[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10162
Non-Argument Calendar

D.C. Docket No. 1:16-cv-04539-MHC

DAVID LONGINO,

Plaintiff-Appellee,

versus

HENRY COUNTY, GEORGIA, et al.,

Defendants,

KEVIN KINSEY,
in his individual and official capacity as a police officer,
ROBERT LEDFORD,
in his individual and official capacity as a police officer,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(October 30, 2019)

Before ED CARNES, Chief Judge, MARCUS, and ROSENBAUM, Circuit Judges.

PER CURIAM:

David Longino filed a 42 U.S.C. § 1983 complaint against Officers Kevin Kinsey and Robert Ledford, contending that they violated the Fourth Amendment and Georgia law when they arrested him in his home without a warrant or probable cause and used excessive force during that arrest. The district court denied in part the officers' motion for summary judgment, finding that that neither officer was protected by qualified immunity on the Fourth Amendment claims. The court also concluded that Officer Kinsey was not protected by official immunity on the state law claims. This is the officers' appeal.

I.

The facts in the summary judgment record are as follows.[1] On December 10, 2015, Longino had a few high school wrestling friends over to his house to

[1] The "facts" as accepted for purposes of summary judgment may not be the actual facts of the case, but we conduct our analysis based on the evidence viewed in the light most favorable to Longino, and our decision must accept that view as the facts at this stage of the proceedings. See Feliciano v. City of Miami Beach, 707 F.3d 1244, 1247 (11th Cir. 2013) (quotation marks and alteration omitted).

prepare food for their former wrestling coach's retirement party. Longino and his friends smoked meat on an egg-style smoker on his screened-in porch, which was connected to his house. The door on the porch led into the kitchen. A separate screen door on the porch led outside to a covered patio, which was in the backyard. The backyard was surrounded on three sides by a wooden privacy fence that ran along the property line parallel to the street. The fourth side of the fence ran along the back property line and was chain-link. A gate on the wooden fence led out to the edge of the property line and onto the street.

Longino had his first beer sometime between three and five in the afternoon. In all, he had around eight beers that night. His friends also were drinking. According to them, Longino was not noticeably intoxicated. While they were drinking, the men also were wrestling, cussing at each other, and laughing.

Around eleven at night, Reid Feagler, Longino's next-door neighbor, called the Henry County Police Department to file a noise complaint. He told the police that the young men were drinking, yelling, and commenting about how drunk they were. Officer Kinsey was dispatched to Longino's house to address the complaint. He knew that this was not the first time that Feagler had made a noise complaint about one of Longino's parties.

On October 31, 2015, Feagler had called the police to complain about a noisy Halloween party at Longino's house. Officer Kinsey did not respond to that

complaint, but he had heard that the officer who was dispatched to Longino's house had requested backup "because of the aggressive nature of the individuals" at the Halloween party. Apparently, the officer had entered Longino's backyard with his taser drawn, which aggravated Longino. According to Longino, that officer "hung around for a little while and then [Longino] asked him to leave." The officer called for back-up, and everything "calmed down" after that. The officers left the Halloween party without issuing any citations or making any arrests.

When Officer Kinsey arrived at Longino's house on December 10, the men were outside. Officer Kinsey knocked on the wooden privacy fence that surrounded the backyard and asked to speak with Longino. Longino opened the gate, and Officer Kinsey told him that a neighbor had made a noise complaint and asked him to keep it down. Longino apologized and told him they would be quiet. Longino then saw Officer Kinsey leave and go to the Feaglers' house. Longino shut the gate.

Longino and his friends went inside the house for a few minutes. Officer Kinsey moved his car to a place on the street where he could monitor the backyard by looking through the chain-link portion of the fence. The men went back out to the backyard and saw Officer Kinsey parked down the street. They had quieted

down, but they were still talking loudly. Officer Kinsey monitored the party from his position on the street for more than an hour.

Eventually, two of the guests—Daniel Morgan and Nathan Becker—went out through the back gate to talk to Officer Kinsey. Longino stayed inside of the other gate, which was closer to the house. Morgan and Becker asked Officer Kinsey if they could leave to go pick up a friend from the airport. Officer Kinsey did not allow them to leave, and he warned the men that he was going to cite them for public drunkenness if they did not quiet down because they were in "plain view from the public roadway" through the chain-link portion of the fence. He told them to get back into the yard. The men complied and walked toward the house. They continued talking, cussing, and cutting up.

