[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12369

D.C. Docket No. 8:16-cv-01035-EAK-MAP

LEON BRIGHT,

Plaintiff-Appellant,

versus

AUSTIN THOMAS,
HECTOR MARCIAL CASTRO-LOPEZ,
JANE DOE 1,
Black Female Night Shift Worker,
CHECKER'S FAST FOOD RESTAURANT,
Corp,
ANDEL DEDIOS,
Franchise Owner,
CITY OF TAMPA, et al.,

Defendants-Appellees.

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

(October 19, 2018)

Before JORDAN, ROSENBAUM and DUBINA, Circuit Judges.

PER CURIAM:

Leon Bright sued several Tampa police officers under 42 U.S.C. § 1983 for involuntarily committing him for a psychiatric evaluation. The district court dismissed Mr. Bright's claims against the officers, ruling that they were entitled to qualified immunity, and Mr. Bright now appeals. Because the officers had arguable probable cause to commit Mr. Bright under Florida's Baker Act, and because Mr. Bright's third amended complaint did not allege sufficient facts to state a claim against them, we affirm.

I

Shortly after midnight on January 1, 2016, Mr. Bright went to a Checkers fast food restaurant in Tampa, Florida. Mr. Bright alleges that after he complained about poor customer service, several Checkers employees assaulted him—first by throwing hot grease at his face through the walk-up ordering window, and then by coming outside and punching him in the face, breaking his jaw. Mr. Bright called 911 to report the "[un]provoked . . . violent assaults" and to request an ambulance. D.E. 27 at ¶¶ 6, 8.

After Tampa police officers Nicole Sackrider and James Wolff arrived on the scene, they heard different versions of events from Mr. Bright and the Checkers employees. According to Mr. Bright's complaint, the Checkers employees

collectively told the officers that Mr. Bright was the instigator, and "reported that [Mr. Bright] hit [Checkers employee] Marcial Catrolopez through [sic] order window and further hit [Checkers employee Austin] Thomas." *Id.* at ¶ 65. In his complaint, Mr. Bright repeatedly takes issue with the officers seeming to believe the Checkers employees' story—that Mr. Bright instigated the altercation and that the employees merely defended themselves. After Mr. Bright grabbed one of the Checkers employees, Mr. Thomas, by the waist, the officers restrained Mr. Bright and took him to a nearby hospital under Florida's Baker Act, which allows an officer to involuntarily commit a person for a psychiatric evaluation. *See* Fla. Stat. § 394.463.

Thereafter, Mr. Bright filed a pro se complaint asserting numerous civil rights claims—including false arrest—as well as Florida law claims against the City of Tampa, its officials, the Tampa Police Department, the responding officers, Checkers, the particular Checkers location he visited, its owner, and the Checkers employees. Mr. Bright never served his complaint on any of the Checkers defendants, but did serve the City officials and the police department defendants. The district court later dismissed Mr. Bright's federal claims against the City defendants under Federal Rule of Civil Procedure 12(b)(6) based on qualified

immunity and failure to state a claim. It also dismissed Mr. Bright's state-law claims without prejudice. Mr. Bright now appeals.[1]

II

We review the grant of a Rule 12(b)(6) motion to dismiss on qualified or official immunity grounds *de novo*, applying the same standard as the district court. *See Gates v. Khokhar*, 884 F.3d 1290, 1296 (11th Cir. 2018). To survive a motion to dismiss, a complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). The pleading standard from Federal Rule of Civil Procedure 8 does not require "detailed factual allegations," but "a naked assertion . . . without some further factual enhancement . . . stops short of the line between possibility and plausibility." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007).

In this circuit "the *Twombly–Iqbal* plausibility standard" applies equally to "[p]leadings for § 1983 cases involving defendants who are able to assert qualified immunity as a defense." *Randall v. Scott*, 610 F.3d 701, 707 n.2, 709 (11th Cir. 2010). We, therefore, "separat[e] out the complaint's conclusory legal allegations," and then we "determin[e] whether the remaining well-pleaded factual

[1] Mr. Bright filed his appeal and submitted his brief pro se, but Michael E. Lockamy, an attorney with Bedell, Dittmar, DeVault, Pillans & Coxe, PA, appeared pro bono at oral argument on Mr. Bright's behalf. We are grateful to Mr. Lockamy for his representation of Mr. Bright.

allegations, accepted as true, 'plausibly give rise to an entitlement to relief[.]'" *Franklin v. Curry*, 738 F.3d 1246, 1251 (11th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 679).

III

The district court ruled that the officers were entitled to qualified immunity on Mr. Bright's § 1983 claim for false arrest. "Qualified immunity protects government officials preforming discretionary functions from suits in their individual capacities unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Dalrymple v. Reno*, 334 F.3d 991, 994 (11th Cir. 2003) (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)). In practice, qualified immunity protects "all [officers] but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Actual probable cause is not required to grant qualified immunity; officers need only have *arguable probable cause* to effectuate an arrest. *See Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002); *Scarbrough v. Myles*, 245 F.3d 1299, 1302 (11th Cir. 2001). Qualified immunity applies if reasonable officers in the defendants' position could have believed that probable cause existed to

involuntarily commit Mr. Bright. *See Post v. City of Ft. Lauderdale*, 7 F.3d 1552, 1558 (11th Cir. 1993).

