[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13583
Non-Argument Calendar

D.C. Docket No. 0:18-cv-60980-WPD

ERIC WATKINS,

Plaintiff-Appellant,

versus

NICOLENE JOHNSON,

Defendant-Appellee.

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

(April 22, 2021)

Before JILL PRYOR, BRASHER, and JULIE CARNES, Circuit Judges.

PER CURIAM:

This litigation arises from Plaintiff's arrest for assault with a deadly weapon on May 3, 2014. Plaintiff claims Defendant, a Broward County Sheriff's Office ("BSO") sheriff's deputy, arrested him without probable cause, unlawfully searched his car, and unreasonably seized his machete, in violation of the Fourth Amendment. Based on the alleged Fourth Amendment violations, Plaintiff, proceeding *pro se*, asserted federal claims against Defendant under 42 U.S.C. § 1983 in her individual capacity. The district court granted summary judgment to Defendant on the ground of qualified immunity. After a careful review, we **AFFIRM**.

BACKGROUND

We assume the following facts to be true for purposes of this appeal.[1] On the morning of May 3, 2014, Plaintiff's 1963 black Volkswagen Beetle was parked in the Westway Towing Company ("Westway") parking lot, located at the intersection of North State Road 7 and West Oakland Park Boulevard in Lauderdale Lakes, Florida. The lot was open to the public, and Plaintiff's car was legally parked there. The car had a "For Sale" sign in its window, and Plaintiff, a

[1] When reviewing a district court's order granting summary judgment, we construe the evidence and draw all inferences in favor of Plaintiff. *See Broadcast Music, Inc. v. Evie's Tavern Ellenton, Inc.*, 772 F.3d 1254, 1257 (11th Cir. 2014). Thus, where there is a factual dispute in the record, we have adopted Plaintiff's version of the events.

heavy-set black male, was sitting in the driver's seat, with the door open and his feet outside the car, doing legal work at a fabricated table.

While Plaintiff sat working, a man later identified as Patrick Hardy drove his truck onto the Westway lot and parked behind Plaintiff's car. According to Plaintiff, Hardy got out of his truck and walked to Plaintiff's car, leaned on Plaintiff's open car door and said, "No cutting grass today?" Plaintiff stood up from where he was sitting and told Hardy to get off his car, and Hardy responded by backing away from the car while at the same time pulling out a knife. Plaintiff testified that he verbally warned Hardy not to approach him with the knife, and that Hardy continued to back away from Plaintiff's car until he reached his truck, whereupon Hardy got into the truck and left the property. Plaintiff concedes there was a machete in a bag inside his car at the time of his encounter with Hardy, but he claims he never brandished or threatened Hardy with the machete.

At 12:55 pm on May 3, 2014, approximately forty-five minutes after Hardy left the property, Defendant was dispatched to the Westway parking lot. Defendant testified that the dispatcher advised her that a heavy-set black male had threatened a victim (later identified as Hardy) with a machete near a black Volkswagen Beetle that was parked in the Westway lot. The CAD report confirms that Defendant was apprised of a black Volkswagen that was parked in the Westway lot and advertised as being for sale, and that when the victim approached

the car to ask about its price, a large black male came out of the car waving a machete. The report indicates that Defendant was dispatched to the scene in response to the victim's 911 call reporting the incident.

Defendant testified that when she arrived at the Westway parking lot, she saw a black Volkswagen Beetle with a "For Sale" sign in its window and she saw Plaintiff sitting in the driver's seat of the car. Both Plaintiff and the car matched the description provided by the dispatcher. Defendant, along with two other officers who had been dispatched to the scene, approached Plaintiff with their guns drawn and ordered Plaintiff to get out of the car and onto the ground. Plaintiff complied, stepping out of the car and getting onto the ground, where he was handcuffed and detained by the officers.

The parties dispute the sequence and timing of the events that followed. Construing the facts in favor of Plaintiff, Defendant immediately walked over to Plaintiff's car, opened the driver's side door, and asked, "Where's the machete?" Plaintiff responded by telling Defendant to shut his car door and saying, "Don't search my car." Defendant ignored Plaintiff's orders and conducted a ten-minute search of the car, during which time she found a bag in the trunk of the car that contained a machete. When Defendant found the machete, she advised Plaintiff that he was under arrest and instructed the other officers to put Plaintiff in their patrol car.

