[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11008
Non-Argument Calendar

D.C. Docket No. 6:15-cv-01520-PGB-KRS

BRYAN HENNING,

Plaintiff - Appellant,

versus

GARY HARREL,
Sgt., #197,
B. GRIFFIN,
Deputy, #865,
BREVARD COUNTY,

Defendants - Appellees,

BEACH AUTO BODY INC.,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida

(January 9, 2018)

Before JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

On June 29, 2013, Bryan Henning ("Plaintiff") was detained and arrested for loitering, in violation of Fla. Stat. § 856.021, by Sergeant Gary Harrell and Deputy Brian Griffin, who are police officers with the Brevard County, Florida Sheriff's Office. The charges were eventually dropped, and, two years later, Plaintiff, proceeding *pro se*, filed this lawsuit under 42 U.S.C. § 1983 against Sgt. Harrell, Deputy Griffin, and Brevard County for violation of Plaintiff's Fourth Amendment rights and for false imprisonment under Florida state law. After cross-motions for summary judgment, the district court granted summary judgment to the defendants on the basis that Sgt. Harrell and Deputy Griffin had not violated Plaintiff's rights and were otherwise entitled to qualified immunity, and, because there was no underlying constitutional violation, Brevard County could not be liable. Plaintiff appealed. We **AFFIRM** the district court.

I. Background

The facts leading to Plaintiff's arrest, viewed in the light most favorable to Plaintiff, are as follows. On June 29, 2013, at approximately 7:00 a.m., Sgt. Harrell was sitting in his patrol car in the parking lot of Canova Beach Park in Brevard County, Florida, when he was approached by a concerned citizen. The citizen told Sgt. Harrell that she was concerned about a person whom she had seen suspiciously watching young children near the park's boardwalk. She described the person as a white male wearing dark shorts, no shirt, and driving a white van. Sgt. Harrell then drove slowly around the parking lot where, consistent with what the concerned citizen had described, he spotted Plaintiff's white van parked in the parking lot. Sgt. Harrell knocked on Plaintiff's van and, receiving no response, he called in the van's tag number for possible information and continued to drive around the parking lot looking for the man who matched the tip's description.

As he drove through the parking lot, Sgt. Harrell began receiving information from dispatch about the man associated with the van, which turned out to be Plaintiff. Sgt. Harrell learned that, over the last few weeks, the police had been called on three different occasions in Brevard County based on complaints about Plaintiff's behavior around young children. Sgt. Harrell was told that Plaintiff had been given a trespass warning at a nearby beach in Indialantic for

taking photos of young children, that police had been called to a McDonald's in Merritt Island for complaints about the same conduct, and that Plaintiff had been arrested for aggravated assault and disorderly conduct at Cocoa Beach that, again, stemmed from Plaintiff watching and taking pictures of children.

After failing to locate Plaintiff, Sgt. Harrell returned to Plaintiff's van at approximately 7:20 a.m. He saw Plaintiff in the front seat of the van—a white male wearing dark shorts and no shirt, consistent with the tip's description—and witnessed him crawl from the front of the van to the back, behind a dark curtain, in what Sgt. Harrell inferred was an attempt by Plaintiff to hide himself. Sgt. Harrell then approached the van and attempted to make contact by knocking on the van and shining his flashlight through the van's rear windows, but he received no response for several minutes.

Eventually, Plaintiff responded and partially rolled down the driver's side window to talk to Sgt. Harrell. When Plaintiff rolled down the window, Sgt. Harrell immediately ordered Plaintiff out of his van for questioning. Around this same time, Sgt. Harrell radioed for backup. Deputy Griffin soon arrived and conferred with Sgt. Harrell about what had happened.

Plaintiff answered Sgt. Harrell's and Deputy Griffin's questions and provided his identification when asked. He told Sgt. Harrell and Deputy Griffin

that he was a law student, had a handgun in his van, and was at the park because he, well, was just "going to the park." After further questioning failed to dispel their concerns, Sgt. Harrell and Deputy Griffin arrested Plaintiff for loitering in violation of Fla. Stat. § 856.021.

