[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10438

Non-Argument Calendar

ASHLEY LYNN ANDRADE,

Plaintiff-Appellant,

versus

SHERIFF OF LEE COUNTY, FLORIDA,
JOSEPH CLARK,
in his official capacity and individually,
EARTHEN BROWN,
in his official capacity and individually,

Defendants-Appellees,

LEE COUNTY SHERIFF'S DEPARTMENT,
a division of Lee County,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:19-cv-00887-JES-NPM

Before NEWSOM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

We must decide whether officers had probable cause to arrest Ashley Andrade under Fla. Stat. § 843.02 and whether they used excessive force in arresting her. The district court held that the officers had probable cause and did not use excessive force. After watching multiple videos of the incident and taking any facts not on video in the light most favorable to Andrade, we agree with the district court. Accordingly, we affirm.

I.

Ashley Andrade's acquaintance, Jacob Oade, was arrested after allegedly groping another woman at the beach. Along with a crowd of other beachgoers, Andrade and her cousin, Danielle

Breehne, followed the arresting officers to their patrol vehicle as they made the arrest. Andrade and Breehne approached the vehicle while the officers placed Oade in the back seat, yelling at the officers. The officers ordered them to back away from the vehicle. Andrade and Breehne briefly backed up, but then returned to the vehicle and again yelled at the officers.

The officers again ordered Andrade and Breehne to back away from the vehicle. They began slowly backing away, with Andrade pulling Breehne by her waist. Deputy Clark, who was called on the scene as backup, approached the women from behind. Meanwhile, Deputy Brown pushed Breehne backwards. A scuffle ensued between Breehne and Brown, with Andrade still pulling Breehne towards her. Deputy Clark then intervened and grabbed Andrade to pull her away from the scuffle. Andrade's ex-husband also became involved, placing his arms around Andrade and pulling her away from Deputy Clark. Clark lost his grip on Andrade, which caused him, Andrade, and her ex-husband to fall to the ground. Clark then secured Andrade on the ground with his knee and hand, stood her up, and handcuffed her.

The officers charged Andrade with resisting a police officer without violence. Fla. Stat. § 843.02. She was transported to a local hospital before being taken to Lee County Jail. She says her arrest resulted in injuries that caused her to lose her job, undergo surgery, and incur tens of thousands of dollars in medical expenses.

Andrade sued Deputies Clark and Brown and Lee County Sheriff Marceno under 42 U.S.C. § 1983 and Florida state law for

false arrest, false imprisonment, excessive force, malicious prosecution, First Amendment retaliation, battery, intentional infliction of emotional distress, and negligent training and supervision. The district court granted summary judgment for the officers on all the claims.

Andrade appealed the district court's ruling on the false arrest, false imprisonment, excessive force, First Amendment retaliation, and battery claims. The district court dismissed the false arrest, false imprisonment, and First Amendment retaliation claims because it concluded the officers had probable cause to arrest Andrade. It dismissed the excessive force claim because it concluded the officer's use of force was reasonable. And it dismissed the battery claim because it concluded the officers had probable cause to arrest Andrade and did not use excessive force.

II.

"We review a district court's grant of summary judgment de novo, viewing all the evidence, and drawing all reasonable factual inferences, in favor of the nonmoving party." *Amy v. Carnival Corp.*, 961 F.3d 1303, 1308 (11th Cir. 2020) (citation omitted). "A grant of summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (cleaned up).

"A fact is 'material' if it might affect the outcome of the suit under the governing law." *BBX Capital v. FDIC*, 956 F.3d 1304, 1314 (11th Cir. 2020) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "A dispute over such a fact is 'genuine' if the evidence

is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Although we must view the facts in favor of the nonmoving party, we accept video evidence over the nonmoving party's account when the former obviously contradicts the latter. *See Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010).

III.

Andrade argues that the district court erred when it concluded that the officers had probable cause to arrest her and did not use excessive force in arresting her. We agree with the district court that the officers had probable cause to arrest Andrade and did not use excessive force. Accordingly, we affirm the district court's grant of the officer's summary judgment.

A.

We start with whether the officers had probable cause to arrest Andrade. Andrade sued the officers for Florida and Section 1983 false arrest, Florida and Section 1983 false imprisonment, and Section 1983 First Amendment retaliation. Each claim fails if the officers had probable cause to arrest Andrade.

To succeed on her federal false arrest claim, Andrade must establish (1) a lack of probable cause and (2) an arrest. Thus, when the government has probable cause to make an arrest, a false arrest claim necessarily fails. *Crocker v. Beatty*, 995 F.3d 1232, 1245 (11th Cir. 2021). An arrestee similarly has a false arrest claim under Section 1983 where "a police officer lacks probable cause to make an

arrest." *Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996). Thus, a false imprisonment claim is also defeated if the officer has probable cause to arrest. *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009).