At some point after Plaintiff was detained in the back of the patrol car, Patrick Hardy and LaJuan Bernell, an alleged eyewitness to Hardy's earlier encounter with Plaintiff, arrived at the Westway parking lot.[2] Defendant testified, and the CAD report confirms, that she called Hardy back to the scene so he could identify Plaintiff and describe the incident that had occurred earlier in the day. According to Plaintiff, Hardy and Bernell reached the scene about twenty minutes after he was detained, and they immediately got into the back of Defendant's patrol car, where they remained until Plaintiff was taken to jail.[3]

When Hardy and Bernell arrived at the scene, Defendant put them under oath and obtained sworn statements from them. Hardy testified in his statement that he was driving down Oakland Park Boulevard when he saw a black Volkswagen Beetle parked in the Westway parking lot with a "For Sale" sign in its window. Hardy stated that he pulled into the parking lot to ask about the price of the car and a man immediately jumped out of the car and said, "Don't approach my fucking vehicle." Hardy said that as he retreated to his truck, the man spun around and retrieved a machete from the car, then walked towards Hardy with the machete

[2] Plaintiff says Hardy was alone when he approached Plaintiff's car earlier in the day, but Bernell testified that he remained in the passenger seat of Hardy's truck, and thus out of Plaintiff's sight, during Hardy's encounter with Plaintiff.

[3] Plaintiff's recollection as to the timing of Hardy and Bernell's arrival at the scene is consistent with the documentary evidence in the record. Hardy's statement reflects that it was taken at 1:19 and concluded at 1:22. Bernell's statement was taken at 1:26.

in his hand stating that he was going to "fucking kill" Hardy. Hardy confirmed to Defendant that Plaintiff was the man who had threatened him with the machete and that the threat made him fear for his life.[4]

Bernell's statement corroborated Hardy's testimony. Bernell stated that earlier that day, he and Hardy saw Plaintiff's car parked in the Westway parking lot, that the car was advertised as being for sale, and that he and Hardy pulled into the lot to ask about the price of the car. Bernell recalled that as Hardy walked towards the car, a man jumped out of the car and started swearing. Bernell said that when Hardy began to retreat, the man grabbed a machete from the car and approached Hardy with it in an aggressive manner, at which time Hardy walked backwards to his truck, eventually getting into the truck, leaving the scene, and calling 911 to report the incident. Like Hardy, Bernell identified Plaintiff as the individual who had jumped out of the car and threatened Hardy with a machete.

Defendant testified that she arrested Plaintiff for aggravated assault after she interviewed Hardy and Bernell, and that she subsequently decided to impound Plaintiff's car incident to his arrest. According to Defendant, she discovered the machete when she conducted an inventory search of the car, as required by BSO

[4] Plaintiff argues in his appellate brief that Hardy did not "positively identify" him as the individual who threatened Hardy with a machete. However, Plaintiff does not present any evidence to support this argument, and he does not otherwise refute Defendant's testimony on this point.

policy when a car is impounded. Documentary evidence in the record—such as the inventory receipt form Defendant completed itemizing the contents of Plaintiff's car, including the machete—corroborates Defendant's testimony on this point. And we note that Plaintiff's car was impounded by Westway when he was arrested. But for purposes of this appeal we assume, consistent with Plaintiff's declaration testimony, that Defendant searched Plaintiff's car immediately after she detained, and before she arrested, Plaintiff.

After his arrest, Plaintiff was taken to the Broward County jail and charged with aggravated assault with a deadly weapon. Upon his release, Plaintiff initiated this lawsuit against Defendant in her individual capacity. His complaint includes two counts under 42 U.S.C. § 1983, each asserting a separate Fourth Amendment violation. In the first count, Plaintiff alleges that Defendant unlawfully arrested him without probable cause. In the second count, Plaintiff alleges that Defendant unreasonably searched his car without his consent and without a warrant, and that she unlawfully seized a machete she found in the car.