On July 31, 2013, the loitering charges were dropped. Two years later, on September 15, 2015, Plaintiff, proceeding *pro se*, brought an action under 42 U.S.C. § 1983 and Florida state law against Sgt. Harrell, Deputy Griffin, and Brevard County stemming from his detention and arrest in June 2013. Plaintiff's amended complaint alleges that Sgt. Harrell and Deputy Griffin violated Plaintiff's Fourth Amendment rights by detaining and arresting him without reasonable suspicion or probable cause, and that he was falsely imprisoned under Florida state law. Plaintiff also alleges that Brevard County is liable because it was deliberately indifferent to the constitutional violations of its police officers, as manifested by its failure to train them on how to constitutionally enforce Fla. Stat. § 856.021.

The defendants moved to dismiss the amended complaint, and the parties filed cross-motions for summary judgment on all counts. On March 1, 2017, the district court entered an order granting defendants' motion for summary judgment, denying Plaintiff's motion for summary judgment, and denying as moot

defendants' motion to dismiss. Plaintiff filed a timely appeal to this Court under 28 U.S.C. § 1291.

II. Standard of Review

We review a district court's grant of summary judgment *de novo* and apply the same legal standards used by the district court. *Stephens v. DeGiovanni*, 852 F.3d 1298, 1313 (11th Cir. 2017). When reviewing a defendant's summary judgment motion based on qualified immunity, "[w]e resolve all issues of material fact in favor of the plaintiff, and then determine the legal question of whether the defendant is entitled to qualified immunity under that version of the facts." *Id.* (quoting *Durruthy v. Pastor*, 351 F.3d 1080, 1084 (11th Cir. 2003)). Doing so gives us "the plaintiff's best case," so disputed factual issues are not a factor and "cannot foreclose the grant or denial of summary judgment based on qualified immunity." *Id.* at 1314 (quoting *Bates v. Harvey*, 518 F.3d 1233, 1239 (11th Cir. 2008)).

III. Discussion

A. Illegal Detention and False Arrest under Federal Law (Counts I and II)

Sgt. Harrell and Deputy Griffin assert a qualified immunity defense in moving for summary judgment on Plaintiff's claims for illegal detention and false arrest under the Fourth Amendment. "Qualified immunity offers complete

protection for government officials sued in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known." *Lee v. Ferraro*, 284 F.3d 1188, 1193–94 (11th Cir. 2002) (internal quotation marks omitted). Qualified immunity "allow[s] officials to carry out discretionary duties without the chilling fear of personal liability or harrassive litigation, protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law." *McCullough v. Antolini*, 559 F.3d 1201, 1205 (11th Cir. 2009) (internal quotation marks and citations omitted).

To be protected by qualified immunity, "an official must first establish that 'he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred.'" *Id.* (quoting *Lee*, 284 F.3d at 1194). The burden then shifts to the plaintiff to show that qualified immunity is inappropriate. *Id.* To do that, the plaintiff must demonstrate: (1) that the facts—viewed in the light most favorable to the plaintiff—establish a constitutional violation, and (2) that "it was clearly established at the time of the incident that the actions of [the official] were unconstitutional." *Id.*[1] For this second prong, "only the caselaw of the Supreme

[1] Under *Pearson v. Callahan*, 555 U.S. 223 (2009), we may address these prongs in any order. *McCullough*, 559 F.3d at 1205.

Court, the Eleventh Circuit or the law of the highest court of the state where the events took place—in this case, Florida—can 'clearly establish' constitutional rights." *Amnesty Int'l, USA v. Battle*, 559 F.3d 1170, 1184 (11th Cir. 2009) (citing *Marsh v. Butler Cnty., Ala.*, 268 F.3d 1014, 1032 n.10 (11th Cir. 2001)). And each officer is entitled to qualified immunity separately, based on their individual acts. *See Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919 (11th Cir. 2000) (evaluating qualified immunity separately for each police officer involved in an incident).