Officer Kinsey was in his police cruiser and had decided to leave, but he changed his mind when he heard Longino yell "fuck the police." Longino denies saying that. Glenn Howell, another guest, and Becker also deny that Longino said it. Officer Kinsey testified that Longino shouted the expletive loud enough for the neighbors to hear, so he decided to arrest him for "[c]oming out and yelling [] obscenities." He also testified that he arrested Longino because of the loud manner in which he had yelled "fuck the police," combined "with all the other loud woo-hooing and partying that had been going on." He called for backup, and Officer Ledford arrived on the scene.

At some point after he allegedly yelled the expletive, Longino went back inside. Longino was inside his kitchen with his back to the door when the door opened, he felt someone grab the back of his neck, and he fell to his knees. At that point, Howell started filming with his cell phone. The video shows Officer Ledford dragging Longino into the yard, where he and Officer Kinsey flip him over onto all fours. Officer Kinsey then punches Longino in the side several times while someone in the background yells "stop" and "quit doing that." Longino holds his hands over his face and head for a few seconds while the officers attempt to cuff him. After Officer Ledford puts Longino's left hand behind his back and Officer Kinsey cuffs his right hand, Officer Kinsey punches Longino in the face. The officers then successfully handcuff Longino and walk him to the police cruiser.

Longino testified that he did not resist arrest at any moment. In an interview following the arrest, Officer Ledford stated that he did "not really" have trouble getting Longino's hands behind his back, and he felt like there was very little resistance. Officer Ledford also told another officer that Longino did not resist being put in handcuffs. He was concerned about the amount of force that Officer Kinsey used in making the arrest. Officer Kinsey testified that Longino was resisting arrest, which is why he punched him in the face. He also said that he was scared that Longino's friends would step in and fight him, so he used force to get

the arrest over with quickly. He testified that when Officer Ledford arrived on the scene, he "felt like two of [the men] came toward [him] in an aggressive manner."

Longino was arrested for willful obstruction of law enforcement officers, disorderly conduct, and maintaining a disorderly house, but those charges were later dropped. As a result of the force used during the arrest, he had scrapes on his legs and buttocks and bruising on his face and torso. He experienced chest pain during the arrest. He suffered from anxiety and had two panic attacks following the arrest.

II.

We review de novo the district court's denial of qualified immunity to the officers. Feliciano, 707 F.3d at 1247. It is undisputed that the officers were acting in the scope of their discretionary authority, and as a result Longino has the burden of showing that they are not entitled to qualified immunity. Oliver v. Fiorino, 586 F.3d 898, 905 (11th Cir. 2009).

To overcome the officers' qualified immunity defense, Longino must show that they (1) violated a constitutional right, and (2) the constitutional right was clearly established. Saucier v. Katz, 533 U.S. 194, 201 (2001), abrogated in part by Pearson v. Callahan, 555 U.S. 223, 236 (2009) (holding that courts have discretion as to the order in which to address the two prongs). Longino contends that the officers violated his Fourth Amendment rights by falsely arresting him,

conducting a warrantless arrest in his home, and using excessive force. We address those contentions in turn.

A. False Arrest

An officer violates the Fourth Amendment when he makes an arrest without probable cause. Redd v. City of Enterprise, 140 F.3d 1378, 1382 (11th Cir. 1998). "Probable cause to arrest exists when law enforcement officials have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime." Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1137 (11th Cir. 2007).

But even in the absence of actual probable cause, the arresting officer will be entitled to qualified immunity if he shows at least "arguable probable cause to believe that a person is committing a particular public offense." Redd, 140 F.3d at 1384. We ask whether "reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest." Id. at 1382. An officer's "underlying intent or motivation" is irrelevant. Lee v. Ferraro, 284 F.3d 1188, 1195 (11th Cir. 2002). The arguable probable cause "standard recognizes that law enforcement officers may make reasonable but mistaken judgments regarding probable cause but does not shield officers who unreasonably conclude that probable cause exists." Skop, 485 F.3d at 1137.

