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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Joshua Wood Adams,

No. CV-15-01755-PHX-JJT

10

Plaintiff,

ORDER

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v.

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K Gilliland, *et al.*,

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Defendants.

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At issue is Defendant Kevin Gilliland's Motion for Summary Judgment (Doc. 67, MSJ), to which Plaintiff Joshua Wood Adams filed a Response (Doc. 72, Resp.), and in support of which Defendant filed a Reply (Doc. 74, Reply). The Court finds these matters appropriate for resolution without oral argument. *See* LRCiv 7.2(f).

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I. BACKGROUND

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In 2013, Plaintiff—a City of Phoenix Police Officer—and his wife, Kristina Adams, were living separately and divorcing, with Mrs. Adams and their three children living in the family home. On November 18, 2013, Mrs. Adams obtained an Order of Protection against Plaintiff from the Maricopa County Superior Court. On the same day, Mrs. Adams went to pick up two of her children from their bus stop and encountered Plaintiff. The two children entered Mrs. Adams's car and she drove to the family home before driving to her mother, Leigh Douglas's house, which is roughly 100 yards away from the family home.

1 In Ms. Douglas's driveway, Mrs. Adams called 911 and told the dispatcher that
2 she had obtained an Order of Protection against Plaintiff, who had followed her home,
3 parked behind her, and refused to leave. Mrs. Adams began crying and told the dispatcher
4 that she was blocked in and that Plaintiff was knocking on her window. Eventually,
5 Plaintiff left the scene, driving to a street corner to wait for the police to arrive.

6 Defendant—a deputy with the Maricopa County Sherriff's Office—responded to
7 the 911 call. When he arrived, Defendant noted that Mrs. Adams was at the family home
8 with her mother, crying, upset, and hesitant to speak. Mrs. Adams reiterated the
9 information she provided to the dispatcher, adding that Plaintiff had called her an idiot
10 and was yelling and banging on the window. While Defendant was speaking to
11 Mrs. Adams, Plaintiff returned to the scene in his vehicle.

12 As Plaintiff approached the home on foot, Defendant stopped Plaintiff, allegedly
13 extending his arm to do so. Plaintiff stated that he needed to obtain items from the home.
14 Defendant explained the information Mrs. Adams had communicated, adding that she
15 had petitioned for an Order of Protection against him. Defendant then asked Plaintiff for
16 identification, and he responded that his identification was in the car. Defendant asked
17 Plaintiff to retrieve it. Plaintiff returned to his vehicle and instead of retrieving his
18 identification, he drove in reverse at up to 25 miles per hour, made a J-turn or fishtail in
19 the intersection, and continued forward down a perpendicular street. Defendant alleges he
20 returned to his marked sheriff's vehicle, activated the lights and sirens, and pursued
21 Plaintiff. In response, Plaintiff avers that he never saw Defendant because he was
22 traveling in reverse—looking through his rearview mirror—and never heard any sirens.
23 Defendant contends that, at a certain point, he felt it unsafe to continue his pursuit and
24 returned to the family home.

25 While continuing to converse with Mrs. Adams and Ms. Douglas, a mail carrier
26 approached and asked Defendant if he was looking for a silver vehicle, reporting that she
27 saw such a vehicle travelling at 60-65 miles per hour. The postal worker provided a
28 written statement to that effect, noting that the driver was driving unsafely. Mrs. Adams

1 also provided a written statement. Defendant then returned to the station and prepared an
2 Incident Report. Upon review, Defendant's supervisor approved the report and Defendant
3 submitted the case for charges against Plaintiff for Unlawful Flight (A.R.S. § 28-622.01)
4 and Disorderly Conduct (A.R.S. § 13-2904.A.1).

5 After submitting the case, the City of Phoenix Police Department Professional
6 Standards Bureau ("Phoenix PSB") interviewed Mrs. Adams, Ms. Douglas, and the
7 postal worker, all of whom largely reiterated their previous narratives. Mrs. Adams and
8 Ms. Douglas, however, stated that they did not witness Plaintiff and Defendant travelling
9 on the same road at the same time. Defendant was not present for the Phoenix PSB
10 interviews, nor was he made contemporaneously aware of any of the statements made
11 therein. The Maricopa County Attorney's Office later charged Plaintiff with Unlawful
12 Flight and Disorderly Conduct. Both charges were eventually dismissed and Plaintiff
13 filed this § 1983 claim for malicious prosecution on September 2, 2015. (Doc. 1).