Sgt. Harrell and Deputy Griffin were engaged in a discretionary function of their official duties as police officers when they initially detained and then arrested Plaintiff. *See Crosby v. Monroe Cty.*, 394 F.3d 1328, 1332 (11th Cir. 2004); *Wood v. Kesler*, 323 F.3d 872, 877 (11th Cir. 2003). Thus, whether Sgt. Harrell and Deputy Griffin are entitled to qualified immunity hinges on whether Plaintiff can show (1) a constitutional violation (2) that was clearly established at the time of his detention and arrest. We address each claim in turn.

1. Illegal Detention (Count I)

Plaintiff asserts that Sgt. Harrell and Deputy Griffin violated his Fourth Amendment rights when Sgt. Harrell—later assisted by Deputy Griffin—ordered Plaintiff out of his van and subjected him to questioning without reasonable

suspicion. *See United States v. Gordon*, 231 F.3d 750, 754 (11th Cir. 2000) (observing that "the Fourth Amendment requires at least" reasonable suspicion for making an investigatory stop). Under the Fourth Amendment, a police officer may "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Reasonable suspicion "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Id.* (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). So an officer must have at least a "minimal level of objective justification for making the stop"; unfounded suspicions and hunches are not enough. *Id.* at 123–24.

To determine whether reasonable suspicion exists, we review "the totality of the circumstances . . . to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *United States v. Hunter*, 291 F.3d 1302, 1306 (11th Cir. 2002) (internal quotation marks omitted) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). "The principal components of a determination of reasonable suspicion . . . will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer,

amount to reasonable suspicion." *Ornelas v. United States*, 517 U.S. 690, 696 (1996). We must give "due weight to the factual inferences drawn by the law enforcement officer," *id.* at 699; *see also United States v. Arvizu*, 534 U.S. 266, 277 (2002), but an officer's "subjective intent" in conducting the stop is "immaterial" to this analysis, *Hicks v. Moore*, 422 F.3d 1246, 1252 (11th Cir. 2005).

Importantly, even if an officer lacked actual reasonable suspicion, the officer is still entitled to qualified immunity so long as he had "arguable reasonable suspicion" to support the investigatory stop. *Jackson v. Sauls*, 206 F.3d 1156, 1166 (11th Cir. 2000). In other words, a plaintiff must show that—in addition to an actual constitutional violation—"a reasonable police officer would have known that he lacked reasonable suspicion for stopping [a suspect] and that he was violating clearly established law in doing so." *Id.*

The district court concluded that Sgt. Harrell and Deputy Griffin had "ample reasonable suspicion to detain" Plaintiff, and thus Plaintiff "failed to demonstrate that his constitutional rights were violated by the investigatory detention." We agree. Viewing the facts in the light most favorable to Plaintiff, Sgt. Harrell initiated the investigatory detention based on: (1) an anonymous in-person tip from a citizen concerned about a man matching Plaintiff's description who she

described as suspiciously watching young children near the boardwalk; (2) police reports from the past few weeks indicating that Plaintiff had taken photos of and watched children at other local beaches and locations, which resulted in the police being called, and in Plaintiff being issued a warning for trespassing after one incident and being arrested for aggravated assault and disorderly conduct after another report of suspicious activity; (3) Sgt. Harrell having seen Plaintiff crawl from the front his van to the back, which he inferred was an attempt by Plaintiff to conceal himself; and (4) Plaintiff's refusal for several minutes to respond when Sgt. Harrell knocked on his van.[2]

With these facts in hand, Sgt. Harrell had reasonable suspicion to believe that Plaintiff was violating the loitering and prowling statute and/or was committing, or going to commit, another crime—such as disorderly conduct (Fla. Stat. § 877.03), stalking (Fla. Stat. § 784.048), or worse. *See*, *e.g.*, *Wright v. State*, 126 So. 3d 420, 424 (Fla. 4th Dist. Ct. App. 2013) (concluding that officers had reasonable suspicion to stop a vehicle based on a citizen's tip and because the suspect's behavior, although plausibly innocent, matched criminal behavior that

