NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued November 18, 2022
Decided January 6, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1842

BRANDON E. KLEIN,
Plaintiff-Appellant,

v.

TOWN OF SCHERERVILLE and
ANTHONY BUONADONNA,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:17-CV-16-JEM

John E. Martin,
Magistrate Judge.

O R D E R

After learning that Brandon Klein had contacted his estranged wife, Officer Anthony Buonadonna arrested Klein for allegedly violating a protective order his wife had obtained against him. In reality, the protective order did not prohibit Klein from communicating with his wife at all, and Buonadonna knew this because he had read it. Nevertheless, in order to secure a warrant for Klein's arrest, Buonadonna attested to a judge under oath that the order banned Klein from initiating such contacts. Relying on Buonadonna's affidavit, the judge issued the warrant, and Buonadonna carried out the arrest. A short time later, Klein was released, and the charges were dropped.

Klein then sued Buonadonna pursuant to 42 U.S.C. § 1983, claiming that he had violated Klein's Fourth Amendment rights by lying in the warrant application. Klein also sued the Town of Schererville, Buonnadonna's employer, under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), on the grounds that the town had failed to adequately train its officers. The district court entered summary judgment for both defendants. We affirm the judgment as to Schererville, but we vacate the judgment and remand as to Buonadonna because, on this record, a reasonable jury could find that he intentionally or recklessly included false information or omitted exculpatory information in his affidavit material to his warrant request.

I. Background

In 2014, Klein's then-wife, Leanne Salatas, obtained an order of protection against him. The order prohibited Klein from committing "domestic or family violence," "stalking" Salatas, and nearing her "residence, school and place of employment." It did not bar him from communicating with Salatas, with whom he had an infant daughter. In fact, Klein and Salatas regularly saw each other and spoke.

Two months later, Klein arrived at a family member's house for a scheduled visit with his daughter but found no one at home. Klein texted Salatas and, when she did not respond, he called and emailed her. Later that day, Salatas reported to the Schererville Police Department that Klein had violated the protective order by contacting her.

The police department assigned Buonadonna to the case. He first read a printout of the protective order and discovered that it did not prevent Klein from contacting Salatas. But, based on his experience with "more than one and less than a thousand" protective orders, Buonadonna believed that such orders usually prohibited communication between the parties. And so he sought additional information from the Indiana Data and Communication System—a law enforcement database that summarizes criminal records and court orders. The database indicated that the protective order did prohibit Klein from contacting Salatas. That said, the database expressly warned users not to rely solely on the database when conducting arrests.

Based upon the information in the database, his experience with other protective orders, and Salatas's recollection of the restrictions the protective order imposed, Buonadonna concluded that Klein had violated the order and filed an application for a warrant for Klein's arrest.

As part of the warrant application, Buonadonna signed an affidavit attesting that he had probable cause to arrest Klein for the state-law crime of invasion of privacy. In the affidavit, Buonadonna stated that he had "read" the "order . . . on file with Schererville PD." More to the point, he stated (under pain and penalty of perjury):

> The [order], signed by a Judge and filed in open court, ordered the accused to: Not make any communication including, but not limited to, personal, written, or telephone contact, fellow workers, or others whom the communication would be likely to cause annoyance or alarm to the victim.

Buonadonna made this representation to the court even though he knew (as he would admit later) "that the paper copy did not explicitly prohibit [Klein] from communicating with . . . Salatas." He did not bother to attach a copy of the order. Nor did he inform the court that he believed that Klein was prohibited from contacting Salatas based solely on the database and Salatas's recollection, even though the actual order did not contain such a limitation.

Relying upon Buonadonna's affidavit, a judge issued a warrant for Klein's arrest. And Klein spent ten days in jail until the charges were dropped.

After the conclusion of discovery in this case, Buonadonna and Schererville filed motions for summary judgment. The district court granted summary judgment in favor of Buonadonna, concluding that Klein's Fourth Amendment claim against the officer was doomed because Buonadonna had had probable cause to arrest Klein. The court also granted summary judgment to Schererville, noting that the town undisputedly lacked notice that a deficiency in its training program would lead to the type of constitutional violation alleged by Klein here.

II. ANALYSIS

We review *de novo* a district court's grant of summary judgment. *Lyberger v. Snider*, 42 F.4th 807, 811 (7th Cir. 2022). Summary judgment is appropriate if the record presents no genuine issues of material fact and the movants are entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). But we must remand if, viewing all disputed facts and drawing all reasonable inferences in Klein's favor, a reasonable jury could find that Buonadonna or Schererville violated his constitutional rights. *Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 457 (7th Cir. 2020).

A.