The existence of arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." Brown v. City of Huntsville, Ala., 608 F.3d 724, 735 (11th Cir. 2010). But "[a]rguable probable cause does not require an arresting officer to prove every element of a crime." Scarbrough v. Myles, 245 F.3d 1299, 1302–03 (11th Cir. 2001). An officer is shielded by qualified immunity as long as he has arguable probable cause to arrest the plaintiff for *any* offense, regardless of the offense announced at the time of arrest. See Durruthy v. Pastor, 351 F.3d 1080, 1089 n.6 (11th Cir. 2003) (determining that officers were entitled to qualified immunity where they had probable cause to arrest the plaintiff for failure to follow traffic rules, even though he was arrested for resisting an officer without violence). "The validity of an arrest does not turn on the offense announced by the officer at the time of the arrest." Bailey v. Bd. Of Cty. Comm'rs, 956 F.2d 1112, 1119 n.4 (11th Cir. 1992). "Where an officer arrests without even arguable probable cause, he violates the arrestee's clearly established Fourth Amendment right to be free from unreasonable seizures." Carter v. Butts Cty., Ga., 821 F.3d 1310, 1320 (11th Cir. 2016).

After careful review of the evidence, we conclude that Officers Kinsey and Ledford had arguable probable cause to arrest Longino for public drunkenness.[2]

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[2] The officers argue on appeal that they had arguable probable cause to arrest Longino for public drunkenness. In the district court, they asserted that argument for the first time in their summary judgment reply brief, and the district court declined to consider it. We are required to

Under Georgia's public drunkenness statute, a person commits a misdemeanor when he is or appears to be "in an intoxicated condition in any public place or within the curtilage of any private residence not his own . . . which condition is made manifest by boisterousness, by indecent condition or act, or by vulgar, profane, loud, or unbecoming language." O.C.G.A. § 16-11-41. A "public place" is "any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household." O.C.G.A. § 16-1-3(15). "[O]ne's premises are not necessarily circumscribed from inclusion as a 'public place.'" Ridley v. State, 337 S.E.2d 382, 383–84 (Ga. Ct. App. 1985) (holding that an officer had probable cause to arrest the defendant for public drunkenness because he was intoxicated in his yard and could be viewed by people other than members of his household); see also United States v. Floyd, 281 F.3d 1346, 1349 (11th Cir. 2002) (noting that, in Georgia, the "public place" under the public drunkenness statute includes any place where the defendant's conduct can

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review the record de novo to determine if the officers had arguable probable cause to arrest Longino for "any" offense, regardless of the offense announced at the time of arrest. Oliver, 586 F.3d at 901; Durruthy, 351 F.3d at 1089 n.6; Bailey, 956 F.2d at 1119 n.4. And we must make that determination at the earliest possible stage of the litigation. See Hunter v. Bryant, 502 U.S. 224, 227 (1991) ("[W]e repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation."); Howe v. City of Enterprise, 861 F.3d 1300, 1302 (11th Cir. 2017) ("[I]mmunity is a right not to be subjected to litigation beyond the point at which immunity is asserted."). For those reasons, we will consider whether the officers had arguable probable cause to arrest Longino for public drunkenness, even though the district court did not.

be reasonably viewed by people other than members of the defendant's household or family).

The record shows that Officer Kinsey witnessed Longino and his friends drinking, wrestling, cussing, and talking loudly. Longino admitted that he had around eight beers that night. Even if Longino were not noticeably intoxicated, the men's rowdiness, combined with the presence of alcohol, supported an arrest for public drunkenness. Scarbrough, 245 F.3d at 1302–03. And while Longino was in his backyard at all times, Officer Kinsey reasonably concluded that he could be viewed by the public. O.C.G.A. § 16-1-3(15); Ridley, 337 S.E.2d at 383. The public could see into the backyard through the chain-link portion of the privacy fence. Officer Kinsey did see the men in Longino's yard while he was parked down the street. An officer who received a noise complaint about a house party, witnessed drinking and boisterous behavior, and viewed that behavior from the street reasonably could conclude that he had probable cause to make an arrest for public drunkenness. Redd, 140 F.3d at 1384. Because the officers had arguable probable cause to arrest Longino for public drunkenness, we do not need to determine whether they had probable cause to arrest him for the other charged offenses.[3] Durruthy, 351 F.3d at 1089 n.6. Because the officers had arguable

[3] Although Officer Ledford did not witness the rowdiness and drinking (he arrived on the scene much later), he had arguable probable cause to arrest Longino because Officer Kinsey had arguable probable cause. See United States v. Allison, 953 F.2d 1346, 1350 (11th Cir. 1992)

probable cause to arrest Longino for an offense (public drunkenness), they are entitled to qualified immunity on the false arrest claim.

