In the

United States Court of Appeals

for the Seventh Circuit

No. 20-3227

CHASE M. BRAUN,

Plaintiff-Appellant,

v.

VILLAGE OF PALATINE
and MICHAEL LICARI,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 18 C 4850 — **Robert W. Gettleman**, *Judge*.

ARGUED MAY 13, 2021 — DECIDED DECEMBER 29, 2022

Before SYKES, *Chief Judge*, and SCUDDER and KIRSCH, *Circuit Judges*.

SYKES, *Chief Judge*. While driving home to Chicago one night in September 2017, Chase Braun suffered a seizure and crashed into a telephone pole in suburban Palatine. Officer Michael Licari of the Palatine Police Department was first on the scene; other officers arrived soon after. Braun could not remember what happened, but his appearance, behavior,

and the circumstances of the accident caused Officer Licari to suspect that he was intoxicated. The crash occurred late at night, and Braun had slurred speech, bloodshot and glassy eyes, and difficulty balancing. Bizarrely, he told the officer that he lived in "Chicago-Miami." And he said he had consumed a beer earlier in the evening.

Based on these signs of intoxicated driving, Officer Licari administered field sobriety tests. After observing Braun struggle with the tests, the officer arrested him. Though an ambulance had been dispatched to the scene, Braun said he was fine and declined medical assistance. When they arrived at the police station, Officer Licari administered a Breathalyzer test. Braun passed. But based on the presence of other indicators of intoxication, Officer Licari took him to a local hospital to collect blood and urine samples for more sensitive testing. When the booking process was completed, Braun was released. He suffered another seizure while still at the station.

Braun then sued Officer Licari under 42 U.S.C. § 1983 raising Fourth Amendment claims for false arrest and failure to provide medical care. He included the Village of Palatine in the latter claim, necessarily implying municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). He also brought a *Monell* claim against the Village alleging a wide array of police misconduct, including making false arrests, hiding evidence, and creating misleading reports. Finally, he alleged several state-law claims, including one for false arrest.

Early in the litigation, the district judge dismissed the second *Monell* claim about widespread police misconduct. After discovery closed, the judge entered summary judg-

ment for the defendants on the other § 1983 claims and the state-law false-arrest claim. More specifically, the judge ruled that (1) Officer Licari had probable cause to arrest Braun for driving under the influence; (2) the officer's failure to provide medical care was not objectively unreasonable; and (3) the medical-care claim against the Village failed for lack of evidence. The judge relinquished jurisdiction over the remaining state-law claims, and Braun appealed.

We affirm. Although Braun passed a Breathalyzer test at the station, other indicia of intoxication provided probable cause to arrest him for driving under the influence. And because Officer Licari neither knew nor had reason to know of Braun's initial seizure or other medical needs, his failure to provide medical care was not objectively unreasonable. With no underlying deprivation of a federally protected right, Braun's medical-care claim against the Village necessarily fails. Finally, Braun abandoned his *Monell* claim about widespread police misconduct. Though he moved to reinstate it almost a year and a half after it was dismissed, the judge reasonably concluded that the request came far too late.

I. Background

In September 2017 Braun was living in Chicago and working as an overnight pharmacist in suburban Cook County. He has a complicated medical history, including traumatic brain injury, seizures, anxiety, depression, and attention-deficit/hyperactivity disorder. After completing his seventh consecutive ten-hour overnight shift on September 11, Braun felt ill and slept at his parents' house in Park Ridge until the late afternoon. He then visited his girlfriend's condo in Palatine where he tried to eat some food

but vomited. Once his girlfriend went to sleep, he left to drive home to Chicago.

The next thing Braun remembers is waking up to two police officers shining flashlights into his car. He had crashed into a telephone pole. Although he would later discover that a seizure caused the accident, at the time he could not describe how the crash had happened. Officer Licari, the first officer to respond, opened the door to check on Braun. Initially Braun told the officer that he did not feel well and that he "need[ed] medical attention."[1] But a few minutes later, he said he was "fine."