[2] The district court relied on the fact that Sgt. Harrell claims to have seen Plaintiff flee when Sgt. Harrell first saw him on the boardwalk. Plaintiff, however, disputes that he ever left his van before he was detained and arrested. Because we resolve all factual disputes in favor of Plaintiff for summary judgment purposes, the district court erred in relying on this fact to conclude that reasonable suspicion existed. But, even without that reliance, the record demonstrates that Sgt. Harrell had reasonable suspicion to investigate and detain Plaintiff.

had been previously reported in the same area). And because Sgt. Harrell's knowledge can be imputed to Deputy Griffin, Deputy Griffin also had reasonable suspicion to temporarily detain Plaintiff.[3] *See United States v. White*, 593 F.3d 1199, 1203 (11th Cir. 2010) ("Reasonable suspicion is determined from the totality of the circumstances, and from the collective knowledge of all the officers involved in the stop.") (quotation marks and citation omitted).

Plaintiff disputes the existence of reasonable suspicion on multiple grounds. First, Plaintiff disputes the veracity of the anonymous tip and police reports and further contends that they are hearsay. But anonymous tips may be relied upon so long as there are "sufficient indicia of reliability." *See Navarette v. California*, __ U.S. __, 134 S. Ct. 1683, 1688 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 329 (1990)). The Supreme Court has held that contemporaneous tips have "long been treated as especially reliable," *Navarette*, __ U.S. at __, 134 S. Ct. at 1689, and our precedent acknowledges that "[a] face-to-face anonymous tip is presumed to be inherently more reliable" as well, *United States v. Heard*, 367 F.3d 1275, 1279 (11th Cir. 2004). Here, the anonymous tip was a contemporaneous eyewitness report made in-person to Sgt. Harrell and corroborated both by the fact

[3] Deputy Griffin contends that he arrived after Sgt. Harrell detained Plaintiff, but, under Plaintiff's version of the events, he was present during the detention and helped detain Plaintiff before Plaintiff was arrested.

that Plaintiff and his van matched the tip's description and by the multiple police reports about recent incidents at nearby beaches and other locations where Plaintiff had been watching and taking photographs of young children.

Second, Plaintiff argues that no one witnessed him do anything illegal or suspicious. But a suspect's conduct need not be illegal to justify reasonable suspicion; it can be grounded on conduct wholly "susceptible to an innocent explanation." *See Wardlow*, 528 U.S. at 125; *Gordon*, 231 F.3d at 754 ("A reasonable suspicion of criminal activity may be formed by observing exclusively legal activity."). And, as previously explained, with the knowledge provided to Sgt. Harrell and Deputy Griffin from the anonymous tip and past police reports, it was reasonable for them to interpret perhaps innocent individual actions—his presence at the beach, watching young children, moving from the front of the van to the back, and ignoring Sgt. Harrell's attempts to make contact—as something more sinister when taken together.

And, finally, Plaintiff argues that there are numerous issues of material fact that preclude summary judgment. But some of the issues raised by Plaintiff (for example, whether Plaintiff told Sgt. Harrell and Deputy Griffin that he was a law student or a lawyer) are not material. For the issues that are material, we have resolved them in favor of Plaintiff. *See Stephens*, 852 F.3d at 1314. Plaintiff also

argues that portions of the police report for his arrest, Sgt. Harrell's interrogatory responses, and Deputy Griffin's interrogatory responses were fabricated or are false. But "[f]or factual issues to be considered genuine, they must have a real basis in the record." *Evans v. Books-A-Million*, 762 F.3d 1288, 1294 (11th Cir. 2014) (quoting *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996)). Here, we discern no factual basis to support a conclusion that anything was fabricated or that the defendants lied.

Because Sgt. Harrell and Deputy Griffin had reasonable suspicion to detain Plaintiff, the district court correctly concluded that Plaintiff's Fourth Amendment rights were not violated and that Sgt. Harrell and Deputy Griffin were entitled to summary judgment.