B. Warrantless Arrest Inside Longino's Home

Even though arguable probable cause supports the officers' arrest of Longino for public drunkenness, that does not end our Fourth Amendment inquiry as far as the arrest goes. It does not because the arrest was made in Longino's home. "[S]earches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573, 586 (1980). "The sanctity of the home is afforded special protection under the Fourth Amendment, such that 'the reasons for upholding warrantless arrests in a public place do not apply to warrantless invasions of the privacy of the home.'" Bashir v. Rockdale Cty., Ga., 445 F.3d 1323, 1327 (11th Cir. 2006) (quoting Payton, 445 U.S. at 576). An officer violates the Fourth Amendment when he makes a warrantless arrest inside a home unless he or she "had probable cause to make the arrest and either consent to enter or exigent circumstances demanding that the officer enter the home without a warrant." Id. at 1328.

The Fourth Amendment's protections extend to the curtilage of the home, which is the area around the home that harbors intimate activities associated with

("Where there is at least minimal communication between different officers, the collective knowledge of the officers determines probable cause.").

domestic life and the privacies of the home. United States v. Dunn, 480 U.S. 294, 300 (1987). An example of curtilage is a porch. See Collins v. Virginia, 138 S. Ct. 1663, 1671 (2018).

It is undisputed that Officers Kinsey and Ledford did not have a warrant. They did, as we already have determined, have arguable probable cause. But "the existence of probable cause does not by itself validate a warrantless home arrest." Bashir, 445 F.3d at 1328. In addition to probable cause, or at least arguable probable cause, see Feliciano, 707 F.3d at 1251, the officers' entry into Longino's home must have been justified by either consent or exigent circumstances. Id. Longino did not consent. And the officers do not argue that exigent circumstances existed. Instead, they argue that the arrest began outside and in view of the public, meaning that the Fourth Amendment protections that extend to the home do not apply.

The record, viewed in the light most favorable to Longino, does not support that argument. The exact location of the arrest is disputed, but the record shows that the officers initially seized Longino either in the kitchen or on the screened-in porch. The arrest video makes that clear. It starts in the middle of the action. We immediately see Officer Ledford dragging Longino. The video blurs, and when it comes back into focus, Officer Ledford is dragging Longino through a door and

past the egg-style smoker. The smoker is located on the screened-in porch. At the beginning of the video, Howell says "[h]e is in his own house."

The parties' testimony does not contradict the video. Longino testified, and his guests Howell and Becker confirmed, that Officer Ledford apprehended him in his kitchen and then dragged him onto the screened-in porch. Howell testified that Longino was in the kitchen when the officers came through the door to the house, and he started filming once they grabbed Longino. He testified that the officers "opened the backdoor . . . picked [Longino] up by his feet and slung and dropped him," and Howell pulled his phone out and started videoing at that time. According to Howell, the officers did not initially grab Longino on the patio, but they "drug [sic] him from the inside out to the patio." At this stage, we must resolve disputes of material fact in Longino's favor. The video makes it clear that Longino was not outside when the officers seized him, but either in his kitchen or on his screened-in porch. Collins, 138 S. Ct. at 1671; Dunn, 480 U.S. at 300. And viewed in the light most favorable to Longino, the evidence is that he was in his kitchen.

The record does not indicate that there were any exigent circumstances permitting the officers to enter Longino's home, such as danger of fleeing or harm to the public or officers. See United States v. Holloway, 290 F.3d 1331, 1334 (11th Cir. 2002) (holding that exigent circumstances include, among other things,

the danger of flight and the risk of harm to the public or police). On the contrary, Longino had retreated into his home. He was not trying to escape, and he was not at risk of harming the public or the officers while he was in his kitchen. This case does not present the urgent need for immediate action that is required to justify a warrantless arrest based on exigent circumstances. See United States v. Burgos, 720 F.2d 1520, 1526 (11th Cir. 1983) ("The term 'exigent circumstances' refers to a situation where the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action."). We conclude that the officers were not entitled to arrest Longino in his kitchen or even in the screened-in porch without a warrant.