Officer Licari did not smell alcohol during this interaction, but Braun's behavior and appearance caused him to suspect that Braun was intoxicated. The officer observed that Braun was confused, slurred his speech, struggled with balance, and had bloodshot and glassy eyes. Braun made the odd statements that he was "not in an accident" and that he "live[d] in Chicago-Miami." And he told the officers that he had consumed "one beer with [his brother] Scott" earlier that evening.[2]

Palatine police officers do not carry portable Breathalyzer devices, so Officer Licari administered standardized field sobriety tests. These included the horizontal gaze nystagmus test, which assessed Braun's eye movement in response to an object being waved near his face; the walk-and-turn test, which had him take a certain number of heel-to-toe steps

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[1] This point is disputed. Because the case comes to us on appeal from a summary judgment, we construe the facts in the light most favorable to Braun. *Reget v. City of La Crosse*, 595 F.3d 691, 695 (7th Cir. 2010).

[2] This statement, it turned out, was incorrect.

before turning and returning; and the one-leg-stand test, which required him to lift one leg off the ground and count out loud. Officer Sopcak, who arrived shortly after Licari, asked Braun to recite the alphabet without singing.[3] Officer Licari reported that Braun failed all these tests.[4]

The officers at the scene asked Braun if he was injured, needed medical care, or had any medical conditions. He replied "no" to all three questions and told them that he was "fine." Braun neither informed the officers of his various medical conditions nor wore a medical bracelet or other indicator of his conditions. And although he was confused, struggled with balance, and had bloodshot eyes, Braun did not exhibit any physical injuries. As a result, Officer Licari concluded that he did not require medical assistance, so the officers waved off an ambulance that had been dispatched to the scene.

After the field sobriety tests, Officer Licari arrested Braun and took him to the police station for a Breathalyzer test. The test results did not show the presence of alcohol; the device registered 0.000. But based on the other signs of intoxication, Officer Licari took Braun to Northwest Community Hospital for a "DUI kit," which uses blood and urine samples to test for the presence of "volatiles" (like alcohol) and drugs. A

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[3] Sergeant Baker and Officer Robertson were also present.

[4] Specifically, Officer Licari reported that Braun's eyes did not move smoothly during the horizontal gaze nystagmus test; that he took the wrong number of steps, struggled with balance, and did not touch his heel to his toe during the walk-and-turn test; and that he swayed, hopped, and put his foot down during the one-leg-stand test. He also reported that Braun's ability to recite the alphabet was poor and that he sang certain letters.

nurse asked Braun if he had any injuries or needed to see a doctor; he said "no" to both questions.[5]

After the samples were collected, Officer Licari took Braun back to the station to finish the booking process. Braun was released from custody when booking was completed, but he suffered another seizure while still at the station and was rushed to the hospital.[6]

The test results from the DUI kit came in months later. They showed that at the time of his arrest, Braun had no alcohol or drugs in his system other than diphenhydramine, which is a central nervous system depressant. In December 2017 the charges against him were dismissed.

In July 2018 Braun filed this § 1983 suit alleging eleven federal and state-law claims against Officer Licari and the Village of Palatine. As relevant here, he raised Fourth Amendment claims against Licari for false arrest and failure to provide medical care. The Village was named as an additional defendant on the medical-care claim, implicitly under *Monell*. Braun brought a second *Monell* claim against the Village alleging that it was responsible for widespread unlawful police practices, including making false arrests, hiding evidence, and creating false reports. Finally, the complaint asserted several claims under state law, including one for false arrest.

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[5] Braun asserts that he does not remember giving this response, but he does not dispute that he declined the offer of medical help.

[6] The parties do not describe what happened to Braun after he was taken to the hospital for this seizure, and Braun does not claim that he was detained again after receiving treatment.

The defendants moved to dismiss all claims. In response Braun asserted summarily that his complaint "sufficiently state[d] all eleven causes of action," but he discussed only the false-arrest claims against Officer Licari and, to a lesser extent, the medical-care claim and the various state-law claims. He did not mention the *Monell* claim about widespread police misconduct. The judge dismissed the medical-care claim and the *Monell* claim alleging unlawful police practices based on Braun's failure to adequately respond to the defendants' motion. But he permitted the other claims to proceed. Braun moved for reconsideration, or alternatively, for leave to replead the medical-care claim. Notably, the reconsideration motion did not seek reinstatement of the *Monell* claim for unlawful police practices. The judge granted the motion, reinstating only the medical-care claim.

In August 2019—about 10 months later—Braun obtained leave to amend his complaint. The amended complaint included the Fourth Amendment false-arrest claim, the state-law false-arrest claim, and the § 1983 claim for failure to provide medical care. The medical-care claim named both Officer Licari and the Village of Palatine as defendants, the latter on a *Monell* theory that the Village had failed to train its officers to recognize medical emergencies. The amended complaint also included the original state-law claims. Once again, the *Monell* claim about widespread police misconduct was not mentioned.