14 **II. LEGAL STANDARDS**

15 **A. Summary Judgment**

16 Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is
17 appropriate when: (1) the movant shows that there is no genuine dispute as to any
18 material fact; and (2) after viewing the evidence most favorably to the non-moving party,
19 the movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v.*
20 *Catrett*, 477 U.S. 317, 322-23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285,
21 1288-89 (9th Cir. 1987). Under this standard, "[o]nly disputes over facts that might affect
22 the outcome of the suit under governing [substantive] law will properly preclude the
23 entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
24 A "genuine issue" of material fact arises only "if the evidence is such that a reasonable
25 jury could return a verdict for the nonmoving party." *Id.*

26 In considering a motion for summary judgment, the court must regard as true the
27 non-moving party's evidence, if it is supported by affidavits or other evidentiary material.
28 *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. However, the non-moving party

1 may not merely rest on its pleadings; it must produce some significant probative evidence
2 tending to contradict the moving party’s allegations, thereby creating a material question
3 of fact. *Anderson*, 477 U.S. at 256-57 (holding that the plaintiff must present affirmative
4 evidence in order to defeat a properly supported motion for summary judgment); *First*
5 *Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

6 “A summary judgment motion cannot be defeated by relying solely on conclusory
7 allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
8 1989). “Summary judgment must be entered ‘against a party who fails to make a showing
9 sufficient to establish the existence of an element essential to that party’s case, and on
10 which that party will bear the burden of proof at trial.’” *United States v. Carter*, 906 F.2d
11 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

12 **B. Malicious Prosecution**

13 To prevail on his § 1983 claim for malicious prosecution, Plaintiff must show that
14 Defendant “prosecuted him with malice and without probable cause, and that they did so
15 for the purpose denying him equal protection or another specific constitutional right.”
16 *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054 (9th Cir. 2009) (brackets and citation
17 omitted); *Blankenhorn v. City of Orange*, 485 F.3d 463, 482 (9th Cir. 2007) (“A police
18 officer who maliciously or recklessly makes false reports to the prosecutor may be held
19 liable for damages incurred as a proximate result of those reports”) (citations omitted).
20 “[P]robable cause is an absolute defense to malicious prosecution.” *Id.* The mere fact “a
21 prosecution was unsuccessful does not mean it was not supported by probable cause.”
22 *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995). “A criminal defendant
23 may maintain a malicious prosecution claim not only against prosecutors but also against
24 others—including police officers and investigators—who wrongfully caused his
25 prosecution.” *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011) (citation omitted).

26 **III. ANALYSIS**

27 Defendant moves for summary judgment on the grounds that he had probable
28 cause to believe Plaintiff had committed disorderly conduct and unlawful flight. (MSJ at

1 6-10.) Defendant also argues that he is protected from suit under the doctrines of
2 qualified immunity and prosecutorial independence. (MSJ at 10-13.) Plaintiff responds
3 that Defendant lacked essential elements of probable cause as to each charge, that any
4 established probable cause is contradicted by eyewitness testimony or by Defendant's
5 contradicting statements, and that Defendant purposefully neglected to uncover
6 exculpatory statements and evidence. (Resp. at 6-12.) Plaintiff argues that these defects
7 also preclude the application of immunity or prosecutorial independence. (Resp. at 11-
8 14.)

9 **A. Probable Cause**

10 As stated, probable cause is an absolute defense to claims of malicious
11 prosecution. "Probable cause exists where 'the facts and circumstances within [an
12 officer's] knowledge and of which [he] had reasonably trustworthy information [are]
13 sufficient in themselves to warrant a man of reasonable caution in the belief that' an
14 offense has been or is being committed." *Safford Unified Sch. Dist. No. 1 v. Redding*, 557
15 U.S. 364, 370 (2009) (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)).
16 Probable cause means "fair probability, not certainty or even a preponderance of the
17 evidence." *United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006). "Subjective
18 intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren*
19 *v. United States*, 517 U.S. 806, 813 (1996). The Court will first analyze whether probable
20 cause existed as to each charge.

21 **1. Disorderly Conduct**

22 A person commits disorderly conduct if, with intent to disturb the peace or quiet of
23 others, such person engages in fighting, violent, or seriously disruptive behavior, makes
24 unreasonable noise, or uses abusive or offensive language or gestures to any person in a
25 manner likely to provoke an immediate physical response. A.R.S. § 13-2904(A)(1)-(3).