We next consider whether the officers violated a clearly established Fourth Amendment right. They did. Bashir, 445 F.3d at 1331 (holding that Payton set forth with "obvious clarity" that an arrest inside the home without a warrant and absent exigent circumstances and consent violated the Fourth Amendment); see also Moore v. Pederson, 806 F.3d 1036, 1050 n.14 (11th Cir. 2015) ("[A]n officer may not execute a warrantless arrest without probable cause and either consent or exigent circumstances, even if the arrestee is standing in the doorway of his home when the officers conduct the arrest."); McClish v. Nugent, 483 F.3d 1231, 1248 (11th Cir. 2007) (stating that arresting someone inside his or her home without a warrant violates the Fourth Amendment, even if probable cause exists, when

exigent circumstances do not also exist); United States v. Newbern, 731 F.2d 744, 748 (11th Cir. 1984) ("The law is clear that law enforcement officers are prohibited from making a warrantless and nonconsensual entry into a suspect's home in order to make [an] [] arrest."). A reasonable officer would have known that his conduct in this instance was illegal. See Hope v. Pelzer, 536 U.S. 730, 739 (2002) (holding that a constitutional right is "clearly established" if its "contours" are "sufficiently clear that a reasonable officer would understand that what he is doing violates that right."). We affirm the denial of qualified immunity on Longino's Fourth Amendment claim based on the warrantless arrest in his home.

C. Excessive Force[4]

The Fourth Amendment right to be free from unreasonable searches and seizures "encompasses the right to be free from excessive force during the course of a criminal apprehension." Oliver, 586 F.3d at 905. We evaluate whether an officer's use of force was excessive under an "objective reasonableness" standard. Graham v. Connor, 490 U.S. 386, 388 (1989). "In determining the reasonableness of the force applied, we look at the fact pattern from the perspective of a reasonable officer on the scene with the knowledge of the attendant circumstances

[4] While "a claim that any force in an illegal stop or arrest is excessive is subsumed in the illegal stop or arrest claim and is not a discrete excessive force claim," Bashir, 445 F.3d at 1332, Longino asserts a "genuine" excessive force claim that "relates to the manner in which [his] arrest was carried out, independent of whether law enforcement had the power to arrest," Hadley v. Gutierrez, 526 F.3d 1324, 1329 (11th Cir. 2008). In case the arrest facts are found differently at trial than we must consider them at the summary judgment stage, we will consider the excessive force claim separately from the false arrest claim.

and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate." McCullough v. Antolini, 559 F.3d 1201, 1206 (11th Cir. 2009). We must keep in mind that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 590 U.S. at 396.

The force used in making an arrest "must be reasonably proportionate to the need for that force." Lee, 284 F.3d at 1198. To determine whether the force used was reasonably proportionate, we look to: (1) the severity of the crime; (2) whether the individual posed an immediate threat to the safety of the officers or others; (3) whether the individual actively resisted arrest or tried to evade arrest; (4) the need to use force; (5) the amount of force applied in light of that need; and (6) the severity of the injury. Hinson v. Bias, 927 F.3d 1103, 1117 (11th Cir. 2019).

Longino claims that Officer Kinsey used excessive force when he punched him in the torso and face.[5] We agree. First, Longino did not pose an immediate

[5] Longino does not challenge Officer Ledford's use of force or failure to intervene and stop Officer Kinsey. In his brief, Longino concedes that Officer Ledford used "little force" and states that the arrest video "show[ed] a vivid contrast between how a reasonable officer and an unreasonable officer effectuate an arrest," Officer Ledford being the "reasonable officer."

