

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7335

JAMES DOUGLAS WOLFE,

Plaintiff - Appellant,

v.

THE CITY OF NORTH CHARLESTON; JERRY JELLICO, individually and/or in his official capacity as an agent of the City of North Charleston; CHARLES BENTON, individually and in his official capacity as an agent for the City of North Charleston; ROBERT E. STONE, individually and/or in his official capacity as an agent of the City of North Charleston,

Defendants - Appellees,

and

JENNIFER BUTLER, individually and in her official capacity as an agent of the City of North Charleston; THE NORTH CHARLESTON POLICE DEPARTMENT,

Defendants.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:19-cv-00902-RMG)

Submitted: April 27, 2022

Decided: July 14, 2022

Before KING and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Jason Scott Luck, Bennettsville, South Carolina, for Appellant. Robin L. Jackson, SENN LEGAL, LLC, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Wolfe filed this action under 42 U.S.C. § 1983 against the City of North Charleston, South Carolina (the City) and four officers in the North Charleston police department (collectively, the defendants), alleging that the officers violated his Fourth Amendment rights by arresting him without probable cause for abusing his eight-week-old baby, E.W. The district court awarded summary judgment in favor of the defendants.¹ For the reasons that follow, we affirm.

I.

On March 22, 2016, E.W.’s mother, Ashley Stanley, took E.W. to the emergency room for treatment of a laceration to the baby’s lip. Doctors observed bruises on E.W.’s head and back, as well as multiple broken ribs, a broken clavicle, and fractures to both legs. The fractures were in different stages of healing, indicating that they had occurred on different occasions. A physician concluded that E.W.’s injuries were caused by

¹ The district court dismissed Wolfe’s claims that the City acted negligently by, or was otherwise liable for, allowing its officers to prepare warrant affidavits unsupported by probable cause. Because as we explain below, the officers did not violate Wolfe’s rights, there is likewise no basis for holding the City liable for any actions of its officers.

Wolfe also argues that the district court erred in dismissing his claim of municipal liability against the City based on the City’s alleged policy of allowing “multiple layers of hearsay” in warrant affidavits. However, it is well-settled that hearsay may be used to support a finding of probable cause for a warrant if there is a “substantial basis for crediting the hearsay.” *United States v. Ventresca*, 380 U.S. 102, 108 (1964). We therefore reject Wolfe’s argument.

“nonaccidental trauma or child abuse,” and ordered that she be transferred to the Medical University of South Carolina (MUSC) for further observation and treatment. Doctors at MUSC ultimately discovered additional severe injuries to E.W., including 16 rib fractures, multiple fractures to her pelvis, and internal bleeding in her spinal cord and brain.

Detectives Jerry Jellico and Charles Benton of the North Charleston police department interviewed both Stanley and Wolfe the next day. Stanley stated that Wolfe had been with E.W. when the injuries occurred, that he had dropped E.W. onto the floor several days earlier, and that he had admitted to causing E.W. to collide with a door. Stanley informed the officers that E.W. screamed whenever Wolfe tried to hold her, and that Wolfe would “massage” E.W.’s body.

During his interview with the officers, Wolfe made numerous incriminating admissions, including that he dropped the baby twice, threw her onto a couch, “squeezed” her to get her to stop crying, hit her head on a doorknob, and sat on her leg. He explained that he had been feeling “short tempered” and had not meant to hurt the baby. Notably, after officers described E.W.’s numerous injuries, Wolfe stated that he took “full blame,” indicated that Stanley was “the best mother,” and did not implicate Stanley in causing E.W.’s injuries.

Later that day, on March 23, 2016, Officer Robert Stone completed an affidavit to support his request for a warrant to arrest Wolfe for committing unlawful conduct toward a child, in violation of S.C. Code § 63-5-70 (the first warrant). Officer Stone included in the affidavit much of the information previously described regarding the injuries to E.W. and the statements made by Stanley and Wolfe. Two particular portions of the affidavit

are relevant to Wolfe's claims on appeal. First, Stone stated in the affidavit that during Wolfe's interview with Detective Jellico, Wolfe

admitted to throwing the child, excessively squeezing the child, dropping the child, and causing at least one impact injury to the child. *These admissions are consistent with the injuries reported by the examining medical personell [sic].*

Stone also stated in the affidavit that during Stanley's interview with Detective Jellico, Stanley informed officers that "she has noticed when the child is with [Wolfe,] [she] cries," and that she observed Wolfe "throw the baby on the couch and squeeze the baby and *heard audible cracking.*" Based on this affidavit, a state magistrate issued a warrant for Wolfe's arrest, and Wolfe was arrested the same day.

More than two weeks later, on April 11, 2016, after officers had received additional information from MUSC about the severity of E.W.'s injuries, Detective Jellico completed an affidavit in support of a warrant to arrest Wolfe on a second charge, namely, infliction or allowing infliction of great bodily injury upon a child, in violation of S.C. Code § 16-3-95 (the second warrant). This affidavit contained allegations similar to those that Officer Stone had included in the affidavit supporting the first warrant. Detective Jellico also described his conversation with doctors at MUSC, in which he learned that E.W. additionally was suffering from a brain bleed and a shattered pelvis, which could cause permanent disabilities. Based on Detective Jellico's affidavit, Stanley was served with the second warrant at the detention center.

