

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11781

Non-Argument Calendar

MARCUS NATHANIAL GRISSOM,

Plaintiff-Appellant,

versus

ALABAMA, STATE OF, THE,
THE HONORABLE JOANNE M. JANNIK,
Individually and in her Professional Capacity and Role,
HAYS WEBB,
ANNAH ROBERTS,
PAULA HEARING, et al.,

Defendants-Appellees,

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SAM BAXTER,
Tuscaloosa County ADA; Individually and in his
Professional Capacity and Role, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:19-cv-00987-GMB

Before LUCK, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Marcus Nathaniel Grissom appeals a magistrate judge's dismissal of his *pro se* amended complaint. He alleges that the defendants, the State of Alabama and several of its officers, violated multiple federal statutes and the United States Constitution in a complex and convoluted scheme that began with a 2018 traffic stop and ended with an audit of his father's tax return. After careful consideration, we affirm.

I. BACKGROUND

Grissom's complaint begins in 2018, when Michael Harris, an Alabama State Trooper, pulled him over. At the time, Grissom

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was driving over the speed limit in an attempt to “get out from behind” another vehicle that was being driven erratically. During the stop, Harris “effectively” told Grissom that “[i]f you’d have just admitted to it, it’d have been ok.” And although Harris told Grissom that he was recording the interaction, no audio was ever captured, only dashcam video.

Harris cited Grissom for reckless driving, and Grissom contested the charge. As part of those proceedings, he contacted Assistant District Attorney Hunter Brown, the prosecutor, to discuss his case and report alleged misconduct by Harris. At trial, Harris proffered video of the traffic stop that bore an incorrect date caption and allegedly lied multiple times. Grissom was convicted of reckless driving and appealed, but the state circuit court “finally dropped” the case after several months.

Once Grissom’s state court proceeding was finished, his father contacted the District Attorney’s Office to report prosecutorial misconduct. Paula Hearing, a supervisory prosecutor in the office, investigated the allegation and concluded that no such misconduct occurred. Five days after Hearing’s reply, Grissom was pulled over again, this time by Alabama State Trooper Isaac Duke, for driving sixty miles-per-hour in the leftmost lane of a sixty-five mile-per-hour zone. Duke asked Grissom about the reason for the traffic stop, and the latter responded. Grissom’s response upset Duke, who then stated that “[w]e were working on a warning but you just changed that,” before issuing Grissom a citation for impeding the flow of traffic “because of . . . [his] attitude[.]”

Grissom again challenged his citation, this time in a trial before Judge Joanne Jannik and prosecuted by Assistant District Attorney Samantha Baxter-Krebs. Judge Jannik allegedly refused to allow Grissom to record the trial, prohibited him from cross-examining Duke on certain subjects, and spoke on Duke's behalf about the applicable law. During the trial, Duke allegedly admitted that he ticketed Grissom because of his attitude. Grissom was convicted again and appealed again, this time eventually winning a dismissal.

Around the time of his second trial, Annah Roberts, a tax auditor with the Alabama Department of Revenue, contacted Grissom's father about an audit of his state tax returns. After email exchanges during which Grissom's father asked to record their tax audit meeting, Roberts explained that the audit letter was sent in error, that Grissom's father should disregard it, and that she would follow up to schedule a date and time for a recorded audit meeting.

Based on the events above, Grissom filed a federal lawsuit alleging that the State of Alabama, Jannik, Hearing, Baxter-Krebs, Brown, Duke, Harris, and Roberts had violated his constitutional rights. He also named District Attorney Hays Webb as an additional defendant. Grissom claimed that the defendants had violated his First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendment rights, as well as six federal criminal statutes. The defendants moved to dismiss, and all parties consented to disposition by a magistrate judge under 28 U.S.C. § 636(c)(1). The magistrate judge granted the defendants' motions and dismissed Grissom's claims with prejudice, after which he timely appealed.

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II. DISCUSSION

As an initial matter, Grissom has abandoned several of his constitutional claims. By failing to discuss his Fourth, Sixth, Eighth, and Ninth Amendment claims in his opening brief, Grissom has abandoned them on appeal. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–82 (11th Cir. 2014); *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (“[W]e do not address arguments raised for the first time in a pro se litigant's reply brief.”).

Grissom’s remaining claims, though properly preserved, fair no better. First, Grissom’s claims against Alabama, Judge Jannik, Assistant District Attorneys Baxter-Krebs, Brown, and Hearing, and District Attorney Hays Webb all fail because each of those defendants is immune from suit. The State of Alabama is entitled to sovereign immunity against lawsuits from its citizens, and the state has not waived its immunity here. U.S. CONST. AMEND. XI; *see also Manders v. Lee*, 338 F.3d 1304, 1308 n.8 (11th Cir. 2003) (en banc); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). Judge Jannik is entitled to judicial immunity because all of Grissom’s allegations against her relate to quintessential judicial functions undertaken in her official capacity: conducting trials, maintaining order in the courtroom, and interpreting the law. *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (“Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation

arose immediately out of a visit to the judge in his judicial capacity.”); *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”). Finally, the various defendants at the District Attorney’s Office all enjoy prosecutorial immunity because Grissom’s claims against them arose out of their official actions and activities taken while advocating for the government. *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1279 (11th Cir. 2002). Baxter-Krebs and Brown directly prosecuted Grissom on behalf of the state and Hearing and Webb supervised those efforts. These functions are “intimately associated with the judicial phase of the criminal process” so as to implicate prosecutorial immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

Second, none of Grissom’s claims under federal criminal statutes, including all of his claims against Roberts, support a private right of action. Thus, he has failed to state a claim for which relief could be granted based on those statutes. *See Donald Frederick Evans & Assocs., Inc. v. Continental Homes, Inc.*, 785 F.2d 897, 912–913; *see also Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1167 n.7 (11th Cir. 2003) (stating that “language customarily found in criminal statutes . . . is usually not sufficient to confer a federal right”).

Third, Grissom’s First and Fifth Amendment claims against Duke and Harris fail. As to Duke, Grissom failed to plead the lack of probable cause for his traffic stop and citation, which serves as an absolute bar to any false or retaliatory arrest challenges. *Brown*

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v. City of Huntsville, 608 F.3d 724, 734 (11th Cir. 2010); *Nieves v. Bartlett*, 587 U.S. ___, 139 S. Ct. 1715, 1723–24 (2019). Instead, the amended complaint concedes that Grissom was driving below the speed limit in the leftmost lane at the time of the stop, which supplied a basis for probable cause for his impeding the flow of traffic citation. *See* ALA. CODE. § 32-5A-80(b). That concession is fatal. As to Harris, Grissom never alleged that Harris pulled him over, or issued him a citation, because of anything he said in particular. *Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016). Thus, he has not pleaded that he engaged in protected speech causally connected to Harris’s actions. *Id.* Nor has he alleged that his statements were used against him at trial. *Chavez v. Martinez*, 538 U.S. 760, 770 (2003). Instead, the complaint only alleged that no audio of his interactions with Harris, which would have captured the trooper’s statements, was available. Even interpreted liberally and in Grissom’s favor, these allegations do not make out a plausible claim under either the First or Fifth Amendment. *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1320 (11th Cir. 2006).

III. CONCLUSION

For the foregoing reasons, the magistrate judge’s order dismissing Grissom’s claims is **AFFIRMED**.