We recognize Longino's concession that he is asserting an excessive force claim against Officer Kinsey only — not against Officer Ledford — and we analyze that claim accordingly. See Alocer v. Mills, 906 F.3d 944, 951 (11th Cir. 2018) (noting that "each defendant is entitled to an independent qualified-immunity analysis as it relates to his or her actions," and we consider

threat. Id. The record shows that Officer Kinsey observed Longino and his friends cutting up, wresting, and cussing at one another. Nothing in the record refutes Longino's assertion that their behavior was nothing more than rowdy horseplay among former wrestling teammates. Other than the disputed "fuck the police" statement, Officer Kinsey does not contend that the men directed their cussing or wrestling toward him. Instead, he argues that force was necessary to protect himself because the officer who responded to the Halloween party reported that Longino was "aggressive." Indeed, Longino admitted that, during his Halloween party forty days earlier, he had approached that other officer and was "aggravated." But the summary judgment record contains no evidence of any aggressive action Longino took at the December 10 party. And it's not clear that his actions taken forty days earlier made him an "immediate" threat to Officer Kinsey on December 10. Id.

Additionally, the evidence does not show that Longino aggressively resisted arrest. Officer Kinsey points to two moments in the arrest video. The first is a brief moment when Longino extends his left arm toward Officer Kinsey while Officer Ledford is dragging him by his shirt and right arm. It's not a quick motion, and Officer Kinsey easily grabs Longino's left arm. Longino is otherwise passive

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"only the actions and omissions in which that particular defendant engaged" in evaluating a defendant's qualified immunity claim.) (citation omitted).

and allows Officer Ledford to drag him. Once Longino is in the yard, both officers flip him over. Officer Kinsey then punches Longino several times in his side.

The second moment Officer Kinsey points to occurs after he initially punched Longino. The video blurs for a moment, and when it comes back into focus, Longino's hands and arms are covering his head in a protective manner. Officer Ledford's knee is on Longino's back, keeping him pinned to the ground. The officers say "put your hands behind your back." Longino keeps his hands on his head for approximately four to six seconds. Officer Ledford takes hold of Longino's left wrist, and Longino drops his right hand to the ground. At that point—while Officer Ledford is holding onto Longino's left arm—Officer Kinsey grabs Longino's right arm and cuffs his right wrist. He then punches Longino in the face with a closed fist. The officers spend a few seconds securing the handcuffs before they walk Longino to the police vehicle.

Longino's actions in extending his left arm and holding his hands on his head for a matter of seconds were not active resistance. See Hinson, 927 F.3d at 1117. And Officer Kinsey's response—punching Longino's torso and face—was not a proportionate response to those actions. Moments before he started throwing punches, Officer Kinsey witnessed Officer Ledford drag Longino's limp body into the yard. While Longino's act of going limp (and thereby compelling Officer Ledford to drag his body) may be a sign of noncompliance, it cannot be said to be

"active" resistance. Longino's actions in momentarily covering his head and face *after* Officer Kinsey threw the initial punches is irrelevant to the issue of whether Officer Kinsey used excessive force when he punched Longino in the torso. Glasscox v. City of Argo, 903 F.3d 1207, 1214–15 (11th Cir. 2018) (holding that an arrestee's act of attempting to pull a taser from his body was irrelevant to the reasonableness of the officer's initial use of the taser). And, crucially, Longino had stopped covering his head and face, his hands were secured by the officers, and he was pinned to the ground when Officer Kinsey punched him in the face. Id. at 1214 (reversing the district court's grant of summary judgment to the officer because the officer tased the plaintiff after the plaintiff had stopped resisting). At no point during the arrest did Longino fight the officers, attempt to escape, or actively resist being handcuffed.

Finally, the record shows that Longino was injured as a result of the arrest. He suffered from bruises, scrapes, and heart troubles during the arrest, and he experienced anxiety and panic attacks following the arrest. Hinson, 927 F.3d at 1117. In light of these facts, we hold that a jury reasonably could conclude that Officer Kinsey used excessive force in arresting Longino because he was arrested for minor, non-violent offenses, he did not pose a serious threat to anyone's safety, he did not actively resist arrest, and he was injured as a result of the punching.