We begin with Klein's claim against Buonadonna. An officer violates the Fourth Amendment when he "intentionally or recklessly includes false statements in a warrant application" that were material to the judge's finding of probable cause. *Rainsberger v. Benner*, 913 F.3d 640, 647 (7th Cir. 2019). An officer similarly violates the Fourth Amendment by intentionally or recklessly withholding material exculpatory information from a probable-cause affidavit. *Whitlock v. Brown*, 596 F.3d 406, 410–11 (7th Cir. 2010). A statement or omission is reckless if the officer had "obvious reasons to doubt" the accuracy of the information in the affidavit. *See Hart v. Mannina*, 798 F.3d 578, 591 (7th Cir. 2015) (quoting *Betker v. Gomez*, 692 F.3d 854, 860 (7th Cir. 2012)). And to determine whether a statement or omission is material, we ask whether the warrant application would have established probable cause if it had not included the falsehoods and had included any omitted exculpatory facts. *Rainsberger*, 913 F.3d at 647, 651.

Here, a reasonable jury could find that Buonadonna intentionally or recklessly included material false statements and withheld material exculpatory information. Buonadonna admits that he read the protective order and knew that it did not bar communication between Klein and Salatas. Yet, he told the judge in his affidavit that the protective order "signed by a Judge and filed in open court" forbade such communication. This was a bald misrepresentation.

For his part, Buonadonna insists that he believed the order was incomplete because it conflicted with the information in the Indiana database and Salatas's erroneous recollection of the order's contents. But, as his counsel acknowledged, the information in the database is based upon the actual orders themselves. Thus, between an actual protective order and the database, a reasonable officer would know that the order controls. As for Salatas's recall of the protective order's contents, this too was flatly contradicted by the actual order, and Buonadonna knew it. This is not to say that Buonadonna was prohibited from giving the database and Salatas's recollection any weight when deciding to seek an arrest warrant. Court orders sometimes are incorrect, whether due to administrative snafus or otherwise. But, given the actual terms of the protective order, it was incumbent upon Buonadonna to provide the judge with a complete and accurate picture of the circumstances. A reasonable jury could find that he did not do that here and that his failure to do so was intentional or at the least reckless.

That brings us to qualified immunity. Buonadonna is entitled to qualified immunity if it would not have been "clear to a reasonable official that his or her conduct

was unlawful in the situation." *Carvajal v. Dominguez*, 542 F.3d 561, 566 (7th Cir. 2008). But it is "clearly established" that an officer violates the Fourth Amendment when he "with reckless disregard for the truth . . . makes false statements in requesting [a] warrant and the false statements were necessary to the determination that a warrant should issue." *Rainsberger*, 913 F.3d at 653 (quoting *Lawson v. Veruchi*, 637 F.3d 699, 705 (7th Cir. 2011)). For the reasons discussed, a reasonable jury could find that Buonadonna intentionally or recklessly disregarded the truth when seeking a warrant for Klein's arrest, and he is not entitled to summary judgment on his qualified immunity defense on this record. *See Abdullahi v. City of Madison*, 423 F.3d 763, 774–75 (7th Cir. 2005).

B.

Klein also seeks to hold the Town of Schererville liable for an unconstitutional policy or practice under *Monell*, 436 U.S. 658. He relies on two theories of liability, but he has waived both, and both lack merit.

First, Klein argues that the town failed to adequately train its officers on how to utilize protective orders. But he spends only one sentence on this argument and, thus, it is waived. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) (explaining that undeveloped arguments are waived). In any event, this argument is meritless. To prevail, Klein must show that the town was on notice that a deficiency in its training program was likely to lead to a constitutional violation. *See Flores v. City of South Bend*, 997 F.3d 725, 731 (7th Cir. 2021). He fails to do so.

Klein also contends that the town had an unconstitutional policy of allowing officers to rely on database information over actual copies of protective orders. Not only does he raise this argument for the first time on appeal, thereby waiving it, *see Puffer*, 675 F.3d at 718, but it too is baseless. To succeed, Klein must show that the allegedly unlawful practice was "so pervasive that acquiescence on the part of policymakers was apparent and amounted to a policy decision." *Bridges v. Dart*, 950 F.3d 476, 479 (7th Cir. 2020) (cleaned up). His only evidence is the police chief's attestation that "[a]t all material times, Officer Buonadonna followed the procedure in place at the Schererville Police Department." No reasonable jury could conclude from this broad statement that the town had a specific policy of disregarding printed orders in favor of the database summaries, particularly when those summaries contain a warning not to rely on them. *See Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 488 (7th Cir. 2022) (holding that

proof of isolated acts of misconduct is insufficient to survive summary judgment on a *Monell* claim).

For these reasons, we AFFIRM the judgment with respect to the claim against the Town of Schererville, VACATE the judgment with respect to the claim against Buonadonna, and REMAND for further proceedings consistent with this order.