In January 2020 Braun moved to vacate the order dismissing the *Monell* claim about police misconduct so he could replead the claim. The motion, filed under Rule 59(e) and Rule 60(b) of the Federal Rules of Civil Procedure, came more than fifteen months after the judge's dismissal order

and five months after Braun obtained leave to file the amended complaint. Based on this lengthy delay and Braun's omission of this *Monell* claim from the proposed amended complaint, the judge denied the motion as untimely.

After completing discovery, the defendants moved for summary judgment on the § 1983 claims and the state-law claim for false arrest. Braun filed a cross-motion for summary judgment on the § 1983 medical-care claim and the state-law false-arrest claim. The judge granted the defendants' motion and denied Braun's. Based on the undisputed evidence, the judge determined that Officer Licari had probable cause to arrest Braun for driving under the influence, which defeated both the Fourth Amendment false-arrest claim and the false-arrest claim under Illinois law. And because no evidence showed that Officer Licari knew or had reason to know of Braun's seizure or any other medical need, the judge held that the officer's failure to provide medical care was not objectively unreasonable. Braun's evidence also fell short on the *Monell* claim against the Village for failure to train its officers to recognize medical emergencies. Having ruled in favor of the defendants on the § 1983 claims and the state-law claim for false arrest, the judge relinquished jurisdiction over the remaining state-law claims and entered final judgment for the defendants.

II. Discussion

We review a summary judgment de novo. *Pulera v. Sarzant*, 966 F.3d 540, 549 (7th Cir. 2020). Braun had the burden to produce evidence sufficient to show "at least a triable issue on each element" of his claims; if he failed to do so, summary judgment for the defendants was appropriate.

Id. Braun's arguments regarding the judge's treatment of his dismissed *Monell* claim implicate different standards of review, which we discuss below.

A. False-Arrest Claims Under Federal and State Law

Braun's claims for false arrest arise under the Fourth Amendment and § 1983, and also under Illinois law. To prevail on a Fourth Amendment false-arrest claim, "a plaintiff must show that there was no probable cause for his arrest." *Neita v. City of Chicago*, 830 F.3d 494, 497 (7th Cir. 2016). Put slightly differently, "[t]he existence of probable cause to arrest is an absolute defense to any § 1983 claim against a police officer for false arrest." *Jump v. Village of Shorewood*, 42 F.4th 782, 788 (7th Cir. 2022) (quotation marks omitted). The existence of probable cause also defeats a false-arrest claim under Illinois law, *see McBride v. Grice*, 576 F.3d 703, 706–07 (7th Cir. 2009), so we analyze these claims together.

Probable cause to arrest exists "when the facts and circumstances that are known to [the officer] reasonably support a belief that the individual has committed, is committing, or is about to commit a crime." *Holmes v. Village of Hoffman Estates*, 511 F.3d 673, 679 (7th Cir. 2007). This is a "common-sense inquiry requiring only a probability of criminal activity"; probable cause exists "whenever an officer … has enough information to warrant a prudent person to believe criminal conduct has occurred." *Leaver v. Shortess*, 844 F.3d 665, 669 (7th Cir. 2016) (quoting *Whitlock v. Brown*, 596 F.3d 406, 411 (7th Cir. 2010)).

Applying this common-sense standard, Braun's behavior and the circumstances of his accident easily provided proba-

ble cause to believe that he had committed the offense of driving under the influence of alcohol, drugs, or some combination of intoxicating substances. *See* 625 ILL. COMP. STAT. 5/11-501(a)(2)–(5). Officer Licari responded to a single-car accident that occurred late at night. Braun, the driver, was confused, slurred his speech, had bloodshot and glassy eyes, and had difficulty balancing. He also struggled with multiple field sobriety tests and made several bizarre statements, including that he was "not in an accident" and that he lived in "Chicago-Miami." Moreover, he told the officer that he had consumed a beer earlier in the evening (though that, of course, turned out to be untrue). These facts and circumstances, considered together, gave Officer Licari probable cause to believe that Braun was under the influence of alcohol or another intoxicant when he crashed his car. *See Jump*, 42 F.4th at 789 (explaining that resolving probable-cause questions requires us "not to dissect every fact in isolation but to look at the totality of the circumstances—the whole picture").