Qualified immunity may shield from civil liability officers who wrongfully believed they had probable cause or when it is later determined that the plaintiff should not have been arrested. As the Supreme Court observed in *Anderson v. Creighton*, 483 U.S. 635, 641 (1987), "it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and we have indicated that in such cases those officials . . . should not be held personally liable." *See also Hunter v. Bryant*, 502 U.S. 224, 227 (1991) ("Even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to immunity.") (internal quotation marks omitted). In determining whether arguable probable cause exists, we, therefore, apply "an objective standard, asking 'whether the officer[s'] actions are objectively reasonable . . . regardless of the officer[s'] underlying intent or motivation.'" *Lee*, 284 F.3d at 1195 (quoting *Vaughan v. Cox*, 264 F.3d 1027, 1036 (11th Cir. 2001)) (alteration in original).

In this case, the qualified immunity question hinges on whether Officers Sackrider and Wolff had arguable probable cause to detain and commit Mr. Bright under Florida's Baker Act. Assuming the truth of the factual allegations in the complaint, we conclude that the officers had arguable probable cause.

Whether an officer possesses probable cause or arguable probable cause depends on the elements of the alleged crime and the operative fact pattern. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1137–38 (11th Cir. 2007); *Crosby v. Monroe County*, 394 F.3d 1328, 1333 (11th Cir. 2004). According to Florida's Baker Act, "[a] person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness . . . [t]here is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior." Fla. Stat. §§ 394.463(1), (1)(b)(2). In addition, the Act states:

> A law enforcement officer *shall* take a person *who appears to meet the criteria* for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to § 394.462 for examination. The officer *shall execute* a written report detailing the circumstances under which the person was taken into custody. . . .

Fla. Stat. § 394.463(2)(a)(2) (emphasis added).

To defeat qualified immunity, Mr. Bright's factual allegations must demonstrate that reasonable officers—possessing the same knowledge as the defendants—could not have believed that Mr. Bright appeared to meet the criteria for involuntary examination. *See Scarbrough*, 245 F.3d at 1302; Fla. Stat. §§ 394.463(1)(b)(2), (2)(a)(2). As we explain, Mr. Bright's allegations fail.

According to the complaint, the police were called to the Checkers shortly after midnight on New Year's Eve. The call was in response to a physical altercation. When the officers arrived, Mr. Bright had "blood and other tissue" drizzling out of his mouth and he either had just grabbed, or was still grabbing, one of the Checkers employees. *See* D.E. 27 at ¶¶ 9, 10, 11. The Checkers employees—in concert—told the officers that Mr. Bright instigated the altercation by attacking them through the walk-up window. Analyzing these alleged facts, the district court found that "[if] the police believed the employees' version that they were merely doing their jobs at a fast food restaurant when [Mr.] Bright arrived and then battered them . . . it is arguable that the police had probable cause to believe that [Mr.] Bright needed to be Baker Acted based on his unprovoked attack on fast food employees." D.E. 87 at 7. This ruling, in our view, was correct.

It is well established that police officers may generally rely on eyewitness accounts and victim statements to establish probable cause. *See Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) ("[A]n officer is entitled to rely on a victim's criminal complaint as support for probable cause."). *See also Myers v. Bowman*, 713 F.3d 1319, 1323, 1326–27 (11th Cir. 2013) (finding a theft victim's complaint sufficient to establish probable cause); *Jordan v. Mosley*, 487 F.3d 1350, 1353, 1355 (11th Cir. 2007) (eyewitness statements led an objectively reasonable officer to believe the plaintiff committed a crime); *L.S.T., Inc. v. Crow*, 49 F.3d 679, 684–

85 (11th Cir. 1995) (finding probable cause based on the "victim's complaint and his identification" with other eyewitnesses statements).

Arguable probable cause is determined "in light of the information the officer possessed." *Durruthy v. Pastor*, 351 F.3d 1080, 1089 (11th Cir. 2003) (quotation marks omitted). In this case, the complaint states that Officers Sackrider and Wolff were told by multiple alleged victims or eyewitnesses that Mr. Bright attacked the Checkers employees through the walk-up window. *See* D.E. 27 at ¶¶ 14, 21, 43, 65–66. The complaint then acknowledges that the officers "approved" of the employees' story. *Id.* at ¶ 14. To find the officers are entitled to qualified immunity, we need not determine whether the employees' version of events was true. The officers are entitled to immunity so long as reasonable officers hearing the employees' version of events and observing the surrounding circumstances could have believed that Mr. Bright appeared to meet the criteria for involuntary examination. *See Scarbrough*, 245 F.3d at 1302; Fla. Stat. §§ 394.463(1)(b)(2), (2)(a)(2).

Mr. Bright alleges no facts that were known to the officers to suggest that it was objectively unreasonable for them to believe the Checkers employees. Mr. Bright alleges that the officers "knew" that the Checkers employees were lying and that the employees' version of events was "impossible, ridiculous, or even ludicrous." D.E. 27 at ¶ 21. But the complaint alleges no facts explaining how the

officers knew the employees were lying or why the employees' version of events was implausible.

