NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

No. 25-12239
Non-Argument Calendar

YOLANDA LOPEZ,

Plaintiff-Appellee.

versus

CITY OF OPA-LOCKA et al.,

Defendants,

GABRIELA LLANES,
JOHANE TAYLOR,

Defendants-Appellants,

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cv-22076-CMA

Before NEWSOM, BRASHER, and WILSON, Circuit Judges.

PER CURIAM:

Defendant-Appellants Gabriela Llanes and Johane Taylor, police officers for the City of Opa-Loka (collectively, the Officers) appeal the district court's denial of summary judgment, finding that they were not entitled to qualified immunity or state immunity. After careful review, we conclude that we lack jurisdiction over the Officers' appeal because their arguments turn on the facts, not the law. Thus, we dismiss this appeal.

I.

The relevant facts here involve an October 1, 2022 encounter between Plaintiff-Appellee Yolanda Lopez and the Officers. Lopez was standing on the corner outside the Opa-Locka Flea Market after her and her husband's business was evicted from the Flea Market. Standing on the sidewalk near the road, Lopez passed out flyers to notify customers of her new location, including to vehicles stopping along the road as they attempted to turn into the now-closed flea market. While doing this, Officer Llanes began harassing her, and Lopez called 911 to seek assistance. While Lopez was on the phone with 911, Llanes began to handcuff Lopez. Officer Taylor also arrived to assist Llanes, and the Officers assaulted Lopez, tasering her twice. The Officers arrested Lopez, but the charges were ultimately dismissed.

II.

Lopez sued the City of Opa-Locka, the Officers, GPT NW 42nd Avenue Owner II LLC, and Link Logistics Real Estate Management LLC. As relevant to this interlocutory appeal, Lopez asserted claims against the Officers for (1) false arrest under 42 U.S.C.

§ 1983, (2) excessive force under 42 U.S.C. § 1983, (3) state law assault and battery, and (4) state law false imprisonment. After discovery, the Officers moved for summary judgment,[1] which Lopez opposed. The district court denied the Officers' motion in full.

The court found that the parties "hotly dispute the events surrounding [Lopez]'s arrest." In response to a video taken by a bystander that the Officers argued supports their version of events and discredits Lopez's, the court explained that nothing in the video contradicts Lopez's version of events because the video provides "only a short and obstructed glimpse into the incident."

The court then went through each of Lopez's claims. As to the § 1983 false arrest claim, the court denied summary judgment, finding that the Officers did not have arguable probable cause to arrest Lopez. The Officers identified three Florida laws that Lopez violated: (1) obstructing traffic; (2) disorderly conduct; and (3) resisting an officer.

For the obstructing traffic charge, the court found that Lopez maintained that she never entered the street, flagged down cars, or otherwise impeded the flow of vehicles. The court then explained that the Officers did not identify any evidence that refuted Lopez's factual allegations. Thus, the court found that, even accepting the possibility that traffic in the area slowed, "the totality

[1] The City also moved for summary judgment, which the court denied. The City did not appeal.

of the circumstances, on [Lopez's] telling, falls short of establishing a 'substantial chance' that [she] violated the statute."

For the disorderly conduct charge, the court also found that, taking the facts in the light most favorable to Lopez, the Officers did not have arguable probable cause to arrest her for disorderly conduct. The Officers had asserted that they had arguable probable cause to arrest her for screaming, which Lopez denied. But the court found that, even under the Officers' version of events, Lopez's "purported isolated outburst—a single shouted phrase—does not, as a matter of law, rise to the level of disorderly conduct under Florida law." The court also rejected the Officers' contention that they had arguable probable cause to arrest Lopez for disorderly conduct because she lingered near the roadway, refused to leave despite repeated commands, and distracted drivers by handing out flyers to occupants of moving vehicles. Lopez denied those facts, and again construing the facts in the light most favorable to Lopez, the court could not find as a matter of law that a reasonable officer could have believed that Lopez had committed disorderly conduct.

As to the resisting an officer charge, the court found that under Lopez's version of events, she (1) did not obstruct traffic, stand in the road, or wave down any vehicles; (2) was never told she was under arrest; (3) assured the Officers she was not resisting, and (4) pleaded not to be tased because of a heart condition, so no actual probable cause existed to arrest her for resisting. The court

then found that clearly established law provided that the arrest would be unconstitutional under those facts.

As to the § 1983 excessive force claim, the court found that, while the Officers maintained that their use of force was necessary to restrain an actively resisting subject who refused to obey their commands, under Lopez's version of events, she followed the Officers' orders, made no threatening gestures, and assured Llanes she would not resist. When taking the facts in the light most favorable to Lopez, the court found that the Officers' use of force could reasonably be viewed as excessive under the Fourth Amendment. The court then found that, at the time of the arrest, clearly established law would have put the Officers on notice that their use of force was unconstitutional under Lopez's version of the facts.

As to the state law claims, the court found that its previously identified genuine disputes of material fact precluded summary judgment for the Officers. The court also addressed the Officers' state immunity argument, finding that immunity does not apply if the officers acted with wanton disregard or improper motive. The court again reiterated that the disputed facts about Lopez's conduct could permit a jury to find the Officers acted in bad faith. The Officers appealed.

III.

We review de novo whether the officers are entitled to summary judgment based on qualified immunity. *English v. City of Gainesville*, 75 F.4th 1151, 1155 (11th Cir. 2023). We also review our jurisdiction de novo. *Id.*

IV.