26 Plaintiff argues that Defendant's knowledge that Plaintiff had been "tapping" or
27 "banging" on a car window is insufficient to establish probable cause for disorderly
28 conduct. (Resp. at 6.) But Defendant has presented undisputed evidence that Mrs. Adams

1 called 911 and stated that she had an Order of Protection against Plaintiff, was blocked in
2 and scared, asked Plaintiff to leave, had been accosted by Plaintiff, and that he was
3 making contact with her car window with some degree of force. Thus, Defendant had
4 information that Plaintiff was refusing to leave a location despite being asked and
5 understanding that Mrs. Adams had an Order of Protection against him, which she
6 obtained due to fear for her safety. Moreover, Defendant knew that Mrs. Adams was
7 crying and scared, had been called an idiot, and had refused to roll down the window of
8 her vehicle while Plaintiff was knocking on it. “With such information it was reasonable
9 for the officer to believe that [Plaintiff] had committed an offense.” *Slade v. City of*
10 *Phoenix*, 541 P.2d 550, 553 (Ariz. 1975). Defendant, therefore, had probable cause to
11 recommend that Plaintiff be prosecuted for disorderly conduct. *See id.*; *Lantay v.*
12 *McLean*, 406 P.2d 224, 226 (Ariz. Ct. App. 1965) (officers had probable cause to charge
13 the plaintiff with disturbing the peace based on his rude conduct and abusive language).

14 While Plaintiff has denied making unreasonable noise or using profanity, and
15 testimony differs as to the degree of force use to knock on Mrs. Adams’s window, this is
16 not sufficient to negate probable cause. “Police depend upon the information furnished by
17 citizens, and, unless the contrary appears, they should be able to depend upon the
18 presumption that men speak the truth.” *Slade*, 541 P.2d at 553; *see also* A.R.S. § 13–
19 3602(R)(4) (“A peace officer may also rely on the statement of any person who is
20 protected by the order that the order remains in effect.”). Defendant only had information
21 that Plaintiff had refused to leave despite Mrs. Adams’s requests and Order of Protection.
22 Even if this information was later refuted, recanted, or characterized differently, the
23 evidence shows that Defendant had ample probable cause to recommend a disorderly
24 conduct charge. Further, while Plaintiff asserts that the police report was not factually
25 correct, a misleading report “does not change the fact that the information upon which the
26 officer acted furnished probable cause.” *Slade*, 541 P.2d at 553. “The acts of the officer
27 concerning the report may constitute another tort, but they do not constitute malicious
28 prosecution.” *Id.*

1 Plaintiff also seems to argue that Defendant was required or should have
2 conducted additional interviews, including of those who already gave written statements,
3 because he had “the right to continue his investigation.” (Resp. at 9.) Though a curious
4 choice of words, the Court agrees that Defendant had the right to continue his
5 investigation. But Plaintiff provides no support for the proposition that Defendant had a
6 duty to re-interview witnesses or search for exculpatory recantations.¹ While an officer
7 has a duty not to ignore exculpatory evidence that “negates a finding of probable cause,”
8 he is under no affirmative duty to continually attempt to negate probable cause once it is
9 acquired. *Broam v. Brogan*, 320 F.3d 1023, 1032 (9th Cir. 2003) (once probable cause is
10 established, “an officer is under no duty to investigate further or to look for additional
11 evidence which may exculpate the accused”). Moreover, the majority of subsequent
12 testimony from eyewitnesses was largely unchanged and would not have erased the
13 existing probable cause. To hold that Defendant was required to interview the very same
14 witnesses from whom he obtained written statements is at odds with all probable cause
15 precedent and does nothing to show that Defendant was aware of exculpatory or
16 contradictory evidence which he failed to disclose or consciously obscured.

17 Finally, Plaintiff argues that there was no refusal to obey a lawful order “to
18 disperse issued to maintain public safety” (Resp. at 7.) Though technically accurate, a
19 clear analogy can be drawn in that an Order of Protection had been issued against
20 Plaintiff, and he was in direct contravention of that Order. While not in regards to a
21 hazard, the Order of Protection is a lawful order that is designed to maintain safety.
22 Defendant had reason to believe that Plaintiff’s persistent conduct was a knowing
23 violation of that Order. Thus, the Court finds that no genuine dispute of fact exists that

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25 ¹ Similarly, Plaintiff notes that “other circuits have also suggested there may be a
26 duty to disclose exculpatory evidence.” (Resp. at 8 n.8 (collecting cases).) Indeed, there is
27 not a suggestion of such a duty to disclose, but an absolute and continuing obligation to
28 divulge exculpatory evidence. However, placement of this argument, and its relevance, is
mystifying. There is no contention that Defendant failed to disclose any exculpatory
evidence, only that he did not adequately endeavor to discover it. Whatever argument
Plaintiff attempts to make with such citations has no relevance to any of the facts or legal
arguments at hand.