In June 2016, a family court judge made a finding that E.W. was “physically abused” by Wolfe, and concluded that reunification of the two was unreasonable. According to Wolfe, he has not seen E.W. or her older sister since March 2016.

A South Carolina grand jury indicted Wolfe on the charges underlying his arrests, namely, two counts of unlawful conduct toward a child and one count of inflicting great bodily harm upon a child. Following a trial conducted in March 2018, a jury acquitted Wolfe on all charges.

Wolfe filed this civil action in March 2019 against four officers² and the City, alleging that his Fourth Amendment rights had been violated because he was arrested based on warrant affidavits that contained false statements. After the defendants filed a motion for summary judgment, a magistrate judge concluded that the officers had probable cause to arrest Wolfe. Accordingly, the magistrate judge recommended that the motion for summary judgment be granted. The district court agreed with this recommendation and entered judgment in favor of the defendants. Wolfe now appeals.

II.

² The district court dismissed defendant Detective Jennifer Butler because she was not involved in executing the arrest warrants or in providing information contained in the affidavits. Wolfe does not challenge that ruling on appeal. The court also dismissed defendant Officer Stone because he did not have reason to believe that any facts in the affidavit relayed to him from other officers were false. Based on our conclusion explained below, that any allegedly false statements in the affidavits were not material, we need not address Wolfe’s argument that the court erred in dismissing Officer Stone.

Wolfe argues that the officers' affidavits included materially false information, and that the officers lacked probable cause to arrest him. We disagree.

An allegation “that an arrest made pursuant to a warrant was not supported by probable cause, or claims seeking damages for the period after legal process issued” presents a claim for malicious prosecution under Section 1983. *Humbert v. Mayor & City Council of Balt. City*, 866 F.3d 546, 555 (4th Cir. 2017). To succeed on such a claim, “a plaintiff must show that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in the plaintiff's favor.” *Id.* (citation, internal quotation marks, and alteration omitted). Only the second element, lack of probable cause, is at issue in this appeal.

Probable cause for arrest requires “facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed an offense.” *Id.* (citation and alteration omitted). “While probable cause requires more than bare suspicion, it requires less than that evidence necessary to convict” a defendant of a crime. *Id.* at 556 (citation omitted).

To demonstrate the absence of probable cause, Wolfe was required to show that an arresting officer “deliberately or with a reckless disregard for the truth” made materially false statements or material omissions in the warrant affidavit. *Miller v. Prince George's Cnty., Md.*, 475 F.3d 621, 627-28 (4th Cir. 2007) (citation omitted). A purportedly false statement is “material” to the magistrate's finding of probable cause only when, considering the affidavit without “the offending inaccuracies,” the warrant affidavit lacked

probable cause. *Id.* at 628 (citation omitted). Accordingly, “[i]f the ‘corrected’ warrant affidavit establishes probable cause, no civil liability lies against the officer.” *Id.*

Wolfe challenges two statements contained in the affidavits as false or misleading. First, he submits that his admitted harmful conduct toward E.W. was not severe enough to be “consistent with the injuries” reported by doctors. And second, he submits that Stanley did not state during her interview that she heard “audible cracking” from E.W.’s body when Wolfe squeezed the baby.

Assuming *arguendo* that these two statements were deliberately false or made “with a reckless disregard for the truth,” we conclude that the statements were not material to the probable cause determination. *See Miller*, 475 F.3d at 627. Absent these statements, the affidavits were adequately supported by probable cause. *Id.* at 628. The affidavits set forth that the officers knew that (1) E.W. had suffered physical abuse, (2) Wolfe had been with her before she was admitted to the hospital, and (3) Wolfe had confessed to committing several acts of physical abuse on E.W. Indeed, Wolfe does not challenge the statement in the affidavit that he had admitted to “throwing the child, excessively squeezing the child, dropping the child, and causing at least one impact injury to the child.” Both Wolfe and Stanley had informed officers that the baby screamed when Wolfe came near her, and Wolfe never implicated Stanley in the abuse but instead claimed that she was a good mother. Under the totality of these circumstances, which were set forth in the affidavits supporting the arrest warrants, we hold that the officers had information amounting to

much more than a “bare suspicion” that Wolfe had committed a crime and, thus, had probable cause to arrest him.³ *See Humbert*, 866 F.3d at 556.

Our conclusion is not affected by the testimony given by medical witnesses at Wolfe’s criminal trial, or by the fact that he ultimately was acquitted of the crimes charged. We assess probable cause for arrest based on the information known to the officers at the time, not based on more nuanced facts developed during an investigation and presented at trial. *See Smith v. Munday*, 848 F.3d 248, 253 (4th Cir. 2017). Moreover, the evidentiary standard for probable cause to arrest is far lower than the evidentiary standard of beyond-a-reasonable-doubt required to obtain a conviction at a criminal trial. *Humbert*, 866 F.3d at 556. We therefore conclude that the district court did not err in determining that the officers had probable cause to arrest Wolfe. Accordingly, the officers were not subject to civil liability under Section 1983. *See id.* at 555.

III.

For these reasons, we affirm the district court’s award of summary judgment in favor of the defendants.

AFFIRMED

³ We also reject as meritless Wolfe’s argument that he was entitled to discovery regarding the grand jury proceedings.