Following discovery, Defendant filed a motion for summary judgment. In her motion, Defendant argued that she was entitled to qualified immunity as to both counts asserted in Plaintiff's complaint because: (1) she had probable cause, or at least arguable probable cause, to arrest Plaintiff for aggravated assault with a deadly weapon based on the information she received from the 911 dispatcher and

the sworn statements of Hardy and Bernell, and (2) her search of Plaintiff's car was a valid inventory search conducted in accordance with BSO policy and pursuant to her lawful decision to impound the car.

The district court granted Defendant's motion as to Plaintiff's false arrest claim. Based on the undisputed facts in the record—including the information relayed to Defendant by the 911 dispatcher, the fact that Defendant observed a man and car that matched the description provided by the dispatcher when she arrived on the scene, and Hardy and Bernell's corroborating sworn statements—the court determined that Defendant had at least arguable probable cause to arrest Plaintiff for aggravated assault under Florida law. But the court denied Defendant's motion as to Plaintiff's unlawful search and seizure claim, noting that Plaintiff's declaration testimony raised an issue of fact as to whether Defendant had searched Plaintiff's car immediately upon her arrival to the scene, and thus before she had decided to arrest Plaintiff and impound his car.

Defendant subsequently requested and was granted leave to file a second summary judgment motion. In her second motion, Defendant argued that her search of Defendant's car was a lawful search incident to Plaintiff's arrest for aggravated assault with a deadly weapon because Defendant had probable cause to arrest Plaintiff on that charge and it was reasonable for Defendant to believe the car contained evidence relevant to the charge—namely, the weapon used in the

assault—based on the information she had received from the 911 dispatcher. Defendant also argued that the search was lawful under the exception to the Fourth Amendment's warrant requirement announced in *Carroll v. United States*, 267 U.S. 132 (1925), because Plaintiff's car was "readily capable" of being used on the highways and Defendant had "probable cause to believe [the car] contain[ed] contraband or evidence of a crime."

The district court granted Defendant's second summary judgment motion based on the *Carroll* exception.[5] The court emphasized that Defendant was dispatched to the scene in response to a 911 call reporting that a large black male had wielded a machete at a victim who had stopped to inquire about the man's black Volkswagen, which was parked in the Westway parking lot and advertised as being for sale, and that when Defendant arrived on the scene she encountered a heavy-set black male sitting in a car that matched the description relayed to her by the dispatcher with a "For Sale" sign in its window. Under those circumstances, the court concluded, Defendant was authorized, per the rationale of *Carroll*, to

[5] While Defendant's second motion for summary judgment was pending, Plaintiff filed two motions for reconsideration of the district court's decision as to Defendant's first motion for summary judgment. Plaintiff argues on appeal that the district court erred when it denied his motions for reconsideration, but he has not shown that the district court abused its discretion by denying either motion. *See Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1254 (11th Cir. 2007) (noting that this Court reviews the denial of a motion to reconsider under the abuse of discretion standard). On the contrary, the district court denied Plaintiff's motions to reconsider pursuant to this Court's well-established rule that a motion to reconsider is a limited remedy that should be used sparingly, and not to "set forth new theories of law" or relitigate issues that have already been considered by the court. *See Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997).

search Plaintiff's car specifically for the machete, the weapon allegedly used in the crime reported to the 911 dispatcher.

Having disposed of both claims asserted in Plaintiff's complaint, the district court entered judgment in favor of Defendant. Plaintiff appealed. As he did in the district court, Plaintiff is proceeding *pro se* on appeal.

DISCUSSION

I. Standard of Review

We review the district court's grant of summary judgment de novo. *Jarvela v. Crete Carrier Corp.*, 776 F.3d 822, 828 (11th Cir. 2015). We apply the same standard as the district court, construing the facts and drawing all reasonable inferences in the light most favorable to Plaintiff. *See id.* Viewing the evidence in that manner, summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (quoting Fed. R. Civ. P. 56(a) (internal quotation marks omitted)).

II. Qualified Immunity

A. Standard

Defendant argues she is entitled to qualified immunity on Plaintiff's § 1983 claims. "Qualified immunity protects government officials performing 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) (internal quotation marks omitted). "When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (internal quotation marks omitted).