1 Defendant had probable cause to submit for disorderly conduct charges, and Plaintiff's
2 arguments to the contrary are without merit.

3 **2. Unlawful Flight**

4 Defendant argues that there was probable cause to submit for the charge of
5 unlawful flight because he had requested identification from Plaintiff, Plaintiff responded
6 by vacating the premises at an elevated rate of speed, and Defendant pursued Plaintiff
7 with activated lights and sirens. (MSJ at 7-8.) In response, Plaintiff claims that he did not
8 knowingly or willfully flee, was unaware of Defendant's pursuit, and was free to leave
9 because Defendant did not tell him he was under investigation or being detained. (Resp.
10 at 9-10.)

11 A person commits unlawful flight if a "driver of a motor vehicle . . . willfully flees
12 or attempts to elude a pursuing official law enforcement vehicle" that has activated
13 visible lights and audible sirens. A.R.S. § 28.622.01. At the outset, Defendant has offered
14 uncontroverted testimony that he pursued Plaintiff in his vehicle, lights flashing and
15 sirens sounding. Plaintiff has failed to assert a single fact that controverts Defendant's
16 claim. While Plaintiff notes that multiple eyewitnesses did not see or hear the lights and
17 sirens, or that the two cars never occupied the same street at the same time, he offers no
18 witness testimony or evidence that Defendant did not act as he claims—only that Plaintiff
19 and others might not have seen it. Thus, it is uncontroverted that Defendant pursued
20 Plaintiff as required by A.R.S. § 28.622.01. However, questions remain as to whether this
21 was a "willful" attempt to flee under the statute.

22 While Plaintiff claims that he did not, and at times could not, have seen or heard
23 Defendant's lights or sirens, this alone does not eviscerate probable cause. Given
24 Defendant's uncontroverted description of events, it was reasonable for him to presume
25 that Plaintiff was cognizant of his pursuit, particularly given the circumstances
26 surrounding the event. The mail carrier that soon after stated that a vehicle matching
27 Plaintiff's had recklessly passed her at a high rate of speed bolstered Defendant's
28 suspicion. Thus, when submitting his report and recommendation for charges, Defendant

1 had probable cause to believe Plaintiff had willfully fled and eluded law enforcement
2 pursuit.

3 In regards to Plaintiff’s argument that he reasonably believed he was free to leave
4 (Resp. at 9-10), that fact is determined by whether “in view of all of the circumstances
5 surrounding the incident, a reasonable person would have believed he was not free to
6 leave.” *U.S. v. Mendenhall*, 446, U.S. 544, 554 (1980). The calculus here, however, is not
7 whether Plaintiff was indeed free to leave under the constitutional analysis, or even
8 whether a reasonable person in his circumstances would believe they had the right to
9 leave, but whether Defendant reasonably believed that Plaintiff knew he was not free to
10 leave or was consciously evading Defendant’s pursuit. The Court finds the facts
11 demonstrate that Defendant’s belief was reasonable. Given the tumultuous circumstances
12 surrounding their interaction, the Order of Protection against Plaintiff, and the fact that
13 Defendant explicitly asked Plaintiff to provide identification immediately prior to his
14 departure, it is at the very least plausible that a reasonable person would not have
15 believed he was free to leave. Thus, Defendant was warranted in his subsequent belief
16 that probable cause existed—even as to Plaintiff’s subjective state of mind—regarding
17 the unlawful flight charge.

18 Plaintiff also argues that Defendant should have interviewed Mrs. Adams and
19 Ms. Douglas after Plaintiff left about the alleged flight. This argument is illogical.
20 Defendant believed Plaintiff was not free to leave and pursued him accordingly. It is
21 puzzling what Plaintiff believes Defendant could have learned from questioning
22 witnesses about his own actions. As Defendant points out, he is “not required to interview
23 witnesses to confirm his own actions and observations,” as there “can be no more
24 trustworthy source of information.” (Reply at 3.) Moreover, Mrs. Adams’ later-made
25 statements were not that Defendant did not activate his lights and sirens, but simply that
26 he did so on one road, rather than another, and that she did not see the two cars on one
27 specific road at the same time. (Reply at 5-6 (citing Defendant’s Statement of Facts
28 ¶¶ 47, 68-69).)