We also conclude that Officer Kinsey's actions violated clearly established law. In Fils v. City of Aventura, we held that our binding precedent established that "unprovoked force against a non-hostile and non-violent suspect who has not disobeyed instructions violates that suspect's rights under the Fourth Amendment." 647 F.3d 1272, 1289, 1292 (11th Cir. 2011) (holding that officers should have known that their conduct violated the plaintiff's Fourth Amendment rights when they tased him despite the fact that he committed a minor offense and did not resist arrest, threaten anyone, or disobey any instructions). Similarly, we held in Hadley that "gratuitous use of force when a criminal suspect is not resisting arrest constitutes excessive force." 526 F.3d at 1330 (holding that officers violated plaintiff's clearly established Fourth Amendment rights when they punched him in the stomach and face while he was handcuffed and not struggling or resisting). While the arrests in those cases are not identical to Longino's, their holdings provided Officer Kinsey with a "fair warning" that his conduct violated the Fourth Amendment. Hope, 536 U.S. at 741. They provide that "fair warning" by showing the "broader, clearly established principle" that an officer violates the Fourth Amendment when he punches a non-hostile suspect accused of a minor crime who has not resisted arrest. See Fils, 647 F.3d at 1289, 1292; Hadley, 526 F.3d at 1330. Because Officer Kinsey violated Longino's clearly established right to be free from

excessive force, we affirm the district court's denial of qualified immunity on this claim.

III.

The district court determined that Officer Kinsey was not entitled to official immunity on Longino's state law false arrest and battery claims. We review de novo the denial of official immunity from state law claims. Hoyt v. Cooks, 672 F.3d 972, 981 (11th Cir. 2012). Under Georgia law, public officials performing discretionary duties are entitled to official immunity from state law claims in their personal capacity unless they act "with malice or an intent to injure." Cameron v. Lang, 549 S.E.2d 341, 344 (Ga. 2001); see Ga. Const. Art. I, § 2, ¶ 9(d). Because it is undisputed that Officer Kinsey was performing a discretionary function when he arrested Longino, our inquiry is whether the record shows a genuine dispute of material fact about whether Officer Kinsey acted with actual malice or an intent to injure. Cameron, 549 S.E.2d at 344; see also Reed v. DeKalb Cty., 589 S.E.2d 584, 588 (Ga. Ct. App. 2003) (noting that the plaintiff had to offer some evidence that the officers acted with actual malice or deliberate intent to injure her in order to overcome summary judgment).

"Actual malice requires a deliberate intention to do wrong, and does not include implied malice, i.e., the reckless disregard for the rights or safety of others." Hoyt, 672 F.3d at 981 (citing Murphy v. Bajjani, 647 S.E.2d 54, 60 (Ga.

2007)) (quotation marks omitted). A "deliberate intention to do wrong" is the "intent to cause the harm suffered by the plaintiffs." Murphy, 647 S.E.2d at 60. Showing that an officer harbored bad feelings toward the plaintiff or acted with ill will is insufficient. Wyno v. Lowndes Cty., 824 S.E.2d 297, 304 (Ga. 2019). Instead, the plaintiff must show "ill will . . . combined with the intent to do something wrongful or illegal." Id. (quotation marks omitted). Similarly, an intent to cause injury means "an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury." Kidd v. Coates, 518 S.E.2d 124, 125 (1999) (quotation marks omitted).

An officer is not entitled to summary judgment on official immunity grounds if the evidence shows that the officer had actual, subjective knowledge that no crime was committed at the time of the arrest.[6] See Lagroon v. Lawson, 759 S.E.2d 878, 883 (Ga. Ct. App. 2014) (officers deliberately intended to do a wrongful act when they attempted to secure charges against the plaintiffs despite knowing that they had committed no crimes). Manufacturing evidence or knowingly producing perjured testimony may be evidence of actual malice. Marshall v. Browning, 712 S.E.2d 71, 74–75 (Ga. Ct. App. 2011) (official immunity applied when the arresting officer mistakenly believed the plaintiff

[6] Official immunity is distinguishable from qualified immunity because it is a subjective standard that requires us to determine whether an officer acted with a deliberate intent to do wrong. See Murphy, 647 S.E.2d at 60. On the other hand, qualified immunity is an objective standard for which an officer's subjective intent is irrelevant. Koch v. Rugg, 221 F.3d 1283, 1295 (11th Cir. 2000).

committed a crime because there was no evidence that she was motivated by a personal animus toward the suspect, manufactured evidence, knowingly presented perjured testimony, or otherwise intended to do wrong).

We do not "speculate [or] make assumptions" about an officer's improper motive. Conley v. Dawson, 572 S.E.2d 34, 37–38 (Ga. Ct. App. 2002). An "inference of malice is insufficient to overcome [an] immunity defense." Watkins v. Latif, 744 S.E.2d 860, 863 (Ga. Ct. App. 2013). We also do not infer actual malice from a warrantless arrest. Bashir, 445 F.3d at 1333. "Even when an arresting officer operates on a mistaken belief that an arrest is appropriate, official immunity still applies." Reed, 589 S.E.2d at 587.