The same is true under Florida law. In Florida, false arrest and false imprisonment are "different labels for the same cause of action." *Coleman v. Hillsborough Cnty.*, 41 F.4th 1319, 1326 (11th Cir. 2022) (quoting *Rankin v. Evans*, 133 F.3d 1425, 1431 n.5 (11th Cir. 1998)). The existence of probable cause is a complete bar to claims of false arrest and false imprisonment. *See Lewis v. Morgan*, 79 So. 3d 926, 928 (Fla. 1st DCA 2012) (false arrest); *Baxter v. Roberts*, 54 F.4th 1241, 1271 (11th Cir. 2022) (false imprisonment).

"[T]he presence of probable cause will . . . generally defeat a § 1983 First Amendment retaliation claim for an underlying retaliatory arrest." *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1297 (11th Cir. 2019). While there are exceptions to this general rule, *see id.*, Andrade does not rely on those exceptions. So her First Amendment retaliation claim fails if the officers had probable cause to arrest her.

"[P]robable cause exists when the facts, considering the totality of the circumstances and viewed from the perspective of a reasonable officer, establish 'a probability or substantial chance of criminal activity.'" *Washington v. Howard*, 25 F.4th 891, 898–99 (11th Cir. 2022) (quoting *District of Columbia v. Wesby*, 538 U.S. 48, 57 (2018)). "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his

presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). "Whether an officer possesses probable cause . . . depends on the elements of the alleged crime and the operative fact pattern." *Brown v. City of Huntsville*, 608 F.3d 724, 735 (11th Cir. 2010). Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243–44 n.13 (1983). And probable cause "is not a high bar: It requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act." *Kaley v. United States*, 571 U.S. 320, 338 (2014) (cleaned up).

An officer has probable cause to arrest someone for resisting a police officer without violence under Section 843.02 when (1) "the officer was engaged in the lawful execution of a legal duty," and (2) "the defendant's action, by [her] words, conduct, or a combination thereof, constituted obstruction or resistance of that lawful duty." *Baxter v. Roberts*, 54 F.4th 1241, 1266 (11th Cir. 2022) (quoting *C.E.L. v. State*, 24 So. 3d 1181, 1185–86 (Fla. 2009)). "Our focus is whether a reasonable jury could find that evidence of either element was lacking at the scene of the incident." *Id.* If so, the officers did not have probable cause to arrest Andrade.

The district court concluded that no reasonable jury could find that evidence of either element was lacking at the scene of the incident. It reasoned that the officers were engaged in a lawful execution of their legal duty because they responded to a call about Oade touching a woman, arrested him, and attempted to continue

their investigation by ordering the crowd, including Andrade, to move away from the patrol car. The district court also reasoned that Andrade obstructed and resisted that lawful duty when she defied those orders and walked towards the vehicle after briefly backing away, and resisted and obstructed Deputy Clark when he tried to remove her from the scuffle.

Andrade says that conclusion is wrong for several reasons. She says there is no allegation that she did anything to impede or obstruct Oade's arrest, she did not obstruct the investigation or resist the deputies in the performance of their lawful duties, and her presence in the area and verbal commentary alone cannot support a finding of probable cause. She also says she was only given the command to back up one time and she was complying with the deputies' orders when deputies Brown and Clark escalated the situation. And she says there are genuine disputes of material fact as to whether she touched or grabbed Deputy Clark and whether she resisted Deputy Clark because she was in a tug-of-war between Clark and her ex-husband.

The deputies respond that Andrade violated Section 832.02 when, after being ordered to back up, she walked back towards the patrol car. They say there is no dispute she defied the order to get back from the patrol car and all that matters is that she was ordered away once and did not obey. Thus, the deputies say that it is immaterial whether Andrade touched or grabbed deputy Clark's shirt or resisted Clark because probable cause existed before that happened.

Andrade cites multiple cases to support her argument that her conduct did not create probable cause that she violated Section 843.02. For example, she points to *D.A.W. v. State* for the proposition that Florida law requires more than speech to establish probable cause. 945 So.2d 624, 627 (Fla. 2d DCA 2006). There, officers were arresting a person wielding a beer bottle as a weapon while a fight was happening in the middle of the street. *Id.* at 625. D.A.W. and a friend began harassing the individual being arrested from fifteen to thirty feet away. *Id.* The officers told D.A.W. and his friend to leave multiple times, but they refused. *Id.* Once the officer detained the individual, he approached D.A.W. and his friend, who turned away and left. *Id.* Other officers ultimately detained D.A.W. and arrested him for violating Section 843.02. *Id.*