1 Even were the Court to find that a genuine issue of material fact remains as to
2 whether probable cause existed regarding the unlawful flight component of Plaintiff's
3 charges—either due to Defendant's pursuit or Plaintiff's state of mind—summary
4 judgment in Defendant's favor would nonetheless be appropriate. Plaintiff's § 1983
5 allegation is styled as a singular count. Thus, even construing the nonmaterial factual
6 disputes regarding Plaintiff's alleged unlawful flight as material, it is unequivocal that
7 Plaintiff's disorderly conduct charge was supported by ample probable cause and could
8 have been brought regardless of Plaintiff's unlawful flight charge. Accordingly,
9 Plaintiff's entire § 1983 claim fails regardless of any alleged issues pertaining only to the
10 unlawful flight probable cause.

11 **B. Qualified Immunity**

12 Because the Court has found ample probable cause existed as to both of Plaintiff's
13 initial charges, it is not required to reach Defendant's argument that he is shielded by
14 qualified immunity. Nonetheless, the Court will briefly address the defense in pursuit of a
15 fulsome analysis.

16 Defendant is entitled to qualified immunity based on (1) whether the facts show a
17 violation of a constitutional right, and (2) if that right was clearly established at the time
18 of the misconduct. *Pearson v. Callahan*, 555 U.S. 223 (2009). Even if a law enforcement
19 officer violates an individual's constitutional rights, the officer may be protected by the
20 doctrine of qualified immunity, which shields a public official from individual liability
21 for civil damages under § 1983 so long as his conduct does not “violate clearly
22 established statutory or constitutional rights of which a reasonable person would have
23 known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Qualified immunity balances
24 two important interests—the need to hold public officials accountable when they exercise
25 power irresponsibly and the need to shield officials from harassment, distraction, and
26 liability when they perform their duties reasonably. The protection of qualified immunity
27 applies regardless of whether the [police officer's] error is a mistake of law, a mistake of
28 fact, or a mistake based on mixed questions of law and fact.” *Pearson*, 555 U.S. at 223

1 (citation and quotation marks omitted). Qualified immunity “provides ample protection to
2 all but the plainly incompetent or those who knowingly violate the law.” *Malley v.*
3 *Briggs*, 475 U.S. 335, 341(1986).

4 Plaintiff argues that Defendant is not entitled to qualified immunity because he
5 may have intentionally placed false information in his report in order to file the charges
6 of disorderly conduct and unlawful flight. (Resp. at 12.) Again, Plaintiff bases his
7 argument on the fact that no witness reported seeing Defendant activate his sirens and
8 lights directly in pursuit of and in proximity to Plaintiff. Still, no witness has asserted that
9 Defendant did not do so, only that they did not see him do so. Mrs. Adams plainly stated
10 that Defendant activated both. Plaintiff argues that it is possible Defendant did not act as
11 he reported and in doing so falsified his report, precluding the application of qualified
12 immunity.

13 At this stage, possibility or plausibility is not the standard. Unlike the pleading
14 stage, Plaintiff must provide factual assertions supported by evidence sufficient to create
15 a genuine issue of fact that Defendant did not act as he claims and lied in his report.
16 Plaintiff has failed to do so. Further, even if Defendant was mistaken as to Plaintiff’s
17 intent, “he is entitled to qualified immunity because a reasonable officer could conclude
18 that an individual who drove away from the scene of an investigation was attempting to
19 flee.” (Reply at 4.) Accordingly, even if the Court found a genuine dispute of material
20 fact as to probable cause, Defendant would be entitled to summary judgment based on
21 qualified immunity.

22 **C. Prosecutorial Independence**

23 As with Defendant’s qualified immunity defense, it is not necessary to address
24 Defendant’s prosecutorial independence defense, but the Court will briefly analyze the
25 argument to fully resolve the contentions before it.