Longino contends that Officer Kinsey acted with actual malice, and as a result, official immunity cannot shield him from Longino's state law claims for false arrest and battery. He argues that Officer Kinsey lied about Longino saying "fuck the police" so he could "create the circumstances of arguable probable cause so as to arrest and then assault Longino." He asserts that Officer Kinsey manufactured that evidence in order to "get [] even for Longino's prior Halloween party." He points to Officer Kinsey's statement in a post-arrest interview with a police sergeant that he was sometimes frustrated with his supervisors because certain situations, like the Halloween party, were "swept under the rug" without the officers taking any official action.

We hold that Officer Kinsey is entitled to official immunity on the false arrest claim, but not on the battery claim. See Hoyt, 672 F.3d at 981. First, there is no direct evidence that Officer Kinsey deliberately intended to wrongfully arrest Longino. See Wyno, 824 S.E.2d at 304. Longino essentially asks us to infer that Officer Kinsey's decision to arrest him was based on the "fuck the police" statement. That argument appears to be premised on the assumption that the statement was the sole source of probable cause. But we already have determined that Officer Kinsey had arguable probable cause to arrest Longino for public drunkenness regardless of whether Longino actually said "fuck the police." For that reason, we cannot infer that Officer Kinsey's probable cause determination was based on the allegedly manufactured evidence. See Watkins, 744 S.E.2d at 863; Bashir, 445 F.3d at 1333. And Longino's argument is belied by the record. Officer Kinsey testified that he arrested Longino not only because of the "fuck the police" statement, but because of "all the other loud woo-hooing and partying that had been going on." Even if Officer Kinsey's belief that a warrantless arrest was appropriate was mistaken, that mistaken belief is insufficient to strip him of official immunity. See Bashir, 445 F.3d at 1333; Reed, 589 S.E.2d at 587. The record does not show that Officer Kinsey knew that Longino had not committed a crime when he arrested him. See Lagroon, 759 S.E.2d at 883. Because there is no

evidence that Officer Kinsey manufactured evidence with the intent to unlawfully arrest Longino, he is entitled to official immunity on the state false arrest claim.

There is, however, a question of fact about whether Officer Kinsey acted with actual malice or an intent to injure when he threw numerous closed-fist punches to Longino's torso and face during the arrest. See Hoyt, 672 F.3d at 981. Officer Kinsey testified that he punched Longino because he was resisting arrest. But, as we already have determined, the arrest video showed that Longino did not resist arrest. Officer Kinsey also admitted in the post-arrest interview that he was frustrated with how his supervisors handled the Halloween party. In light of the conflict between Officer Kinsey's stated reason for punching Longino and the arrest video, and his admission that he was frustrated with how Longino's behavior at the Halloween party was "swept under the rug," a reasonable jury could find that Officer Kinsey's proffered reasons for punching Longino lacked credibility and he actually was motivated by ill will and a deliberate intent to do wrong. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) ("Credibility determinations . . . are jury functions, not those of a judge."); see Wyno, 824 S.E.2d at 304. On the other hand, a jury could find that Officer Kinsey's proffered reasons are credible, see Feliciano, 707 F.3d at 1247, but that determination cannot be made at the summary judgment stage. Because there is a genuine issue of material fact about whether Officer Kinsey had a deliberate intention to do wrong

when he repeatedly punched Longino, he is not entitled to official immunity on the battery claim.

IV.

We affirm the district court's denial of qualified immunity to Officers Kinsey and Ledford on Longino's Fourth Amendment claim based on the warrantless arrest in his home. We affirm the denial of qualified immunity to Officer Kinsey on the excessive force claim and the denial of official immunity to him on the state law battery claim. We reverse the court's denial of qualified immunity to both officers on the § 1983 false arrest claim and the denial of official immunity to Officer Kinsey on the state false arrest claim. We remand for entry of summary judgment in favor of Officers Kinsey and Ledford on the § 1983 false arrest claim and Officer Kinsey on the state law false arrest claim and for further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.