The court held that the officers lacked probable cause to arrest D.A.W. for violating Section 843.02. *Id.* at 627. The court reasoned that D.A.W. did not cause the officers fear or public safety concerns, stayed fifteen to thirty feet away, and the officer was not forced to interrupt the arrest to deal with D.A.W.'s conduct. *Id.* at 626. The court held that "when the officer is not executing process on [an individual], legally detaining [an individual], or has not asked [an individual] for assistance in an ongoing emergency, the [the individual's] actions must normally be physically obstructive, not merely verbally harassing, in order to support a conviction for obstructing an officer without violence." *Id.*

But Andrade was closer than fifteen to thirty feet from the patrol car and yelling at the officers, was ordered away from the

patrol car as the officers were arresting Oade and continuing their investigation, and, after briefly backing away from the car, defied the officers' orders, returned close to the car, and yelled at the officers again. Thus, her conduct was much different from the exclusively verbal conduct in *D.A.W.*—she was ordered to physically move back from the patrol car and defied that order.

Andrade also relies on *Davis v. Williams*, 451 F.3d 759, 764–65 (11th Cir. 2006). There, a man noticed police cars outside of his house, went outside to determine what was going on, and asked the officers to redirect traffic because he was worried about guests coming to his house being diverted into dangerous driving conditions. *Id.* at 763. The officers told him to leave and, as he returned to his house, arrested him for violating Section 843.02. *Id.* at 764. The court held that the officers did not have probable cause to arrest him because he "did not physically interfere with or obstruct the deputies," and he testified that "he never made physical or verbal threats towards [the officers], never sought to incite violence, and never told the deputies to get off his property." *Id.* at 766. The court concluded that "[n]either an owner's simple inquiry as to why officers are present on his property nor a person's attempt to bring a dangerous situation to the officer's attention can be construed as obstruction of justice or disorderly conduct." *Id.* at 767.

Andrade was not simply asking to speak with the officers and was not attempting to bring a dangerous situation to their attention. Instead, the video shows that she congregated around the patrol car with Breehne, yelled at the officers, and physically

interfered with and obstructed the deputies when she defied their orders to back away from the car.

Two other cases Andrade cites also fail to establish the officers did not have probable cause. In *Owen v. Sheriff of Okaloosa County*, the court denied the officers' motion summary judgment because there was conflicting evidence about whether the officers had probable cause to make an arrest under Section 843.02. No. 3:21-cv-906 MCR-HTC, 2023 WL 2721647 (N.D. Fla. Mar. 30, 2023). Andrade says the same is true here because the videos do not conclusively establish that her arrest was supported by probable cause, and because her testimony contradicts the officers' testimony about the events prompting her arrest. But Andrade is wrong because the videos here do conclusively establish that the officers had probable cause to arrest her for violating Section 843.02—the officers ordered her away from the car and she defied that order.

And in *J.G.D. v. State*, the court held the officers had no probable cause to arrest a man who protested police actions in investigating crimes at an apartment building the man was visiting. 724 So. 2d 711 (Fla. 3d DCA 1999). The officers ordered the man to leave the complex and he defied that order, but the court held that the officers lacked probable cause to arrest him under Section 843.02 because his protest was nonviolent and only verbal. *Id.* Again, Andrade did much more than verbally protest Oade's arrest—she followed the officers from the beach to their patrol car,

was close to the patrol car and yelling at the officers, was ordered to back away from the car, and defied that order.

We agree with the officers that the cases Andrade cites do not establish that the officers lacked probable cause to arrest her for violating Section 832.02. The officers were engaged in the lawful execution of their legal duty by arresting Oade, transporting him to the patrol car, securing the area for their investigation, and ordering Andrade to back away from the car. And Andrade, by combination of her words and conduct, obstructed and resisted that lawful duty when she defied that order.

We agree with the district court that no reasonable juror could find there was a lack of probable cause to arrest Andrade. Thus, we agree with the district court that Andrade's claims for Florida and Section 1983 false arrest, Florida and Section 1983 false imprisonment, and Section 1983 First Amendment retaliation should fail.

B.

We next consider whether the officers used excessive force in arresting Andrade. Andrade argues that Deputies Clark and Brown used excessive force when they arrested her because the misdemeanor offense she was accused of did not warrant the use of force, she never posed a threat to the officers, and she never resisted the arrest. On the other hand, the officers say it was reasonable to grab her arm to pull her away from the scuffle, hold her to the ground while assessing the situation, place her arms behind her back, stand her up, and cuff her.

The district court agreed with the officers, concluding that the officers' force was permissible because Deputy Clark grabbed her arm, did not slam her to the ground, and used *de minimis* force to secure her once she was on the ground, and Deputy Brown used *de minimis* force when he pushed Breehne away from the patrol car. We agree.

