

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10834
Non-Argument Calendar

STEVEN EVERETT,

Plaintiff-Appellant,

versus

WYATT MCCALL,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:24-cv-00107-WMR

Before ROSENBAUM, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

Steven Everett appeals the district court's grant of summary judgment to Sergeant Wyatt McCall in Everett's 42 U.S.C. § 1983 action alleging malicious prosecution. Everett contends the district

court erred in granting qualified immunity to Sergeant McCall because Sergeant McCall did not provide the magistrate judge with sufficient facts to make an independent determination that probable cause existed to issue a warrant. After review,¹ we affirm the district court.

I. BACKGROUND

Everett is the former spouse of Sharon Dennis, and Everett was stepfather to Sharon's daughter, Kaci Parker. In 2021, Kaci and her then-husband, Paul Parker, separated. During Kaci and Paul's divorce proceedings, Paul's visits with their daughter, Natasha, were supervised. Everett objected to the supervised visit arrangement and decided to "be a witness" of Paul's supervised visits with Natasha by "observing from a distance."

On February 25, 2023, Everett went to a skating rink to observe a supervised visit between Paul and Natasha. The skating rink had only one entrance and exit to its parking lot, and Everett saw Paul's car parked in the row nearest the rink at the far right in the last space. Everett drove through the parking lot and noticed Paul's vehicle was "backed in against the building." Everett's circling of the parking lot was captured both by the skating rink surveillance footage and a dashcam in Paul's parked vehicle.

¹ "We review a district court's grant of summary judgment *de novo*," with all evidence and factual inferences viewed in the light most favorable to the non-moving party. *Butler v. Smith*, 85 F.4th 1102, 1111 (11th Cir. 2023).

After circling the parking lot, Everett parked next door at an AutoZone and left his vehicle with an object in his hand. Everett then walked off camera and behind Paul's vehicle, then walked back to his own car. Everett was dressed in dark-colored clothing, including a dark knit hat. After Everett left, Paul checked his dashcam video and investigated the rear of his car, where he located a Spytec tracking device. Paul then called the police.

Sergeant McCall, of the Hiram Police Department, watched Paul's dashcam footage that showed Everett circling the parking lot, driving next door, getting out of the vehicle in dark-colored clothing, walking to the rear of Paul's car, and then re-emerging and walking back to his own car. Sergeant McCall checked the video against Everett's driver's license photo, took a copy of the video, and placed the tracker into evidence. Sergeant McCall also went to the skating rink to review their surveillance footage.

Sergeant McCall attempted to call Everett, but was unable to reach him. Paul told Sergeant McCall he was "intimidated" by Everett, who "didn't have any reason to be there for the supervised visit." Paul also told Sergeant McCall that he was involved in a "heated divorce" and "he was in fear for his safety for [...] having a tracking device placed on his vehicle."

Sergeant McCall applied for an arrest warrant charging Everett with misdemeanor stalking under O.C.G.A. § 16-5-90(a)(1). In support of the warrant, Sergeant McCall swore in an affidavit before the magistrate judge that Everett "did knowingly, willfully,

without consent and with the purpose of harassing and intimidating, place Paul Parker under surveillance for no legitimate purpose by placing a Spytec GPS tracker on Parker's vehicle."

Based on Sergeant McCall's affidavit, the magistrate judge issued the warrant on March 8, 2023. Everett was arrested and released on bond the following day. The State nolle prossed the stalking charge based on insufficient evidence.

Everett's counsel subpoenaed Spytec for information regarding the device. Spytec responded that the device had been purchased by a private investigator. Everett's counsel later determined the private investigator installed the tracking device on Paul's car on November 22, 2022.

II. DISCUSSION

A Fourth Amendment claim for malicious prosecution requires a plaintiff to "prove both (1) the elements of the common-law tort of malicious prosecution and (2) a violation of his Fourth Amendment right to be free from unreasonable seizures." *Butler v. Smith*, 85 F.4th 1102, 1111 (11th Cir. 2023) (quotation marks omitted).

The constituent elements of the common law tort of malicious prosecution include: (1) a criminal prosecution instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff accused's favor; and (4) caused damage to the plaintiff accused. The Fourth Amendment overlay adds two elements: The

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plaintiff must establish (5) that the legal process justifying her seizure was constitutionally infirm and (6) that her seizure would not otherwise be justified without legal process.

Id. at 1111-12 (internal citations, alterations, and quotation marks omitted).

We agree with the district court that “elements (1), (3), and (4) are easily satisfied.” Sergeant McCall instituted a criminal prosecution against Everett, that prosecution terminated in Everett’s favor when it was nolle prossed, and Everett incurred damages because he had to pay attorney’s fees and costs. We also assume, like the district court, that element (6) is satisfied—Everett’s seizure would not otherwise be justified without legal process.