To be clearly established, a right must be "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (internal quotation marks omitted). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate" and thus given the official fair warning that his conduct violated the law. *Id*. (internal quotation marks omitted). Fair warning is most commonly provided by materially similar controlling precedent. *See Terrell v. Smith*, 668 F.3d 1244, 1255 (11th Cir. 2012). Alternatively, authoritative judicial decisions may "establish broad principles of law" that are clearly applicable to the conduct at issue or, very occasionally, it may be obvious from "explicit statutory or constitutional statements" that conduct is unconstitutional. *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1209 (11th Cir. 2007).

A defendant who asserts qualified immunity has the initial burden of showing she was acting within the scope of her discretionary authority when she took the allegedly unconstitutional action. *See Bennett v. Hendrix*, 423 F.3d 1247,

1250 (11th Cir. 2005). Assuming the defendant meets that requirement, the burden shifts to the plaintiff to establish that qualified immunity is not appropriate by showing that (1) "the facts alleged make out a violation of a constitutional right" and (2) "the constitutional right was clearly established at the time" of the alleged misconduct. *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016). Plaintiff does not dispute that Defendant was acting in her discretionary authority when she arrested him and searched his car on May 3, 2014. The burden thus lies with Plaintiff to show that the arrest and search violated a constitutional right that was clearly established at the time of the incident. *See id.* As discussed below, Plaintiff has not met this burden as to either his false arrest or his unlawful search and seizure claim.

B. False Arrest

Plaintiff claims he was arrested on May 3, 2014 without a warrant and without probable cause, in violation of the Fourth Amendment. A warrantless arrest lacking probable cause violates the Fourth Amendment and can therefore underpin a § 1983 claim. *See Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 734 (11th Cir. 2010). On the other hand, "the existence of probable cause at the time of arrest is an absolute bar" to a § 1983 claim challenging the constitutionality of the arrest. *Id.*

"Probable cause exists where the facts" within an officer's knowledge, "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.* 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, 243 n.13 (1983). In the qualified immunity context, the relevant inquiry is whether an officer had "arguable" probable cause to arrest the plaintiff. *See Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002). "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.* (emphasis added and internal quotation marks omitted). *See also Wood v. Kesler*, 323 F.3d 872, 878 (11th Cir. 2003) ("[T]he inquiry is . . . whether an officer reasonably could have believed that probable cause existed, in light of the information the officer possessed." (internal quotation marks omitted)).

Whether an officer has probable cause or arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." *Brown*, 608 F.3d at 735. The rationale behind qualified immunity is that an officer who acts reasonably should not be held personally liable merely because it appears, in hindsight, that she might have made a mistake. The concept of arguable probable cause thus allows for the possibility that an officer might "reasonably but

mistakenly conclude that probable cause is present." *Id.* (internal quotation marks omitted). Under this Court's governing precedent, such an officer cannot be held personally liable for false arrest. *See id.*

Defendant arrested Plaintiff for aggravated assault with a deadly weapon (a machete). Under Florida law, an assault is defined as "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent." Fla. Stats. § 784.011(1). An assault is aggravated if it is committed "[w]ith a deadly weapon without intent to kill." Fla. Stats. § 784.021(1)(a).

Plaintiff does not dispute that a machete, brandished in the manner alleged by Hardy, would qualify as a deadly weapon for purposes of the Florida statute. We agree that the machete constituted a deadly weapon under the circumstances, and we conclude further that Defendant had at least arguable probable cause to believe Plaintiff had committed an assault with the machete when she arrested him on May 3, 2014. *See P.J.A. v. State*, 152 So. 3d 805, 806–07 (Fla. 4th DCA 2014) (holding that a steak knife, held and twisted in the defendant's hand while he threatened to kill the victim, was a deadly weapon under the Florida statute).

Again, Defendant responded to the Westway parking lot after being apprised by a 911 dispatcher that a large black male in a black Volkswagen, which was

parked in the lot and advertised for sale, had threatened a victim who inquired about the cost of the Volkswagen while waving a machete at the victim. When Defendant arrived at the scene, she encountered Plaintiff, a heavy-set black male who matched the 911 dispatcher's description of the perpetrator, sitting in the driver's seat of a car that also matched the dispatcher's description—a black Volkswagen with a "For Sale" sign in its window. Shortly thereafter, the victim returned to the scene and provided sworn testimony in which he stated that Plaintiff had brandished a machete while threatening to "fucking kill" him, causing the victim to fear for his life. An eyewitness who returned to the scene with the victim provided a sworn statement corroborating the victim's testimony.