Nor was probable cause eliminated because an innocent explanation for the crash and Braun's behavior emerged later. There is no requirement that "the officer's belief be correct or even more likely true than false, so long as it is reasonable." *Qian v. Kautz*, 168 F.3d 949, 953 (7th Cir. 1999). And "the fact that the officer later discovers additional evidence unknown to [him] at the time of the arrest is irrelevant to whether probable cause existed at the crucial time." *Bailey v. City of Chicago*, 779 F.3d 689, 695 (7th Cir. 2015) (quoting *Qian*, 168 F.3d at 953–54)). Here, Officer Licari encountered a man who was in a single-car accident at about midnight, was confused and slurred his words, had bloodshot eyes and difficulty balancing, and struggled with

several sobriety tests. The officer did not need to eliminate every innocent explanation for a situation that had many hallmarks of a DUI crash.

This is especially true because Braun gave the officers no reason to think that a medical problem had caused the accident. Although he initially suggested otherwise, he quickly changed course and told the officers that he was "fine." He also responded "no" when they asked if he needed medical care or had any medical conditions. And he did not wear a medical bracelet or other indicator "that would have alerted the [o]fficers to his medical condition" as a potential explanation for the crash and his behavior. *Padula v. Leimbach*, 656 F.3d 595, 601 (7th Cir. 2011).

Our decision in *Qian* is instructive on this point. There the police encountered a driver who had crashed his car and was slurring his speech and struggling to walk. 168 F.3d at 954. But he "showed no physical signs of injury" and "denied being injured." *Id.* We held that this "overall setting easily support[ed] [the officer's] decision to arrest [the driver] on the scene," *id.*, even though the driver—like Braun—did not smell of alcohol, had no alcohol or drugs in his car, and later blew a 0.000 on a Breathalyzer test, *id.* at 952; *see also Gutierrez v. Kermon*, 722 F.3d 1003, 1013 (7th Cir. 2013) ("[C]ertain behavior can be so extreme and dangerous that it can be inferred for purposes of probable cause that it resulted from alcohol or drug impairment, such as erratic driving leading to the loss of control of a vehicle and a serious crash. This is true even if the basis of impairment later proves to be something else." (citations omitted)).

Braun presses several arguments on appeal, but none is persuasive. First, he argues that summary judgment was

inappropriate because probable cause is *always* a question of fact for the jury. That is incorrect. "If the underlying facts supporting the probable cause determination are not in dispute, … the court can decide whether probable cause exists." *Holloway v. City of Milwaukee*, 43 F.4th 760, 769 (7th Cir. 2022) (quotation marks omitted). And here, as in *Qian*, "there is no room for a difference of opinion concerning the facts or the reasonable inferences to be drawn from them." 168 F.3d at 953. Braun's undisputed behavior and appearance created a sufficient probability of criminal activity to support the arrest, especially because it occurred before his medical condition became apparent.

Braun also argues that even if probable cause existed at the time of his initial arrest, his later 0.000 Breathalyzer result extinguished it and rendered the arrest unlawful. Not so. "[T]he probable cause analysis is an *ex ante* test," *Padula*, 656 F.3d at 601 (quotation marks omitted), so the discovery of subsequent information that was unknown to Officer Licari at the time of the arrest does not speak to whether he had probable cause to arrest Braun. In assessing the legality of Braun's arrest at the scene of the crash, what matters is what Officer Licari knew then—not what he found out later. *See Bailey*, 779 F.3d at 695.

To the extent Braun contends that his continued detention after he blew a 0.000 was unlawful, that argument also falls short. The Breathalyzer result did not instantly negate the clear indications of intoxication that Officer Licari and the other officers observed at the crash scene. *Cf. Seiser v. City of Chicago*, 762 F.3d 647, 656 (7th Cir. 2014) (noting that an individual's successful completion of "one or more field sobriety tests … does not negate probable cause when other

circumstances give rise to a reasonable belief that the individual is intoxicated"). The undisputed signs of intoxication could have stemmed from alcohol, drugs, or other intoxicating substances, which explains why Officer Licari took Braun to the hospital for more comprehensive DUI blood and urine testing.[7]