2. False Arrest (Count II)

Plaintiff asserts that Sgt. Harrell and Deputy Griffin also violated his Fourth Amendment rights by arresting him without probable cause. *See Brown v. City of Hunstville*, 608 F.3d 724, 734 (11th Cir. 2010) ("An arrest without a warrant and lacking probable cause violates the Constitution and can underpin a § 1983 claim."). "Probable cause exists where the facts within the collective knowledge of law enforcement officials, derived from reasonably trustworthy information, are sufficient to cause a person of reasonable caution to believe that a criminal offense

has been or is being committed." *Id.* Thus, "[w]hether an officer possesses probable cause or arguable probable cause depends on the elements of the alleged crime and the operative fact pattern." *Id.* at 735 (citing *Skop v. City of Atlanta*, 485 F.3d 1130, 1137–38 (11th Cir. 2007); *Crosby*, 394 F.3d at 1333). And, as with reasonable suspicion, probable cause is determined by objectively evaluating the totality of the circumstances. *See Carter v. Butts Cty., Ga.*, 821 F.3d 1310, 1319 (11th Cir. 2016). An officer's subjective intentions "play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren v. United States*, 517 U.S. 806, 813 (1996).

Although this is a higher standard than reasonable suspicion, "[p]robable cause does not require overwhelmingly convincing evidence, but only reasonably trustworthy information." *Case v. Eslinger*, 555 F.3d 1317, 1327 (11th Cir. 2009) (internal quotation marks and citation omitted). It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 245 n.13 (1983). So probable cause may exist even though an officer may not have definitive proof that every element of a crime has been established. *See Brown*, 608 F.3d at 735 ("Showing arguable probable cause does not, however, require proving every element of a crime.").

Even if there was not actual probable cause to arrest, an officer is nevertheless entitled to qualified immunity if "arguable probable cause existed." *Case*, 555 F.3d at 1327. "Arguable probable cause exists 'where reasonable officers in the same circumstances and possessing the same knowledge as the Defendant could have believed that probable cause existed to arrest.'" *Id.* (quoting *Scarbrough v. Myles*, 245 F.3d 1299, 1302 (11th Cir. 2001)). Under this standard, an officer may "reasonably but mistakenly conclude that probable cause is present" and still be immune from suit. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

Under Florida law, a person violates Fla. Stat. § 856.021 if two elements are satisfied: "(1) the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals; [and] (2) such loitering and prowling were under circumstances that warranted a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." *State v. Ecker*, 311 So. 2d 104, 106 (Fla. 1975). The Florida Supreme Court has interpreted the second element to essentially require reasonable suspicion, meaning that an officer "'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' a finding that a breach of the peace is imminent or the public safety is threatened." *Id.* at 109 (quoting *Terry*, 392 U.S. at 21). Further, for this second element, "alarm is

presumed under the statute if, when a law officer appears, the defendant flees, conceals himself, or refuses to identify himself." *Id.* at 106.

Applying this framework to the facts, we agree with the district court's ultimate conclusion that Sgt. Harrell and Deputy Griffin were entitled to qualified immunity because we conclude that probable cause existed to support the arrest under Fla. Stat. § 856.021. Under Plaintiff's version of the events, after being ordered from the van, Plaintiff was cooperative, provided his driver's license to Sgt. Harrell, and stated, among other things, that he had a handgun in his van and was a law student. And, in response to being asked what he was doing at the park, he answered: "I'm going to the park-type-of-thing." After Plaintiff's responses failed to dispel their concerns, Sgt. Harrell and Deputy Griffin arrested him for violating the loitering statute.

As to the basis for that arrest, the officers knew or had reason to believe that: (1) a citizen at the beach had seen a man matching Plaintiff's description suspiciously watching young children and was sufficiently concerned to report the behavior to police; (2) recent police reports indicated that police had been called to other local beaches and locations and that Plaintiff had been given a trespass warning and charged with aggravated assault and disorderly conduct, all stemming from similar behavior involving taking photos of and watching children; (3)

Plaintiff had crawled from the front his van to the back in an attempt to conceal himself; and (4) Plaintiff further tried to avoid Sgt. Harrell by "just ignor[ing]" him when he knocked on the van for multiple minutes.[4] Although Plaintiff eventually explained his presence at the park by stating he was "going to the park," that explanation understandably failed to dispel the suspicions about Plaintiff's behavior concerning young children at the beach. *See Marx v. Gumbinner*, 905 F.2d 1503, 1507 n.6 (11th Cir. 1990) (observing that police "were not required to forego arresting [a suspect] based on initially discovered facts showing probable cause simply because [the suspect] offered a different explanation").