Excessive force claims in the context of an arrest are judged under the Fourth Amendment's objective reasonableness standard. *Graham v. Connor*, 490 U.S. 386, 395–96 (1989). For excessive force claims, we balance the nature and quality of the intrusion on the individual against the government justification for using force and consider (1) the severity of the crime, (2) whether the suspect poses an immediate threat, and (3) whether the suspect is resisting arrest or attempting to evade arrest. *Id.* at 396. We also consider the justification for the use of force, the relationship between the justification and the force used, and the extent of any injury inflicted. *Saunders v. Duke*, 766 F.3d 1262, 1267 (11th Cir. 2014).

"[W]e must be careful not to Monday-morning quarterback but instead to judge '[t]he "reasonableness" of a particular use of force . . . from the perspective of a reasonable officer on the scene.'" *Patel v. City of Madison, Alabama*, 959 F.3d 1330, 1339 (11th Cir. 2020) (quoting *Graham*, 490 U.S. at 396). Additionally, "the application of de minims force, without more, will not support a claim for excessive force in violation of the Fourth Amendment." *Nolin v. Isbell,* 207 F.3d 1253, 1257 (11th Cir. 2000); *see Croom v. Balkwill*, 645 F.3d 1240, 1252 (11th Cir. 2011) (holding that force used was *de*

minimis when officers pushed a 63-year-old woman to the ground while she was in a squatting position and held her there with a foot or knee in her back for ten minutes while executing a search warrant).

We agree with the district court that Deputy Clark's use of force in grabbing Andrade's arm, securing her on the ground with his knee and hand, placing her arms behind her back, standing her up, and handcuffing her was reasonable and *de minimis*. And we agree that Deputy Brown's pushing Breehne back from the patrol car, potentially causing Andrade to lose her balance, was also *de minimis*.

Andrade argues on appeal that *Stephens v. DeGiovanni* establishes that the force the officers used to arrest her for violating Section 843.02 was excessive. 852 F.3d 1298 (11th Cir. 2017). But the facts here differ from the facts in *Stephens*. There, an officer questioned two men working on a car outside of a friend's apartment. *Id.* at 1307. Without asking Stephens to do anything but hand over his ID—which he did—the officer slapped a Bluetooth device from Stephens' ear, slugged Stephens in the chest twice, stepped on his foot while grabbing him by the neck and slamming him backwards, and twisted his hand. *Id.* at 1308. The officer handcuffed him, took him to the station, and charged him with resisting an officer without violence under Section 843.02. *Id.* at 1309. We vacated the district court's order that the officer did not use excessive force. *Id.* at 1328.

Andrade followed the officers to the patrol car as they arrested Oade. She came close to the car, yelled at the officers, and was ordered to back away. She backed away momentarily but then returned, again yelling at the officers. When Deputy Clark grabbed her arm to pull her out of the scuffle that ensued, her ex-husband grabbed her waist and pulled her in the opposite direction, ultimately causing her to fall to the ground. Officer Clark then secured her on the ground with his knee and hand, put her arms behind her back, stood her up, and cuffed her. Deputy Brown's only involvement was pushing Breehne away from the patrol car, which may have contributed to Andrade falling to the ground.

Both Deputies' use of force was not unreasonable under these circumstances. While the crime was a misdemeanor, the video shows a fast-moving situation outside the patrol car. A "Monday-morning quarterback" view may provide one perspective, but a reasonable officer at the scene could have believed that Andrade was a threat, resisting arrest, and attempting to flee because of the intensity of the situation and because her ex-husband was pulling her away from the officer. Even more, the deputies' actions were both *de minimis* uses of force.

Andrade also argues that her injuries sufficiently establish that the deputies use of force was excessive. She testified that she has lasting headaches and migraines, underwent jaw and shoulder surgery, and lost employment as a result of her injuries. But the videos show that those injuries could stem from the fall caused in part by her ex-husband pulling her, not by the deputies' actions.

And in any event, her injuries alone cannot transform the deputies' *de minimis* use of force into excessive use of force.

Thus, we agree with the district court that the deputies did not use excessive force when they arrested Andrade, so her excessive force claim must fail.

C.

Because we agree with the district court that the officers had probable cause to arrest Andrade and did not use excessive force in arresting her, her battery claim must also fail.

In Florida, a battery claim in the context of an arrest "is analyzed by focusing upon whether the amount of force used was reasonable under the circumstances." *Baxter v. Roberts*, 54 F.4th 1241, 1272–73 (11th Cir. 2022) (citing *City of Miami v. Sanders*, 672 So. 2d 46, 47 (Fla. 3d DCA 1996)). If an officer uses excessive force, that use of force is transformed into a battery. *Id.* at 1273. But where an officer does not use excessive force in making an arrest, there can be no claim for battery. *Id.* Thus, we agree with the district court that Andrade's battery claim must fail.

IV.

For these reasons, we **AFFIRM** the district court's grant of summary judgment.