Put another way, even if we assume that the Breathalyzer result should have informed Officer Licari that Braun had no alcohol in his system, there was still probable cause to believe that Braun had committed the crime of driving under the influence of drugs or another intoxicating substance that "render[ed] [him] incapable of driving safely." § 5/11-501(a)(3)–(4). Probable cause persisted throughout Braun's limited detention after the Breathalyzer test, and that detention did not become unlawful merely because Officer Licari's arrest report states that he arrested Braun for driving under the influence of *alcohol* rather than some other intoxicating substance. *See Tapley v. Chambers*, 840 F.3d 370, 377–78 (7th Cir. 2016) ("If there is probable cause to believe that a person has committed a crime, it is constitutionally irrelevant whether the officer arrested the person on charges for which there was no probable cause." (citing *Holmes*, 511 F.3d at 682)).

Given Braun's behavior and the circumstances of his accident, Officer Licari reasonably believed that he had com-

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[7] Braun contends that charging him after he blew 0.000 on the Breathalyzer test violated the Village's policy. But the "only question that matters … is whether [the defendants] violated the Fourth Amendment." *Pulera v. Sarzant*, 966 F.3d 540, 551 (7th Cir. 2020). A violation of the Village's policy does not necessarily amount to a constitutional violation enforceable under § 1983.

mitted the Illinois offense of driving under the influence of an intoxicant. *See* § 5/11-501(a)(2)–(5). The existence of probable cause defeats both the § 1983 false-arrest claim and the state-law false-arrest claim.

B. Failure to Provide Medical Care

Braun also challenges the judge's rejection of his § 1983 medical-care claim. He argues that Officer Licari deprived him of his right to medical care by dismissing the ambulance from the scene of the accident. Additionally, he asserts that the Village is liable under *Monell* for failing to adequately train its police officers to assess the medical needs of people involved in accidents like his.

Because these events took place while Braun was under arrest and prior to a probable-cause hearing, the § 1983 claim for denial of medical care arises under the Fourth Amendment. *See Pulera*, 966 F.3d at 549; *see also Currie v. Chhabra*, 728 F.3d 626, 629 (7th Cir. 2013). Accordingly, we ask whether the "officer's conduct was 'objectively unreasonable under the circumstances.'" *Williams v. Rodriguez*, 509 F.3d 392, 403 (7th Cir. 2007) (quoting *Lopez v. City of Chicago*, 464 F.3d 711, 720 (7th Cir. 2006)). The inquiry considers: "(1) whether the officer ha[d] notice of the detainee's medical needs; (2) the seriousness of the medical need; (3) the scope of the requested treatment; and (4) police interests, including administrative, penological, or investigative concerns." *Ortiz v. City of Chicago*, 656 F.3d 523, 530 (7th Cir. 2011).

Braun's claim falters on the first factor—notice. Whether Officer Licari knew or should have known about Braun's medical needs is critical to the analysis because "[t]he question on summary judgment is whether a jury could find that

it was objectively unreasonable for [Licari] to take no action to seek medical care for [Braun] *based on what* [*he*] *knew at the time*." *Id.* at 531–32 (emphasis added); *see also Florek v. Village of Mundelein*, 649 F.3d 594, 600 (7th Cir. 2011) ("[T]he intuitive, organizing principle is that police must do more to satisfy the reasonableness inquiry when the medical condition they confront *is apparent* and serious and the interests of law enforcement in delaying treatment are low." (emphasis added)). If an officer has no reason to think that a person needs medical help, then failing to summon or provide medical assistance is not objectively unreasonable.

With that principle in mind, we agree with the district judge that Officer Licari's response in the wake of Braun's crash was not objectively unreasonable. "Officers can be placed on notice of a serious medical condition either by word or through observation of … physical symptoms." *Estate of Perry v. Wenzell*, 872 F.3d 439, 454 (7th Cir. 2017). But neither words nor observation suggested to a reasonable officer in Officer Licari's position that Braun had just suffered a seizure or otherwise needed medical assistance. Although Braun initially told the officers that he did not feel well, he quickly changed course and said that he was "fine." When asked if he was injured, needed medical care, or suffered from a medical condition, he responded "no." And nothing that Officer Licari observed undermined these statements: Braun did not wear a medical bracelet or other indicator of his underlying conditions, and his physical symptoms were limited to those suggesting intoxication—confusion, slurred speech, bloodshot eyes, and difficulty balancing.