Given these facts, we conclude that Sgt. Harrell and Deputy Griffin had probable cause to arrest Plaintiff under Fla. Stat. § 856.021. As to the first element of the statute, the officers had reasonably trustworthy information that Plaintiff was suspiciously watching young children, which would satisfy the requirement that he was loitering or prowling in an unusual manner. As to the second element—that the loitering was done in a manner that created justifiable and reasonable cause for alarm that a breach of the peace or threat to public safety was imminent—not only had a citizen expressed alarm to the officers about Plaintiff's behavior involving

[4] As noted, in the district court's analysis of this issue, it considered the fact that Sgt. Harrell had seen Plaintiff initially flee. Because we resolve all factual disputes in favor of Plaintiff for summary judgment, we do not consider this fact in our analysis.

these young children immediately prior to his arrest, but the officers had also learned that, in recent weeks, police had been called on three different occasions based on complaints about Plaintiff's behavior around young children. Specifically, prior to arrest, the officers learned that Plaintiff had recently been issued a warning citation for trespassing at a beach near Indialantic, based on his taking photos of young children. They also learned that police had been called to a McDonald's in Merritt Island after complaints about the same type of conduct. Finally, Plaintiff had been arrested for aggravated assault and disorderly conduct at Cocoa Beach, again arising from Plaintiff's watching and taking pictures of children. In addition, Sgt. Harrell observed Plaintiff attempt to conceal himself from the officers by moving from the front of his van to the back and ignoring Sgt. Harrell as the latter knocked on the van to speak to him. *See Ecker*, 311 So. 2d at 106 (alarm is presumed under the statute if, when a law officer appears, the defendant flees, conceals himself, or refuses to identify himself).

In short, based on these facts, Sgt. Harrell and Deputy Griffin had probable cause to arrest Plaintiff for violating Fla. Stat. § 856.021. Plaintiff contends, however, that even if the information on which probable cause was based was sufficient, it was not trustworthy and should not have been relied on by the officers. Specifically, he argues that the anonymous tip and police reports cannot

be considered in determining whether Sgt. Harrell and Deputy Griffin had probable cause. In support, he argues that Florida law requires that an officer personally witness the unlawful conduct to be able to arrest a person for a misdemeanor. *See* Fla. Stat. § 901.15 ("A law enforcement officer may arrest a person without a warrant when: (1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer."); *Lucien v. State*, 557 So. 2d 918, 919 (Fla. 4th Dist. Ct. App. 1990) ("When there is an arrest for loitering and prowling all elements of the misdemeanor offense must occur in the officer's presence, and only a police officer's own observation may be considered in determining whether probable cause exists to make the warrantless misdemeanor arrest.") (citation omitted).

Yet, this Court has "reject[ed] the notion that the Florida law procedures governing warrantless arrests are written into the federal Constitution." *Knight v. Jacobson*, 300 F.3d 1272, 1276 (11th Cir. 2002); *see also Crosby*, 394 F.3d at 1333. Under federal law, reliable third-party reports can be considered when determining the existence of probable cause under the Fourth Amendment. *See Case*, 555 F.3d at 1327 (holding that officer "was entitled to rely on allegations of an informant and corroborating evidence as probable cause for a warrantless arrest"); *United States v. Lindsey*, 482 F.3d 1285, 1292 (11th Cir. 2007) (holding

that police had probable cause based, in part, on a reliable anonymous tip). And here, as already discussed, the tip was reliable because it was an in-person contemporaneous tip corroborated by both the recent police reports and Sgt. Harrell's eyewitness confirmation that Plaintiff and Plaintiff's van matched the details provided in the tip.

As to Plaintiff's contention that the conduct on which the officers based the arrest was innocent in nature, we reject these contentions here for the same reasons we rejected them in the context of Plaintiff's investigatory detention. *See supra* at 12–13; *see also Gates*, 462 U.S. at 243 n.13 ("In making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of non-criminal acts."); *Lindsey*, 482 F.3d at 1291–92 (holding probable cause existed for arrest based, in part, on a tip).