26 To prevail on the § 1983 claim that his prosecution violated his civil rights,
27 Plaintiff “must show that the defendant[] prosecuted [him] with malice and without
28 probable cause, and that they did so for the purpose of denying [him] equal protection or

1 another specific constitutional right.” *Freeman*, 68 F.3d at 1189 (citations omitted). Even
2 assuming that Plaintiff could meet the malice and lack of probable cause elements—
3 which the Court has already found otherwise—the presumption of prosecutorial
4 independence, which frequently bars a plaintiff’s § 1983 malicious prosecution claim
5 against an arresting officer, must still be rebutted.

6 Ordinarily, the decision to file a criminal complaint is presumed to result from an
7 independent determination of the prosecutor, and, thus, precludes liability for those who
8 participated in the investigation or filed a report that resulted in initiation of proceedings.
9 However, the presumption of prosecutorial independence does not bar a subsequent
10 § 1983 claim against state or local officials who improperly exerted pressure on him,
11 knowingly provided misinformation to the prosecutor, concealed exculpatory evidence,
12 or otherwise engaged in wrongful or bad faith conduct that was actively instrumental in
13 causing the initiation of legal proceedings. *Awabdy v. City of Adelanto*, 368 F.3d 1062,
14 1067 (9th Cir. 2004). Malicious prosecution actions are not limited to suits against
15 prosecutors, but may be “brought against other persons who have wrongfully caused the
16 charges to be filed.” *Id.* at 1066 (citation omitted). “A prosecutor’s decision to charge . . .
17 will not shield a police officer who deliberately supplied misleading information that
18 influenced the decision They cannot hide behind officials whom they have
19 defrauded.” *Pierce v. Gilchrist*, 359 F.3d 1279, 1292 (10th Cir. 2004) (quoting *Jones v.*
20 *City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988)).

21 As Plaintiff acknowledges, the non-movant must point to evidence of fabrication,
22 other than inconsistency between the accounts of different parties, in order to defeat
23 summary judgment in malicious prosecution claims. (Resp. at 13 (citing *Smiddy v.*
24 *Varney*, 665 F.2d 261, 266-67 (9th Cir. 1981).) To do so, Plaintiff again argues that
25 witness reports contradict Defendant’s statements. (Resp. at 13-14.) These statements do
26 not directly contradict Defendant’s; they simply do not bolster them. Plaintiff presents no
27 evidence establishing a genuine issue of material fact as to whether Defendant exerted
28 pressure on prosecutors or his superiors to charge Plaintiff, or whether Defendant

1 provided misinformation, concealed exculpatory evidence, or engaged in wrongful or bad
2 faith conduct that was instrumental in causing the initiation of legal proceedings. *See*
3 *Harper v. City of Los Angeles*, 533 F.3d 1010, 1028 (9th Cir. 2008) (holding that
4 evidence rebutting the presumption of prosecutorial independence “must be substantial”).
5 Again, Plaintiff only provides later statements that may differ slightly from Defendant’s
6 rendition of events—not actual contradictions. Not only are the supposed discrepancies
7 far less than the substantial threshold required to rebut prosecutorial independence, but
8 they are quite common in eyewitness testimony. Indeed, many of the witness statements
9 that supply the alleged discrepancies on which Plaintiff relies differ from separate
10 accounts from those very same witnesses. Therefore, summary judgment is proper
11 because there is no evidence upon which a reasonable jury could find the presumption of
12 prosecutorial independence rebutted.

13 **IV. CONCLUSION**

14 Plaintiff argues that there are factual disputes that preclude summary judgment on
15 the existence of probable cause. But there are either no such disputes or, to the extent that
16 there are, the evidence is insufficient to negate probable cause—even when construed in
17 Plaintiff’s favor. The Court concludes, as a matter of law, that sufficient probable cause
18 to believe that Plaintiff had committed disorderly conduct and unlawful flight existed
19 such that Defendant could submit his report to initiate criminal charges. Moreover,
20 Defendant is shielded from liability by qualified immunity and prosecutorial
21 independence.

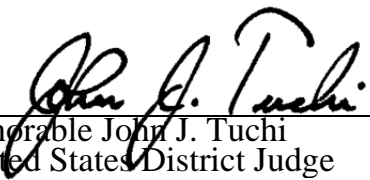
22 **IT IS THEREFORE ORDERED** granting Defendant Kevin Gilliland’s Motion
23 for Summary Judgment (Doc. 67).

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IT IS FURTHER ORDERED that the Clerk of Court shall enter final judgment accordingly and close this case.

Dated this 28th day of July, 2017.



Honorable John J. Tuchi
United States District Judge