Braun argues that his odd statements that he was "not in an accident" and that he "live[d] in Chicago-Miami" should have alerted Officer Licari that he was experiencing a medical emergency, particularly because Braun said that he had consumed just one beer hours earlier. But just because Braun claimed to have had only one drink does not mean that Officer Licari had to believe him. That's especially true because Licari had observed classic symptoms of intoxication at the scene of a single-car accident shortly after midnight. Based on Braun's appearance and behavior—and especially considering the lack of obvious signs of medical distress and his rejection of medical assistance when it was offered—it was reasonable for Officer Licari not to interpret Braun's confused statements as cause for medical concern.

The "ultimate inquiry" is whether the officer's conduct "was objectively reasonable under the circumstances." *Id.* at 453–54 (quotation marks omitted). Braun said he was not injured, did not suffer from any medical conditions, and did not need medical assistance. And his appearance and behavior were entirely consistent with intoxication. Under these circumstances, Officer Licari lacked notice that Braun needed medical care. His response was therefore objectively reasonable.

This conclusion also defeats Braun's claim that the Village is liable for failing to train its officers to recognize medical emergencies. This claim arises under *Monell*, which requires Braun to "prove that the constitutional violation was caused by a governmental 'policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" *First Midwest Bank ex rel. Est. of LaPorta v. City of Chicago*, 988 F.3d 978, 986 (7th Cir.

2021) (quoting *Monell*, 436 U.S. at 694). More specifically, Braun must "have evidence of '(1) an action pursuant to a municipal policy, (2) culpability, meaning that policymakers were deliberately indifferent to a known risk that the policy would lead to constitutional violations, and (3) causation, meaning the municipal action was the "moving force" behind the constitutional injury.'" *Pulera*, 966 F.3d at 550 (quoting *Hall v. City of Chicago*, 953 F.3d 945, 950 (7th Cir. 2020)). Here, the judge entered summary judgment for the Village because Braun provided no evidence from which the court or a jury could infer deliberate indifference.

But before these heightened requirements come into play for municipal liability under § 1983, the plaintiff must take the "first step in every § 1983 claim" by "prov[ing] that he was deprived of a federal right." *First Midwest Bank*, 988 F.3d at 987; *see also Bohanon v. City of Indianapolis*, 46 F.4th 669, 675 (7th Cir. 2022) (describing the requirement that the plaintiff prove that "he was deprived of a right secured by the Constitution or laws of the United States" (quotation marks omitted)). Braun has not done so.

As we have explained, Officer Licari's response to Braun's condition was objectively reasonable under the circumstances. That means that there was no "underlying constitutional violation by a municipal employee," so the Village "cannot be liable under *Monell*" for failing to train Licari and its other officers. *Sallenger v. City of Springfield*, 630 F.3d 499, 504 (7th Cir. 2010); *see also id.* at 501 ("Because the officers did not violate [the plaintiff's] Fourth Amendment rights by the way in which they used [a device], the City itself cannot be liable under *Monell* for failure to properly train them in the use of the device."). In other words, because "[a] failure to train

theory … requires a finding that the individual officers are liable on the underlying substantive claim," *Doxtator v. O'Brien*, 39 F.4th 852, 864 (7th Cir. 2022) (quoting *Tesch v. County of Green Lake*, 157 F.3d 465, 477 (7th Cir. 1998)), Braun's theory of municipal liability falls with his claim of individual liability against Officer Licari. His failure to establish a deprivation of a federally protected right dooms both claims.

C. The Dismissed *Monell* Claim

Braun also raises several claims of error regarding the judge's dismissal of the second *Monell* claim, which alleged widespread unlawful conduct in the Palatine Police Department. Specifically, Braun challenges the judge's initial decision to dismiss this claim, the denial of his motion to reconsider, and the judge's refusal to reopen the dismissal to permit him to replead it.

When a judge dismisses a complaint in whole or in part for failure to state a claim, we normally review that order without deference to the district court. *Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011). Here, however, the judge dismissed this claim based on Braun's failure to address it in his response to the motion to dismiss. The judge properly construed Braun's omission as a waiver. A litigant "waives an argument by failing to make it before the district court." *Id.* at 721. This rule applies when "a party fails to develop arguments related to a discrete issue" and also when he "effectively abandons" the issue "by not responding to alleged deficiencies in a motion to dismiss." *Id.*; *see also Lekas v. Briley*, 405 F.3d 602, 614 (7th Cir. 2005) (finding waiver because the plaintiff "did not present legal argu-

ments or cite relevant authority to substantiate [his] claim in responding to [the] defendants' motion to dismiss").