At some point during her investigation, Defendant searched Plaintiff's car and found the machete allegedly used to assault the victim. But even if Defendant had not found the machete, an officer in Defendant's position "reasonably could have believed"—and likely would have believed—there was probable cause to arrest Plaintiff for aggravated assault under Florida law, given the information Defendant received from the 911 dispatcher, the corroborating facts she discovered at the scene, and Hardy and Bernell's sworn testimony. *See Wood*, 323 F.3d at 878. Accordingly, Defendant is entitled to qualified immunity on Plaintiff's false arrest claim.

B. Illegal Search and Seizure

In accordance with its prohibition of unreasonable searches and seizures, the Fourth Amendment generally requires an officer to have a warrant supported by probable cause to search an individual's personal property. *See United States v. Wilson*, 979 F.3d 889, 910 (11th Cir. 2020). The Fourth Amendment's warrant requirement is subject to several well-established exceptions, however. *See id.* Most relevant here, the "automobile exception" recognized by the Supreme Court in *Carroll v. United States* permits the warrantless search of a car where (1) the car is "readily mobile" and (2) "probable cause exists to believe [the car] contains contraband." *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (internal quotation marks omitted). *See also Carroll*, 267 U.S. at 153–56 (upholding the warrantless search of a car that officers had probable cause to believe contained illegal liquor).

Plaintiff does not dispute that his car was operational and thus "readily mobile" when Defendant conducted the search. *See United States v. Alexander*, 835 F.2d 1406, 1409 (11th Cir. 1988) ("The vehicle does not have to be moving at the moment when the police obtain probable cause to search."). Plaintiff concedes further that his car was parked in a public parking lot at the time of the search, in a location where he would have no reasonable expectation of privacy. *Compare Collins v. Virginia*, 138 S. Ct. 1663, 1668 (2018) (holding that the automobile exception did not permit an officer to conduct a warrantless search of a motorcycle

that was parked in the curtilage of a home and covered with a tarp). The first requirement of the automobile exception is thus met in this case.

The probable cause requirement is also satisfied in this case. For purposes of the automobile exception, probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in the vehicle under the totality of the circumstances." *United States v. Delva*, 922 F.3d 1228, 1243 (11th Cir. 2019) (internal quotation marks omitted). Under the "totality of the circumstances" here, it was reasonable for Defendant to conclude there was a "fair probability" Plaintiff's car contained a machete that had been used earlier in the day to commit an aggravated assault. *See id.* ("Facts provided by a confidential informant and then independently corroborated by the government can support probable cause to believe that a vehicle contains contraband.").

To recap briefly, Defendant was advised by a 911 dispatcher that a large black male had threatened a victim with a machete when the victim had stopped to ask about the price of a black Volkswagen Beetle that was parked in the Westway parking lot and advertised as being for sale. When Defendant arrived at the Westway parking lot, she observed Plaintiff, a heavy-set black male, sitting in a black Volkswagen Beetle that was parked in the lot with a "For Sale" sign in its window. Defendant had no reason to doubt the credibility of the information provided by the 911 dispatcher, and the corroborating facts she discovered when

she arrived at the scene provided probable cause to search Plaintiff's car specifically for the machete allegedly used in the earlier assault. According to Plaintiff's version of the events, that is exactly what Defendant did—ordering Plaintiff to get out of his car and proceeding to search the car after stating, "Where is the machete?" Based on those undisputed facts, the district court correctly granted qualified immunity to Defendant on Plaintiff's unlawful search and seizure claim pursuant to the automobile exception.

CONCLUSION

In accordance with the foregoing discussion, we conclude that Defendant had at least arguable probable cause to arrest Plaintiff for aggravated assault in violation of Florida law, and that her search of Plaintiff's car and seizure of the machete she found in the car were permitted under the automobile exception to the Fourth Amendment's warrant requirement. Accordingly, we **AFFIRM** the district court's order granting summary judgment to Defendant on Plaintiff's § 1983 false arrest and unlawful search and seizure claims.