of any malfeasance or training necessary for its officers. Second, even assuming *arguendo* that the 2014 search was unconstitutional, we have consistently rejected, with limited exception, evidence of a single incidence of unconstitutional activity as sufficient to impose liability under *Monell*. *See, e.g.*, *Kerr*, 856 F.3d at 820 (finding no municipal liability where "the only 'evidence' suggesting a pattern of tortious conduct is this case itself"); *Craig v. Floyd Cty., Ga.*, 643 F.3d 1306, 1311 (11th Cir. 2011) (no municipal liability unless plaintiff can show a "*series* of constitutional violations from which deliberate indifference can be inferred") (emphasis added and quotations omitted). *Cf. City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985) ("Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing unconstitutional policy, which policy can be attributed to a municipal policymaker."); *Depew v. City of St. Mary's, Ga.*, 787 F.2d 1496, 1499 (11th Cir. 1986) ("Normally random acts or isolated incidents are insufficient to establish a custom or policy.") (internal citation omitted).

Because the appellants cannot establish a pattern of substantially similar constitutional violations, they must establish that "the

unconstitutional consequences of failing to train" the City's officers in administrative searches are "patently obvious." *Connick*, 563 U.S. at 64. The Supreme Court has hypothesized a single example of this rare situation: a municipality's failure to train officers about the constitutional limits on the use of deadly force with knowledge that those officers will be armed and expected to use those weapons in the course of their duties. *See id.* at 63; *City of Canton*, 489 U.S. at 390 n.10. The appellants' contention that the City's officers were inadequately trained regarding administrative searches—let alone administrative searches involving the nuances of Florida Statute § 812.055—"fall[ ] far short of the kind of 'obvious' need for training that would support a finding of deliberate indifference to constitutional rights on the part of the city." *Gold*, 151 F.3d at 1352 (finding no obvious need for officers to be trained on Florida's disorderly conduct statute and the proper response to handcuff complaints) (quoting *City of Canton*, 489 U.S. at 396–97).

The risk of imperfection here, if any, "is not obvious in the abstract," *Gold*, 151 F.3d at 1353 (quotation and citation omitted). And we will not find municipal liability for each such imperfection "under the rubric of failure to train simply because the municipality does not have a professional education program covering the specific violation in sufficient depth." *Connick*, 563 U.S. at 73–74 (Scalia, J., concurring). Mr. Landau and Fryer's have not established the requisite notice to support *Monell* liability; thus, we affirm dismissal of their *Monell* claims against the City of Daytona Beach.

V

The district court correctly granted summary judgment in favor of the defendants. Although the district court erred in failing to recognize the existence of a genuine issue of material fact regarding the pretextual nature of the administrative search of Fryer's, the individual defendants were entitled to qualified immunity because the illegality of their conduct was not clearly established. We also agree that the claims against the City of Daytona Beach failed, albeit on alternative grounds. We therefore affirm the district court's summary judgment order.

AFFIRMED.

BRASHER, Circuit Judge, concurring in part and concurring in the result:

I concur in Parts I, II, III, IV.A.2, IV.B, and IV.C. of the majority opinion. I also concur in the result.

I disagree with Part IV.A.1. In Part IV.A.1, the majority concludes that "the district court erred in failing to recognize the existence of a genuine issue of material fact as to whether the February 2015 administrative search was focused on ferreting out criminal wrongdoing or simply inspecting Fryer's towing business for statutory compliance." Op. at 17. Because "a jury could conclude that the purpose of the February 2015 administrative search was to detect evidence of 'ordinary criminal wrongdoing,'" the majority suggests that the search may have been unconstitutional. Op. at 17.

I disagree with this reasoning in two respects.

First, there are no genuine issues of material fact. Instead, the key facts are entirely undisputed. Everyone agrees exactly how the search took place. Whether that search was reasonable under the Fourth Amendment is a question of law, not a question of fact. We have held that "[q]uestions regarding the reasonableness of a search or seizure based on established facts must be decided by the trial judge and not the jury." *Ziegler v. Martin Cnty. Sch. Dist.*, 831 F.3d 1309, 1319 (11th Cir. 2016). So the district court was right to resolve this constitutional question at summary judgment.

Second, I think the district court was correct that this administrative search was constitutional, even though the police had

good reasons to suspect they would find evidence of crime. I disagree with the majority's counterintuitive suggestion that an officer's *high* level of suspicion based on a *thorough* investigation can render an administrative search unreasonable. Instead, I agree with Judge Ed Carnes's concurring opinion in *Bruce v. Beary*, 498 F.3d 1232 (11th Cir. 2007), that there is no basis to conclude that otherwise lawful "administrative searches may not be permissible if there is too much basis for suspecting that evidence of a crime will be found during the search." *Id.* at 1250. *See also United States v. Villamonte–Marquez*, 462 U.S. 579 (1983) (rejecting argument that Customs officers and state police could not inspect a ship because they had reason to believe it was carrying illegal cargo).

As Judge Carnes explained, "[t]he notion that the permissibility of an administrative search varies inversely with the reason to believe that the search will uncover evidence of a crime defies logic and finds no support in the law." *Bruce*, 498 F.3d at 1250 (Carnes, J., concurring). "Administrative searches conducted pursuant to valid statutory schemes do not violate the Constitution simply because of the existence of a specific suspicion of wrongdoing." *United States v. Thomas*, 973 F.2d 1152, 1155–56 (5th Cir. 1992) (assessing search of tow yard). We should not follow any "hand-wringing *dicta*" in *Bruce* that suggests otherwise. *Bruce*, 498 F.3d at 1250 (Carnes, J., concurring).

Although a *category* of search may be unconstitutional because it is not justified by a purpose other than looking for evidence of crime, *e.g.*, *City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000),

a *particular* administrative search does not become unconstitutional merely because officers initiated that *specific* search as part of an effort to uncover evidence of wrongdoing. As the Supreme Court has explained, when assessing the constitutionality of an administrative search, "an inquiry into *programmatic* purpose is sometimes appropriate," but "this inquiry is directed at ensuring that the purpose behind the *program* is not ultimately indistinguishable from the general interest in crime control." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 405 (2006) (emphasis added) (internal quotation marks omitted). This inquiry *"has nothing to do with discerning what is in the mind of the individual officer conducting the search." Id. See also Edmond*, 531 U.S. at 48 ("[W]e caution that the purpose inquiry in this context is to be conducted *only at the programmatic level . . ."); Ashcroft v. al-Kidd,* 563 U.S. 731, 737 (2011) ("'programmatic purpose' is relevant to Fourth Amendment analysis of programs of seizures without probable cause").

To be sure, a particular administrative search is unlawful if it exceeds the authorized scope of an administrative search. But the February 2015 search meets this test. An indisputably constitutional Florida law permits administrative searches of tow yards "during normal business hours" to locate stolen vehicles. Fla. Stat. § 812.055. Law enforcement can also inspect records related to title certificates and liens. *Id*. That is exactly what the officers did in this case. They searched the tow yard and records within normal business hours hoping to identify any stolen vehicles. Incident to that administrative search, the police located a supposedly stolen vehicle and some paperwork apparently related to that stolen vehicle.

Several officers conducted the search, they did not brandish their weapons, and they completed the search in about one hour. The search was reasonable and constitutional as a matter of law.

For these reasons, I cannot concur in Part IV.A.1.