Braun's response to the motion to dismiss highlighted what he argued were contested facts relating to other claims but did not mention the *Monell* claim alleging widespread misconduct in the Palatine Police Department.[8] He also argued that certain factual questions prevented a determination of probable cause at the pleading stage, which implicated only the false-arrest claims against Officer Licari. In short, Braun "effectively abandon[ed]" his *Monell* claim alleging widespread police misconduct by not addressing it in his response to the motion. *Alioto*, 651 F.3d at 721. And because Braun ignores on appeal the basis for the judge's decision to dismiss the claim—namely, that he never argued that it shouldn't be dismissed—he has "doubled down on his waiver by failing to grapple with that aspect of the district court's order." *Id.*

Braun emphasizes that he quickly asked the judge to reconsider his dismissal decision and requested an opportunity to replead the claim. This argument overstates the record. Braun's reconsideration motion argued only that the complaint adequately stated a claim for failure to provide medical care. He cannot now argue that the judge erroneously denied the reconsideration motion with respect to a claim that was never mentioned.[9] His later motion for leave to file

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[8] Specifically, Braun discussed factual issues relating to Counts I (malicious prosecution), II (intentional infliction of emotional distress), VI (failure to provide medical care), VII (willful and wanton conduct), and XI (respondeat superior).

[9] In truth, the judge did not deny the reconsideration motion at all. As we've noted, the motion addressed only the claim for failure to provide

an amended complaint likewise omitted any reference to the dismissed *Monell* claim.

Finally, Braun argues that the judge wrongly denied his later motion under Rules 59(e) and 60(b) to vacate the dismissal order to permit him to replead the *Monell* claim alleging widespread police misconduct. Our review is deferential; we will reverse the denial of a Rule 59(e) or 60(b) motion only if we find an abuse of discretion. *Anderson v. Catholic Bishop of Chi.*, 759 F.3d 645, 652 (7th Cir. 2014).

As we've explained, Braun filed his motion to vacate very late in the litigation—about fifteen months after the dismissal order and about five months after his motion for leave to amend the complaint. The judge deemed the motion untimely and denied it. That ruling is unassailable. A Rule 59(e) motion must be filed within 28 days of the entry of judgment. FED. R. CIV. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment."). The rule addresses "judgments," but Braun invoked it as a basis to reopen the judge's interlocutory dismissal order. Regardless of the procedural posture, the judge was right to treat the motion as coming far too late.

The motion was also untimely if considered under the rubric of Rule 60(b). The only possible basis for proceeding under that rule is the catch-all provision in Rule 60(b)(6), which provides that the court may grant relief from a final judgment or order for "any … reason that justifies relief." A

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medical care, and the judge reinstated that claim in an oral ruling on the motion. Tellingly, Braun's counsel did not object during the hearing when the judge clearly indicated that he viewed the motion as challenging only the dismissal of the medical-care claim.

motion for relief under this subsection of Rule 60(b) "must be made within a reasonable time." FED. R. CIV. P. 60(c)(1). Setting aside the unusual procedural posture, Braun's motion, coming fifteen months after the dismissal order, was hardly filed "within a reasonable time."

We note for completeness that the motion was also substantively defective. Relief under Rule 60(b)(6) "is available only in 'extraordinary circumstances.'" *Buck v. Davis*, 137 S. Ct. 759, 777 (2017) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). A judge may consider many factors when making this determination, including "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Id.* at 778 (quotation marks omitted). Braun failed to identify any extraordinary circumstances to justify his request for relief. He argued only that the dismissed *Monell* claim was adequately pleaded as an initial matter. But the proper place for that argument was his response to the defendants' motion to dismiss. He did not include it there or in his motion for reconsideration of the judge's dismissal order. And he did not take the opportunity to include the dismissed claim in his August 2019 motion for leave to amend his complaint.

Instead, Braun sought to revive this claim almost a year and a half after it was dismissed and just days before the close of fact discovery. Under these circumstances, the judge was well within his discretion to deny the motion. *See Pearson v. Target Corp.*, 893 F.3d 980, 985 (7th Cir. 2018) (describing Rule 60(b)(6) and noting that "[i]t is fine to say that individual parties must bear the responsibility for their deliberate litigation conduct and leave it at that").

AFFIRMED