[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-12998

Non-Argument Calendar

CHRISTOPHER A. PARKER,

Plaintiff-Appellant,

versus

CYNTHIA THURMAN,
SUMMER RALEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:21-cv-00080-TWT

Before JILL PRYOR, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

Plaintiff Christopher A. Parker appeals the district court's order granting defendant Cynthia Thurman's motion for judgment on the pleadings and dismissing Parker's 42 U.S.C. § 1983 claim for malicious prosecution. After careful consideration, we affirm.

I.

In 2018, Parker lived with his partner, Hannah Sharp. Both Parker and Sharp worked nights. One morning, after their shifts ended, Parker picked Sharp up from work. They ran some errands and then returned home to eat breakfast. After finishing their meals, they went into their shared bedroom to sleep. According to Sharp, she fell asleep and woke up to Parker raping her. Parker admits that he had sexual intercourse with Sharp but claims that the encounter was consensual; he denies raping her.

Immediately after the sexual encounter, Sharp was crying and upset. She locked herself in the bathroom. Sharp tried to call her mother but was unable to reach her. Parker claims that he was confused by Sharp's distress and tried to comfort her. He contacted her sister, Summer Raley, and asked her to check on Sharp.

Raley, who worked as a deputy for the Dade County Sheriff's Office, called Sharp and convinced her to meet. Raley then

called Thurman, an investigator with the Dade County Sheriff's Office, and reported that Parker had raped Sharp. Raley said that she was taking Sharp to a sexual assault center to have a rape examination conducted.

Thurman, who knew Sharp because they had previously worked together and remained friends, met Sharp and Raley at the sexual assault center. At the sexual assault center, Thurman interviewed Sharp. Sharp cried throughout the interview, which lasted about 15 minutes. Raley, Sharp's mother, the director of the sexual assault center, and a victim's advocate from the district attorney's office all were present during the interview.

During the interview, Sharp told Thurman about the sexual assault. Sharp said that when she went to bed, she was exhausted and quickly fell asleep. She woke up approximately 30 minutes later to find Parker "on top of her and inside of her." Doc 1-2 at 7.[1] She reported that Parker twice ejaculated inside her. According to Sharp, although she had fallen asleep in pajamas, she was naked when she woke. Thurman asked her whether she had said anything to Parker during the assault. She shook her head no and indicated that she was in shock when she woke up to being raped.

Sharp described to Thurman what happened after the assault. She said she went into the bathroom because it was the only room in the house with a working lock. While she was locked

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[1] "Doc." numbers refer to the district court's docket entries.

in the bathroom, Parker was on the other side of the door crying and screaming at her. According to Sharp, Parker begged her not to leave, apologized, and claimed that she had agreed to have sex with him. She responded that she had never agreed to have sex and that he was lying. During the interview, Sharp told Thurman that Parker would claim she had agreed to have sex with him.

Also during the interview, Sharp admitted to Thurman that she had recently become angry with Parker and decided to end their relationship. She reported that Parker was aware she was going to leave him and the night before had begged her to stay with him.

There was no evidence of abrasions, bruises, or marks on Sharp's body. Thurman did not document any physical injuries that Sharp had suffered.

Based on the interview, Thurman appeared before a magistrate court judge and applied for an arrest warrant. Before applying for the warrant, Thurman made no attempt to contact Parker, visit the crime scene, talk to additional witnesses present at the sexual assault center, or obtain any additional evidence. To support the warrant application, Thurman signed an affidavit stating that Parker had committed the offense of rape under Georgia law when he "willingly and knowingly[] penetrated the vagina of Hannah Sharp with his penis without her permission or consent and against her will." Doc. 6 at ¶ 37. The magistrate court judge issued a warrant for Parker's arrest.

A few hours later, officers arrested Parker. He was taken to the sheriff's office and questioned by Thurman and another officer. During the interview, Parker denied raping Sharp and claimed that they had engaged in consensual sex. He also denied knowing that she wanted to end their relationship. When the officers told him that Sharp had wanted to end the relationship, Parker suggested that she had made up the rape accusation as a way to end their relationship. Parker also reported that she had claimed to have been sexually assaulted by other men in the past.

Parker was transported to the local jail and held there for several days. After posting bond, he was released from custody. As a condition of his release, Parker had to submit to electronic ankle monitoring and was allowed to leave his residence only for limited purposes. Parker was required to wear the ankle monitor for approximately six months.

Eventually, the district attorney moved to dismiss the arrest warrant based on "insufficient evidence to warrant a reasonable probability of conviction." *Id.* at ¶ 58 (internal quotation marks omitted). The magistrate court granted the district attorney's motion. Parker was never indicted for any offense in connection with the alleged rape.

Parker later filed this lawsuit against Thurman, bringing a claim under 42 U.S.C. § 1983 for malicious prosecution.[2] After fil-

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[2] Parker also brought a malicious prosecution claim against Raley. The district court dismissed this claim. Because Parker does not challenge on appeal

ing an answer, Thurman filed a motion for judgment on the pleadings, arguing that she was entitled to qualified immunity.