On appeal, the Officers argue that the district court erred in denying their motion for summary judgment, finding that at this stage they were not entitled to qualified immunity and state immunity. They assert that the court misconstrued the record, and they repeatedly assert they are entitled to qualified immunity based on facts that the district court found were disputed. Lopez argues that the court properly denied summary judgment and asserts that the Officers' arguments boil down to a dispute about the facts and not the law, and thus, this court lacks jurisdiction over this appeal.

We agree with Lopez that we lack jurisdiction to review the court's order denying summary judgment. We first address the court's denial of qualified immunity. We then address the denial of state immunity.

A.

"To be appealable, an order must either be final or fall into a specific class of interlocutory orders that are made appealable by statute or jurisprudential exception," including the collateral order doctrine. *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000); 28 U.S.C. §§ 1291, 1292. An order is immediately appealable under the collateral order doctrine if it: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from and collateral to the merits of the action; and (3) would be effectively unreviewable on appeal from the final judgment. *Plaintiff A v. Schair*, 744 F.3d 1247, 1252–53 (11th Cir. 2014).

"Whether we have interlocutory jurisdiction to review the denial of summary judgment on qualified immunity grounds depends on the type of issues involved in the appeal." *Cottrell v. Caldwell*, 85 F.3d 1480, 1484 (11th Cir. 1996) (emphasis omitted). "An official asserting the affirmative defense of qualified immunity must initially establish that he was acting within his discretionary authority." *Skop v. City of Atlanta*, 485 F.3d 1130, 1136 (11th Cir. 2007). If the official does so, the burden then shifts to the plaintiff to show that the official is not entitled to qualified immunity by demonstrating that the official's conduct violated a statutory or constitutional right and that the violation was clearly established at the time the conduct occurred. *Id.* at 1136–37.

"Issues of law include the question of whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions." *Jackson v. City of Atlanta*, 97 F.4th 1343, 1351 (11th Cir. 2024) (quotation marks omitted). But when the only issues appealed relate to the sufficiency of the evidence, such as whether the district court erred in determining that there was an issue of fact for trial regarding the defendant's actions, we lack jurisdiction to review the denial of immunity. *English*, 75 F.4th at 1155–56. If an appeal from an order denying qualified immunity includes both factual and legal issues, then we have jurisdiction to consider it under the collateral order doctrine. *Id.*

Throughout the Officers' merits brief, they often reiterate that the district court misconstrued the record, and they repeatedly assert they are entitled to qualified immunity based on facts that

the district court found were disputed. The Officers attempt to cast their arguments as legal disputes, but essentially they ask this court to reject the district court's evidentiary findings. And that type of argument does not give us jurisdiction to review this interlocutory appeal. *See English*, 75 F.4th at 1156.

For example, the Officers argue they had probable cause to arrest Lopez for obstructing traffic "even taking [Lopez]'s version of facts as true." They base that argument on their assertion that Lopez admitted handing out flyers to cars in the road before police arrived, yet the district court found that Lopez denied doing that. And the Officers argue that the district court "did not comport" with binding precedent "as to what constitutes clearly established law" regarding Lopez's false arrest claim because the district court "misstates a critical fact"—that Lopez did not wave any vehicles down. Again, their argument is based on an argument that the district court got the facts wrong.

"[T]he dispute is about what the evidence could prove at trial"—namely whom the jury will believe, Lopez or the Officers. *Id.* Thus, we lack jurisdiction over the district court's denial of summary judgment based on qualified immunity.

B.

"[A]n order denying summary judgment based on state sovereign immunity is immediately appealable if state law defines the immunity at issue to provide immunity from suit rather than just a defense to liability." *Coleman v. Hillsborough Cnty.*, 41 F.4th 1319,

1324 (11th Cir. 2022) (internal quotation marks omitted). "'In Florida, sovereign immunity is both an immunity from liability and an immunity from suit.'" *Id.* (quoting *Fla. Hwy. Patrol v. Jackson*, 288 So. 3d 1179, 1185 (Fla. 2020)). Thus, we normally would have jurisdiction to review the district court's denial of state sovereign immunity. "But as in the qualified immunity context, we lack interlocutory appellate jurisdiction over the denial of summary judgment based on state-law immunity where the appeal turns on issues of evidentiary sufficiency." *English*, 75 F.4th at 1157.

"Pursuant to Florida law, police officers are entitled to a presumption of good faith in regard to the use of force applied during a lawful arrest, and officers are only liable for damage where the force used is 'clearly excessive.'" *Davis v. Williams*, 451 F.3d 759, 768 (11th Cir. 2006) (quoting *City of Miami v. Sanders*, 672 So. 2d 46, 47 (Fla. Dist. Ct. App. 1996)). Officers "may not be held personally liable in tort" for actions taken in the scope of their employment unless they "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Fla. Stat. § 768.28(9)(a).

The Officers assert that the district court erred in denying state immunity because it "[a]ccepted a [factual] narrative" that was unsupported by the record, and they asserted that it erred by not identifying "record evidence supporting a finding of malicious or willful conduct." But the district court did point to evidence—Lopez's account that she committed no crime, posed no threat, did not resist and yet was slammed against a car and tased twice—that

a jury could believe would find the Officers acted with wanted disregard or improper purpose, which would negate state immunity. Again, the Officers' argument turns on the facts, not the law. We therefore lack jurisdiction over this appeal.

V.

Ultimately, the Officers' appeal turns on "the factual inferences the district court drew from a series of circumstances." *Hall v. Flournoy*, 975 F.3d 1269, 1278 (11th Cir. 2020). While "[w]e may disagree with the inferences the district court has drawn," our review of those determinations "would amount to nothing more than weighing the evidence supporting the district court's summary judgment determination." *Id.* Thus, we lack jurisdiction to review the district court's order.

APPEAL DISMISSED.