On a motion to dismiss, we do not "accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). An allegation that the defendants had some particular knowledge—without specific facts to support that allegation—can be conclusory and insufficient to establish a constitutional violation under § 1983. *See Iqbal*, 556 U.S. at 680–81 (finding that the allegation that the defendants "knew of" the harsh conditions that the plaintiff was subjected to, without factual support, was "conclusory and not entitled to be assumed true"); *Franklin*, 738 F.3d at 1250–51 (11th Cir. 2003) ("[B]y alleging Appellants 'knew or should have known' of a risk, [the plaintiff] merely recited an element of a claim without providing the facts from which one could draw such a conclusion . . . ."). *Cf. Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312, 1320–21 (11th Cir. 2016) (denying qualified immunity, in part, because the complaint alleged several specific facts to support the conclusion that the defendants had knowledge of a risk to the plaintiff).

Here, Mr. Bright's allegation that the officers knew the Checkers employees were lying is a conclusion without factual enhancement, and, therefore, it does not alter our arguable probable cause analysis. *See Franklin*, 738 F.3d at 1251. Under

the facts alleged in the complaint, reasonable officers could have accepted the employees' eyewitness and victim statements and, based on them, believed that Mr. Bright appeared to have a mental illness and might cause serious bodily harm to himself or others. *See* Fla. Stat. §§ 394.463(1), (1)(b)(2). Thus, qualified immunity applies.

In addition to stating that the employees "presented" a self-defense theory that the officers "accepted," D.E. 27 at ¶ 14, several paragraphs in the complaint rely on the premise that the officers improperly took the Checkers employees at their word. For example, Mr. Bright claims that the officers did not adequately investigate the scene, review camera footage, or work to substantiate his version of events. *See id.* at ¶¶ 15–16, 21. But "a police officer 'is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest.'" *Kingsland v. City of Miami*, 382 F.3d 1220, 1229 (11th Cir. 2004) (quoting *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 128 (2d Cir. 1997)).

In *Rankin,* for example, officers arrested a teacher for allegedly molesting a student. *See* 133 F.3d at 1428. The teacher argued that the arresting officer should have examined the area where the act allegedly occurred and interviewed other teachers at the school. *Id.* at 1437. Because the arresting officer interviewed other witnesses, including the victim and her mother, we found there was probable cause as a matter of law. *Id.* As in *Rankin*, Officers Sackrider and Wolff spoke to

multiple witnesses, supplying more than enough evidence to reasonably argue probable cause.

Even if the Checkers employees' statements and accusations alone were insufficient to provide arguable probable cause, other facts alleged in the complaint support the officers' decision to detain and commit Mr. Bright. First, the officers observed Mr. Bright in some sort of altercation after arriving at the Checkers. Mr. Bright alleges that, after the officers arrived on the scene, he grabbed Mr. Thomas around the waist to prevent an impending attack. Although there was debate at oral argument as to whether the officers saw Mr. Bright grab Mr. Thomas—and the contradictory allegations in the complaint do not resolve the issue—whether the officers observed Mr. Bright initially grab Mr. Thomas is immaterial. The complaint states that the officers observed at least part of the altercation, as they were forced to separate Mr. Bright and Mr. Thomas, and that observation—given the version of events provided by the Checkers employees—could have led a reasonable officer to believe that Mr. Bright appeared to meet the requirements for involuntary commitment. Second, the complaint alleges that the Checkers employees conspired to tell a single, consistent version of events to the officers—their self-defense theory—thereby bolstering the credibility of the employees' version and the weight a reasonable officer would give to it. *Cf. United States v. Martin*, 615 F.2d 318, 326 (5th Cir. 1980) ("[W]here informers give tips that

substantially corroborate each other that factor helps establish the reliability of the tips.").

IV

Mr. Bright also argues that the district court abused its discretion by dismissing his complaint without giving him an opportunity to amend. It is true that leave to amend shall be freely given "when justice so requires." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (internal quotation marks and citations omitted); Fed. R. Civ. P. 15(a)(2). If a more artfully drafted complaint might state a claim, a plaintiff should be given at least one chance to amend the complaint before the action is dismissed with prejudice. *See Bryant*, 252 F.3d at 1163. But when a plaintiff repeatedly fails to cure deficiencies, the district court need not grant additional opportunities to amend. *Id.* Here, the district court gave Mr. Bright three opportunities to amend his complaint, and it also accepted a second version of his third amended complaint, which was submitted *without leave of the court*. The district court did not abuse its discretion by dismissing Mr. Bright's claims without giving him another bite at the apple.[2]

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[2] We note that while the district court found in favor of the defendants on Mr. Bright's federal-law claims, the court dismissed Mr. Bright's state-law claims without prejudice. *See* D.E. 87 at 24.

V

Based on the foregoing, we affirm.[3]

AFFIRMED.

[3] As to Mr. Bright's other arguments, we affirm the district court's rulings without further discussion.