The district court granted Thurman's motion. The court concluded that Thurman was entitled to qualified immunity because the information Sharp provided in the interview about the sexual assault gave Thurman at least arguable probable cause to believe that Parker had committed a crime.

This is Parker's appeal.

II.

We review *de novo* a district court order granting judgment on the pleadings. *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001). "Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." *Id.* "In determining whether a party is entitled to judgment on the pleadings, we accept as true all material facts alleged in the non-moving party's pleading, and we view those facts in the light most favorable to the non-moving party." *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014).[3]

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the district court's dismissal of his claim against Raley, we do not discuss the claim further.

[3] Parker attached various documents to his complaint including Thurman's arrest affidavit and her investigation summary, which detailed the statements that Sharp and Parker made during their interviews. Because these documents were attached as exhibits to Parker's complaint, we treat them as part

III.

"Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action." *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir. 2019) (internal quotation marks omitted). To receive qualified immunity, an officer "bears the initial burden to prove that [s]he acted within [her] discretionary authority." *Dukes v. Deaton*, 852 F.3d 1035, 1041 (11th Cir. 2017). The plaintiff then bears the burden of proving that "the defendant violated a constitutional right" and "the right was clearly established at the time of the violation." *Barnes v. Zaccari*, 669 F.3d 1295, 1303 (11th Cir. 2012). Because Parker does not dispute that Thurman was engaged in a discretionary function, he bears the burden of proving that she was not entitled to qualified immunity.

Parker claims that Thurman is liable under the Fourth Amendment for malicious prosecution, "which is shorthand for a claim of deprivation of liberty pursuant to legal process." *Luke v. Gulley*, 975 F.3d 1140, 1143 (11th Cir. 2020) (internal quotation marks omitted). To succeed on this claim, Parker must prove that (1) Thurman "violated his Fourth Amendment right to be free from seizures pursuant to legal process" and (2) "the criminal pro-

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of that pleading for purposes of Thurman's motion for judgment on the pleadings. *See Gill ex rel. K.C.R. v. Judd*, 941 F.3d 504, 511–12 (11th Cir. 2019).

ceedings against him terminated in his favor." *Id.* at 1144. To establish that Thurman violated his Fourth Amendment right to be free from seizures pursuant to legal process, Parker must establish "that the legal process justifying his seizure was constitutionally infirm and that his seizure would not otherwise be justified without legal process." *Id.* (internal quotation marks omitted). Because the existence of "[p]robable cause renders a seizure pursuant to legal process reasonable under the Fourth Amendment[,] . . . the presence of probable cause defeats a claim that an individual was seized pursuant to legal process in violation of the Fourth Amendment." *Washington v. Howard*, 25 F.4th 891, 898 (11th Cir. 2022) (internal quotation marks omitted).

In the context of an arrest, probable cause exists "when the facts, considering the totality of the circumstances and viewed from the perspective of a reasonable officer, establish 'a probability or substantial chance of criminal activity.'" *Id.* (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 586 (2018)). In assessing whether there was probable cause for an arrest, we "ask whether a reasonable officer could conclude that there was a substantial chance of criminal activity." *Id.* at 902 (alteration adopted) (internal quotation marks omitted). "Probable cause does not require conclusive evidence and is not a high bar." *Id.* at 899 (internal quotation marks omitted).

To determine whether there was probable cause for Parker's arrest, we ask whether a reasonable officer could have concluded that there was a substantial chance that he had committed

the crime of rape. Under Georgia law, a person commits the offense of rape "when he has carnal knowledge of . . . [a] female forcibly and against her will." O.C.G.A. § 16-6-1(a)(1). Under Georgia law, "carnal knowledge" occurs "when there is any penetration of the female sex organ by the male sex organ." *Id.* Georgia courts have recognized that "sexual intercourse with a woman who is temporarily without will, due to unconsciousness arising from sleep, is rape." *Johnson v. State*, 369 S.E.2d 48, 49 (Ga. Ct. App. 1988); *see Cook v. State*, 790 S.E.2d 283, 287 (Ga. Ct. App. 2016) (explaining that victim's statement that she was in and out of consciousness when defendant had sexual intercourse with her was sufficient to establish that defendant had used "constructive force" and committed the crime of rape).

Here, a reasonable officer could conclude there was a substantial chance that Parker had committed the crime of rape. An officer could draw this conclusion based on Sharp's statements during the interview that she woke from sleeping to find Parker "on top of her and inside of her." Doc. 1-2 at 7. Although Parker argues that there was no probable cause because there was no physical evidence to corroborate Sharp's rape allegation, we have recognized that an officer generally "is entitled to rely on a victim's criminal complaint as support for probable cause." *Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998); *see Huebner v. Bradshaw*, 935 F.3d 1183, 1188 (11th Cir. 2019) (explaining that officer had probable cause to arrest suspect for battery based on victim's statements).