That leaves elements (2) and (5). We have explained that “there is significant overlap between a malicious-prosecution claim’s common-law and constitutional components and, indeed, that what we have called the second element effectively merges into the fifth.” *Id.* at 1112. Thus, “[i]f a plaintiff establishes that a defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process, he has also established that the defendant instituted criminal process against him with malice and without probable cause.” *Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020).

In assessing whether Everett’s arrest warrant was constitutionally infirm, we consider “only . . . the information that was before the magistrate, either in [Sergeant McCall’s] formal affidavit[]

or otherwise.” *Butler*, 85 F.4th at 1113. In this case, the only evidence before the magistrate judge was Sergeant McCall’s affidavit. Sergeant McCall’s affidavit to the magistrate judge stated:

Personally came **Wyatt B. McCall**, who makes oath before a Magistrate of this Court that **STEVEN LAMAR EVERETT** (hereinafter called the accused) did, between Feb. 25, 2023 03:00 PM to Feb. 25, 2023 03:25 PM at 4054 Jimmy Lee Smith Pkwy., Hiram, County of PAULDING, GA 30141 commit the offense of **Stalking – (M)(M)** violating O.C.G.A., Section **16-5-90(a)(1)**. Said accused did knowingly, willfully, without consent and with the purpose of harassing and intimidating, place Paul Parker under surveillance for no legitimate purpose by placing a Spytec GPS tracker on Parker’s vehicle[]; and affiant makes this affidavit that a warrant may issue for the arrest of the accused.

“A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.” O.C.G.A. § 16-5-90(a)(1).

Sergeant McCall’s affidavit established probable cause. *Davis v. City of Apopka*, 78 F.4th 1326, 1334 (11th Cir. 2023) (“Probable cause exists if the totality of the circumstances known to the officers could persuade a reasonable officer that there is a substantial chance of criminal activity by the person arrested.” (quotation marks omitted)). Sergeant McCall identified the form of stalking

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alleged (surveillance), described the specific means used (placing a GPS tracking device on a vehicle), and stated the unlawful purpose (harassing and intimidating Parker). Based on this information, a reasonable magistrate judge could have concluded there was a “substantial chance” Everett committed stalking under O.C.G.A. § 16-5-90(a)(1). *See id.*

While Everett contends Sergeant McCall’s affidavit fails to show Everett surveilled Parker with the purpose of harassing and intimidating him, given the inherently secret nature of monitoring Paul’s location with a hidden GPS tracking device, a reasonable magistrate judge could infer that action was part of an ongoing pattern of wrongful conduct that was intended to harass, intimidate, and cause emotional distress. Even if Everett is correct in contending the affidavit fails to show the purpose of harassment and intimidation, “evidence of every element of a crime is not required for a showing of probable cause.” *See id.* at 1335.

Further, Everett asserts Sergeant McCall omitted information from his affidavit either intentionally or in reckless disregard for the truth; specifically, that he neglected to tell the magistrate judge he did not know where and when Paul found the tracker and therefore could not have narrowed down the window of time during which the tracker could have been placed. Instead, he swore that Everett placed the tracker on Parker’s car on a specific date with a 25-minute window. There is no evidence that Sergeant McCall intentionally lied or had a reckless disregard for the truth when swearing this statement. *Paez v. Mulvey*, 915 F.3d 1276, 1287

(11th Cir. 2019) (stating intentional or reckless misstatements or omissions in a warrant can violate the Fourth Amendment). Everett does not allege Sergeant McCall knew when he swore the affidavit on March 8, 2023, that a private investigator placed the GPS tracker. Additionally, there is also no evidence of recklessness. While Everett is correct that it was ultimately determined he did not place the GPS tracker, “[a]n officer who files an affidavit in support of an arrest warrant need only have a reasonable belief in the veracity of the information that [h]e provides, regardless of whether it ultimately turns out to be true.” *See Butler*, 85 F.4th at 1114 (quotation marks and alteration omitted).

Sergeant McCall’s affidavit established probable cause for stalking under O.C.G.A. § 16-5-90(a)(1), and Everett’s arrest warrant was not constitutionally infirm. Thus, Sergeant McCall is entitled to qualified immunity. *See Gilmore v. Ga. Dep’t of Corr.*, 144 F.4th 1246, 1258 (11th Cir. 2025) (en banc) (“Qualified immunity attaches when an officer’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (quotation marks and alteration omitted)). We affirm the district court.

AFFIRMED.