

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11088
Non-Argument Calendar

KEVIN BAIN,

Plaintiff-Appellant,

versus

BRANDON MCCORD,
JAMES HYPPOLITE,
Detectives at Broward Sheriff Office,
LARRY AKERS,
BSO SWAT Team Leader,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cv-61166-AHS

Before NEWSOM, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Kevin Bain, proceeding pro se, appeals the district court's order dismissing his amended complaint with prejudice. Bain argues (1) that the district court abused its discretion by taking judicial notice of certain filings in his state-court criminal case at the motion-to-dismiss phase, (2) that the district court erred in concluding that he had failed to state a plausible § 1983 claim, and (3) that the district court abused its discretion by not granting him leave to amend his complaint. After careful review, we affirm. We assume the parties are familiar with the facts and briefing and recount them here only as necessary to decide the case.

I

First, Bain's contention that the district court erred by taking judicial notice of the pending criminal case against him at the motion-to-dismiss phase: We review a district court's decision to take judicial notice of a fact for abuse of discretion. *Lodge v. Kondaur Cap. Corp.*, 750 F.3d 1263, 1273 (11th Cir. 2014). A district court is entitled to take judicial notice of relevant public documents at the motion-to-dismiss phase. *See Lozman v. City of Riviera Beach*, 713 F.3d

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1066, 1075 n.9 (11th Cir. 2013). And a district court may “consider documents attached to the motion to dismiss if they are referred to in the complaint, central to the plaintiff’s claim, and of undisputed authenticity.” *Hi-Tech Pharms., Inc. v. HBS Int’l Corp.*, 910 F.3d 1186, 1189 (11th Cir. 2018); *see also Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).

The district court did not abuse its discretion in considering the documents—including orders from Bain’s state-court case and the federal search warrants whose validity he contests—that were attached to the deputies’ motion to dismiss. *Lozman*, 713 F.3d at 1075 n.9; *Hi-Tech Pharms.*, 910 F.3d at 1189. Bain never asserted that the documents were incorrect and, in fact, explicitly relied on and cited them in his own briefing. And the noticed documents are central to this case: Bain’s federal claims challenge the constitutionality of his state criminal proceedings and the police investigation that preceded them. The district court did not err by taking judicial notice of relevant documents at the motion-to-dismiss phase.

II

Next, Bain’s argument that the district court erred in dismissing all three of his 42 U.S.C. § 1983 claims: We review the grant of a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) *de novo*, accepting the plaintiff’s allegations as true and construing the allegations “in the light most favorable to the plaintiff.” *Caterpillar Fin. Servs. Corp. v. Venequip Mach. Sales Corp.*, 147 F.4th 1341, 1346 (11th Cir. 2025) (citation

modified). We hold *pro se* pleadings to a less stringent standard than counseled pleadings and liberally construe them. *Jacob v. Mentor Worldwide, LLC*, 40 F.4th 1329, 1334 (11th Cir. 2022). “Yet even in the case of *pro se* litigants this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading” *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (citation modified).

Bain’s amended complaint sets forth three different counts related to the officers’ search of his parents’ property and his subsequent arrest. Each is insufficient to state a claim. First, Bain asserts that the officers committed a “Fourteenth Amendment Violation” of the “Particularity Requirement” because they relied on a warrant that did not list the property to be seized, and because the warrant listed his parents’ address as the place to be searched but didn’t separately identify the guest house on their property in which Bain resided. *See* Am. Compl. at 7, Dkt. No. 22. As for the list of property to be seized, Bain’s argument ignores the fact that Attachment B, which was referenced in and attached to the warrant, *does* list the specific property to be seized. Attachment B at 24–25, Dkt. No. 28-3. In *Groh v. Ramirez*, the Supreme Court clarified that the particularity requirement does not “prohibit[] a warrant from cross-referencing other documents.” 540 U.S. 551, 557 (2004). By referencing Attachment B, which contained all the requisite specificity, the warrant satisfied the particularity requirement.

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As to Bain’s argument that the warrant didn’t authorize a search of his parents’ guest house, although we “ha[ve] yet to address in a published opinion whether a search warrant that does not explicitly authorize a search of the curtilage of a residence subject to a search warrant implicitly does so,” we observe now, as we did in *Spriggs v. United States*, 2022 WL 2345758 (11th Cir. June 29, 2022), that “[w]e are guided and bound by *United States v. Napoli*, 530 F.2d 1198 (5th Cir. 1976)¹,” *id.* at *12, where the old Fifth Circuit held that a warrant authorizing a search of a particular address extended “to an outbuilding or to a vehicle on the premises,” *Napoli*, 530 F.2d at 1200–01. The pertinent curtilage here includes, as Bain acknowledges, the guesthouse in which he resides. Br. of Appellant at 7. Thus, the warrant in this case—which listed the address of his parents’ home—also authorized a search of Bain’s guesthouse on the property. The district court did not err in dismissing Bain’s first claim.

Second, Bain asserts that the officers committed another “Fourteenth Amendment Violation” by executing a “Warrantless Arrest” at his home with “NO warrant from the State of Florida.” Am. Compl. at 8, Dkt. No. 22. The Fourth Amendment “prohibits the police from making a warrantless and non-consensual entry into a suspect’s home for purposes of making a felony arrest, unless

¹ See *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (“We hold that the decisions of the United States Court of Appeals for the Fifth Circuit . . . handed down by that court prior to the close of business on [September 30, 1981], shall be binding as precedent in the Eleventh Circuit . . .”).

exigent circumstances are present.” *United States v. Standridge*, 810 F.2d 1034, 1036 (11th Cir. 1987). Such circumstances are indicated by factors including:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

Id. at 1037.