Parker nevertheless argues that Thurman lacked probable cause because she conducted an "unreasonable investigation." Appellant's Br. at 7. Parker says that Thurman's investigation was insufficient because she should have interviewed him before obtaining an arrest warrant. If Thurman had interviewed Parker before obtaining the arrest warrant, she would have heard him dispute Sharp's account of the events and claim that Sharp had engaged in consensual sexual intercourse.

Even with the interview, however, Thurman still would have had probable cause to arrest Parker. When an officer initially uncovers facts showing probable cause, she is not "required to forego arresting" a suspect simply because the defendant "offered a different explanation." *Huebner*, 935 F.3d at 1188 (internal quotation marks omitted). As we have explained, when deciding whether there is probable cause for an arrest, an officer is not "required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances presented a sufficient basis for believing that an offense had been committed." *Id.* (alterations adopted) (internal quotation marks omitted). The totality of the evidence here was sufficient to give a reasonable officer a basis to conclude that Parker had committed the crime of rape under Georgia law.

Parker also argues that Thurman's investigation was unreasonable because Thurman was "bias[ed]" due to her friendship with Sharp. Appellant's Br. at 17. To support this argument, Parker relies on our decision in *Kingsland v. City of Miami*, 382 F.3d

1220 (11th Cir. 2004). After considering *Kingsland*, we cannot say that Thurman's investigation was unreasonable.

In *Kinsgland*, Misty Kingsland was involved in a car accident with an off-duty police officer. *Id.* at 1223. After the accident, Kingsland climbed out of her wrecked vehicle and "sat down in a pile of shattered glass." *Id.* Although a large number of officers responded to the scene, ultimately as many as 20, none of them approached Kingsland for a full 30 minutes, either to ask for her version of events or to inquire about her well-being. *Id.* When officers finally spoke to Kingsland, she told them that she "had sustained injuries to her head" and "was dizzy and could not stand up." *Id.* Still, no one offered Kingsland any medical care. *Id.* Although one officer claimed to have detected an odor of marijuana emanating from Kingsland and her vehicle, nobody searched her truck, summoned drug-sniffing dogs, or ever found any marijuana. *Id.* at 1223–24. When Kingsland (presumably still dizzy and sick) failed field sobriety tests, officers put her in a vehicle and told her "she was being transported to the hospital for treatment and more tests." *Id.* at 1224. In fact, the officers took Kingsland into custody and drove her to "a DUI testing facility." *Id.* Once there, officers administered multiple breathalyzer tests, all of which came back negative. *Id.* Given Kingsland's clean results, the officer completing paperwork for the arrest asked a colleague "what he should . . . write." *Id.* He was told "to write that Kingsland had a strong odor of cannabis emitting from her breath." *Id.* The officer then "threw away the form he was writing on and started

writing on a new form." *Id.* After taking additional tests and providing a urine sample, which later came back clean, Kingsland was handcuffed, transported to jail, and charged with driving under the influence. *Id.* at 1225. Several months later, the charges were dropped. *Id.*

Kingsland sued the officers for false arrest. *Id.* We reversed the district court's grant of summary judgment to the officers, holding that there were genuine issues of material fact as to whether the officers had conducted a reasonable investigation. *Id.* at 1223, 1225. We explained that officers cannot ignore "exculpatory information that is available to them" and may not "conduct an investigation in a biased fashion or elect not to obtain easily discoverable facts, such as whether there was cannabis in the truck or whether witnesses were available to attest to who was at fault in the accident." *Id.* at 1228–29. We concluded that a jury could find the officers' investigation was "deficient in that the officers consciously and deliberately did not make an effort to uncover reasonably discoverable, material information." *Id.* at 1230. Furthermore, we concluded that a reasonable jury could have found that the officers "fabricated" evidence to establish probable cause. *Id.* at 1233.

Parker argues that the investigation was unreasonable under *Kingsland* because it was tainted by bias: "Thurman chose to base her investigation on allegations . . . by a complaining witness with whom she had a pre-existing relationship." Appellant's Br. at 17. But we did not conclude in *Kingsland* that the officers per-

formed an unreasonable investigation simply because they had a pre-existing relationship with the officer who hit Kingsland's car. Instead, we reversed the grant of summary judgment because a reasonable jury could have found that the officers consciously ignored information they already possessed that cast significant doubt on whether Kingsland was guilty of driving under the influence and that the officers fabricated evidence against Kingsland. *See Kingsland*, 382 F.3d at 1226–28, 1233–34. Because there is no allegation in this case that Thurman consciously and deliberately ignored information that she already possessed or that she fabricated evidence, we cannot say that *Kingsland* controls here.

IV.

For the reasons set forth above, we affirm the district court's grant of judgment on the pleadings in favor of Thurman.

AFFIRMED.