B. False Imprisonment under Florida State Law (Count III)

Plaintiff also asserts that his arrest constituted false imprisonment under Florida state law. The district court held that, because probable cause is an affirmative defense to false imprisonment, Sgt. Harrell and Deputy Griffin could not be liable for false imprisonment.[5] *See Bolanos v. Metro. Dade Cty.*, 677 So. 2d

[5] In its discussion of the arrest and detention, the district court noted that the applicable question for qualified immunity purposes was whether arguable probable cause existed. It found that

1005 (Fla. 3d Dist. Ct. App. 1996) ("[P]robable cause is a complete bar to an action for false arrest and false imprisonment."). Because we conclude that Sgt. Harrell and Deputy Griffin had probable cause to arrest Plaintiff, they have a complete defense to false imprisonment and are entitled to summary judgment. *See id.*; *see also Rankin v. Evans*, 133 F.3d 1425, 133 (11th Cir. 1998) ("[P]robable cause is the same under both Florida and federal law.").

C. Municipal Deprivation of Civil Rights under Federal Law (Count IV)

Plaintiff contends that Brevard County is liable for Sgt. Harrell and Deputy Griffin's illegal detention and arrest. *See Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 694 (1978) (holding that a local government may be liable under § 1983 when its "policy or custom" causes a constitutional violation). The district court granted summary judgment to Brevard County because it concluded that Plaintiff's investigatory detention and arrest did not violate his constitutional rights under the Fourth Amendment. For the reasons stated above, we agree that both Plaintiff's detention and arrest were constitutional. Because there is no underlying constitutional violation, this claim fails at the starting gate and we

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arguable probable cause existed. In resolving the false imprisonment claim, the district court implicitly indicated that it had also found the existence of actual probable cause because it resolved the claim on that basis. We concur that actual probable cause existed.

conclude the district court properly granted summary judgment to Brevard County. *Case*, 555 F.3d at 1328 ("[N]either [*Monell*], nor any other [Supreme Court] case[ ] authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact . . . the officer inflicted no constitutional harm.") (quoting *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986)).

D. Other Alleged Constitutional Violations

Finally, Plaintiff offers a raft of other arguments against summary judgment but none is properly presented on appeal. Specifically, Plaintiff raises numerous theories about other possible constitutional violations, including (1) that he was arrested in violation of his First Amendment rights to take pictures of children, (2) that his arrest violated his constitutional right to loiter, (3) that confiscating his gun after his arrest violated his Second Amendment rights, and (4) that he was discriminated against in violation of the Equal Protection Clause because of his age, sex, and homeless status.

These theories of liability were not addressed by the district court likely because they were not properly raised before that court. Specifically, the first two issues were improperly raised for the first time in summary judgment briefing and not in the pleadings. *See Gilmour v. Gates, McDonald and Co.*, 382 F.3d 1312,

1315 (11th Cir. 2004) ("Liberal pleading does not require that, at the summary judgment stage, defendants must infer all possible claims that could arise out of facts set forth in the complaint. . . . At the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint in accordance with Fed. R. Civ. P. 15(a)."); *Chavis v. Clayton Cty. Sch. Dist.*, 300 F.3d 1288, 1291 n.4 (11th Cir. 2002) (holding that a claim raised for the first time at summary judgment was not "properly before" this Court on appeal). The last two were improperly raised for the first time on appeal. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1335 (11th Cir. 2004) ("We will not address a claim that has been abandoned on appeal or one that is being raised for the first time on appeal, without any special conditions.").

Plaintiff also asserts that the district court's opinion should be reversed because it reflects bias and violates separation of powers. Plaintiff, however, merely states the issue and never argues it. *See Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012) ("A passing reference to an issue is not enough, and the failure to make arguments and cite authorities in support of an issue waives it."). Accordingly, none of these issues were properly raised on appeal.

Conclusion

Accordingly, we **AFFIRM** both the district court's grant of summary judgment to Sgt. Harrell, Deputy Griffin, and Brevard County and the district court's denial of summary judgment to Plaintiff.