Here, the police had probable cause to believe that Bain had committed several violent crimes—specifically, that he had committed three separate shootings at the homes of his former coworkers. *See* Warrant Aff. at 30–31, Dkt. No. 28-3. Because exigent circumstances justified warrantless arrest here, Bain has failed to make out a claim for a constitutional violation.²

² Bain argues that “the district court dismissed Claim Two relying on exigent circumstances in a sua sponte manner not advanced by the parties and not adopted by the magistrate judge.” Br. of Appellant at 9. Not so: The magistrate judge recommended that the district court dismiss Bain’s warrantless-arrest claim because “the Fourth Amendment does not require police officers to obtain an arrest warrant before making a felony arrest” if “made based on probable cause.” R.&R. at 22, Dkt. No. 34. And the district court adopted that reasoning exactly: It held that, although the Fourth Amendment protects against “warrantless arrest and nonconsensual entry into a suspect’s home to

Bain's third claim alleges another "Fourteenth Amendment Violation," this time implicating his "[r]ight to be free from Unreasonable Searches and Seizures." Am. Compl. at 8–9, Dkt. No. 22. Here, he argues that two of the officer-defendants unreasonably relied on a warrant affidavit that contained a misstatement. The warrant affidavit mentioned a witness's allegations that Bain "verbally threatened her over her cell phone 513 times from a blocked number within 14 hours." *Id.* at 9. This is a misstatement, he alleges, because the witness's subpoenaed cell-phone records "show that she had NOT ONE INCOMING BLOCKED CALL for the whole entire day" on which the witness claimed she received Bain's calls. *Id.* He proceeds to accuse the officer who procured the warrants (who is not a party in this case) of "act[ing] with Reckless Disregard for the Truth by never having personal Knowledge" of the witness's allegations and argues that, under the "Fellow Officer Rule," that disregard must be imputed to the defendants here. *Id.*

We employ "a two-part test to determine whether a misstatement in an officer's warrant affidavit amounts to a violation of the Fourth Amendment." *Paez v. Mulvey*, 915 F.3d 1276, 1287 (11th Cir. 2019). "First, we ask whether there was an intentional or reckless misstatement or omission. Then, we examine the materiality of the information by inquiring whether probable cause would be

make a routine felony arrest," a warrantless arrest "can be made if the officer has probable cause to believe that the suspect has committed an offense and where exigent circumstances exist," and such circumstances "can include . . . probable cause to believe that suspect committed the crime." Order Granting Def'ts Mot. to Dismiss at 8, Dkt. No. 38 (citation modified).

negated if the offending statement was removed or the omitted information included.” *Id.* As an initial matter, this Court has never held in a published decision that non-affiant officers who execute search warrants can be held liable for an affiant officer’s misstatements. But even if the executing officers could be held liable, Bain’s argument would fail at step one: He did not plausibly allege that any statement in the affidavit was a deliberate falsehood or made with reckless disregard for the truth. Bain never alleged that the affiant officer deliberately lied—only that she (in Bain’s view, wrongly) relied on a victim’s statement. And while he stated that the ATF agent acted with reckless disregard for the truth, the only supporting allegation he provided was that she “never ha[d] personal Knowledge there was a crime.” Am. Compl. at 8–9, Dkt. No. 22. Federal courts have long held that a warrant affidavit may be based on hearsay instead of on the affiant’s own observations, so the affiant officer’s lack of personal knowledge doesn’t imply recklessness. See *Aguilar v. Texas*, 378 U.S. 108, 114 (1964), *abrogated on other grounds by Illinois v. Gates*, 462 U.S. 213 (1983). At most, Bain’s allegations indicate that the affiant negligently—but not recklessly—relied on the victim’s statements in drafting the affidavit. And negligent misstatements do not violate the Fourth Amendment. See *Paez*, 915 F.3d at 1287. Bain hasn’t stated a cognizable Fourteenth Amendment claim against the officers for executing a

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search warrant that was supported by an affidavit containing alleged misstatements.

III

Finally, Bain’s contention that the district court erred in denying him leave to further amend his complaint: We review a district court’s order denying further leave to amend a complaint for abuse of discretion, but review de novo the district court’s decision that granting leave to amend would be futile. *Pinnacle Advert. & Mktg. Grp., Inc. v. Pinnacle Advert. & Mktg. Grp., LLC*, 7 F.4th 989, 999–1000 (11th Cir. 2021) (reviewing denial of leave to amend for abuse of discretion); *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1328 (11th Cir. 2020) (reviewing whether granting leave to amend would be futile de novo). A court abuses its discretion if it applies an incorrect legal standard, follows improper procedures, or makes clearly erroneous findings of fact. *Peer v. Lewis*, 606 F.3d 1306, 1311 (11th Cir. 2010).

A district court need not allow amendment in the event of undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Leave to amend would be futile if an amended complaint would still fail at the motion-to-dismiss or summary-judgment stage.” *Peterson*, 982 F.3d at 1332. And a litigant seeks leave to amend in bad faith if he “knowingly or recklessly raises a frivolous argument,” or, to harass the other side, “argues a meritorious claim.” *Hall v. Merola*, 67 F.4th 1282, 1296 (11th Cir. 2023) (citation modified).

The district court concluded that Bain acted in bad faith in this case—which is one of at least fifteen similar federal cases Bain has filed to challenge the state-court criminal proceedings against him—by refusing to abandon his misstatements of the law even after the district court corrected them. *See* R.&R. at 26-27, Dkt. No. 34; Order Granting Def'ts Mot. to Dismiss at 12, Dkt. No. 38 (adopting the R.&R.). And it concluded that amendment would be futile in any event: The search warrants Bain challenges were valid, and no number of amendments could change that. R.&R. at 26. The district court did not abuse its discretion by denying Bain leave to amend.

AFFIRMED.